

**HIGH COURT OF TRIPURA
AGARTALA**

WA 116 of 2023

Sri Alvin Debbarma,
S/o- Sri Anil Debbarma,
Resident of Happy Valley, Nandan Nagar,
PO: Bankumari, Agartala, West Tripura, PIN: 799006

---Appellant(s)

Versus

1. The High Court of Tripura

Represented by its Registrar General, Lichu Bagan,
PO: Secretariat, Agartala, West Tripura, PIN: 799010

2. The Registrar General,

High Court of Tripura, Lichu Bagan,
PO: Secretariat Agartala West Tripura, PIN: 799010.

---Respondent(s)

For Petitioner(s)	: Mr. C. S. Sinha, Advocate.
For Respondent(s)	: Mr. B. N. Majumder, Sr. Advocate. Mr. S. C. Sen, Advocate. Mr. D J Saha, Advocate.
Date of hearing	: 21.11.2023
Date of pronouncement	: 06.12.2023.
Whether fit for reporting	: Yes

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(T. Amarnath Goud, J)

This is an appeal as per High Court Rules and as per Notification No.F.3(35)-HC/2023/4087 dated 21.03.2023 regarding practice and procedure for filing writ appeal preferred against the Judgment and order dated 21.03.2023 in WP(C) 337 of 2021 passed by the Single Judge.

[2] The reliefs sought for in WP(C) No.337 of 2021 may be reproduced here-in-below:

- (i) Admit the writ petition;
- (ii) Call for records:

- (iii) *Issue writ in the nature of certiorari calling upon the respondents to show cause as to why the very exclusion of petitioner from selection and appointment to the post of System officer against ST vacancy relying on the criteria of cut off marks in written, practical and viva voce examination which is not available in the advertisement dated 29.05.2019 should not be declared illegal and bad in law.*
- (iv) *Issue writ in the nature of certiorari calling upon the respondents to show cause as to why the select list of System officer supplied to petitioner vide letter dated 25.03.2021 in connection with advertisement dated 29.05.2019 should not be declared bad in law so far as the case of the petitioner is concerned.*
- (v) *Issue writ in the nature of certiorari calling upon the respondents to show cause as to why the introduction of criteria of cut off marks after completion of selection process (completion of written, practical and viva voce) should not be declared bad in law.*
- (vi) *Issue writ in the nature of mandamus calling upon the respondents to show cause as to why petitioner should not be selected and appointed to the post of System officer against ST vacancy from the date of appointment of System Officers.*
- (vii) *Pass any other order/orders/relief/reliefs which Your Lordship may deem fit and proper.*

[3] 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:

12. In the opinion of this court, when there is no cut off mark mentioned in the advertisement, it was within the domain of the Selection Committee to fix/determine the cut-off mark to find out the best suitable candidate. The post of 'System Officer' is highly technical. As such, Selection Committee as well as the appointing authority had kept it in mind that these posts are to be filled up by the best performers.

13. Article 229 of the Constitution of India, empowers the Chief Justice of the High Court to make rules or to apply his discretion in appropriate cases and his decision is final. It is not the case here that there was any bias in excluding the petitioner from the final merit list. The cut off mark as decided by the Chief Justice of the High Court had been applied uniformly in case of all the candidates who participated in the selection process.

[4] Being aggrieved by and dissatisfied with the impugned judgment and order, the appellant has preferred the present writ appeal before this court.

[5] It is the case of the appellant-petitioner that the petitioner is the graduate in Electronics & Telecommunication. In response to the advertisement dated 29.05.2019, he made an application for the post of System Officer. Out of 4(four) posts of System officer advertised, 2 (two)

posts are for ST category. After written, practical and oral examination merit list was published. He is in the merit list. But by introducing criteria of cut off marks in the examination which is not available in the advertisement he has been excluded from selection and appointment to system officer illegally and arbitrarily. Being aggrieved, the petitioner made WP(C) 337 of 2021 but Ld. Single Judge dismissed it illegally and without applicant of mind, the appellant has approached this court for seeking reliefs.

[6] Heard learned counsel for the parties.

[7] Mr. C. S. Sinha, learned counsel appearing for the appellant has submitted before this court that learned Single Judge did not appreciate that in the advertisement there is no criteria of cut off marks in the written, practical and viva voce test. Learned Single Judge also did not appreciate that in para-10 of the counter affidavit the respondents have admitted that there is no mention of cutoff marks of written, viva-voce and practical tests. It is also represented by the counsel for the appellant that the learned Single Judge did not appreciate the settled law that there can be no relaxation in the terms and condition contained in the advertisement unless the power or relaxation is duly reserved in the relevant Rule and/or in the advertisement.

[8] On the contrary, Mr. B N Majumder, learned senior counsel assisted by Mr. DJ Saha, learned counsel appearing for the respondents has submitted before this court that there are no laches on the impugned order dated 21.03.2023 and hence the same may not be interfered with. It is further submitted by Mr. Majumder, learned senior counsel for the respondents that in earlier occasion also appointments were made following the same procedure.

[9] After perusal of the record, we are of the view that the appellant has not approached this court with clean hands. It is also evident from the record that there is no cut off mark mentioned in the advertisement, it was within the domain of the Selection Committee to fix/determine the cut-off mark to find out the best suitable candidate. It is also evident from the counter affidavit submitted by the respondents that since the High Court of Tripura e-Courts Services (Appointment, Conditions of Service and Conduct) Rules, 2013 does not prescribe any qualifying or cut off marks in written and practical examination and viva voce thus, as per Rule 19 of these Rules in absence of any specific provision, the decision of the Chief Justice shall be final.

[10] To deal with the matter, it is apposite to extract herein below the Rule 17 and 19 of the High Court of Tripura e-courts Services (Appointment, Condition of Service & Conduct) Rules, 2013.

Rule 17: Reservation- Except as otherwise provided in these rules, all appointments by absorption or by the other modes of direct recruitment to the service and promotion under these rules shall be subject to the provisions of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and the Rules made there under. If no such suitable candidate is available, the posts will be filled up by the candidates other than those of the Schedule Caste and Schedule Tribe. In case of absorption of all the existing staff, they will be absorbed or appointed irrespective of whether required SC/ST Candidates have been appointed or not.

Rule 19: If any question arises as to be interpretation of these rules, the decision of the Chief Justice shall be final.

[11] As it is seen from the record, the matter relating to the cut-off marks has already been dealt with on number of occasions by the then Hon'ble the Chief Justice on 24.09.2011, 27.01.2015, 26.10.2017. By the order dated 24.09.2011, it was held that UR candidates who have obtained 55% and above and all reserved categories candidates who have obtained 45% and above be called for interview. On another occasion, by the order dated 25.10.2017 it was held that UR candidates

who secured 50% and SC/ST candidates who secured 40% of total marks will be called for practical and viva voce. So, it is evident from the record that in no prejudice has been caused to the petitioner from the side of the respondents.

[12] In the absence of any express provision the procedure that would be adopted in all fairness depending on the circumstances, Rule 19 comes into existence. Thus, this court finds no infirmity with the order passed by the learned single judge.

[13] In view of the above, the instant writ petition stands dismissed confirming the judgment & order dated 21.03.2023 by the learned Single Judge. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

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