

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No.1052 of 2022

Dr. Sukla Debbarma (Age 54 years), wife of Sri Apan Jamatia, resident of Advisor Chowmuhani, Krishnanagar, P.O. Agartala, District- West Tripura, Pin-799001.

..... Petitioner(s)

V E R S U S

1. The State of Tripura represented by Secretary to the Government of Tripura in the Health & Family Welfare Department, Having its office at New Capital Complex, P.O. Agartala Secretariat, Agartala, District- West Tripura, Pin-799010.

2. Director, Health & Family Welfare, having his office at Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, Agartala, District- West Tripura, Pin-799006.

3. Tripura Public Service Commission represented by Secretary, TPSC having its office at Akhaura Road, P.O. Agartala, District- West Tripura, Pin-799001.

..... Respondent(s)

4. Dr. Amar Tripura, THS Grade-III, presently posted at AGMC & GBP Hospital, notice to be served through the Director, Health Services having its office at Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, District- West Tripura, Pin-799006.

5. Dr. S.N. Naithok Jamatia, THS Grade-III, presently posted at AGMC & GBP Hospital, notice to be served through the Director, Health Services having its office at Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, District- West Tripura, Pin-799006.

6. Dr. Bikram Debbarma, THS Grade-II, presently posted at Office of the CMO, Khowai, notice to be served through the Director, Health Services having its office at Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, District- West Tripura, Pin-799006.

7. Dr. Appoli Kalai, THS Grade-II, presently posted at Office of the CMO, Dhalai as CMO, notice to be served through the Director, Health Services having its office at Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, District- West Tripura, Pin-799006.

..... Private respondent(s)

For Petitioner(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mr. Kousik Roy, Advocate,
Mr. R. Chakraborty, Advocate.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : *25th August, 2023.*

Whether fit for reporting : YES

JUDGMENT & ORDER(ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. Kousik Roy, learned counsel appearing for the petitioner and also heard Mr. D. Sharma, learned Additional Government Advocate appearing for the State-respondents.

[2] The present writ petition has been preferred by the petitioner with a prayer to issue a writ of Mandamus directing the respondents to revise the tentative seniority list as on 31.10.2013 showing the petitioner senior over private respondents and consider promotional benefits of the petitioner to the next successive grades i.e. Grade-III and Grade-II of Tripura Health Service *with effect from* the date juniors to the petitioner have been promoted. She also prayed for a direction to consider her case for promotion to Grade-II *with effect from* the date her junior Medical Officers i.e. private respondents have been promoted to Grade-II. The petitioner also sought a issuance of writ of certiorari for calling the records relating to subject matter of the proceedings to render substantial justice by revising the seniority position of the private respondents *qua* the petitioner. Consequential reliefs of pay and allowances upon such promotion to Grade-II and Grade-III have also been prayed for.

[3] The facts as pleaded by the petitioner are that she was appointed as Junior Medical Officer in Grade-V of Tripura Health Services

under the Health & Family Welfare Department on ad-hoc basis vide memo dated 11.03.1996 issued by the Department of Health & Family Welfare, Government of Tripura (Annexure-1). While in service under Grade-V, she appeared in an interview for recruitment to the ex-cadre post of Medical Officer on 27.10.2002 and got selected to the post. The said ex-cadre post of Medical Officer was equivalent post of Junior Medical Officer in Grade-IV of Tripura Health Service (*T.H.S, for short*). By virtue of her selection, she claims to have been upgraded to Medical Officer, Grade-IV from Grade-V of T.H.S. The appointment letter dated 26.12.2002 is at Annexure-2. Petitioner's name is at serial No.13 of Annexure-2. The appointment to the ex-cadre post of Medical Officer which was specified as equivalent post of Grade-IV of T.H.S, had the pay scale of Rs.7800-15100/- as per appointment order (Annexure-3) dated 23.12.2002. Petitioner was working without any blemish in the ex-cadre post at different places. Later, petitioner came across the fact that persons selected as Medical Officers much after the petitioner in the equivalent post of Medical Officer, Grade-IV of T.H.S had superseded her in two successive grades and she was made to work in the same Grade-IV since the date of her appointment. She came to know of the tentative seniority list of Grade-IV of T.H.S as on 31.10.2013 wherein she found that respondent No.4, Dr. Amar Tripura who joined in the post on 02.08.2005 and appeared in the selection process conducted by Tripura Public Service Commission (*TPSC, for short*) along with respondent No.5 and respondent No.6 were given seniority over the petitioner. Respondent Nos.4, 5 and 6 had joined the service on 18.01.2005, 04.08.2005 and 30.07.2005 in T.H.C Grade IV through TPSC vide merit list dated 18.01.2005. Their names

appeared at Sl. Nos. 111, 113 and 128 whereas the petitioner was at Sl. No.188 in the same seniority list (Annexure-4).

[4] Petitioner being aggrieved made a representation for cadre review and promotion to her next grade by way of a representation dated 28.07.2022 which was duly received by the respondents (Annexure-5). Since no reply was furnished, she has approached this Court in the present writ petition.

[5] Petitioner contends that persons appointed later in the T.H.S cadre cannot be given a merger in the seniority list over the petitioner who was appointed long before them. Moreover, since the junior officers in Grade-IV have been given successive promotions to the exclusion of the petitioner, she made a demand notice for promotion to Grade-II of T.H.S. She has referred to the letter dated 08.09.2022 (Annexure-7) issued by the Directorate of Health Services, Government of Tripura as per which it is shown that she was initially appointed on 13.03.1996 on ad-hoc basis in Grade-V of T.H.S and got extension of her ad-hoc service from time to time. It also indicates that on the basis of selection and recommendation by the TPSC, she was appointed to ex-cadre post of Medical Officer which is equivalent to Grade-IV of T.H.S and her ad-hoc service was regularized on 31.10.2002. Therefore, she presumed that on regularization in service on 31.10.2002, she would be favoured with successive promotions. However, she was surprised that the tentative seniority list has showed the private respondents senior to her though they were appointed later. The petitioner is also conscious of the *status quo* order passed by the Apex Court in

connection with promotion as a result of which departmental promotions were not made from 2014. According to the petitioner, she has been shown in seniority list published on 31.08.2008 at Sl. No.552 whereas the private respondents Dr. Bikram Debbarma and Dr. Appollo Kalai were shown at Sl. Nos. 450 & 456 respectively whereas petitioner was born on the cadre before the private respondents. Respondent Nos.6 and 7 have been shown senior to the petitioner and have got successive promotions to Grade-III and Grade-II respectively ahead of the petitioner. Petitioner has got one promotion to Grade-III on ad-hoc basis vide notification dated 28.10.2022 (Annexure-9). After making several representations to the respondent-authorities, she has approached this Court with the aforesaid grievance seeking correction in the seniority list and promotion to Grade-II and Grade-III of T.H.S.

[6] Respondent Nos.1, 2 and 4 to 7 have filed a combined counter-affidavit sworn by the Deputy Secretary of the Department of Health & Family Welfare, Government of Tripura. The stand of the respondents in substance is reflected in paragraphs 8 to 11 of the counter affidavit.

It is stated that petitioner was appointed on 11.03.1996 as Junior Medical Officer Grade-IV in T.H.S purely on ad-hoc basis vide memo dated 11.03.1996. Later on, under an advertisement published for recruitment to the post of Medical Officer (ex-cadre) (equivalent post of Junior Medical Officer in Grade-IV of T.H.S) she got selected to the post of Medical Officer (ex-cadre), Grade-IV of T.H.S where her name stood at serial No.13 of the notification dated 26.12.2002. Petitioner's post as Junior

Medical Officer, Grade-IV of T.H.S was upgraded to Medical Officer, Grade-IV of T.H.S (ex-cadre). Respondent No.4 was appointed on regular basis on 02.08.2005 and respondent No.5 was appointed on regular basis on 04.08.2002 and their services were also confirmed from the date of their joining on the recommendation of TPSC. But the service of the petitioner including 74 Medical Officers outside the cadre of T.H.S were included in the initial grade (Grade-IV) of T.H.C under the Health & Family Welfare Department with effect from 01.11.2007 vide notification dated 12.09.2008 (Annexure-R/1). It was clearly indicated therein that their seniority in the cadre service will be determined on the basis of the date of bringing them under the T.H.S Rules. In the tentative seniority list, the name of Dr. Manashree Debbarma is at serial No.128 and not the name of Dr. Bikram Debbarma as wrongly mentioned in the writ petition. It is also stated that the final seniority position of Medical Officers was prepared as per merit position of TPSC. In fact, no final seniority list in respect of Medical Officers of Grade-IV of T.H.S has come out till date after publication of tentative seniority list which was published on 27.11.2013. It is further stated that the private respondents joined service (cadre service) on 02.08.2005, 30.07.2007 & 04.08.2005 on regular basis and were confirmed on the recommendation of TPSC with effect from their joining date and they occupy seniority position at Sl. Nos.111, 113 & 128. Petitioner having been included in the cadre with effect from 01.11.2007 in Grade-IV of T.H.S has rightly been placed at Sl. No.188 in the seniority list after the private respondents. Her ad-hoc service from 13.03.1996 to 31.10.2002 was regularized and she got upgraded as ex-cadre on the basis of the

recommendation of TPSC. Therefore, there is no question of depriving her seniority. The seniority position was prepared on the basis of date of service confirmation in which the private respondents ranked ahead of the petitioner. It is also averred that the Government of Tripura undertook promotional exercise in view of the policy decision contained in notification dated 22.06.2021 after the interim order passed by the Apex Court to fill up posts lying vacant on ad-hoc basis. By virtue of the notification dated 28.09.2022, 277 Grade-IV Medical Officers of T.H.S including the petitioner have been promoted to Grade-III of T.H.S. Therefore, there is no question of depriving the petitioner of her lawful promotion. Counter-affidavit has also been filed by respondent No.3.

[7] Petitioner has also filed an interlocutory application bearing No.01 of 2023 seeking to challenge the seniority list of 31.10.2009 notified on 11.11.2009 in order to question the seniority position of the private respondents vis-à-vis the petitioner. By order dated 10.07.2023, this Court had observed that the prayer made in the amendment petition shall be considered at the time of hearing of the case.

[8] In the aforesaid background of facts and relevant documents placed on record, learned senior counsel for the petitioner submits that the petitioner who was taken into ex-cadre service after facing a recruitment exercise by the TPSC under an advertisement in the year 2002 to the post of Medical Officer Grade-IV in T.H.S (ex-cadre) was treated as equivalent to Medical Officer, Grade-IV since her joining on 28.12.2002. Therefore,

petitioner has been unfairly denied due seniority vis-à-vis the private respondents who joined as Medical Officer, Grade-IV in T.H.S after her. Her service in ad-hoc capacity from 1996 also got regularized after her selection in a proper recruitment exercise conducted by the TPSC in the year 2002. As such, denial of seniority to the petitioner and promotion of the private respondents ahead of her has entailed serious prejudice and injustice to her. Therefore, she has approached this Court after her representations remained un-redressed. The seniority list of 11.11.2009 has been challenged as it came to the notice of the petitioner only after the counter affidavit was filed by the respondents. He further submits that petitioner would continue to suffer if such relief is not granted and the private respondents, who are junior to her, enjoy the promotions to Grade-III and Grade-II ahead of her.

[9] Learned counsel for the State Mr. D. Sharma has relied upon the contents of the counter affidavit and sought to repeal the contention advanced on behalf of the petitioner. It is submitted that the private respondents were recruited to cadre post by a selection exercise conducted by the TPSC whereas the petitioner was inducted into the T.H.S, Grade-IV as an ex-cadre Medical Officer on 28.12.2002. The services of the private respondents were confirmed with effect from the date they joined the service on the recommendation of the TPSC and as such, they stood senior to the petitioner who along with 74 others were encadred by notification dated 12.09.2008 Annexure-R/2 issued by the Department of Health & Family Welfare, Government of Tripura. It is also pointed out that the notification dated 12.09.2008 clearly indicates that the seniority position of these 75

officers shall be determined on the basis of the date of bringing them under the Tripura Health Services Rules. Since the petitioner along with 74 others came into the regular cadre of T.H.S only *with effect from* 1st November, 2007 they could not rank senior to the private respondents who had entered the regular cadre post of T.H.S earlier to them on the recommendation of the TPSC in a separate recruitment exercise. It is submitted that the notification dated 12.09.2008 remained unchallenged. It is too late in the day for the petitioner to question the seniority position vis-à-vis the private respondents. The petitioner has approached this Court in the year 2022 only and as such valuable rights have accrued and vested in favour of the private respondents. The seniority position in the entire cadre should not be unsettled at this point of time at the behest of the petitioner otherwise it may lead to serious repercussions in the entire cadre and create an administrative chaos. In support of his submission, he relied upon the following decisions :

(i) ***P.S. Sadasivaswamy versus State of Tamil Nadu***, reported in ***AIR 1974 SC 2271***;

(ii) ***Jiten Kumar Sahoo and others versus Chief General Manager, Mahanadi Coalfields Limited and others***, reported in ***(2011) 11 SCC 520***;

(iii) ***State of Uttranchal and another versus Shiv Charan Singh Bhandari and others***, reported in ***(2013) 12 SCC 179***;

(iv) ***Dr. Akshya Bisoi and another versus All India Institute of Medical Sciences and others*** reported in ***(2018) 3 SCC 391***.

It is submitted that therefore no relief may be granted to the petitioner and the writ petition may be dismissed as being devoid of merits.

[10] I have considered the submissions of learned counsel for the parties and taken note of the relevant pleadings and documents placed from records. The chronology of facts and dates noted above show that petitioner was inducted on ad-hoc basis as a Junior Medical Officer in the year 1996 in T.H.S and continued as such till she was appointed as a Medical Officer, Grade-IV (ex-cadre) by virtue of notification dated 26.12.2002. This notification in the first paragraph indicates that on the basis of recommendation of the TPSC, the Governor of Tripura has been pleased to appoint the following Medical Officers (petitioner is at serial No.13) in Grade-IV of T.H.S (ad-hoc)/Medical Officer Ex-Cadre (equivalent post of T.H.S Grade-IV) on regular basis with effect from 31.10.2002 and until further orders in the scale of pay of Rs.7800-15100/- plus non-practicing allowance of Rs.250/- per month and other allowances as are admissible under the rules in Tripura from time to time. They would be under probation for a period of two years from the date of their appointment which may be extended or curtailed at the discretion of the competent authority. It is pertinent to also take notice of the fact that the private respondents No.4, 5 & 6 were appointed in regular cadre of T.H.C, Grade-IV on 02.08.2005, 31.07.2007, 04.08.2005 and their services were also confirmed on the basis of recommendation of TPSC with effect from dates of their joining. They naturally ranked senior at Sl. Nos.111, 113 and 128 of the seniority list since the services of the petitioner were encadred or taken into regular cadre only

with effect from 01.11.2007 along with 74 others ad-hoc Medical Officers in Grade-IV of T.H.S by notification dated 12.09.2008 (Annexure-R/2 to the counter affidavit) issued by the Department of Health & Family Welfare, Government of Tripura. The notification is extracted hereunder :

“NO.F. 3(412)-HFW/2006

Government of Tripura

Health & Family Welfare Department

Dated, Agartala, the 12/09/2008

NOTIFICATION

Consequent upon the 17th Amendments of Tripura Health Service Rules, 2007 vide Notification No.F.3(142)-HFW/2006 dated 28.11.2007, the Governor, Tripura is pleased to include all the Posts of Medical Officer outside the Cadre of T.H.S in the initial Grade (Grade-IV) of THS under the Health & Family Welfare Department with effect from 01.11.2007.

2. Accordingly, all the 75 (Seventy Five) present incumbents of Medical Officer outside the Cadre of THS appointed on regular basis as listed in Annexure-1 are treated as General Duty Medical Officer/Junior Medical Officer in Grade-IV of THS with effect from 01.11.2007 under the terms & conditions as laid down in the THS rules.

3. The Annexed list of the 75 (Seventy Five) Officers has been arranged as per Seniority position outside the Cadre and their seniority in the Cadre Service will be determined on the basis of the date of bringing them under THS Rules.

4. This is issued with the approval of the Council of Ministers vide G.A. (C & C) Department Memorandum No.F.1(52)-GA(CAB)/2000 dated 2nd September, 2008.

By order of the Governor,

Sd/

(Bina Basfore)

Under Secretary to the
Government of Tripura”

[11] The principle on which the seniority of these 75 Medical Officers including the petitioner was to be determined is also indicated at paragraph 3 of the notification i.e. on the basis of date of bringing them under the T.H.S Rules. In effect, the petitioner and 74 others became incumbents of regular cadre of T.H.S, Grade-IV with effect from 01.11.2007 only. The relevant condition of the notification dated 12.09.2008 remained unchallenged. Petitioner was serving as a ad-hoc Medical Officer, Grade-IV

since her appointment vide Annexure-2 till she was encadred vide notification dated 12.09.2008 and, as such, ranked junior to the private respondents in the seniority list as these respondents had entered regular cadre of T.H.S on the recommendation of TPSC prior to 01.11.2007. The private respondents being ranked senior to the petitioner naturally got successive promotions to Grade-III and Grade-II ahead of the petitioner. The seniority position of the petitioner and the private respondents remained unchallenged all along till 2022 when the petitioner approached this Court. However, the seniority position concerning the petitioner and the private respondents was reflected in the notification dated 11.11.2009 which has now been sought to be challenged through an amendment petition in the present writ petition. Such a belated challenge to a seniority list cannot be entertained as it not only suffers from gross delay in raising the cause of action, if any, but also would amount to upsetting the seniority list which has long been settled and on the basis of which consequential promotions have been granted to not only the private respondents but also several others.

[12] As such, prayer to challenge the seniority list dated 31.10.2009 notified on 11.11.2009 at this point of time cannot be entertained. The amendment application, therefore, stands rejected. Further, in view of the elaborate discussion made hereinabove and the status of the petitioner as a member of the regular cadre of T.H.S, Grade-IV with effect from 01.11.2007 by virtue of the notification dated 12.09.2008 and also of the private respondents by virtue of their recruitment in regular cadre of T.H.S on 02.08.2005, 30.07.2007 and 04.08.2005, the prayer of the petitioner to direct

the official respondents to grant her promotion from the date on which the juniors have been promoted cannot be allowed as it is untenable both in law as well as on facts. Petitioner has now been promoted to Grade-III of the T.H.S along with 276 other Medical Officers of Grade-IV by notification dated 28.09.2022.

[13] In view of the aforesaid facts and circumstances and for the reasons recorded hereinabove, no relief, as prayed for, can be granted to the petitioner. The writ petition is, accordingly, dismissed. Consequently, interlocutory application bearing No.01 of 2023 is also dismissed.

(APARESH KUMAR SINGH) CJ

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