

**HIGH COURT OF TRIPURA
AGARTALA**

WA 212 of 2021

Sri Gautam Majumder

S/o Sri Gouranga Chandra Majumder
Resident of Government Quarter No.T/III/4,
Malancha Niwas, Block NO.1, Near AG Office,
PO: Kunjaban, PS: New Capital Complex,
District: West Tripura

---Petitioner-Appellant(s)

Versus

1. The State of Tripura

Represented by its Secretary-cum-Commissioner to the Department of Labour, Directorate of Employment Services and Manpower Planning, Government of Tripura, PO: Kunjaban, PS: New Capital Complex, District: West Tripura

2. The Director,

Directorate of Employment Services and Manpower Planning, Government of Tripura, PO: Agartala, Office Lane, PS: West Agartala, District: West Tripura

3. The Tripura Public Service Commission

Represented by its Secretary, having his office at Akhaura Road, Agartala, PO: Agartala, PS: West Agartala, District: West Tripura,

4. Sri Partha Sarathi Dutta,

S/O Unknown serving as Assistant Directorate (Employment), Directorate of Employment Services and Manpower Planning, Government of Tripura, Office Lane, PO: Agartala, PS: West Agartala, District: West Tripura.

---Respondent(s)

For Appellant(s)	: Mr. A. Pal, Advocate.
For Respondent(s)	: Mr. P Roy Barman, Senior Advocate. Mr. S. Bhattacharjee, Advocate. Mr. M. Debbarma, Addl.GA. Mr. Raju Datta, Advocate.

Date of hearing
and date of
delivery of judgment and order : 09.08.2023.
Whether fit for reporting : Yes.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment and order (Oral)

(T. Amarnath Goud), J

This is an appeal under Rule 2 of the Chapter VA of the Gauhati High Court Rules read with Article 226 of the Constitution of India, against the impugned final order dated 11.01.2021 passed by the learned Single Judge in WP(C)337 of 2018.

The reliefs sought by the petitioner in the WP(C) 337 of 2018 are as follows:

- (i) *Issue notice upon the respondents.*
- (ii) *Call for the relevant records from the custody of the respondents.*
- (iii) *Issue rule calling upon the respondents to show cause as to why memorandum dated 23.03.2018 whereby the seniority between petitioner and the private respondent has been determined on the basis of their joining to the respective posts, shall not be set aside and quashed.*

And

- (iv) *Issue rule calling upon the respondents to show cause as to why the respondent shall not be restrained from acting in furtherance of the memorandum dated 23.03.2018.*

And

- (v) *Issue rule calling upon the respondents to show cause as to why the seniority of the petitioner and the Private respondent shall not be determined in order of merit as per recommendation of the Tripura Public Service Commission.*

And

- (vi) *After hearing the parties be pleased to make the rule absolute*

And

- (vii) *In the interim be pleased to say the operation and effect of the memorandum dated 23.03.2018 till disposal of connected Writ Petition.*

And/Or

- (viii) *Pass any other order/orders as deem fit and proper by this Hon'ble Court.*

After hearing the learned counsel for the parties, the learned Single Judge has observed in the following manner while dismissing the petition of the petitioner:

"[6] Having applied that golden scale, it is clear that the respondent No. 4 is older than the petitioner and moreover, the respondent No.4 had joined earlier than the petitioner. In this regard, there is no controversy. As such, this court can safely state that there is no infirmity in preparing the combined final seniority list of the posts of Assistant Director (Employment) and the Employment Officer (Special) working under the Directorate of Employment Service & Manpower Planning, Government of Tripura.

In the result, the writ petition stands dismissed."

Being aggrieved and dissatisfied with the impugned order dated 11.01.2018, the appellant has preferred the present writ appeal before this court.

It is the case of the appellant that Tripura Public Service Commission issued an advertisement for the post of Assistant Director

(Employment) and the Employment (SPL) on 13.03.2008, vide item No.5 and 6 as per notification No.02/2008. The appellant was invited to appear before the interview board for both the post of Assistant Director (Employment) and the Employment Officer (SPL) on 04.10.2008. The appellant was appointed to the post of Employment Officer (SPL) on 25.02.2009. On 22.03.2018, the relative seniority between the appellant and the respondent No.4 was sought to be determined on the basis on the basis of their respective dates of joining. Being aggrieved by the illegal determination of seniority, the appellant challenged the same by filing a writ petition before the Hon'ble High Court which was registered as WP(C) No.337 of 2018, on 27.03.2018 which was subsequently dismissed by the learned Single Judge on 11.01.2021. Aggrieved thereby the appellant has preferred this appeal before this court.

Mr. A. Pal, learned counsel appearing for the appellant has contended before this court that the learned Single Judge failed to appreciate that the appellant and the respondent No.4 were direct recruits through TPSC and therefore, the conclusion drawn by the learned Single Judge that seniority has to be determined on the basis of the date of joining and the age of the candidates is erroneous. He has contended that the learned Single Judge failed to appreciate that clause 4 of the general principles for determining the seniority lays down that the relative seniority of all direct recruits shall be determined in order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority. So the appellant and the respondent No.4 being direct recruits through TPSC, their determination of inter se seniority on the basis of date of joining and age is illegal, arbitrary and unsustainable in law.

Mr. A. Pal has also contended that the learned Single Judge failed to appreciate that the appellant was late in joining the service

because his previous employer being the Government of Tripura released him late and the previous employer of the respondent No.4 released him early which enable him to join early. That being the situation, determination made on the basis of joining is illegal and arbitrary.

On the other hand, Mr. M. Debbarma, learned Addl.GA while denying the claim of the appellant has referred to the corrigendum dated 06.04.2018 and the relevant portion is extracted herein :

"...
The Director is Head of Department in consultation with the Secretary of the Department publishing the seniority list that Partha Sarathi Datta, Asst. Director (Employment) is senior to Sri Gautam Majumder, Employment Officer (Special) as opined that the relative seniority in between two officers should be determined on the basis of their joining to their respective post. Thus the matter is disposed off and the seniority list appended."

According to Mr. Debbarma, learned Addl. GA appearing for the state respondents, it is apparent from the said corrigendum dated 06.04.2018 that Partha Sarathi Datta, Asst. Director (Employment) is senior to Sri Gautam Majumder, Employment Officer (Special).

Mr. P Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the private respondent No.4 has categorically submitted before this court that the notification dated 22.10.2008 only shows that the appellant and the private respondent No.4 had been recommended to the Government of Tripura, Department of Labour & Employment as against their post opted by them in pursuant to the advertisement No. 02/2008 and it is not a seniority list.

In view of the above discussion and having gone through the record, we are of the view that the appellant has not approached this court with clean hands. Moreover, the learned single judge has rightly observed that the analogy in determining the seniority list by the respondent No.3 (The Tripura Public Service Commission) cannot be accepted for the simple reason that the said clause 4 can only be applied when the two persons are appointed on the same post by direct

recruitment but in this case, the petitioner and the respondent No.4 have been recruited in two different posts. However, for purpose of their promotion to the post of State Employment Officer, the combined seniority list has been published showing the respondent No.4 above the petitioner.

In view of the above, the instant writ petition stands dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

JUDGE

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