

**HIGH COURT OF TRIPURA**  
**A\_G\_A\_R\_T\_A\_L\_A**  
**WP(C) No.64 of 2023**

Sri Biswabasu Dasgupta

..... Petitioner(s)

V E R S U S

The State of Tripura and others

..... Respondent(s)

---

For Petitioner(s) : Mrs. S. Deb(Gupta), Advocate.

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

---

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

**=O=R=D=E=R=**

**13.02.2024**

Heard Mrs. S. Deb(Gupta), learned counsel appearing for the petitioner and also heard Mr. Dipankar Sharma, learned Additional Government Advocate appearing for the State-respondents.

[2] Petitioner has approached this Court for a direction upon the respondents to promote him to the post of Lower Division Clerk (LDC) from the post of Senior Attendant Laboratory, Group-D as respondents No.4 to 6 who were juniors to him have been promoted in Group-C post following the judgment dated 26.11.2018 passed in WP(C) No.677 of 2017 with all actual, financial and service benefits. Petitioner sought promotion on the post of LDC in Group-C *with effect from 22.12.2022* and also prayed for declaring him senior to respondents No.4 to 6 under Un-reserved (UR) category. Petitioner also prayed for a direction upon the respondents to grant him further promotions in the line of promotion. The private respondents were serving in Group-D post of Peon, Night Guard, Sweeping and Cleaning Assistant.

[3] Petitioner had earlier approached this Court in WP(C) No.677 of 2017 seeking a direction upon the respondents to promote him to the post of lower division clerk *with effect from* 03.05.2017 as certain juniors arrayed as respondents No.4 to 7 were promoted to the said post with all consequential benefits. The writ petition was disposed of by judgment dated 26.11.2018 passed by Co-ordinate Bench of this Court *inter alia* observing as under :

“14. This court, having considered the contention launched for the petitioner, is not inclined to accept that the petitioner is senior to the private respondents and he has to be considered for promotion along with the private respondents, inasmuch as the court has gathered impression that those private respondents may belong to the reserved category and got acceleration in promotion. The reserved category candidates may get the promotion against the posts/vacancies reserved out of the promotion posts on acceleration irrespective of their position in the seniority list. Thus, the respondents shall find out whether any unreserved category candidate in the post of LDC has been appointed after 01.05.2013 or whether any person, junior to the petitioner in the grade of Group-D category has been promoted or not. The Director of Higher Education or any other officer duly authorized to take up that exercise. If it is found that junior of the petitioner [from unreserved category] in the grade of Group-D has been promoted to LDC, the respondents shall consider the promotion of the petitioner with effect from the date when his junior was promoted. For this purpose, this exercise be taken and completed by the respondents within a period of 3(three) months from the day when a copy of this order be furnished by the petitioner. It is clarified that the petitioner's undertaking in writing be realized in the manner as indicated above before the exercise is taken up. If the petitioner did not opt for promotion to LDC, no further exercise is called for.”

[4] It is pertinent to mention here that earlier the relevant Education Department Recruitment Rules - Post of Lower Division Clerk notified on 13.12.2000 (Annexure-3) provided for promotion of Group-D employees having qualification as prescribed in column-7 with 5 years experience in Group-D post. The description of the Group-D employees at column-11 indicates Process Server/Duftory/Peon/Night Guard/Chairman and Generator Operator. Later, one Sri Nipendra Reang who was working as a

Senior Laboratory Attendant, Group-D in Scheduled Tribe (ST) category approached this Court in WP(C) No.1429 of 2019 with a prayer to direct the respondents to promote him to the post of LDC, Group-C against the vacancies of 2014 which were filled up by promotion of respondent No.4 therein on 18.12.2014. The learned Court disposed of the writ petition with a direction to the respondents to consider the case of the said petitioner for promotion to the post of LDC on the first available vacancy in his category. It was further observed that if such vacancy is already existing, the DPC shall consider his case within a period of three months from the date of the order. Such consideration shall have prospective effect. However, since the case of the present petitioner was not being considered despite directions passed in his case earlier in WP(C) No.677 of 2017 and that promotions were being granted to certain persons like the private respondents working in Group-D posts i.e. Night Guards vide notification dated 22.11.2022 (Annexure-23), petitioner once again approached this Court with the reliefs prayed for as above.

[5] Respondents appeared and filed counter-affidavit. The stand of the respondents is reflected in a number of paragraphs, such as paragraphs 11 to 13, 16, 18, 20 to 22, and 24 to 27. The respondents have also passed an order on 08.12.2023 on the representation of the petitioner which was pending before them. That has been placed on record by learned counsel for the writ petitioner. The counter-affidavit and the reasoned order in substance convey that petitioner's case is governed by Laboratory Assistant, Education Department Recruitment Rules, 2010 (*Recruitment Rules, 2010, for short*) notified on 21.09.2010. As per the said Recruitment Rules, promotion from

the post of Sr. Attendant (Laboratory) would be granted to incumbents holding the specified Group-D post to the specified Class-IV employees having 5 years experience in that grade. According to them, the private respondents do not fall under Recruitment Rules, 2010 as they are separate class in themselves and are holding post of Night Guards in Group-D who are governed by the Recruitment Rules of 2000 which has been re-notified on 27.10.2021 by repealing the previous Recruitment Rules of 2000. Para 11 of the schedule to the Education Department Recruitment Rules, 2021 is extracted hereunder:

“11. In case of recruitment by promotion/transfer on deputation, grades from which promotion/transfer on deputation is to be made.

From the post of Group-D(Peon/Class-IV/Night Guard/Sweeping & Cleaning Assistant) employee having requisite educational and other qualification as prescribed under Item No.7 above, with at least 5(five) years experience in this grade.”

[6] It is submitted that since the petitioner's case is not governed by the Education Department Recruitment Rules, 2021, he cannot compare himself with the private respondents. It is also pointed out that there are no vacancies existing in the promotional Group-C post of Sr. Attendant (Laboratory). As such, petitioner's prayer cannot be allowed on grounds of discrimination vis-à-vis respondents No.4 to 6 who form a different class in themselves.

[7] Learned counsel for the petitioner submits that by the Recruitment Rules of 2021 the surplusage 'etc' which was existing in the 2000 Recruitment Rules and which brought the incumbent from the petitioner's Group-D cadre post into the class of persons like Peon/Nigh

Guard have been wisely ousted by a fresh rules notified in 2021 which is now confined to Group-D posts like Peon, Night Guard, Sweeping and Cleaning Assistant. Learned counsel for the petitioner is, however, not able to countenance the submission of learned counsel for the respondents that petitioner's case is not governed by the Education Department Recruitment Rules, 2021 rather it is governed by 2010 Rules.

[8] Be that as it may, since the petitioner does not fall in the class of persons covered under the Recruitment Rules of 2021, his case can be considered as per the Laboratory Assistant, Education Department Recruitment Rules, 2010 subject to availability of vacancy in the UR category to which the petitioner belongs and of course on fulfillment of the eligibility conditions prescribed under the 2010 Rules as has been referred hereinabove.

[9] As such, the relief prayed for by the petitioner cannot be granted in view of the facts and circumstances and the reasons recorded hereinabove. The petition is, accordingly, dismissed. Pending application(s), if any, also stands disposed of.

**(APARESH KUMAR SINGH) CJ**

**DIPESH DEB**

Digitally signed by DIPESH DEB  
Date: 2024.02.19 14:48:15 +05'30'