

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No.893 of 2022

Sri Pranab Deb, son of Sri Pranesh Deb, Katlamara, P.O. Simna, P.S. Sidhai
Mohanpur, District- West Tripura, Pin-799212.

..... Petitioner(s)

V E R S U S

1. The State of Tripura represented by Secretary cum Commissioner,
Education Department, Civil Secretariat, New Capital Complex, P.O.
Kunjaban, Agartala, West Tripura, Pin-799006.

2. Director of School Education, Government of Tripura, P.O. Agartala, Pin-
799001.

3. The Headmaster, Ishanpur Higher Secondary School, Ishanpur, P.O. Sidhai,
District- West Tripura, Pin-799212.

..... Respondent(s)

For Petitioner(s) : Mr. A.L, Saha, Advocate,
Mr. K. Nandi, Advocate,
Mr. Soham Paul, Advocate,
Mr. S. Bhowmik, Advocate.

For Respondent(s) : Mr. S.S. Dey, Advocate General,
Mr. Debalay Bhattacharya, G.A.,
Mr. Soumyadeep Saha, Advocate.
Mrs. Ayantika Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR JUSTICE T. AMARNATH GOUD
HON'BLE MR JUSTICE ARINDAM LODH

Date of hearing and judgment : **26th September, 2023.**

Whether fit for reporting : YES

JUDGMENT & ORDER(ORAL)

Heard Mr. A.L, Saha, learned counsel appearing for the
petitioner and also heard Mr. S.S. Dey, learned Advocate General appearing
for the State-respondents.

[2] This Full Bench has been constituted in view of the reference
made by one of us (*Arindam Lodh, J*) in the order dated 30.05.2023 in

WP(C) No.893 of 2022. Since learned counsel for the petitioner herein relied upon a judgment passed in WP(C) No.334 of 2021, the learned Writ Court after respectfully disagreeing with the decision rendered in WP(C) No.334 of 2021 by one of us (*T. Amarnath Goud, J*) referred the matter before Hon'ble the Chief Justice of this Court to constitute an appropriate Bench to decide the matter.

[3] Hon'ble the Chief Justice of this Court in exercise of the residuary powers under Rule 15 of Chapter V of the High Court of Tripura Rules, 2023 and all powers vested in him, therefore, has constituted a Full Bench to hear the matter also taking into consideration that at present this Court is functioning with a strength of 3 Judges only out of the sanctioned strength of 5.

[4] The appointees to the post of teacher under the advertisements of 2002, 2006 and 2009 appear to revive the issue relating to the termination of their employments even after the issue has attained finality by virtue of the judgment rendered by a learned Division Bench of this Court in the case of *Tanmoy Nath and others versus State of Tripura and others reported in (2014) 2 TLR 731* and other analogous matters and affirmed by the Apex Court in its judgment dated 29.03.2017 in SLP(C) Nos.18993-19049/2014 and other analogous matters.

[5] Briefly stated the entire selection process to the post of teachers (Undergraduate, Graduate and Postgraduate) under the advertisements of 2002, 2006 and 2009 were in question before this Court in the case of

Tanmoy Nath and others (supra) on, *inter alia*, a number of grounds, the main ground being the legality and vires of the Revised Employment Policy, 2003 under which the selection process had been undertaken. A perusal of the paragraphs 4 to 8 of the judgment in case of *Tanmoy Nath and others* (supra) would show that the appointment of all the 10,323 teachers i.e. Undergraduate, Graduate and Postgraduate were under question before this Court in case of *Tanmoy Nath and others* (supra). The learned Division Bench of this Court after comprehensively dealing with the matter and the rival contentions of the parties, *inter alia*, set aside the entire selection process by declaring the Revised Employment Policy of 2003 as unconstitutional. Paragraphs 121 to 129 of the judgment containing the operative direction are extracted hereunder:

“121. It has been urged that even if we set aside the selections, our judgment should be prospective in nature. It has also been urged by Mr. Sankar Deb, learned Sr. Counsel for the petitioners, that those portions of the policy which are bad may be severed and those portions which can be upheld may be retained, but the appointments already made need not be disturbed. Reliance has been placed on the judgments of the Apex Court in *A.P. Public Service Commission v. K. Sudharshan Reddy and others*, (2006) 5 SCC 505, AIR 1957 SC 628, (2000) 7 SCC 719. These judgments have no applicability to the cases in hand and we are not all in agreement with this submission. The selections have been totally unfair. The selections have not been made in a transparent manner. The citizens of this country have not been treated equally. Most of the clauses of the policy are illegal and unconstitutional. The entire policy is bad because it gives no guidelines and, therefore, the entire selection will have to be, must be and is accordingly set aside.

122. Though we have set aside the selections, we are concerned with the education of the small children who are innocent and have no concern with the illegalities of the selection. We, therefore, direct that the teachers whose selections have been set aside shall continue to function in their present place of postings till 31-12-2014, i.e. the end of the academic session of this year.

123. The State on or before 31-12-2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31-12-2014.

124. It is not for this Court to frame guidelines but if the State does not frame any guidelines, then the State shall follow the following directions while making selections. If the State frames its own guidelines, it must ensure that they are in tune with the law laid down by the Apex Court as discussed by us above and in light of the directions given hereinafter.

- (i) Fresh applications shall be invited for all the posts;
- (ii) Even those who have applied earlier will have to apply again though they may be given relaxation in age and no fees may be charged from them;
- (iii) The State shall clearly set out the number of posts in each category of teachers;
- (iv) In case of undergraduate teachers, the State if it is so advised may divide the posts sub-division wise so that the primary school teachers are local people as far as possible;
- (v) In respect of graduate teachers, the State may divide the posts district wise;
- (vi) In case of postgraduate teachers, there will be no zone wise division of posts;
- (vii) In case the State decides to make division of posts region wise, as indicate hereinabove, then the candidates must be asked to apply only for one region of their choice. It should also be specified in the advertisements that once a candidate applies under any category then he shall not be permitted to change his category and the roll number should be allocated in such a fashion that the category and region of each candidate is clearly depicted in the roll number itself.
- (viii) For each category of teachers, a written test preferably an objective (MCQ) test must be held;
- (ix) This test should be conducted by an independent body like the Tripura Public Service Commission or the Tripura Central University;
- (x) The test should be multiple choice question and the answer sheet should be checked through a computer keeping in view the large number of candidates involved;
- (xi) At least 50% of the total marks shall be awarded on the basis of the performance in the written test, i.e. in case a candidate obtains 70 marks out of 100 in a written test, 35 marks out of 50 shall be awarded to him towards the total assessment;
- (xii) In the case of Post Graduate Teachers another 20 marks shall be awarded for the marks received in the qualifying course, i.e. B.A./B.Sc./B.Com (Honours) or post-graduation, i.e. M.A./M.Sc./M.Com. Therefore, if a candidate has obtained 50% marks in the qualifying course, he would get 10 out of 20 under this head. A candidate, who has higher qualifications, for example he is an Hons. Graduate and has also done his post-graduation or has done his post-graduation in 2(two) subjects, then he may be awarded 5 more. Similarly 5 more marks shall be awarded to those candidates who

have obtained Ph. D. or similar qualifications. Since consistency has an important role, 5 marks each i.e. 10 marks shall be awarded for the marks obtained in Madhyamik and Higher Secondary examination respectively. Therefore, if a candidate has 40% marks in Madhyamik he will get 2 out of 5 and if he has 60% marks in Higher Secondary he will get 3 marks. Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. but the State must lay down clear-cut guidelines as to how these marks have to be allotted. Therefore, the interview board will have the liberty to award 5 marks on the basis of oral interview.

(xiii). In case of Graduate Teachers, 50% marks shall be allocated for the performance in the written test, 20% marks for the marks obtained in the qualifying course i.e. Graduation, 5 marks on the basis of marks obtained in Higher Secondary and 5 marks for the marks obtained in Madhyamik and 10 marks shall be awarded on the basis of percentage of marks for candidates when done post graduate. Similarly, Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. and 5 for performance in interview.

(xiv). For Under Graduate Teachers 50% shall be allocated for performance in the written test, 10 marks for the marks obtained in Madhyamik, 10 marks for the marks obtained in Higher Secondary and 15 marks shall be awarded to those candidates who are qualified as per the NET guidelines i.e. they have passed TET or B. Ed or 2(two) years Diploma in Teaching. 5 Marks for higher qualifications. Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. and 5 for performance in interview.

(xv). We may make it clear that 50% seats shall be filled in only on the basis of merit. In the State of Tripura the reservation is as follows :

Scheduled Tribe – 31%
Scheduled Caste – 17%
General Category - 52%

Therefore, if there are 1000 posts in a particular category of 'Teachers' at least 165 Scheduled Tribe candidates should be selected on the basis of merit amongst Scheduled Tribes, 85 candidates belonging to Scheduled Castes be selected on the basis of merit drawn out amongst the Scheduled Caste category and 260 out of the unreserved/general category shall be appointed strictly on the basis of merit drawn out as above.

(xvi). The State must also ensure that in accordance with the Persons with Disability Act and the law laid down by the Apex Court in a number of cases including Union of India and Anr. Vs. National Federation of the Blind and Ors., [(2013)10 SCC 772] adequate numbers of posts are reserved for persons with disabilities.

(xvii). In case the States so desires, it may reserve a small percentage of posts for Ex-servicemen or wards of those who have

died fighting for the Country or have been severely disabled. However, the reservation under this head shall be horizontal and not above 5%. The number of posts in this category should also be clearly defined.

(xviii). The State may, if it so desires, also out of this 50% give some weightage to persons who have been waiting for the appointment for a long time. Therefore, there can be additional 20 marks to be awarded for seniority i.e. 1 mark for each year of seniority subject to a maximum of 20 marks. Similarly, the State may also give some weightage to members of the needy families out of these 50% posts and may allot 10 marks for those persons who belonged to the needy category. Therefore, the remaining 50% of posts the marking may be out of 130 i.e. 20 marks for seniority and 10 marks for need.

(xix). Effectively, those selected only on the basis of the merit shall be graded out of a maximum of 100 marks but for those who are given benefit of seniority and/or belonging to a poor family the marking will be out of 130 marks. It is, however, made clear that the State at the time of framing of the policy shall also lay down clear-cut guidelines how the needy families are to be identified. (i) The identification must be done on clearly set out criteria i.e. to say the upper income limit should be clearly defined. (ii) It should be clearly stated that no member of the family should be in government/organized employment. (iii) It should be clearly stated that the land of the family should be below a certain area. We also make it clear that any certificate given to a person said to be needy can be challenged by the unsuccessful candidates if they feel that this certificate has been wrongly given.

125. We would also like to make it clear that other than the benefits indicated by us above there can be no reservation/preference on the basis of age. There shall be no preference to dependent government servants or retired government employee or retrenched employees etc. There can be no reservation for linguistic or religious minorities or on area wise basis. It is further made clear that if the persons who are selected in the previous selection are again selected then the service rendered by them earlier shall be counted for the purpose of seniority, pension and all other purposes.

126. We may make it clear that the benefit to the candidates on the ground of being needy shall not be granted on the basis of the BPL certificates since we have found that there are no guidelines for issuing the BPL certificates. Other guidelines can also be laid down so that the needy can be identified properly.

127. Since we have set aside the revised employment policy which applies to a large category of posts and not merely to teachers, we would like to make it clear that our judgment shall be prospective in nature and shall not affect the appointments already made unless the said appointments are already under challenge before the Court on the ground that the employment policy is illegal.

128. We are also of the considered view that in future the State should not wait for years on end to make the recruitments. In

each year before 31st July the State shall identify the number of posts which shall fall vacant in every category of teachers on account of retirements, creation of new posts etc. in the next calendar year. To this 10 to 20% may be added as the posts for anticipated and unforeseen vacancies which may occur due to resignation or death of serving teachers. The test for these posts should be held every year and Select List should be prepared by 31st December of every year so that when the new academic year starts in January these teachers are selected and no school is without a teacher at any given time. While issuing this direction we are taking support from the judgment of the Apex Court in **Malik Mazhar Sultan and Anr. Vs. U.P Public Service Commission and Ors., [2008 (17) SCC 703]** wherein the Apex Court passed time bound directions for recruitment of civil judges. In our opinion, the requirement of adequate number of teachers is even more important than that of Judges and no post of teacher shall remain vacant. The 'Select List' shall be valid for a period of 1 or 2 years but before the validity of the 'Select List' comes to an end the State must ensure that fresh test is carried out and fresh selection is made.

129. All the writ petitions are disposed of in the aforesaid terms. No order as to costs."

[6] The State and certain aggrieved writ petitioners went in appeal before the Apex Court. As an interim relief, the operative directions at paragraph 123 were, however, stayed by the Apex Court. By the impugned judgment dated 29.03.2017, the Apex Court dismissed the Special Leave Petitions, with certain modifications in paragraph 123 of the impugned judgment. The judgment dated 29.03.2017 is quoted hereinbelow:

"We have heard learned counsel for the parties and perused the record. We do not find any ground to interfere with the impugned order. We do not find any ground to interfere with the impugned order. While setting aside the selections, the High Court in Para 123 of the impugned order observed:

"123. The State on or before 31.12.2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31.12.2014."

While issuing notice in the present matters this Court by its order dated 04.08.2014 stayed the directions contained in aforesaid para 123 of the impugned order.

Since we do not find any ground to interfere with the impugned order, the directions in para 123 now required to be suitably modified. We, therefore, direct :

(a) New Employment Policy should be framed by the State by 30th April, 2017 if not already framed and advertisements for filling up the vacancies may be issued latest by 31st May, 2017.

(b) The fresh selection process be completed on or before 31st December, 2017 and till the fresh process is completed, the teachers already appointed shall continue.

(c) The candidates who participated in the selection process pursuant to the advertisements in question, whether selected or not, will be allowed to participate in the fresh selection process by relaxing their age but subject to their having necessary qualifications.

(d) The qualifications in the case of teachers governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall be in conformity with the relevant statutory provisions of the said Act.

(e) The qualifications of teachers employed for Classes IA and above shall be strictly in compliance with the relevant provisions concerning such appointments.

Subject to the aforesaid modifications, the view taken by the High Court in the impugned order is affirmed and the special leave petitions are dismissed.

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

[7] By virtue of the judgment dated 29.03.2017 the services of all those teachers including the petitioner who was one of the selectees under the same recruitment exercise as a Graduate teacher were terminated by order dated 31.12.2017. The order of termination of the present petitioner is at Annexure-5 which reads as under:

“Government of Tripura
Directorate of Secondary Education
Estt.(N.G.) Section

No.F.1(1-43)-SE/E[NG]/2017[Vol-II]

Dated, Agartala, the 23.12.2017

MEMORANDUM

Whereas, Hon’ble Supreme Court of India vide order dated 23.03.2017 in SLP No.18993-19049/2014 has affirmed the order of the Hon’ble High Court of Tripura dated 07.05.2014 setting aside the

selection of teachers and directed amongst others in para (b) of the said order that the fresh selection process to be completed on or before 31.12.2017 and till such process is completed, the teachers already appointed shall continue.

And

Whereas, Hon'ble Supreme Court of India in order dated 14.12.2017 in the aforesaid connected cases, directed that on 31st December, 2017, the tenure of the incumbents will come to an end. Thereafter, their appointment will only for six months on ad-hoc basis on such fresh terms as the State Government may impose and further observed that "Thereafter, none of the said incumbents will continue."

And

In compliance of the aforesaid order dated 29.03.2017 and order dated 14.12.2017 of the Hon'ble Supreme Court of India, the service tenure of the teachers, who were appointed as Graduate Teachers as in the list enclosed at Annexure-A whose selection has been set aside, shall come to an end on 31st December, 2017.

And

Now, therefore, in compliance of the order dated 14.12.2017, the teachers whose names are listed at Annexure-A are hereby appointed as Graduate Teachers on ad-hoc basis w.e.f. 01.01.2018 for a period of 6 months on existing pay scale plus other allowances and entitlements admissible as per rules.

The Graduate Teachers so appointed on ad-hoc basis will work in their present place of posting.

S/d

(U.K. Chakma)

Director of Secondary Education,
Tripura."

[8] By virtue of the interim orders passed by the Apex Court on the request of the State of Tripura, the teachers whose services were terminated were appointed as Graduate teachers on ad-hoc basis with effect from 01.01.2018 for a period of 6 months which continued up to 31.03.2020 by virtue of the order dated 01.11.2018 passed by the Apex Court in Contempt Petition (Civil) No.1706 of 2017 in SLP(C) No. 18993-19049/2014 with Misc. Applications and other connected matters. The order dated 01.11.2018 is also extracted hereunder for better appreciation.

“..... Having considered the matter, we are of the view that at this stage, we ought to permit the State of Tripura to continue to avail of the services of the terminated teachers until the end of the academic session 2020, meaning the academic session 2019-2020. The above direction has been issued in the peculiar facts of the case and the circumstances which have confronted the State of Tripura and above all the need to functioning of teaching activities in schools in the State of Tripura remains unaffected.....”

[9] As per the above interim arrangement, these teachers including the petitioner continued on ad-hoc basis till 31.03.2020. By the impugned order dated 31.03.2020 (Annexure-11/A) the petitioner was informed that his ad-hoc services were terminated with effect from 31.03.2020. Petitioner has thereafter approached this Court in the present writ petition preferred on 10.10.2022 assailing the termination letter dated 23.12.2017 (Annexure-5) and the termination letter dated 31.03.2020 (Annexure-11/A) issued by the Directorate of Secondary Education, Government of Tripura. In order to complete the narrative, it would also be proper to refer to another batch of litigation on the same issue initiated by some of the teachers in case of ***Bijoy Krishna Saha and others versus State of Tripura*** [WP(C) No.1040 of 2019] and other connected writ petitions. In the said batch of writ petitions, the petitioners though were beneficiaries of the same appointment process as Undergraduate/Graduate/Postgraduate teachers claimed to be not bound by the decision rendered in the case of ***Tanmoy Nath*** (supra) as affirmed by the Apex Court, *inter alia*, contending that (a) those petitioners were appointed in March, 2010 before which date they had already acquired the eligibility in terms of notification issued by the State of Tripura as required under the Provisions of the National Council for Teacher Education Act, 1993; (b) in terms of the selection process undertaken by the State, the petitioners were

appointed as Graduate teachers; (c) The petitioners were never ever informed of the pendency of any proceedings or impleaded as parties and are, therefore, not bound by the decision dated 07.05.2014 rendered in the case of **Tanmoy Nath** (supra) and (d) that their representations stood summarily rejected.

[10] The learned Division Bench of this Court of which one of us (*Arindam Lodh, J*) was a member dismissed the writ petitions holding that those bunch of writ petitions were an abuse of the process of law and speculative in nature. The aforesaid contentions raised by the petitioners in the case of **Bijoy Krishna Saha & others** were also squarely dealt with in the body of the judgment. The grounds of non-impleadment as parties and non-issuance of notice to them were also discussed at paragraphs 18, 19 and 20. Those petitioners had also raised the issue relating to protection relying upon paragraph 127 of the judgment of **Tanmoy Nath** (supra). That contention was also dealt with at paragraphs 23 to 27 of the judgment dated 03.10.2019.

[11] It also needs to be mentioned here that by order dated 06.02.2014 in the case of **Tanmoy Nath** (supra) notices were issued to all the affected teachers through paper publication in the light of the principles contained in Order I Rule 8 of the Code of Civil Procedure (*CPC, for short*). The decision in the case of **Tanmoy Nath** (supra) was thus rendered in respect of the entire selection process under the advertisements of 2002, 2006 and 2009 and conducted in terms of the new Revised Employment

Policy of 2003. The learned Division Bench in the case of *Tanmoy Nath* (supra) found several illegalities and lack of proper guidelines in the Revised Employment Policy which had resulted in blatant case of arbitrariness in the selection process. It was therefore compelled to set aside the entire selection process undertaken under those advertisements relating to Undergraduate/Graduate/Postgraduate teachers.

[12] When the termination of the ad-hoc services of some of the teachers i.e. Sri Pradip Debbarma and two others in WP(C) 334 of 2021 by the impugned order dated 31.03.2020 were brought before this Writ Court, one of us (T. Amarnath Goud, J) after dealing with the rival contentions of the parties found that the memorandum dated 31.03.2020 was not a speaking order, rather an omnibus communication. Therefore, it was set aside with a liberty to the respondents to pass a reasoned and specific order in the subject matter relating to the petitioners. Petitioners, if aggrieved by the said decision, were granted liberty to avail remedies under law. The State preferred a Review Petition No.40 of 2023 against the said judgment which was heard and decided by the Bench presided by one of us (T. Amarnath Goud, J), *inter alia*, holding as under:

“6. In view of the prevailing circumstances explained, the clarification of the Order dated 03.05.2023 passed by this Court in WP(C) No.334 of 2021 is given as under:-

i) The said WP(C) No.334 of 2021 has been filed only by three petitioners namely, 1. Shri Pradip Debbarma, 2. Moynal Hossain and 3) Shri Kanai Lal Das.

ii) This Court at Para-30 of the said order dated 03.05.2023 held as under:-

“30. According to this Court, the memorandum dated 31.03.2020 which have been issued by the respondents is not a speaking order

and it is an omnibus communication is set aside with a liberty to the respondents to pass a reasoned and specific order in the subject matter relating to the petitioners. If the petitioners are aggrieved by the said decision, they can avail remedies under law”

In view of the above, it is clear that the said order passed is not in “REM” but it is in ‘personam’ confining the relief to the petitioners of the said WP(C) No.334 of 2021 only and is not applicable to all 10,323 teachers.

iii) This Court has not granted any relief in favour of the writ petitioners for providing them any appointment or to continue with their services as teachers.

7. Merely by setting aside the memorandum dated 31.03.2020 which was a non-speaking and omnibus communication, this Court has granted liberty to the Government/respondents to issue a specific and reasoned order to the petitioners and if aggrieved they would assail the same in accordance with the law.

8. In fact, no relief has been granted in favor of the writ petitioners.

9. With the above clarification, the present review petition is accordingly closed. It is needless to observe that the Government is at liberty to initiate steps against the concerned persons with its investigating agencies for causing through media an unhealthy atmosphere in society.

10. Accordingly, with the above observation and direction, this present review application stands closed.”

It was made clear that the Court had not granted any relief in favour of the writ petitioners for providing them any appointment or to continue with their services as teachers. This decision of Writ Court was brought to the notice of the other Writ Court presided over by one of us (*Arindam Lodh, J*) in the case of the present writ petitioner whereafter the learned Court referred the matter to Hon’ble the Chief Justice to constitute an appropriate Bench to decide the reference. That is how the reference is before us.

[13] Mr. A.L. Saha, learned counsel for the petitioner has assailed the impugned termination letters dated 23.12.2017 (Annexure-5) and 31.03.2020 (Annexure-11/A) *inter alia* on the following grounds:

(a) That the petitioner was not a party in the writ petitions decided by this Court in the case of **Tanmoy Nath** (supra) and other connected writ petitions dated 07.05.2014;

(b) That no notice was served upon the petitioner asking him to submit his defence reply before the order of termination was passed. As such, there is a violation of principles of natural justice. Learned counsel for the petitioner has sought to rely upon the decision of the Apex Court in case of Maneka Gandhi vrs. Union of India reported in AIR 1978 SC 597 in support of his submission as regards requirement of compliance of principles of natural justice as it entails adverse civil consequences.

(c) Learned counsel for the petitioner has also placed reliance upon paragraph 127 of the judgment in the case of Tanmoy Nath (supra) in order to submit that since petitioner was not a party in those writ petitions, therefore, in view of the prospective overruling, the services of the petitioner were saved. Learned counsel for the petitioner has, therefore, submitted that the services of the petitioner have been terminated in violation of principles of natural justice. Moreover, he was not a party or covered by the decision of this Court in **Tanmoy Nath** (supra) or before the Apex Court where the judgment was affirmed. The writ petition is not barred by delay as there is no period of limitation for invoking writ jurisdiction. Moreover, his services were continued till 31.03.2020. Learned counsel for the petitioner has also referred to certain representations made and the applications for furnishing information under RTI before the authorities of the State which have not been heeded to. He has also referred to certain information obtained under RTI from the Supreme Court Registry to the effect that the petitioner was

not a party in the SLP(C) No. 18993-19049/2014 before the Apex Court arising out of the case of *Tanmoy Nath* (supra). In substance, it is the case of the petitioner that the decision of *Tanmoy Nath* (supra) does not cover the case of the petitioner and as such, his services could not have been terminated without proper show-cause notice and without consideration of his defence reply.

[14] Mr. S.S. Dey, learned Advocate General has strongly opposed the prayer. He submits that the petitioner has not been able to make out a clear case on the basis of the pleadings of the writ petition that he was not falling in the category of teachers i.e. Undergraduate, Graduate and Postgraduate whose cases have been dealt with squarely at paragraphs 4 to 8 of the decision in *Tanmoy Nath* (supra). The writ petition is an abuse of the process of law as petitioner has failed to show as to how his case is distinguishable or segregated from rest of the teachers whose selection process was set aside primarily on the ground that the Revised Employment Policy of 2003 under which the recruitment exercise was undertaken under advertisements of 2002, 2006 and 2009 were found to be arbitrary, illegal and suffering from nepotism and favoritism. It is submitted that the decision of *Tanmoy Nath* (supra) is a judgment in *rem* and no individual teacher can claim to be excepted from its rigors which stands affirmed up to the Apex Court. Petitioner can also not complain that no notice was served upon him as vide order dated 06.02.2014 passed during the proceedings of the case of *Tanmoy Nath* (supra), notices were issued to all such teachers through paper publication in line with the principles contained under Order I Rule 8 of the

CPC. Learned Advocate General has also placed the Division Bench judgment of this Court in case of *Sri Bijoy Krishna Saha & others versus The State of Tripura & others* in *WP(C) No.1040 of 2019* where the same contentions have been raised and squarely dealt with and answered by this Court. It is submitted that the decision in *Tanmoy Nath* (supra) covers 10323 teachers. Petitioner is also one of them. As such, the plea of non-compliance of principles of natural justice or opportunity to show-cause does not arise in the case of individual petitioner when the entire selection process was set aside. Learned Advocate General has also sought to rely upon the decisions which have already been referred to in the previous part of the judgment.

[15] We have given our anxious consideration to the rival submissions of the parties. It needs to be mentioned at the outset that by virtue of the judgment rendered in Review Petition No.40 of 2023 by one of us (T. Amarnath Goud, J) it has been abundantly made clear that the Writ Court had not granted any relief in favour of the writ petitioners for providing them any appointment or to continue with their services as teachers. The referral order dated 30.05.2023 passed in WP(C) No.893 of 2022 has elaborately referred to the judgments rendered by this Court in the case of *Tanmoy Nath* (supra) dated 07.05.2014, *Sri Bijoy Krishna Saha and others* dated 03.10.2019 and also the judgment of the Apex Court dated 29.03.2017 whereby the decision in *Tanmoy Nath* (supra) was affirmed with certain modifications in paragraph 123 of the judgment in *Tanmoy Nath*. However, since at the fag end of the order, the judgment passed in WP(C)

No.334 of 2021 of the coordinate Bench of the Writ Court was brought to the notice of the learned Court, the matter was referred to Hon'ble Chief Justice to create Bench to decide the reference.

[16] After hearing learned counsel for the parties at length and after giving anxious consideration to the rival submissions of the parties and the points raised, we are of the unanimous view that the issue of legality of the appointments undertaken under advertisement of 2009 in terms of the Revised Employment Policy of 2003 have attained finality by virtue of the judgment rendered by the Apex Court dated 29.03.2017 whereby the decision of the learned Division Bench of this Court dated 07.05.2014 in the case of **Tanmoy Nath** (supra) has been affirmed. The relevant paragraphs of the judgment in the case of **Tanmoy Nath** (supra) have already been quoted hereinabove. The order of the Apex Court dated 29.03.2017 and the interim order passed thereafter by virtue of which ad-hoc extensions were granted to the teachers like the petitioner to continue till 31.03.2020 have also been referred to hereinabove. The decision in the case of **Tanmoy Nath** (supra) is a judgment in *rem* which operates as regards all the appointees, teachers under the advertisement of 2009 and covers 10323 teachers of different categories i.e. Undergraduate, Graduate and Postgraduate including the present petitioner. It is not that proper notice was not issued upon all the appointees/selectees under the aforesaid advertisement as by virtue of the order dated 06.02.2014 in the case of **Tanmoy Nath** (supra) notices were issued to all though paper publication in terms of Order I Rule 8 of CPC. It appears that this petitioner despite valid notice did not choose to intervene in

the batch of writ petitions decided in the case of **Tanmoy Nath** (supra) and continued to enjoy the ad-hoc extensions to his service till 31.03.2020 in terms of the interim order passed by the Apex Court. The present case of the petitioner is not one where his services have been terminated on charges of misconduct where the principles enshrined under Article 311 of the Constitution of India are required to be followed. The entire selection process was set aside as the Revised Employment Policy of 2003 suffered from various illegalities, lack of guidelines, arbitrariness, favoritism and nepotism in the process of recruitment. The learned Division Bench of this Court had directed the State to frame a fresh employment policy and conduct fresh selection process after giving age relaxation to the appointees whose services were terminated. It, therefore, does not lie in the mouth of the petitioner to contend that the impugned termination orders dated 23.12.2017 (Annexure-5) and 31.03.2020 (Annexure-11/A) are suffering from violation of principles of natural justice and that petitioner is not covered by the judgment of this Court in case of **Tanmoy Nath** (supra) as affirmed by the Apex Court. In fact, the contention of the petitioner relying upon paragraph 127 of the decision of **Tanmoy Nath** (supra) also has been squarely dealt with by learned Division Bench of this Court in case of **Sri Bijoy Krishna Saha and others**. Paragraph 127 of **Tanmoy Nath** (supra) case, cannot be read in isolation from the preceding paragraph starting from paragraphs 121, 122 and the directions passed by the Court contained in paragraphs 123 to 126 of the judgment. It is quite obvious that since several employments could have taken place under the Revised Employment Policy

of 2003 concerning other departments which were not before the Court in the case of **Tanmoy Nath** (supra) (which covered the case of teachers under Education Department only) the learned Court consciously clarified that this decision would operate as regards the appointments made under the advertisement dated 25.09.2009 unless any other employment made under any other department was already under challenge on the ground that the Employment Policy is illegal. As such, paragraph 127 does not confer any benefit or leverage to the present petitioner to escape from the rigors of the decision rendered by this Court in case of **Tanmoy Nath** (supra) as affirmed by the Apex Court. The litigation journey as observed at the outset has gone for almost 12 years by now since the first writ petition was filed in the year 2011. The beneficiaries of that selection process like the present petitioner ought to have obeyed the judgment of this Court in the case of **Tanmoy Nath** (supra) as affirmed by the Apex Court dated 29.03.2017 instead of raking up their grievances repeatedly on issues which have attained finality. This Court, therefore, deprecates the approach of the petitioners in indulging in abuse of the process of Court. The decision of this Court in **Tanmoy Nath** (supra) has attained finality and none of the points raised herein are available to be raised by the petitioner.

[17] After going through the records thoroughly, it has come to light that the petitioner Sri Pranab Deb has suppressed a material fact that he along with another had approached this court by way of filing a writ petition being WP(C) No.95/2021 titled as Sri Santanu Bhattacharjee & Anr. Vs. State of Tripura & Ors.

[18] The judgment and order (Oral) passed by a Coordinate Bench of this Court [Akil Kureshi, CJ (as he then was)] in WP(C) 95/2021 is reproduced herein below for convenience in extenso:

“[2] Before recording the contentions of the counsel for the petitioners, a brief background leading to the decision in case of Tanmoy Nath may be given. In the State of Tripura the State Government had issued successive public advertisements for appointment of large number of graduate, undergraduate and postgraduate teachers in the years 2002 and 2006, however, the selection process could not be completed. Yet another advertisement was issued on 23.09.2009 inviting fresh applications, however, providing that those who had already applied earlier, need not apply afresh and their applications would be considered by giving one-time age relaxation. After these selections were made large number of petitions were filed challenging the appointments on various grounds. Bunch of these petitions were disposed of by a Single Judge of the Agartala Bench of Gauhati High Court by common judgment dated 16.11.2011. The learned Single Judge did not go into the merits of the allegations made by the petitioners but remanded the matters back to the Government for thorough scrutiny and examination by constituting a committee. This judgment was challenged by private individuals as well as by the State Government. The issue was thus placed before the Division Bench. The Division Bench of this court in case of Tanmoy Nath held that the new employment policy formulated by the State Government in the year 2003 on the basis of which all the selections and appointments were made, was defective on numerous counts. Entire selection was set aside. While doing so, the Court was conscious that terminating such large number of teachers at one-shot would create a vacuum of teaching staff in Government schools which would be detrimental to the education of young children. The Court, therefore, issued certain directions for continuing these teachers till fresh selections and appointments can be made within a specified time. The judgment of Tanmoy Nath was carried in appeal by the State Government. The Supreme Court initially stayed the judgment. All the selected teachers who were under threat of termination by virtue of the judgment of the High Court continued in the same capacity. However, subsequently the said appeal was dismissed. The judgment of the High Court in Tanmoy Nath was confirmed. Only modification made was in the timelines for completing the fresh selections with a further direction that the existing teachers would get the benefit of age relaxation. These timelines were also extended and revised from time to time and eventually even this extension was not granted further. Many teachers in the State thus faced terminations.”

[19] On the aforesaid facts, the plea raised by the present petitioner in WP(C)95/2021 may be reproduced hereunder:

“[3] The petitioners’ services have been terminated as part of the above process. They have filed these petitions challenging their terminations on the grounds that they were never a party in Tanmoy Nath case and their selections were not under challenge. Learned counsel for the petitioners argued that the High Court in Tanmoy Nath had specifically provided that the judgment would be prospective and would apply only to those selections which were in challenge before the High Court. In his opinion, since the selection of the petitioners was not in challenge, the judgment in case of Tanmoy Nath would not cover their cases and consequently the State Government committed a serious error in terminating their services relying on the decision in case of Tanmoy Nath.”

[20] On hearing the learned counsel appearing for the present petitioner and the counsels appearing for the State, the Hon’ble Chief Justice (Akil Kureshi, J) had held thus:

“[9] The decision of this Court in case of Tanmoy Nath thus was clear on its sweep and implications. Entire selections made by the State Government pursuant to the advertisement issued on 23rd September, 2009 were set aside. This has been so stated by the Court on various occasions as I have noted earlier. Very foundation of the selection being a new recruitment policy which was declared unconstitutional, the Court was persuaded to set aside all selections. It did not refer to specific selections and appointments under challenge as is sought to be canvassed before me by the counsel for the petitioners. It is undisputed that the petitioners had also applied in response to the said advertisement and were selected and appointed under the same exercise which was scrutinized by the High Court and declared as illegal. The observations of the Court in paragraph 127 of the judgment noted earlier therefore must be viewed from this background. This paragraph cannot be read in isolation as to limit the effect of the judgment in case of Tanmoy Nath to only those specific selections which the original petitioners might have challenged before the High Court. What in paragraph 127 of the judgment the Division Bench had provided was that the effect of the judgment would be limited to the selection of teachers pursuant to the advertisement dated 23.09.2009 and not to any other selections. This was necessary because the new recruitment policy of the Government framed in the year 2003 may have been a source of appointment of number of other Government posts. If the decision of the Tanmoy Nath was utilized to reopen such appointments, far reaching and widespread implications would be felt in administration leading to chaotic situation. It was in this background that the Court made its clarifications in paragraph 127 of the judgment.”

[21] In the said judgment dated 26.02.2021 (in WP(C) 95/2021 and WP(C) 96/2021) the learned Judge also referred to the case of ***Partha Debnath & Ors Vs. State of Tripura & Ors [WP(C) 1219/2019]*** when the question of non-issuance of individual notices before termination was also dealt with and it was held that issuance of individual notices was not necessary.

[22] The petitioner was/is well aware of the contentions he raised in the present writ petition and the decisions rendered by the Division Bench of this Court in the case of ***Partha Debnath*** (Supra). In spite of this, the petitioner suppressing all those relevant facts has filed the instant writ petition raising similar facts in issue and law.

[23] It is aptly evident that the parties of the present writ petition under reference and the parties in WP(C)95/2021, the grounds agitated in WP(C) 95/2021 and the prayers made therein are similar and identical to the present writ petition. As such, the present writ petition filed by the petitioner Sri Pranab Deb is barred by *res judicata* as embodied under Section 11 of the Civil Procedure Code, 1908 and thus, the same is not maintainable in its present form and nature.

[24] That apart, it is now well settled that “*if the mischief played is so widespread and all pervasive, affecting the result so as to make it difficult to pick out the persons who have been unlawfully benefitted or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to*

cancel the whole selection.” It is also settled “when the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.” [Ref: MP State Cooperative Bank Limited, Bhopal Vs. Nanuram Jadhav & Ors, (2007) 8 SCC 264].

[25] Besides, principle of natural justice is not a straightjacket formula. It depends upon various facets in the administration of justice and it is established that there is *exception to rules of natural justice*. The present case falls within such exception where rules of natural justice would not be applicable because of large scale corruption, favouritism, nepotism and arbitrariness found in the entire selection process. The entire selection process was vitiated by fraud and arbitrariness which has already been declared illegal and appointments of the persons so selected were terminated.

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[emphasis supplied]

[26] The appointments of the petitioners and other teachers were vitiated from the very inception which resulted in the issuance of their termination orders and in that case, the principles of natural justice were not violated, if no opportunity was given to the employees concerned to have their say in the matter before their appointments were recalled and terminated.

[27] As an upshot of the above discussions and the reasons recorded, we are of the unanimous view that no interference is called for in the impugned orders whereby the services of the petitioners have been

terminated. The reference is answered accordingly. The instant writ petition is dismissed with a cost of Rs.**25,000/-** to be deposited in the Tripura State Legal Services Authority.

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

(APARESH KUMAR SINGH) CJ

(T. AMARNATH GOUD) J

(ARINDAM LODH) J

**DIPESH
DEB**

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by DIPESH DEB
Date: 2023.10.12
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