

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.216 of 2022

1. Sri Sanjit Sil, Son of Sri Jahar Lal Sil, resident of Poangbari, P.O.- Melaghar, P.S. Melaghar, District- Sepahijala Tripura
2. Smt. Papiya Ghosh, D/O- Sri Harisankar Ghosh, R/O - Sarashima, P.O - Sarashima and PS- Belonia , District- South Tripura.

.....Appellant(s);

Versus

1. The State of Tripura, represented by the Secretary, Department of Panchayet, Government of Tripura, having his office at Secretariat Complex, P.O- Secretariat Complex, P.S. New Capital Complex, Pin- 799010, Agartala, West Tripura.
2. The Secretary, Employment Services Manpower Planning, Government of Tripura, having his office at Secretariat Complex, P.O - Secretariat Complex, PS.- New Capital Complex, Pin-799010, Agartala, West Tripura.
3. The Secretary to the Government of Tripura, Rural Development (Panchayet) Department, Government of Tripura, having his office at Secretariat Complex, P.O - Secretariat Complex, PS.- New Capital Complex, Pin-799010, Agartala, West Tripura.
4. The Secretary Cum Commissioner, Finance Department, Government of Tripura, having his office at Secretariat Complex, P.O - Secretariat Complex, PS.- New Capital Complex, Pin-799010, Agartala, West Tripura.
5. The Director, Panchayet Department, Government of Tripura, Gorkhabasti, Pandit Nehru Complex, P.O. Kunjaban, P.S. NCC. Agartala, West Tripura.
6. Sri Haribindu Biswas, C/O - Jaharlal Biswas, R/O- Vill - Laxmipur, Machmara, PO- Machmara, PS- Pecharthal, Sub-Div- Kumarghat, Dist- Unakoti, Pin-799263.
7. Smt. Alaka Debnath, C/O- Sri Haridas Debnath, Vill- West Lalcharri, PO- Kulai Bazar, PS- Ambassa, Sub-Div- Ambassa, Dist- Dhalai Tripura, Pin- 799204

8. Sri Bijay Debnath, C/O, Bimal Debnath , Vill- Kamal Nagar, PO- Champak Nagar, PS- Jirania, Dist-West Tripura, PIN-799045.

.....Respondent(s).

For Appellant(s) : Mr. D. Sarkar, Advocate.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Mangal Debbarma, Addl. G.A.,
Mr. K. Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH

Whether fit for reporting: YES / NO

Order

23/05/2023

Heard Mr. D. Sarkar, learned counsel for the appellants and Mr. Somik Deb, learned senior counsel representing private respondents No.6 to 8. Also heard Mr. Mangal Debbarma, learned Additional Government Advocate appearing for the respondents-State.

2. Petitioners are the appellants herein aggrieved by the common impugned Judgment and Order dated 20th July, 2020 passed in a batch of writ petitions wherein the selection and appointment to the post of Rural Programme Manager (RPM) under the Department of Panchayet, Government of Tripura pursuant to the notice of employment dated 4th October, 2015 was under challenge.

3. Willing candidates were asked to appear for a walk-in interview on different dates at different places as provided in the notice with their bio-data along with their original testimonials of their educational qualification and the testimonials relating to Indian Citizenship.

4. By the impugned Judgment and Order, the learned Writ Court has refused to interfere in the selection and appointment of the non-official respondents to the post of RPM and except WP(C) No.334 of 2018 [*Smt. Sarmistha Chakraborty v. State of Tripura and others*] where the distinguishing facts were in relation to the marks obtained by the said petitioner who despite being an Honours Graduate, had been allotted 14(fourteen) marks instead of 28(twenty eight) marks. Rest of the writ petitions were dismissed. In the case of Smt. Sarmistha Chakraborty, the learned Writ Court directed the respondents to verify if the said petitioner was awarded 28(twenty eight) marks for qualification on considering her Honours degree or not; and if it was found so, they shall make necessary amendment in the tabulation sheet, if required. The grounds of challenge were multifold in all the writ petitions and one of the grounds related to allocation of marks depending upon the marks obtained in the qualifying exam, i.e. the Graduation Examination.

The present writ petitioners' case was dealt with at Paragraph 37 of the impugned Judgment and Order which is extracted hereunder:

“[37] Mr. D. Sarkar, learned counsel has appeared for the petitioners and Mr. D. Bhattacharjee, learned GA has appeared for the official respondents, Mr. S.M. Chakraborty, learned senior counsel along with Ms. P. Sen, learned counsel have appeared for the non-official respondents No.6 to 8.

The petitioners have challenged the selection of the non-official respondents to the post of RPM and have simultaneously urged for considering their appointments to the said post in pursuance to the employment notice dated 05.10.2015. There is no dispute that the petitioners had appeared in the walk-in-interview for selection to the said post. The petitioner No.1 secured 44.4% marks in the Graduation and he had completed the course of Master of Rural Management and Development [MRMD] from Tripura University. The petitioner No.2 secured 44.96% in his Graduation [B.Sc.] and he had the degree of MRMD from Tripura University. According to the petitioners, the non-official respondents are less meritorious and their selection has been done in gross violation of the guidelines dated 12.01.2015 issued by the respondent No.1. According to them, all the non-official respondents were awarded 28 marks under the minimum educational qualification but they were not entitled to so. As a result, the petitioners have been eliminated wrongfully.

The official respondents and the non-official respondents filed their reply separately and contested the challenge as raised by the petitioners. They have stated that the main grievance of the petitioners is that the non-official respondents have been awarded 28 marks against the educational qualification when they did not deserve it and awarding of 28 marks in favour of the non-official respondents is illegal and arbitrary. The official-respondents have negated the

guidelines as laid down for purpose of selection. The respondents have stated that the petitioners have intentionally suppressed the fact that the non-respondents were all Honours Graduates. The Selection Committee which evolved a principle of weightage following the guidelines of Tripura University has awarded 28 marks against the Honours Graduate vis-à-vis the Pass Graduate. Since the Graduation with Honours is indisputedly a higher qualification, according to the Tripura University guidelines, by awarding the candidates 28 marks having Honours Degree, no illegality has been committed by the Selection Committee. As such, there is no infirmity in the appointment of the non-official respondents and others.”

5. In the present appeal, Mr. D. Sarkar, learned counsel for the appellants, relying upon the advertisement dated 4th October, 2015 at Page-74 (Annexure-1) and the General Employment Guidelines contained in office memorandum dated 12.01.2015 issued by the General Administration (Personnel & Training) Department, Government of Tripura at Page-80, submits that the petitioners/appellants herein was not allotted 40(forty) marks despite having a Post Graduation qualification. Learned counsel for the appellants has further sought to draw the attention of this Court to the Merit List at Page-85 and specially referred to the candidate at Serial No.326 who has been allotted 40(forty) marks on the basis of his Post Graduate qualification compared to the writ petitioners/appellants herein who has been allotted only 14(fourteen) marks.

6. The illustration appears to be far-fetched on the face of it as against the same candidate at Serial No.326 at Column containing the percentage of Graduation marks, it is shown as 60, which as per the yardsticks applied by the Selection Committee entitled him to get 40(forty) marks. The criteria as laid down in the General Employment Guidelines also containing memorandum dated 12.01.2015 under (Category-2) as under :

“(ii) Maximum marks to be allotted to evaluate Educational Qualifications: 40 Marks.

(a) 30% - 44% Marks obtained in qualifying Exam. = 14 Marks

(b) 45% - 59% Marks obtained in qualifying exams. = 28 Marks

(c) 60% and above Marks obtained in qualifying Exams.= 40 Marks”

7. The only modification that was made by the Selection Committee in this criteria was to allot 28(twenty eight) marks even to candidates who had scored more than 40% marks in the Graduation examination and were having Honours degree. Since this yardstick was applied uniformly and a reasonable classification was made by the Selection Committee in a transparent manner, the learned Writ Court refused to interfere in the award of marks. The marksheets of the 2(two) petitioners/appellants herein annexed to the writ appeal and the facts of the present petitioners/appellants herein dealt at Para 37 of the impugned Judgment and Order also do not leave any room of doubt that both the

petitioners had got less than 45% marks in the Graduation i.e. 44.4% and 44.96% and were not Graduate with Honours.

8. Allotment of marks on the basis of a higher qualification was not the yardstick as per the advertisement and the procedure adopted by the Selection Committee. While this classification of marks amidst Graduates without Honours and with Honours have been assailed in the present writ proceedings, petitioners in any case would not succeed as having scored less than 45% marks in Graduation without Honours. They would, in any case, get 14(fourteen) marks only. This issue has also been dealt with by the Coordinate Bench of this Court of which one of us (Arindam Lodh, J.) was a member.

9. In WA No.31 of 2021 and other analogous appeals arising out of the Judgment rendered by the Writ Court in several writ petitions raising the same issue. The discussion on this issue has been made at paragraph 13 to 17 which are extracted hereunder:

“13. The only point which has been contended by the writ petitioners who are the unsuccessful candidates appear before this court is on the point of discrimination in adopting the government issued memorandum in providing selection and appointments to the post of Rural Programme Manager (RPM) in the Panchayat Raj Department. The attention of this court has been drawn by the counsel

appearing for the petitioner that the minimum Educational qualification for the post of RPM was Graduation. Interview Board divided the homogeneous group of Graduate into 2 Groups i.e. Graduation with Pass and Graduation with Honours. The Private respondents who are Graduation with Honours, they were given 28 marks (extra marks of 14), beyond the memorandum 12.01.2015. Accordingly, the candidates who are not selected are before this court.

14. The learned Single Judge has passed an elaborate order dealing with all contentions. The points which came for consideration before this court by the counsel appearing for the appellants herein is on the point of discrimination.

15. From a fair reading of Article 14 of the Constitution of India though it deals with regard to maintaining of equality, it needs to be treated as equality amongst the equals. It is a question of selection of candidates and providing them employment, this court considers that the selection committee would give more preference for highly educated and qualified candidates for the purpose of selection.

16. During the course of argument, Mr. Roy Barman, learned senior counsel appearing for the appellant has placed before this court an information under the RTI Act which was taken with surprise by learned Advocate General where in the said information it is stated that there are still 53 vacancies to be filled up and the cases of the appellants would be considered. It is not for this court to express any opinion on the same but further, it is needless to say that wherever the vacancies are available, the welfare State will take pragmatic view and might consider and fill up the vacancies as per its procedure.

17. In the light of the judgment of the apex court in **Baidyanath Yadav**(supra) and **Union Public Service Commission**(supra) it is categorically stated that unless any malafide is attributed and the same are proved, any allegations made with regard to the selection process has no weightage. In the present writ appeals at hand, the

petitioners failed to established the point of malafide and with regard to the awarding of marks, this court feels that no interference needs to be done, since the selection procedure which has been categorically dealt by the learned Single Judge needs no inference and the same is confirmed.

Accordingly, the writ appeal is dismissed.”

10. Mr. Somik Deb, learned senior counsel for the private respondents and Mr. Mangal Debbarma, learned Additional Government Advocate for the State respondents, have asserted that the classification made by the Selection Committee in award of marks to candidates who had secured Honours in Graduate course *vis-à-vis* those who were Graduates with Pass Course is a reasonable classification with a rational nexus to the objects sought to be achieved and is permissible under Article 14 of the Constitution of India. It has been applied uniformly and in a transparent manner. As such, the learned Writ Court refused to interfere in the Selection Process. The same issue has been squarely discussed and upheld in appeal by this Court in the case of ***Sri Saikat Saha v. The State of Tripura and Others in WA No.31 of 2021*** and other analogous appeals vide Judgment dated 14.12.2022. Therefore, the appeal deserves to be dismissed as no distinguishing features have been made out on the part of the appellants.

11. On consideration of rival submission of the parties and the grounds on which the impugned Judgment and Order has been challenged, we are of the considered view that no infirmity can be pointed out in the reasonings of the learned Writ Court so far as it refused to interfere in the selection procedure on the instant criteria of allocation of marks between Graduates with Pass Course and Graduates with Honours subject. On facts, we find that petitioners/appellants herein who have obtained less than 45% marks have been rightly allotted 14(fourteen) marks as per the prescribed criteria. Since the petitioners had not secured Honours in Graduation this distinction, in any case, is not going to make good their case any further.

12. As such, the appeal, being devoid of merit, is dismissed. Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ