

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.95 of 2024

Sushanta Deb,
Son of Sri Late Adhir Chandra Deb, resident of Vill. Charganki, P.O. Khowai
Court, Khowai, Tripura, Pin 799202 (Age-43 years).

....Petitioner(s)

Versus

- 1. The State of Tripura,** (to be represented by) the Secretary, Department of Labour, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S-New Capital Complex, Agartala, West Tripura, Pin 799010.
- 2. The Secretary, Department of Labour, Government of Tripura,** New Secretariat Building, New Capital Complex, Kunjaban, P.S-New Capital Complex, Agartala, West Tripura, Pin 799010.
- 3. The Director of Employment Services & Manpower Planning, Tripura,** Directorate of Employment Services & Manpower Planning, Agartala, West Tripura, Pin 799001.
- 4. The Chairman, Joint Recruitment Board, Tripura,** Shram Bhavan, Office Lane, Agartala, West Tripura, Pin 799001.
- 5. The Member Secretary, Joint Recruitment Board, Tripura,** Shram Bhavan, Office Lane, Agartala, West Tripura, Pin 799001.
- 6. The Controller, Joint Recruitment Board, Tripura,** Shram Bhavan, Office Lane, Agartala, West Tripura, Pin 799001.

....Respondent(s)

For the Petitioner(s)	:	Mr. D. Paul, Advocate
For the Respondent(s)	:	Mr. K. De, Addl. GA
Date of hearing & delivery of judgment & order	:	01.10.2024
Whether fit for reporting	:	Yes

HON’BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)

By means of filing the present writ petition, the petitioner has prayed for necessary directions upon the respondents to re-publish the Merit List dated 13.09.2023 and to recommend the name of the petitioner for the post of Agriculture Assistant (TAFS Grade-III)/ Lower Division Clerk(LDC).

2. Heard Mr. D. Paul, learned counsel appearing for the petitioner. Also heard Mr. K. De, learned Addl. GA appearing for the respondents-State.

3. Mr. Paul, learned counsel for the petitioner has straightway drawn my attention to the selection list published under notification dated 13.09.2023(*Annexure-5* to the writ petition) wherefrom it is found that Sri Subrata Mahajan(serial no.706), Sri Victor Barua(serial no.707), Sri Rahul Roy(serial no.708), Sri Arpan Sen(serial no.709), Sri Rupak Datta(serial no.710) have secured 117.5 marks and Sri Subhajit Deb Roy(serial no.711) and Sri Prasenjit Saha(serial no.713) have secured 117.25 marks, who belong to UR category candidates. Mr. Paul, learned counsel for the petitioner has drawn my attention to the reply obtained through RTI filed by the petitioner(*Annexure-6* to the writ petition) whereby and whereunder it comes to light that the petitioner, namely Sri Sushanta Deb has secured 119.75 marks in total. So, the contention of the petitioner that he has secured higher marks than those persons whose names appeared in the select list under the notification dated 13.09.2023 is correct. Furthermore, the petitioner has been able to establish that he was subjected to discrimination for illegally and arbitrarily excluding his name from the merit list.

4. In view of this, this Court is at a loss to understand why the name of the petitioner has not been included in the select list.

5. Mr. De, learned Addl. GA appearing for the respondents-State has submitted that the selection of the petitioner has not been considered for the reason that he was over-aged as on the last date of submission of the online application.

6. In view of this, I have perused the relevant advertisement dated 27.11.2020 being Advertisement no.01/2020. In the column relating to age, it is mentioned that “(a) Age limit for direct recruitment is 18 to *41 years as on 31st December, 2020; Upper age limit is relaxable by 5 years in case of ST/SC/PwDs/Government servant candidates.

**Due to pandemic caused by COVID-19, an additional age relaxation of 1 year is allowed to all categories of candidates (Unreserved/reserved candidates and Government servants) as per State Government Memorandum vide No.F.20(1)/-GA(P&T)/18 dated 15th July 2020.”*

7. The contention of the petitioner is that as on 31st December, 2020, the petitioner was below the age of 41 years, which is an admitted position. However, Mr. De, learned Addl. GA has laid much emphasis on the notification dated 12.02.2021(Annexure-2 to the writ petition). The contention of Mr. De, learned Addl. GA is that in the notification dated 12.02.2021, the last date for filling up of online application for all Group-C posts including LDC was 12th March, 2021, when the petitioner was attaining the age of more than 41 years.

8. I have considered the submissions of learned counsel appearing for the parties.

9. Based on the submission of learned Addl. GA, I have meticulously perused the notification dated 12.02.2021 wherein the last date of submission of online application was mentioned as 12th March, 2021. On plain reading of the said notification, it becomes crystal clear that the said notification was not issued in cancellation of the earlier notification dated 27.11.2020. It is apparent that the notification dated 12.02.2021(supra) is in revision or to say it otherwise, in continuation of the notification dated 27.11.2020, where some additional posts

had been incorporated and invited applications from eligible candidates extending the date of filling up of online applications and the last date of submission was mentioned as 12th March, 2021. Moreso, in the notification dated 12.02.2021(supra), it is clearly mentioned that *“those candidates who have already applied for 1500 Lower Division Clerk(LDC), Group-C, Non-Gazetted post(s), need not apply once again to the added 910 other Group-C posts and their candidature for all 2410 Group-C posts will be considered based on their educational qualification etc.”* That means, the candidates who applied against the notification dated 27.11.2020 were not required to submit fresh application.

10. It is pertinent to mention herein that under Advertisement No.01/2020 dated 27.11.2020(*Annexure-1* to the writ petition), the respondents had issued notification for filling up the vacant posts of 1500 Lower Division Clerk, Group-C, Non-Gazetted post(s), as such, the name of the petitioner had to be considered on the basis of his age, which he was attaining as on 31st December, 2020. The ground taken by the respondents for non-inclusion or exclusion of the name of the petitioner from the select list is illegal, arbitrary and discriminatory being violative of Articles 14 and 16 of the Constitution of India. As such, the name of the petitioner should be included in the select list.

11. From the notification dated 13.09.2023(*Annexure-5* to the writ petition) it comes to fore that the respondents could not fill up 430 numbers of vacancies of Group-C, Non-Gazetted posts due to non-availability of suitable/eligible candidates. This position of vacancy as available in the selection notification dated 13.09.2023(supra) makes it clear that there are vacant posts wherein the petitioner can be accommodated against one such vacant posts according to his application.

12. In the opinion of this Court, when the petitioner has been able to establish the fact that the respondents have failed to perform their legal duties which they are legally obliged to do and/or neglected to do so, then, it would be the solemn duty of the Constitutional Courts to issue a writ of mandamus to correct the egregious error and prevent injustice, arising from the State respondents' manifestly *erroneous* exercise of power.

[emphasis supplied]

13. In the instant case, the petitioner has been able to establish the fact that the legal duties which the respondents are supposed to perform, have failed to perform and/or neglected to do so. In contra thereto, the writ petitioner has been able to establish his legal right to get his name included in the select list under notification dated 13.09.2023 since the respondents has caused miscarriage of justice in not performing their legal duties, that is, failure on their part to include the name of the petitioner in the select list for consideration of his appointment to the post of Agriculture Assistant (TAFS Grade-III)/ Lower Division Clerk(LDC). Further, the petitioner is subjected to discrimination on the false pretext that he was over-aged as on the last date of submission of online application. In this situation, in the considered view of this Court, a writ of mandamus can be issued to remedy injustice caused to the petitioner and prevent miscarriage of justice, given the manifestly erroneous exercise of power by the State-respondents. In view of this, the respondents are under legal obligation to include the name of the petitioner in the select list to consider his appointment in the post of Agriculture Assistant (TAFS Grade-III)/ Lower Division Clerk(LDC).

14. As regards the issuance of mandamus, in the context of the case, I am fortified by some decisions rendered by the Hon'ble Supreme Court. In ***Union of India and Anr. vs. S.B. Vohra and Ors.***, reported in (2004) 2 SCC 150 where the three-judge bench of the Hon'ble Supreme Court has held thus:

“Mandamus vis-à-vis Article 229(2) of the Constitution

12. *Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.*

13. *A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”*

Again, I may make reference to the decisions in ***CAG vs. K.S. Jagannathan***, reported in (1986) 2 SCC 679 and ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani***, reported in (1989) 2 SCC 691. In ***CAG(supra)***, where the Hon'ble Supreme Court observed thus: (SCC pp. 692-93, para 20)

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

In *CAG(supra) and Andi Mukta Sadguru(supra)*, the Hon'ble Supreme Court had laid down the proposition that mandamus can be issued for doing the positive act or a legal duty cast upon an authority.

Furthermore, in the case of *Shri Sohan Lal vs. Union of India and Anr.* reported in *AIR 1957 SC 529*, the Hon'ble Supreme Court held that it is settled principle that in an appropriate case a writ of mandamus can be granted to compel the performance of duties of a public nature.

In *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, reported in *(1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784*, the Hon'ble Supreme Court held that “*mandamus, which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature*”.

15. Keeping in mind the principles laid down by the Hon'ble Supreme Court in the cases referred to here-in-above, in my opinion, the present case is a fit case to direct the respondents to perform their legal duties by way of inclusion of the name of the petitioner in the select list for consideration of his name in respect of appointment in the post he applied for. As I said earlier, there are considerable number of vacancies still exist against the post of Agriculture Assistant/LDC.

Accordingly, this Court directs the respondents to include petitioner's name in the merit/select list and thereafter, consider his appointment in the post of Agriculture Assistant (TAFS Grade-III)/LDC, if he is found to be fit otherwise.

The entire process shall be completed within a period of 30(thirty) days from the date of receipt of a copy of this order.

The instant writ petition stands allowed and disposed in the above terms.

JUDGE

Snigdha

SANJAY Digitally signed by
GHOSH SANJAY GHOSH
Date: 2024.10.18
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