

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.451/2020

1. The State of Tripura, Represented by the Chief Secretary to the Government of Tripura, New Civil Secretariat Complex, P.O. Kunjaban, Agartala-799010.

2. The State of Tripura, Represented by the Secretary to the Government of Tripura, Department of Education (Social Welfare and Social Education), Agartala, Tripura.

3. The Director of Education (Social Welfare and Social Education), Government of Tripura, Abhoynagar, Agartala, West Tripura, Tripura.

4. The Deputy Director of Education (Social Welfare and Social Education), Government of Tripura, Abhoynagar, Agartala, West Tripura, Tripura.

.....Appellant(s).

V E R S U S

Md. Suruk Ali, S/O. Md. Mahmad Ali, R/O. Jubarajnagar, Baburbazar, P.S. Kailasahar, District-Unakoti, Tripura.

.....Respondent(s).

For Appellant(s) : Mr. Dipankar Sarma, Addl. G.A.

For Respondent(s) : Mr. R. Paul, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of hearing and judgment: **11th December, 2023.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the appellants-State and Mr. R. Paul, learned counsel appearing for the writ petitioner/respondent.

2. The State of Tripura being aggrieved by the judgment and order dated 06.03.2020 passed in WP(C) No.1106 of 2016 by the learned Writ Court is in appeal. By the impugned judgment, the learned Writ Court has, *inter alia*, held as under:

"6. It is clear that 24 numbers of Group-C posts are still lying vacant and these posts are roster verified. The reasons as assigned by the respondents are that suitable candidates were not found from Schedule Tribe/hearing category.

7. From the said statement made in the counter affidavit, it is revealed that some posts are reserved for the persons having hearing disability. According to me, it amounts to reservation within reservation. Physically handicapped persons themselves form a different class and total 119 numbers of posts are kept reserved for this class of person and all posts are roster verified. Reservation for a particular class i.e., for hearing category persons is not permissible in law. The advertisement as issued by the State-respondents only classified the physically disabled persons as eligible for being appointed to those posts. It was further clarified in the advertisement that the total number of posts may vary for any category. It is also to be kept in mind that the respondents while issuing advertisement did not specify the number of posts to be reserved for persons having any particular type of disability. Having found no such stipulation in the advertisement, in my opinion, the petitioner deserves to be considered for appointment against the vacant posts, otherwise, it would offend Article 14 and 16 of the Constitution of India. In the context of the case, and having considered the fact that 24 numbers of roster verified posts under Group-C category are still lying vacant, I direct the State-respondents to consider the case of the petitioner sympathetically, and appoint him in any Group-C posts within the said 24 posts, keeping in mind the above observations made by this Court.

8. With the aforesaid observation and direction, the present writ petition stands disposed. The entire exercise shall be completed within 4(four) months from the date the petitioner shall furnish a copy of this order to the respondent No.3."

3. The appellants contend that writ petitioner who was an unreserved candidate with locomotor disability under the advertisement dated 24.06.2015 issued by the Education (Social Welfare and Social Education) Department, Government of Tripura cannot be accommodated against the vacancy available for the Scheduled Tribe candidate suffering from hearing disability.

4. The respondents/appellants herein in their additional counter affidavit made the following categorical statement:

"4. That I humbly submit that total 119 nos. vacant posts have been received for Group-C as per verified roster. Because Social Welfare & Social Education Department did not receive clearly category wise & cast wise verified posts from few Departments. However, it was clearly mentioned in the newspaper on 30th June 2015 that the total number of posts may vary for any category.

(A copy of the verified roster is annexed as Annexure RR/1 and copy of the newspaper dated 30-06-2015 is annexed as Annexure RR/2)

5. That I humbly submit that out of 119 nos. roster verified posts under Group-C, initially Department has distributed/recommended 89(eighty nine) nos. posts to various Departments and 6 nos. posts for Group-C have been kept in abeyance as 6(six) nos. eligible candidates had submitted different date in regard to their date of birth in different documents along with their application. And thus, 6 nos. posts for Group-C have been retained for the said candidates till the finalization of necessary verification from concerned certificate issuing authority. Accordingly, after completion of necessary verification, these 6(six) nos. posts have been distributed to the Departments. Therefore, total 95 (ninety five) nos. posts have been distributed/recommended to the various Departments.

(A Copy of the Note-02 Dated 13-05-2016 is appended herewith as Annexure RR/3).

6. That I humbly submit that further, 24 (twenty four) nos. roster verified posts under Group-C could not be distributed by the SW & SE Department due to non availability of eligible candidates under ST/Hearing category."

5. Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the appellants-State, submits that since out of notified 119 posts, 95 were already filled up and distributed amongst different departments, the remaining 24 roster verified posts could not be distributed due to non-availability of eligible candidates under ST hearing category.

6. As per the notification dated 24.05.2016 which is the list of successful candidates, 89 were recommended for appointment to the post under Group-C, out of which 43 belonged to the category of Visual disability, 26 to the category of Locomotor disability and 20 to the category of Speech and hearing disability. Petitioner's name did not figure in the category of Locomotor disability. Therefore, he approached the Writ Court. The appellants further contend that 6(six) no. of Group-C posts were kept in abeyance as these eligible candidates had submitted different dates of their birth in different documents with their application forms. These posts had been retained for the said candidates till finalization of the necessary verification from the concerned

certificate issuing authority. After necessary verification, six number of posts were distributed to the department. Therefore, total 95 number of posts have been distributed/recommended to the various departments and only 24 number roster verified posts of eligible ST hearing candidates in Group-C remained vacant. Petitioner stood at Sl. No.65 in the merit list and as such, his claim for being accommodated against the remaining 24 vacancies meant for ST hearing category would be in teeth of the provisions of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 since the advertisement was issued during the prevalence of the 1995 Act. As per the said Act, 1% each was to be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment; and (iii) locomotor disability or cerebral palsy in the post identified for each disability.

7. Learned Addl. Government Advocate for the appellants has also drawn the attention of this Court to the relevant provisions of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991. Paragraph-14 of the Schedule earmarks the reservation for physically handicapped categories and the operation of the roster. It is submitted that in view of the ratio rendered by the Apex Court in the case of *Union of India and another vrs. National Federation of the Blind and others* reported in (2013) 10 SCC 772 (paragraphs-41 and 42), these vacancies are not interchangeable. In substance, it is the case of the appellants that petitioner cannot seek appointment against a vacancy available for ST hearing category as he was a candidate for the vacancy available against locomotor disability in the unreserved category. Therefore, the direction of the learned Writ Court requires interference, otherwise it would amount to breaching the statutory mandate of the Act of

1995 and the Act of 1991 in a case of horizontal reservation and not vertical reservation.

8. Mr. R. Paul, learned counsel for the writ petitioner/respondent, has taken the Court through the pleadings of the writ petition. The first plea raised by him is to the effect that after the advertisement of 2012 bearing No.Tripura/ SW & SE/01/2012 did not lead to any appointment, these vacancies of physically disabled category were carried forward under the 2015 advertisement and the distinction between the 3(three) physically disabled category disappeared. However, on two counts such plea is untenable in law. Firstly, the advertisement of 2012 did not lead to a recruitment process as the advertisement was cancelled. As such, the vacancies were never carried forward. It was a fresh recruitment exercise for the available vacancies of physically disabled category. Secondly, learned counsel for the petitioner has not been able to show any rule which provides for disappearance of the earmarked vacancy of each of the physically disabled category in case they are carried forward to a subsequent exercise on remaining unfilled. Since the first advertisement of 2012 was cancelled and did not lead to any recruitment exercise, the second ground becomes totally untenable on facts also.

9. Learned counsel for the writ petitioner has then sought to raise a point of fact which remains undisputed during course of writ proceedings. As per the stand of the respondents in the additional counter affidavit extracted above, after filling up of 95 of the 119 posts notified under the advertisement of 2015, the remaining 24 posts belonged to the hearing disability in ST category. Indisputably, petitioner belongs to the unreserved category and suffered from

locomotor disability. The horizontal reservation guaranteed under the Act of 1995 provides for 1% each of the vacancies to persons suffering from the following physical disability:

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy.

The position in law as regards the allocation of posts as 1% for each of the three physically disabled category stands settled by virtue of the decision rendered by the Apex Court in the case of *National Federation of the Blind* (supra).

10. The learned Writ Court, however, fell in error in treating the vacant post of ST hearing category as available for being considered for appointment of a person like the petitioner who suffered from locomotor disability in the unreserved category. As such, the impugned judgment and order dated 06.03.2020 passed in WP(C) No.1106 of 2016 by the learned Writ Court cannot be sustained in the eye of law. It is accordingly set aside.

11. With the aforesaid observations, the writ appeal is allowed and stands disposed of.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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