

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WA.No.02 of 2024

Sri Subhrasarathi Majumder

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura and Others

.....Respondents

For Petitioner(s)	:	Mr. C. S. Sinha, Advocate.
For Respondent(s)	:	Mr. D. Sarma, Addl. G.A. Mr. Ratan Datta, Advocate. Mr. R. Datta, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

_F_I_N_A_L_O_R_D_E_R_

30.01.2024

[T. Amarnath Goud, J]

Heard Mr. C. S. Sinha, learned counsel appearing for the appellant also heard Mr. D. Sarma, learned Addl. G.A., Mr. Ratan Datta, learned counsel and Mr. Raju Datta, learned counsel appearing for the respondents.

[2] The present appeal has been filed as per rules and notification dated 21.03.2023 regarding practice and procedure for filing writ appeal preferred against the judgment and order dated 21.06.2023 passed by this Court in writ petition being numbered WP(C) No.333 of 2022.

[3] The facts in brief are that the appellant is an Assistant Engineer (under Urban Development Department). For promotion to the post of Executive Engineer rule says that 70% of the total posts are of degree holders and 30% of diploma holders. Seniority of degree and diploma holders is maintained separately. But, in promotion, common 100 points roster is maintained but promotion of the appellant is denied which is contrary to the rule. Subsequently, the appellant has filed WP(C) No.333 of 2022 before this Court but, the learned Single Judge has dismissed the same vide judgment and order dated 21.06.2023. Being aggrieved by and dissatisfied with the same, the present appeal has been filed before this Court for redress.

[4] The learned Single Judge, after hearing the learned counsel appearing for the parties and having gone through the evidence on record has observed as under:

“17. At the end, learned senior counsel for the petitioner submits that on account of such situation, not only are individuals like petitioner, bearing a sense of perceived injustice, but the functioning of the department is also suffering in the absence of any incumbent to the post of Executive Engineer (Mechanical) Grade-III. Learned senior counsel for the petitioner submits that both in the interest of the department and in view of the long service rendered by the engineers like the petitioner, the department may be asked to consider the representation of the petitioner for grant of current duty charge to the post of Executive Engineer (Mechanical) Grade-III to ensure that the functioning of the department does not suffer in the absence of a regular Executive Engineer (Mechanical) Grade-III.

18. This Court, at this stage, is not in a position to comment whether the functioning of the department is suffering in the absence of regular Executive Engineer (Mechanical) Grade-III. However, it is always open to the respondent department to consider such representation, if made by the petitioner for the purpose of grant of current duty charge so that the functioning of the department does not suffer in the ultimate analysis.

19. With these observations, the writ petition is disposed of. Pending application(s), if any, also stands disposed of.”

[5] The appellant has prayed for the following reliefs:

- i. Admit this appeal.
- ii. Call for the records.
- iii. After hearing both the parties, the appellants are to be given benefit similarly situated persons approached the Court with WP(C)No.333/2023 and direct the respondents to proceed the appellants' relief as sought for in the writ petition.”

[6] Mr. C. S. Sinha, learned counsel appearing for the appellant has submitted that the learned Single Judge has not appreciated the impugned judgment and order dated 21.06.2023 and also not appreciated the Rule-2(a) and Rule-29 in TPSE' 1987 are the basic parameters in deciding the case of the appellant.

[7] It has been further contended that for filling up posts in TPSE Gr. III Rule-2 stipulates that 70% of total posts is for degree holders and 30% for diploma holders, in other words, consideration of promotion of degree holders is limited to 70% of total posts and that of diploma holders to 30%. It has also not been appreciated that where posts are demarcated to 70:30 ratio and separate seniority lists are maintained for degree holders and diploma holders in common 100 points roster in promotion is erroneous. The appellant herein,

deserves consideration of his promotion to Executive Engineer (TPSE Grade.III) on the basis of separate 100 points roster for diploma holders and as such, the judgment and order dated 21.06.2023 suffers from non-application of mind and contrary to the rule and is liable to be set aside.

[8] In reply to the submissions made by the learned counsel appearing for the appellant, learned counsel for the respondents has submitted that the roster repeats after every operation and the fourth post would fall in the SC category in any case. It is further submitted that since the four posts belonged to one cadre i.e. Executive Engineer (Mechanical) Grade-III, the 3(three) posts from the feeder cadre of Assistant Engineer (Mechanical) Degree Holders and 1(one) post from Assistant Engineer (Mechanical) Diploma Holder cannot be segregated.

[9] Any working of the roster in such manner would lead to the anomalous situation i.e. incumbents from the Assistant Engineer (Mechanical) Grade-IV from the other categories would be ineligible for promotion. It is also submitted by the learned counsel for the respondents that the operation of the roster is non-discriminatory and applies in a uniform and transparent manner to all services. As such, the operation of the roster is in conformity with the rules and there is no illegality or arbitrariness in the operation of roster.

[10] In view of above submissions made by the learned counsel appearing for the parties and having gone through the material evidence on record, we are of the opinion that entire facts and reasons have elaborately been discussed in the judgment of the learned Single Judge. This Court, at this stage, is not in a position to comment on the functioning of the department and decide the same afresh. Thus, the present appeal stands dismissed confirming the judgment of the learned Single Judge.

[11] Accordingly, the appeal stands dismissed. As sequel, miscellaneous application(s) pending, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

ANJAN
GHOSH

Digitally signed by
ANJAN GHOSH
Date: 2024.02.03
15:10:14 +05'30'