HIGH COURT OF TRIPURA
AGARTALA
WP(C) 942/2022

Smt. Kalpita Sutradhar .....**Petitioner**

Versus

The State of Tripura and 6 ors. .....**Respondents**

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Debbarma, Advocate
For Respondent(s)	:	Mr. D. Bhattacharjee, GA Mr. S. Saha, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH

Order

25/01/2023

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Debbarma, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharjee, learned GA, assisted by Mr. S. Saha, learned counsel appearing for the respondents-State.

2. By means of filing this writ petition, the petitioner has prayed for the following reliefs:

> **"(i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, for directing the respondents, to transmit the records, appertaining to this writ petition, lying with them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Notification dated 27.11.2020 & the impugned Notification dated 11.02.2022 (Annexure 5, 6 & 9 respectively supra) insofar as the same does not include the name of the petitioner;**
> **(ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, for mandating/directing the respondents, to forthwith revoke/rescind the impugned notification dated 27.11.2020 & the impugned notification dated 11.02.2022 (Annexures- 5, 6 & 9) respectively supra) insofar as the same does not include the name of the petitioner, and further, for mandating/directing them, to issue Offer of Appointment, in favour of the petitioner, in tune with the statutory mandate, contained in Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 & the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992;**
> **(iii) Call for the records appertaining to this petition;**
> **(iv) After hearing the parties, be pleased to make the Rule Absolute in terms of i. & ii. above;**
> **(v) Cost of and incidental to this proceeding;**
> **(vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper".**

3. Briefly stated, initially a notification was issued by the respondent-State for filling up of vacant post of Post Graduate Teacher in connection with filling up 12 (twelve) numbers of vacant posts of Post Graduate Teacher in Music subject. Out of the said 12 posts, 6 (six) posts are meant for UR candidates, 2 (two) for SC candidates and 3 (three) for ST candidates. Subsequently, by advertisement dated 02.03.2019 online application was invited for filling up of 10 vacant posts for the subject 'Music' out of which 4 posts are for UR candidates, 2 for SC candidates and 4 for ST candidates. Following the recruitments made by TRBT in the year 2018 and 2019 by a notification dated 27.11.2020 it was enumerated that out of 7 vacancies, 1 post is for UR candidates, 2 posts are for SC candidates and 4 posts are for ST candidates. Thereafter, TRBT issued a notification on 22.12.2021 enumerating subject wise cut-off marks. It is the further case of the petitioner that for publication of subject-wise merit list selection for the post of Post Graduate teacher, 2020, TRBT issued a notification dated 11.02.2022 selecting 3 candidates belonging from SC category.

4. During the course of hearing, learned counsel for the petitioner has brought on record the number of years and the posts that were carry forward, in a tabular form, which is as under:-

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Year	Total Vacancies	UR	SC	ST	Remarks
2017	12	6 (50%)	2 (16.66%)	4 (33.33%)	Excess reservation for ST: None found eligible

2018	**12 (totally carried forward)**	**6 (50%)**	**2 (16.66%)**	**4 (33.33%)**	**1st carry forward in the next recruitment year: Excess reservation for ST: 2 UR found eligible**
2019	**10 (12-2=10 carried forward)**	**4 (40%)**	**2 (20%)**	**4 (40%)**	**2nd carry forward in the next recruitment year impermissible: Excess reservation for SCs & STs: Further 3 UR found eligible**
2020	**7 (10-3=7 carried forward)**	**1**	**2 (28.57%)**	**4 (57.14%)**	**3rd carry forward in the next recruitment year impermissible: Excess reservation for SCs & STs**

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5. Mr. Bhattacharjee, learned GA appearing on behalf of respondents-State has not disputed the facts mentioned in the above table regarding carrying forward of the posts.

6. It is pertinent to mention herein that Clause (c) of sub-rule 8 of Rule 8 of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992 [for short, the Rule, 1992] clearly stipulates that the reserved vacant posts shall be carried forward to the next recruitment year.

7. A Division Bench of this court has interpreted this provision in case no. **W.A. 458 of 2020** and others [titled as ***Pankaj Bhowmik vs. The State of Tripura and others***], wherein it was held that in the first recruitment year the competent authority may undertake so many recruitment processes, as they desire. After end of the said first recruitment year, the reserved vacant category of posts can be carried forward in terms of sub-rule 8(c) of Rule 8

of the said Rules, 1992, that is, during the next recruitment year, but, not in the subsequent years.

8. In this case, admittedly, the first recruitment year for recruiting Music teacher was in the year 2017. The posts could not be filled up due to non-availability of the eligible reserved candidates. The said posts of Music teacher under reserved category were carried forward during the year 2018. That time also no eligible reserved category candidates were found. Thereafter, these posts were further carried forward in the year 2019-20, which is contrary to the statute as provided under sub-rule 8(c) of Rule 8 of the Rules, 1992.

9. The Division Bench in the case of ***Pankaj Bhowmik*** (***supra***) explained and interpreted the provision under sub-rule 8(c) of Rule 8 of the Rules, 1992, as under:

> **"19. Under the second amendment Rules,2007 the State's lawmakers only preferred to limit their exercise to the extent of the insertion of the words "vacant posts" in clause (c) of sub-rule 8 of Rule 8 of Rules,1992, which reads as under:**
>
> > ***"(c) If the required number of candidates are not available even after further attempt within a recruitment year the reserved [vacant posts] shall be carried forward to the next recruitment year".***
>
> **20. The language of this provision, according to us, is very clear and unambiguous. The well-neigh principle is that Rule of "literal construction" is the safe rule and should be followed unless the language used is contradictory, ambiguous, or leads really to absurd results. Besides, legislation is always to be understood first in accordance with its plain meaning. A plain reading of sub-rule 8(c) of Rule 8 of amended Rules, 2007 makes it clear that despite Clause (4-B) of Article 16 of the Constitution of India, the State Government had consciously taken a decision that the unfilled vacancies if not filled up within a recruitment year, the reserved [vacant posts] shall be carried forward to the next recruitment year. In other words, the law-makers wanted to limit carry forward rule to fill up the reserved [vacant posts] i.e. backlog vacancies up to the next recruitment year only and not in any further subsequent/succeeding**

years. It is clarified that the expression "*if the required vacancies of candidates are not available even after further attempt within a recruitment year*" would mean and connote that the authorities concerned can exercise the process of recruitment indicating the unfilled backlog vacancies for a number of times within the same year i.e. initial/first recruitment year.

21. On careful reading of sub-rule 8(c) of Rule 8 of the Rules, 1992 as amended in 2007, we are of the considered opinion that while Article 16 (4-B) had given wide discretion upon the State Government/Legislature for enacting any law to decide the number of year or years up to which unfilled vacancies will be carried forward, the State Government under Clause (c) of sub-rule (8) of Rule 8 of the Rules,1992 legislated that in case the required number of candidates are not available even after further attempt within a recruitment year, the reserved vacant posts shall be carried forward to the next recruitment year.

22. The Hon'ble Supreme Court in *Dr. Jaishri Laxmanrao Patil (supra)* it was held [*per majority*] while interpreting a newly inserted provision which was enacted to bring it in alignment with existing *pari materia* provisions, the Court should not be unmindful of the existing constitutional provisions. When constitutional amendments introduce new definition, judicial interpretation has leaned in favour of giving literal meaning to the terms used which had led to change. The Supreme Court on numerous occasions has given full literal effect to the terms of the amendment brought in by the legislature, after understanding the rationale for the change.

23. By now, it is well-settled that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not all *[AIR 1936 PC 253(2)].* In the case of *Ramchandra Keshab Adke Vrs. Govind Joti Chavare*, reported in *AIR 1975 SC 915*, the apex court held that *when a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*. In the instant cases, the advertising department, i.e. the Director of Health Services, Govt. of Tripura, the respondent no.2 in both the appeals and the respondent no.5 in the writ petition, have no power to carry forward backlog vacancies years after years, which if allowed, will be in direct conflict with the provisions encrypted in the Rules, 1992. Such unauthorized act of the Director of Health Services, Government of Tripura in both the appeals and the Member Secretary, Teacher's Recruitment Board, Tripura, Office of the School Education, Govt. of Tripura, in the writ petition, had given undue advantage to the reserved category of candidates which offends the equality clause in the matter of appointment as enshrined under Article 16 of the Constitution of India. The action of the official respondents invites inequality amongst the equals. The official respondents ought to have taken into account that relevant provision under Clause (c) of sub-rule (8) of Rule 8 of the Rules, 1992 clearly provides carry forward rule to fill up he backlog vacancies only limited up to the next recruitment year as stated above in para 20 of this judgment. Thus, by way of by-passing the mandatory provision of sub-rule(c) of sub-rule (8) of Rule 8 of SC & ST Rules, 1992, the official respondents have committed a vital mistake in overlooking statutory dictum as provided therein. The State-respondents ought not have violated the statutory provisions. It is well settled that there is no estoppel against law or statute. We have noticed, in the instant

cases, statutory violation ought to have subsisting since inception, i.e., since the date of publication of the employment notification for filling up the vacancies in the posts of Pharmacist (Allopathy) under the Directorate of Health Services.

24. In our considered view, since *the official respondents acted contrary to law and in contravention of the Rules,1992 (as amended in 2007), they had violated the statutory provisions, and in that case, the respondents are prohibited to take the plea of estoppels to defend such unlawful act. Clause(c) of sub-rule (8) of Rule 8 of the Rules,1992 is such provision which cannot be waived or dispensed with on the ground of estoppel and if such violation is permitted, then, it would ultimately tantamount to repeal the provision which is inserted in the statutory rule with a view to uphold constitutional ethos. Doctrine of estoppel is founded on the principles of equity and the issues of constitutional validity cannot be thwarted, by applying the doctrine of estoppel.* Bearing in mind the aforesaid principle, we are unable to agree with the decision of learned Single Judge that the challenge made by the petitioners suffers from the doctrine of estoppel.

25. In the above conspectus, the conclusion is inevitable that the official respondents have breached the mandatory provision embodied in Clause(c) of sub-rule (s) of Rule 8 of the Rules, 1992 (Second amendment,2007) in following the carry forward rule to fill up the unfilled vacancies in the posts of Pharmacist (Allopathy) from reserved category of candidates in succeeding recruitment years including the current recruitment under employment notification dated 30.10.2013, issued by the Director of Health Services and the notification dated 15.07.2022 issued by the respondent no.3 in the writ petition. It is clearly held under Clause(c) of sub-rule(8) of Rule 8 of SC & ST Rules, 1992 that unfilled reserved backlog vacancies shall be carried forward only after the first recruitment year in any posts and not in the succeeding years.

26. Under Clause(c) of sub-rule (8) of Rule 8 of the Rules, 1992 the State is barred to apply carry forward rule to clear backlog vacancies of reserved category candidates beyond next recruitment year. We make it clear that "next recruitment year" means the year followed by the first recruitment process in a particular year. As for example, a department issues an employment notification in the year 2021 for filling up of 100 posts in a particular category. For this purpose, 50% have been kept reserved for reserved category candidates as per the State's roster. After completion of the said selection process, the department finds only 30 candidates eligible for filling up the said posts identified for reserved category candidates. Remaining 20 (twenty) unfilled posts, if kept vacant, these will be treated as "backlog vacancies". If the required numbers of candidates are not available, then, the authorities concerned may make further attempts to fill up the unfilled vacancies within the same year i.e. initial/first recruitment year. Now, suppose, in the year 2023, Govt. has created another 150 posts of the same category. Out of these 150 posts, 50% posts will be kept reserved for reserved category candidates and further, 20 unfilled vacancies of 2021 will be added to determine the total vacancies meant for reserved category candidates and it would be 75 +20 = 95 that is, 95 posts which will be kept reserved because it will be the next

recruitment year i.e. 2nd recruitment year followed by the first recruitment year 2021. Again, suppose, out of 95 posts the department may find 80 candidates suitable for appointment, which means that 15 vacancies belonging to reserved category have not been filled up. Thereafter, the department again has issued fresh employment notification in the year 2025 for filling up 50 vacancies of the same category of posts. The department as usual will notify 50% vacancies for candidates belonging to unreserved category. But, in that recruitment year, i.e.2025, if the department tries to fill up the backlog vacancies of 15 which could not be filled up in the year 2023, by way of following carry forward rule, then, it will violate the mandatory provision as contemplated in Clause (c) of sub-rule (8) of Rule 8 of the Rules, 1992 as amended by second amendment, 2007.

27. In the cases in hand, we find no inconsistency or irrationality to the legislation brought in by the State Government under sub-Rule 8(c) of Rule 8 of amended Rules, 2007. The State Government was well aware of the fact that the object and purpose of insertion of Article 16(4-B) by way of Eighty-first Amendment of the Constitution of India is to enable the State Governments to legislate its own law considering the socioeconomic scenario of the State as well as overall efficiency in administration as enshrined in Article 335 of the Constitution of India.

28. In the opinion of this court, when the State law-makers had clear intention to apply carry forward rule for clearing the "backlog vacancies" up to the next recruitment year, that is, after the initial recruitment year, the court has no jurisdiction to read and construe/interpret it otherwise which will definitely defeat the object and purpose of the legislation brought in by the State law-makers under Sub- Rule 8(c) of Rule 8 of amended Rules, 2007. We re-iterate that *the State legislature has thought it fair and just to apply the carry forward rule only up to the next recruitment year and not years any further or subsequent years. (emphasis supplied)*

29. It is evident from the counter affidavits and additional counter affidavits filed by the State-respondents as well as the submission of learned G.A. that 'backlog vacancies' to fill up the post of reserved category candidates are being carried forward for a number of recruitment years after introduction of SC & ST Act and the Rules,1992. According to us, it is inconsistent to and in contravention to Clause (c) of sub-rule 8 of Rule 8 of amended Rules, 2007. Therefore, this is a continuous breach of a statutory provision which escaped the notice of the executives who have the primary duty to strictly adhere to the legislative decision encrypted in the statute, and therefore, must be stopped here to prevent further breach of legislative intent and object of the legislatures to protect the interest of public in general for whose interest particular legislation was introduced. The State-respondents have committed a serious error in law to identify and keep 60 seats for reserved category candidates out of total 73 posts for filling up the vacant posts of Pharmacist (Allopathy), which is the subject matter in both the appeals; so also the subject matter of the writ petition where out of 230 posts of Graduate Teachers, 201 numbers of posts were kept reserved for SC and ST candidates. We may in the context of the case, unhesitatingly hold that reservation in excess of 50%

ceiling limit is inconsistent and contrary to law as contemplated under Sub-Rule 8(c) of Rule 8 of Rules, 1992.

30. This Court in WP(C) No. 736 of 2022, by way of interim order asked the respondents to continue the selection process, but, not to declare the results of the examination. As we have already held in the above writ appeals that ceiling limit of 50% cannot be breached in any manner whatsoever, in the succeeding recruitment years beyond the second year of recruitment followed by the first recruitment year. It is evident that so many recruitment processes for recruitment of Graduate Teachers in many subsequent recruitment years since the enactment of "Rules, 1992" have already been undertaken for filling up reserved vacant posts i.e. the backlog vacancies of Graduate Teachers by way of applying the carry forward rule, which exercise, according to us, were carried out in direct contravention to Clause (c) of sub-rule 8 of Rule 8 of the Rules,1992. In our considered view, the mistakes already committed by the State executives in filling up the posts of Graduate Teachers in the State as aforestated is unrepairable; however, such illegalities committed by the respondents-authorities during the previous years cannot be permitted to perpetuate by continuous mistake.

31. Here, we shall be failing to our solemn duty if we do not stop the recurrence of such flouting of a statutory provision as enshrined in subrule 8(c) of Rule 8 of the Rules,1992. It is for this reason such illegal exercise or practice must be stopped here i.e. from the present recruitment year in question and for all times to come. Excessive reservation beyond ceiling limit of 50% rule, if not permitted or supported by any law or statute, is illegal, arbitrary and discriminatory.

32. It is not unknown to this court that there is dearth of competent and adequate Pharmacists (Allopathy) in the State of Tripura. If the posts are allowed to remain vacant for non-availability of eligible reserved category candidates for the years to come, then, the health services, which the Government is necessarily to provide to its people, will badly be affected. Similarly, complaints against adequate numbers of teachers in the schools are a regular phenomenon in the State. So, if the vacancies in the posts of teachers are not filled up, then, the education system of the State will also be adversely affected when right to education has been made a fundamental right. Absence of adequate numbers of teachers will frustrate the object the law-makers wanted to achieve through providing of qualitative education.

33. Before we conclude, we must say, that, it is settled proposition of law that the number of backlog reserved vacancies form a separate class and is treated as a distinct group and are excluded from the ceiling limit of 50% reservation. In the instant cases, these backlog reserved vacancies which are being carried forward in the recruitment year under notification dated 30.10.2013 in WA No. 458/2020 and WA No.460/2020, for filling up the posts of Pharmacist (Allopathy) and the notification dated 15.07.2022 in WP(C) No.736/2022, for filling up the posts of Graduate Teachers are illegally kept reserved in contravention to sub-rule 8(c) of Rule 8 of Rules, 1992. However, the mistake as discussed in detail in the preceding paragraphs has been committed by the official respondents in carrying forward the vacant reserved posts for years together including the notification dated 30.10.2013, for which, according to

us, the appointments already made from this distinct group have not been disturbed by this court. More so, we are in agreement with Ld. Single Judge that no malpractice is found to be committed in the selection process as alleged by the petitioners/appellants for filling up the posts of Pharmacist (Allopathy), and in this respect, the common judgment and order dated 15.09.2020 passed by the learned Single Judge in WP(C) No.134 of 2015 and WP(C) No.135 of 2015 is not interfered with.

34. For the reasons stated and discussed here-in-above, we pass the following directions in WA No. 458/2020 & in WA No.460/2020:-

(i) The action of the official respondents to reserve 60 posts out of 73 posts for filling up the posts of Pharmacist (Allopathy) in the employment notification
dated 30.10.2013 is illegal, arbitrary and discriminatory and in contravention to Clause (c) of sub-rule(8) of Rule 8 of the Rules, 1992 being in excess of ceiling limit of 50% reservation.

(ii) There shall not be application of carry forward rule in the matter of appointment/filling up of the posts of Pharmacist (Allopathy) under the employment notification dated 30.10.2013.

(iii) The posts which are in excess of ceiling limit of 50% rule, shall be filled up by general category candidates, if not already filled up by reserved category candidates, that is, from the candidates belonging to the distinct group. It is made clear that the appointments already made in the posts of Pharmacist (Allopathy) by applying the carry forward rule under notification dated 30.10.2013 shall not be disturbed. It is further made clear that if any vacancies under the same notification still exists and left vacant those shall be filled up by general category candidates according to their merits and in that case, the official respondents shall prepare and publish the merit list of general category
candidates.

(iv) The official respondents shall not apply the carry forward rule in any of the future recruitment process for filling up the vacant posts of Pharmacist (Allopathy).

34.1 Directions in WP(C) 736 of 2022

(i) The employment notification dated 15.07.2022, issued by the Member Secretary, Teachers Recruitment Board, Tripura (TRBT), for filling up the posts of 'Graduate Teacher' for the Classes-IX-X, wherein, 201 posts have been kept reserved out of 230 posts, is also interfered with to the extent that the number of vacancies carried forward shall not be given effect to.

(ii) The selection of reserved category candidates must be limited to 50% for filling up the total number of posts of 'Graduate Teacher' under the notification dated 15.07.2022. The respondents shall prepare the select list following the said ceiling limit of 50% rule for reservation.

(iii) The official respondents shall not apply the carry forward rule in any of the future recruitment process for filling up the vacant posts of 'Graduate Teacher'.

35. In the light of the above observations and directions, the impugned common judgment and order, dated 15.09.2020, passed in WP(C) No. 134 of

> **2015 and WP(C) No. 135 of 2015 by learned Single Judge is modified to the extent as indicated above.**
> **36. As a sequel, both the writ appeals, accordingly, stand disposed in the aforesaid terms, and the writ petition [W.P.(C) 736 OF 2022] filed by the petitioner, stands allowed and disposed to the extent as indicated above. In the above conspectus, the interim order dated 09.09.2022, passed in WP(C) No.736 of 2022, shall stand disposed."**

10. In the light of above, I direct the respondents-State i.e. authorities concerned to recast/re-arrange the select list dated 11.02.2022 (Annexure 9 of the writ petition) taking into account the well-settled principle of 50% ceiling limit in the matter of reservation, and also bearing in mind the principle laid down in ***Pankaj Bhowmik*** (***supra***) case.

11. Accordingly, the select list dated 11.02.2022 (Annexure 9 to the writ petition) stands set-aside and quashed. The entire process of re-casting/ re-arranging of select list shall be concluded within a period of 4 (four) weeks from today in terms of the above directions.

12. With the above observations and directions, the instant writ petition stands allowed and thus disposed of.

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

JUDGE

Saikat