

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.988/2022

Smt. Subarna Chakraborty, W/O- Sri Sudip Goswami, Resident of Rabindra Nagar, AMC Ward No.51, P.O.:- Renters Colony, P.S.:- East Agartala, District:-West Tripura, Pin:-799004, Aged about:-33 years.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by its Special Secretary, Department of Industries and Commerce, Government of Tripura, P.O.:- Agartala Secretariat, P.S.:-New Capital Complex, District:-West Tripura, PIN-799010.

2. The Director, Department of Industries and Commerce, Government of Tripura, P.O.:- Agartala Secretariat, P.S.:-New Capital Complex, District:-West Tripura, PIN-799010.

.....Respondent(s).

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate,
Mr. Ankan Tilak Paul, Advocate,
Mr. Swarupan Saha, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Soumyadeep Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **2nd August, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

This is the fourth round of litigation by the petitioner in connection with her appointment to the post of Senior Instructor (Employability Skill) under the Department of Industries and Commerce, Government of Tripura, under advertisement dated 30.04.2016.

2. In the first writ petition being WP(C) No.375 of 2016, the date for filing application under the advertisement dated 30.04.2016 was extended. Petitioner applied within the extended time. The second writ petition bearing

No. WP(C) 864 of 2017 was preferred by the petitioner as the petitioner was awarded "0" marks under the head of "need" criteria which the petitioner challenged. The writ petition was decided by the learned Writ Court vide judgment dated 05.08.2020, *inter alia*, holding as under:

"17. In view of such conclusions and in obtaining facts the relief in the favour of the petitioners must be moulded. It is not necessary to unsettle the selection of the private respondents at this distant point of time. Nor petitioners can hope to secure employment only on the basis of this declaration. For the purpose of these petitions, therefore, the respondents would be asked to eliminate the marks under the head of "need" criteria in case of the petitioners and for comparison, in case of all selected candidates who belong to unreserved category. After eliminating such marks, the official respondents shall prepare a result sheet in the order of merits drawn on the basis of marks awarded to the respective candidates under the remaining headings. If on such basis the petitioners or either of them is/are found to be more meritorious than the last selected candidate, he would be offered appointment on the existing vacancy for an unreserved candidate on the post in question or against the first available vacancy which may arise in future. Any such appointment would be prospective and would carry no weightage for the past period for any purpose. This exercise shall be carried out within a period of 4(four) months from today."

(emphasis supplied)

3. Thereafter, the petitioner again approached this Court in WP(C) No.34 of 2021 as despite preparation of a fresh result sheet pursuant to the judgment dated 05.08.2020, they had not offered appointment to the petitioner within a period of 4(four) months. The said writ petition was disposed of with the following directions:

"Be that as it may, since there are vacant posts available, the respondents are directed to initiate necessary steps to appoint the petitioners in the post of Senior Instructor under any of the ITIs. The entire exercise shall be completed within a period of 3 months from the

date when the respondents shall receive a copy of this order since direction to complete the exercise within a period of 4 (four) months in terms of the judgment and order dated 05.08.2020 in WP(C) 106 of 2017 and WP(C) 864 of 2017 have already been elapsed over.

In the result, the instant writ petitions stand disposed of in the above terms.

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

A copy of the order be forwarded to learned Additional GA."

4. Thereafter, the petitioner has been appointed vide memorandum dated 30.04.2022 (Annexure-3 to the writ petition) on the post of Senior Instructor (Employability Skill), Group-C (Non-Gazetted). The present writ petition has been preferred with a prayer to direct the respondents to give retrospective effect to her date of appointment vide memorandum dated 30.04.2022 from the date on which the other similarly situated candidates were appointed for the purposes of counting of the said period towards pension, gratuity and other service benefits including notional fixation.

5. The respondents in their counter affidavit have contested the prayer and, in particular, at paragraph-6 of their counter affidavit also relied upon the observations of the Writ Court in the judgment dated 05.08.2020, paragraph-17 of which has also been quoted hereinabove.

6. Mr. Arijit Bhaumik, learned counsel for the petitioner, has drawn the attention of this Court to the rejoinder affidavit, in particular paragraphs- 11 and 12 and submitted that since the judgment dated 05.08.2020 was not implemented, the petitioner cannot be denied the relief of restoration of his original position at par with other similarly situated candidates who were

appointed under the advertisement dated 30.04.2016 for the purposes of qualifying service for pension, gratuity, seniority etc.

7. Mr. Debalay Bhattacharya, learned Government Advocate assisted by Mr. Soumyadeep Saha, learned counsel appearing for the respondents-State, has, however, strongly objected to the prayer for giving retrospectivity to the order of appointment dated 30.04.2022 in view of the categorical observations of the Writ Court at paragraph-17 of the judgment dated 05.08.2020.

8. I have considered the submissions of learned counsel for the parties and taken note of the chequered history of the litigation relating to the claim of the petitioner for appointment to the post of Senior Instructor (Employability Skill) under the Department of Industries and Commerce, Government of Tripura. It is true that the petitioner had to fight several round of litigations to finally secure an employment which was granted to her only in the year 2022 vide memorandum dated 30.04.2022. Had the delay on account of litigation been the only basis for making a plea for getting retrospective effect to her order of appointment, one could have understood. However, since the Writ Court on the second occasion in its detailed judgment dated 05.08.2020 being conscious of the complications which may arise in giving effect to the judgment while preparing a fresh result sheet by eliminating the marks under the head of "need" criteria has categorically observed as under:

"Any such appointment would be prospective and would carry no weightage for the past period for any purpose."

9. Such observation being delivered in the case of the petitioner herself, it would not be proper to give effect to the order of appointment of the

petitioner dated 30.04.2022, a retrospective effect from the date on which other persons have been appointed under the same advertisement dated 30.04.2016. This would amount to overreaching the judgment of the Writ Court rendered in the case of the same parties in respect of the same advertisement and his prayer for appointment on the same post. As such, the relief prayed for cannot be granted.

10. The writ petition is accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.08.04
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