

HIGH COURT OF TRIPURA AGARTALA

WP(C) No.476/2023

Dr. Viral Pravin Maru (39), Son of Mr. Pravin Vasanji Maru, Resident of 66 Fanaswadi, Leelatara Building 16th floor, flat No.1603, Charni Road East, P.O.-Mumbai GPO fort, P.S.-LT Marg, Mumbai, PIN-400002.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, Represented by Secretary/Director of Health and Family Welfare Department having its office New Secretariat Complex, P.O.-Secretariat, Agartala, West Tripura, PIN- 799010.

2. The Secretary, Health and Family Welfare Department, Having its office New Secretariat Complex, P.O.-Secretariat, Agartala, West Tripura, PIN-799010.

3. The Director, Health and Family Welfare Department, Having his office at Health Directorate Building, 2nd Floor, Pandit J.N. Complex, Agartala, PIN-799006.

4. Agartala Government Dental College and IGM Hospital, represented by the Dean/Principal, having his office at Agartala Government Dental College and IGM Hospital, IGM Chowmuhani, Akhaura Road, Agartala-799001.

5. The Dean/Principal, Agartala Government Dental College and IGM Hospital, IGM Chowmuhani, Akhaura Road, Agartala-799001.

6. Tripura Public Service Commission, Represented by the Chairman, Tripura Public Service Commission, having his office at Near Old Secretariat Complex, Akhaura Road, Agartala, Tripura, Pin-799001.

7. The Chairman, Tripura Public Service Commission, having his office at Near Old Secretariat Complex, Akhaura Road, Agartala, Tripura, Pin-799001.

8. The Member(s), Tripura Public Service Commission, having his office at Near Old Secretariat Complex, Akhaura Road, Agartala, Tripura, Pin-799001.

9. The Secretary, Tripura Public Service Commission, having his office at Near Old Secretariat Complex, Akhaura Road, Agartala, Tripura, Pin-799001.

10. The Under Secretary, Tripura Public Service Commission, having his office at Near Old Secretariat Complex, Akhaura Road, Agartala, Tripura, Pin-799001.

.....Respondent(s).

For Petitioner(s)

: Mr. Sankar Lodh, Advocate,
Mr. D. Debnath, Advocate.

For Respondent(s)

: Mr. Debalay Bhattacharya, G.A.,
Mr. Raju Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **18th August, 2023.**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner, Mr. Debalay Bhattacharya, learned Government Advocate appearing for the State respondents and Mr. Raju Datta, learned counsel appearing for the respondents-Tripura Public Service Commission.

2. Petitioner submitted Online application on 18.06.2023 under advertisement No.05/2023 dated 30.05.2023 (Annexure-1 to the writ petition) issued by the Tripura Public Service Commission, Agartala (*hereinafter referred to as TPSC*), i.e. before the cutoff date and time, i.e. 5.30 p.m. on 19.06.2023 for the post of Assistant Professor in Paediatric & Preventive Dentistry in Agartala Government Dental College and IGM Hospital, Agartala. He also sent the hard copies of the application and other relevant documents on 19.06.2023 through Inland Speed Post. As per the advertisement (Annexure-1) at paragraph-2 the following documents were supposed to be submitted in hard copies along with the application in hard copy by 23.06.2023:

"Candidates are required to submit self attested copy of certificates in support of their claims regarding Age, Educational Qualifications Madhyamik onwards (all mark sheets and certificates), Attempt Certificate of BDS, PG (MDS/DNB), Registration Certificate from the appropriate authority, Permanent Resident Certificate/Citizenship Certificate, Scheduled Castes/Scheduled Tribes, Experience Certificates, API score (as per Schedule-VI) and others, if any."

Annexure-3 at page-39 of the writ petition is the Tracking report of Speed Post which shows that the item reached Agartala Head Post Office on 20.06.2023 but it was delivered only on 28.06.2023, i.e. after the cutoff date of 23.06.2023 for submission of hard copies. Meanwhile, before the expiry of the cutoff date for submission of hard copies of the application along with the prescribed mandatory documents, i.e. 23.06.2023 the respondents-TPSC issued a notification bearing No.F.11(26-41)-Rectt./TPSC/2023 on 21.06.2023 (Annexure-4) which allowed submission of attempt certificate and up-to-date registration certificate by the candidates till 30.06.2023 by 5.30 p.m., failing which the Scrutiny Committee would take a decision *ex parte*. Since the application in hard copy and documents submitted by the petitioner through Speed Post reached on 28.06.2023, petitioner was treated as ineligible and his application was not subjected to scrutiny. Therefore, petitioner approached this Court in the present writ petition.

3. Petitioner apprehended that the extension of time for submitting only two documents, i.e. attempt certificate and up-to-date registration certificate apart from other certificates which were required to be submitted in hard copy as per paragraph-2 of the advertisement was done to favour few selected persons only. Petitioner's contention is that the TPSC even before the expiry of the cutoff date, i.e. 23.06.2023 for submitting application through hard copy undertook scrutiny of the applications received by it and on 21.06.2023, i.e. 2(two) days before the expiry of the cutoff date chose to issue a corrigendum to favour few persons.

4. Mr. Sankar Lodh, learned counsel for the petitioner, has also contended that if the hard copy of the applications submitted by candidates after 21.06.2023 suffered from shortfall of certain other documents, there was no reason why the TPSC extended time on 21.06.2023 for submitting hard copies of only two documents, i.e. attempt certificate and up-to-date registration certificate by 30.06.2023. Learned counsel for the petitioner, therefore, submits that the TPSC has not adhered to uniform and transparent yardstick in entertaining and scrutinizing applications of eligible persons. The delay on the part of the Postal Department is not attributable to the petitioner since his application had reached the Agartala Office of the Postal Department on 20.06.2023 itself and took 8(eight) days' time for being finally delivered in the Office of the TPSC, i.e. beyond the cutoff date of 23.06.2023. Learned counsel for the petitioner, therefore, submits that the recruitment exercise has suffered from lack of transparency and application of fair standard and uniform yardsticks in respect of all the candidates. Therefore, the impugned recruitment exercise is to be interfered and the respondents-TPSC should be directed to entertain the application of the petitioner and other similarly situated persons for giving them a fair opportunity to compete.

5. When the matter was taken up on the first date, i.e. 01.08.2023, the respondents were asked to file counter affidavit. Respondents No.6 to 10 being the TPSC and its officials have filed a counter affidavit. Mr. Raju Datta, learned counsel for the respondents-TPSC, has drawn the attention of this Court to the averments made in the counter affidavit and in particular, paragraphs-4, 5 & 6. It is submitted that the two documents, i.e. the attempt

certificate and up-to-date registration certificate are those documents which are necessary for computation of API score. There is no bar on the Commission to undertake scrutiny of the applications and documents submitted in hard copy before the cutoff date, i.e. 23.06.2023. The advertisement relates to filling up 18(eighteen) posts in 9(nine) disciplines including the one in which the petitioner is interested. The scrutiny of the documents reveals that some of the candidates did not furnish these two documents. This extension of time was granted to candidates whose application in hard copy with documents reached the Commission by the cutoff date 23.06.2023 covering all disciplines and 18 posts. No candidate whose application in hard copy with documents have been received by 23.06.2023 has approached this Court with a grievance that their applications have not been subjected to scrutiny despite all mandatory documents supplied in hard copy. It is also pointed out that about 62 such applications in hard copies were received after the cutoff date. These applications were, therefore, not subjected to scrutiny as such applicants were held to be ineligible. The apprehension of the petitioner that candidates from outside States have been ousted to favour candidates appearing from the State of Tripura is also unfounded since about 66 applicants from various States including Jammu & Kashmir and Karnataka had been able to submit their applications within the cutoff date of 23.06.2023. Their applications have been scrutinized and many of them who were found eligible were also called for interview.

6. Learned counsel for the respondents-TPSC has drawn the attention of this Court to the decisions of the Apex Court rendered in the case

of *Tata Cellular vrs. Union of India* reported in (1994) 6 SCC 651 and in the case of *Tajvir Singh Sodhi & Ors. Vrs. State of Jammu & Kashmir & Ors.* reported in 2023 SCC OnLine SC 344 which have been relied upon in a recent decision of this Court rendered by the Bench presided over by Hon'ble the Chief Justice (Justice Aparesh Kr. Singh) in the case of *Dr. Sandeep Roy Sarkar vrs. Tripura Public Service Commission & others* [WP(C) No.966 of 2022]. He has, in particular, relied upon the reasoning and observations of the Court in paragraphs-11, 14 and 15 of the said judgment. It is submitted that the Apex Court has cautioned interference in the decisions of the expert recruitment bodies in judicial review by the High Courts. It is submitted that the Apex Court has clearly held that unless the decision of the recruitment body is patently arbitrary and suffers from *mala fide*, no interference should be made. He, therefore, submits that the petitioner has not been able to establish any case of arbitrariness or *mala fide* against the TPSC in the recruitment exercise conducted for filling up various posts in 9(nine) disciplines in the Medical Colleges of the State. As such, the writ petition based on imaginary apprehension and without any enforceable legal right is fit to be dismissed since no case of arbitrariness or *mala fides* has been established by the petitioner.

7. I have considered the submissions of learned counsel for the parties at length and gone through the pleadings and the documents placed from record. The narration of facts and events have been dealt with in the foregoing paragraphs which are not being repeated hereunder, as they are not in dispute. Under the advertisement dated 30.05.2023 at Annexure-1, the TPSC

has undertaken an exercise to fill up 18 posts of Assistant Professor in Agartala Government Dental College & IGM Hospital, Agartala under the Health & Family Welfare Department, Government of Tripura. The advertisement required the applicants to submit the documents as at paragraph-2 quoted hereinabove in hard copies by 23.06.2023 (5.30 p.m.) along with the printed copy of Online application, failing which the candidature shall be treated as cancelled and the Commission would not entertain any application thereafter. It is not in dispute that though the petitioner had made Online application on 18.06.2023, the hard copy of the application along with the documents did not reach the Office of the Commission by the deadline, i.e. 5.30 p.m. on 23.06.2023. It has been pointed out from the Tracking report of Speed Post at Annexure-3, page-39 of the writ petition that though the item had reached the Agartala Office of the Postal Department but the same was delivered only on 28.06.2023, i.e. after the cutoff date.

8. It is not the case of the petitioner that applications in hard copy with documents received after the cutoff date of 23.06.2023 have been entertained by the TPSC and candidates have been allowed to participate in the recruitment exercise. Petitioner's grievance hinges upon Annexure-4, Corrigendum/ Notification dated 21.06.2023, by which the Commission extended the time limit for furnishing two documents, i.e. attempt certificate and up-to-date registration certificate which were found to be in shortfall in some of the applications received by 30.06.2023 (5.30 p.m.) in hard copies. The Commission has in their averments through the counter affidavit sought to justify the extension of time limit to submit these two documents only as they

were necessary for computation of the API score and as such, mandatory in nature. It is the stand of the respondents-TPSC that the process of scrutiny of documents received in hard copy before the cutoff date, i.e. 23.06.2023 is not legally impermissible. This plea of the respondents-TPSC appears to have sound basis as the recruiting body has to undertake scrutiny of several documents and applications received in respect of any such recruitment exercise in order to expedite the recruitment process.

9. It is also evident that no candidate who had submitted his application in hard copy by the cutoff date of 23.06.2023 has come forward with a grievance that his application has not been entertained and treated ineligible or that the benefit of extension of time till 30.06.2023 has not been granted to them. It appears from the stand of the respondents-TPSC that about 66 such candidates from far-off States like Jammu & Kashmir and Karnataka also had submitted their applications in hard copy with documents by the cutoff date of 23.06.2023 and they have been subjected to scrutiny and have been called to interview on being found eligible.

10. It is also evident from the counter affidavit of the respondents that it is not only the petitioner whose application in hard copy along with documents reached after the cutoff date of 23.06.2023 but there were 62 such applicants whose applications reached after the cutoff date 23.06.2023 and all of them were treated as ineligible. As such, on the one hand, the Commission cannot be faulted for treating applications received after 23.06.2023 as ineligible as no extension of time for submitting of hard copies of application with documents beyond 23.06.2023 was granted nor any application received

in hard copy after 23.06.2023 were entertained by the Commission for scrutiny and interview. Therefore, on the first plank, since the petitioner's application had reached on 28.06.2023, the decision of the recruiting body to treat that application as ineligible cannot be found fault with. It, therefore, also appeals to the Court that extension of time on 21.06.2023 for submitting two certificates which were mandatory for computation of API score to all the candidates covering 9 disciplines and 18 posts in total in the said recruitment exercise was not actuated by malice to favour few persons. Petitioner has also not been able to show that any individual candidate has been favoured selectively on account of extension of time for submission of these two documents in hard copy by 30.06.2023.

11. The judgments of the Apex Court on the issue of interference in judicial review in the decision of recruitment body are by now well settled. In the case of *Tajvir Singh Sodhi* (supra) the Apex Court has at paragraphs-64 to 69 laid down the broad parameters under which the Writ Court should not interfere. Only on the grounds of *mala fide* or palpable arbitrariness, interference can be made in such exercise. The wisdom of the recruiting body to fix a cutoff date cannot be questioned unless they are suffering from arbitrariness or are intended to favour few selected persons. The petitioner has not been able to make out a case of any such *mala fide* or *ex facie* arbitrariness in the decision of the recruiting body to adhere to the cutoff dates i.e. 23.06.2023 for submission of hard copies of applications with documents and 30.06.2023 i.e. the extension of time for submission of two mandatory

documents, i.e. attempt certificate and up-to-date registration certificate by the applicants which are necessary for computation of API score.

12. As such, on a comprehensive analysis of the facts, the reasons recorded and the legal position settled in this regard by the Apex Court, this Court does not find any merit in the writ petition. Accordingly, it is dismissed.

Pending application(s), if any, also stands disposed of.

Apresh Kumar Singh
(APARESH KUMAR SINGH), CJ

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Date: 2023.08.23

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