

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WA. No.20 of 2024

For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.
For Respondent(s) : Mr. D. Sarma, Addl. G.A.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE BISWAJIT PALIT

_O_R_D_E_R_

09.04.2024

Heard.

The present writ appeal is filed against the judgment and order dated 22.02.2024 passed by the learned Single Judge in connection with WP(C) No.60 of 2023 between C/7743 Meghnad Saha and others [i.e. the petitioners in the writ petition] and the State of Tripura & Others [i.e. the respondents in the writ petition].

The appellant has prayed for the following reliefs:

“A. Admit the appeal

B. Call for the records

C. After hearing both the parties, set aside the impugned Judgment and Order, dated, 22.02.2024, passed by the L'D Single Judge, in WP(C) No. 60 of 2023;

D. Allow the writ appeal by quashing & cancelling the PHQ Order No. 207/2022, dated 22.12.2022, issued by the Director General of Police, Tripura; and further directing the Respondents to confer the rank of Assistant Sub-Inspector of Police (Un-Armed Branch) (Man) to each of the appellants along with all consequential benefits flowing there from, with effect from the date which is anterior to the date on which the Respondent Nos. 4 to 9 & others have been conferred the rank of Assistant Sub-Inspector of Police (Un- Armed Branch) (Men).”

The facts in brief are that the appellants had filed WP(C) 60/2023, praying, inter alia, for necessary directions from this Court upon the respondents to quash & cancel the PHQ Order No. 207/2022, dated 22.12.2022, issued by the Director General of Police, Tripura, by which the respondent Nos. 4 to 9 & others have been illegally conferred the rank of ASI of Police although none of them appeared in the departmental examination as has been mandated by the relevant Recruitment Rules 2007. The appellants have prayed for further directions from this Court to confer the rank of ASI of Police (UB) upon the appellants along with all consequential benefits flowing therefrom, with effect from the date which is anterior

to the date on which the respondent Nos. 4 to 9 & others have been conferred the rank of ASI of Police (UB). The learned Single Judge dismissed the writ petition.

The learned Single Judge having heard the learned counsel appearing for the parties and after appreciation of material evidence on record as observed as under:

“15. The discussion made hereinabove, therefore, leads to the conclusion that in the matter of conferment of rank of ASI (UB) Men on temporary basis to the incumbents of the cadre of Head Constables and Naiks which is not a promotion or even an ad-hoc promotion, no arbitrariness or illegality has been done nor the petitioners have been unfairly left out in the matter of conferment of the rank of ASI (UB) Men as undisputedly, they are holding the rank of Constable, which is at the lowest hierarchy in the set up. The impugned order also very clearly mentions that the conferment of full duty charge on the Head Constables and Naiks with only an honorarium and no extra pay and allowances, in no way, would affect the inter-se seniority of the officials in their original rank and that would not affect the promotion of the officials in the normal course.

16. As such, this Court is of the considered view that the impugned order does not suffer from any vices of arbitrariness, discrimination or illegality which calls for interference by this Court under Article 226 of the Constitution of India.”

Hence, the instant writ appeal is filed by the appellant before this Court for redress.

On behalf of the appellants, reliance is placed upon the Schedule to the Recruitment of Assistant Sub-Inspector of Police (Un-armed Branch) (Men & Women) Rules, 2007 (Recruitment Rules of 2007, for short) notified on 08.07.2008. According to them, the appellants have cleared all the three parts of departmental exam. However, they have not been considered for conferring the rank of ASI (UB) Men even on temporary basis compared to the persons named in the PHQ Order No.207/2022.

Learned counsel for the appellants has contended that appellants do fulfil the eligibility conditions prescribed under Clause-11 of the Schedule to Recruitment Rules of 2007 and are entitled to be considered for regular promotion to the post of ASI (UB) Men, but they have been left out. If no DPC has been held before conferring the rank of ASI (UB/AB) Men on temporary basis, the respondents could not have judged the suitability and eligibility of the concerned candidates who have been conferred such temporary rank. The official respondents have adopted an arbitrary criterion to confer a higher rank as ASI (UB/AB) Men to these persons which in effect, gives them all the powers of the ASI during the period they remain

on the full duty charge. As such, the impugned action suffers from arbitrariness and illegality failing to adhere to a uniform yardstick even in the matter of conferment of a higher rank on temporary basis to the post of ASI (UB/AB) Men.

It is apparent from a reading of the recruitment rules that the Constable (UB/AB) forms the lowest rank in the hierarchy above whom are Naiks and next Head Constable and then ASI. It is not in dispute that by the impugned PHQ Order No.207/2022, persons were conferred the rank of ASI (UB) Men from the post of Head Constable (UB & AB) Men and Naik (AB) Men. No Departmental Promotion Committee meeting has, therefore, been held. Passing of a departmental exam is a relevant eligibility criterion for regular promotional exercise. Since regular promotional exercise is not being undertaken due to pendency of the case before the Apex Court in relation to promotion to the post of ASI (UB).

This impugned exercise is not even ad-hoc promotion. Under this impugned exercise, only Head Constables and Naiks have been considered for being conferred rank of ASI (UB) on a temporary basis to meet the operational efficiency, deployment in law & order functions, traffic law enforcement and investigation of cases, etc. The instant exercise even does not disturb the inter-se seniority amongst the persons eligible for being considered for regular promotion to the post of ASI in Police (UB) (Men & Women) on regular basis or even on ad-hoc basis. In order to perform exigencies of law and order duty, traffic laws enforcement, etc., the State Government had to undertake this exercise of conferment of rank to incumbents holding the post of Head Constable and Naik on temporary basis as ASI (UB) (Men).

These Head Constables or Naiks have come in their cadre on promotion from the post of Constables (UB/AB). As such, the criteria employed by the respondents-State for conferring rank of ASI (UB) Men on temporary basis to these incumbents is purely based upon their positions in the cadre of Head Constable and Naik which are definitely above the rank of Constable to which the appellants belong. Accordingly, we are of the view that the appellants are employed prior to 2008 and the recruitment rules are issued on 8th June, 2008 which is only a temporary conferment and not a regular promotion. Their inter-se seniority is not affected. The proceeding dated 22nd December, 2022 vide PHQ No.207/2022 which is challenged hereunder, is only a consequential proceeding of the government which is issued by the Home Department on 22.12.2022 and the same is not challenged.

In that view of the matter, the present appeal stands dismissed. As a sequel, miscellaneous application, pending if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

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