

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.205 of 2023

Sri Sumanta Nandi, S/o Sri Santosh Nandi, resident of Ramthakur Para, P.O.-
A.D. Nagar, (near A.D. Nagar H.S. School), Agartala-799003, West Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

WP(C) No.206 of 2023

Sri Bireswar Debbarma, S/o Lt. Radha Mohan Debbarma, resident of Ujan
Abhoynagar, (near New Star Club), P.O. Abhoynagar, Agartala, West Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

WP(C) No.207 of 2023

Sri Debasis Deb, S/o Lt. Sushil Chandra Deb, resident of Indranagar, Ward No.5,
(near Indaranagar Post Office), P.O.-Indranagar, West Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

WP(C) No.208 of 2023

Sri Partha Pratim Paul, S/o Lt. Sukhendu Bikash Paul, resident of Sadar,
Agartala, Ward No.18, Kamar Pukur Par South, P.O.-Agartala, West Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

WP(C) No.209 of 2023

Sri Manik Ranjan Barman, S/o Aditwa Kumar Barman, resident of Gokulpur, Tepania, Udaipur, Gomati District, Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

WP(C) No.210 of 2023

Sri Shyamal Saha, S/o-Lt. Subal Chandra Saha, resident of Math Chowmohani Bazar, Gali No.2, P.S. East Agartlaa, West Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

WP(C) No.211 of 2023

Sri Santi Ranjan Mallik, S/o Sushil Mallik, resident of Udaipur, P.O. Madhyapara, District-Gomati, Tripura.

..... Petitioner (s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Agriculture Department, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.

2. The Director of Agriculture, Government of Tripura, Akhaura Road, Agartala, West Tripura.
3. Tripura Public Service Commission, represented by its Secretary, Akhaura Road, Agartala, West Tripura.

..... Respondent(s)

For Petitioner (s)	:	Mr. G.K. Nama, Advocate.
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, G.A., Mr. Raju Datta, Advocate, Mr. R. Saha, Advocate, Mr. D.C. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing & Judgment: **17.05.2024**

Whether Fit for Reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. G.K. Nama, learned counsel for the petitioners and Mr. Kohinoor N. Bhattacharyya, learned Government Advocate together with Mr. Raju Datta, learned counsel for the respondent/TPSC.

[2] Since the case of the parties are common, for convenience sake, facts as are pleaded in WP(C) 205 of 2023 are being referred to hereunder.

[3] All these petitioners were appointed to the post of Junior Engineer in the Department of Agriculture, Government of Tripura holding the qualification of degree in Engineering in the respective year 2005, 1996 and 1992. According to them they are governed by the Recruitment Rules, 2010 namely 'Recruitment Rules, 2010' for the post of Assistant Engineer (Civil/ Mech), Department of Agriculture, Government of Tripura (Annexure-2). The Rule-4 of the Recruitment Rules, 2010 prescribes the method of recruitment, age limit, qualification etc. Rule-6 of the Recruitment Rules, 2010 provides for fixation of seniority. Rule-11 of the Recruitment Rules, 2010 provides for repeal and savings by which the existing Recruitment Rules of 1983 were repealed. But such repeal

would not affect any appointment made or order issued or action taken or anything whatsoever done under the rules so repealed and would be treated as having been done under the corresponding provision of these rules. Their grievance is that by advertisement No.03/2023 respondent-State has taken initiative to fill up only 20% direct recruitment quota of Assistant Engineers keeping in abeyance the 40% promotion quota. As per the Recruitment Rules, 2010, Clause-5 of the schedule annexed thereto which is extracted hereunder, 20% of the post of the Assistant Engineer (Civil/Mechanical) are to be filled up by direct recruitment (as per Combined Competitive Examination, Rules, 2009); 40% by promotion from Degree holder Junior Engineers Grade-I and 40% by promotion from Diploma holder Junior Engineers Grade-I, failing which by transfer on deputation:

5	Method of Recruitment whether by Direct Recruitment or by Promotion or by deputation/ Transfer and percentage of the vacancies to be filled up by various method.	(a) 20% by direct recruitment (as per Combined Competitive Examination, Rules, 2009) (b) 40% by promotion from Degree holder Junior Engineers Grade-I (c) 40% by promotion from Diploma holder Junior Engineers Grade-I Failing which by transfer on deputation.
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[4] According to the petitioners, respondents have ignored the adverse effect of making direct recruitment only without due promotion to the petitioners form the cadre of Junior Engineer Grade-I which could result in direct recruits becoming senior to them. Petitioners admit that by notification dated 14th October, 2022 they have been promoted to the post of Assistant Engineer on ad-hoc basis. However, their concern is that direct recruitment thereafter would affect their seniority since their promotion is only ad-hoc. Therefore, they have prayed for stalling of the recruitment to the post of Assistant Engineer through

direct recruitment till the process of 40% promotion quota is initiated simultaneously within the same year. Meanwhile, direct recruitment to the post of Assistant Engineer may be stayed.

[5] Respondent-State has filed counter-affidavit in all the matters. The gist of the stand of the respondent as contained in paragraph-9 and 10 are extracted hereunder:

“9) That, with regards to the averments made in Para 3 of this Writ Petition, the answering Respondent submits that the Department has taken the required initiative in promoting the Junior Engineers to the post of Asstt. Engineers, as admitted by the petitioner vide Notification No.F.2(152)-Agri/Estt/2007-08/P-I/9443-501 dated 14.01.2022.

Further, answering respondent submits that of SLP (C) 19765-19767 of 2015 before the Hon’ble Supreme Court of India, have given the promotion of the Petitioner on Ad-hoc basis vide Notification No. F.2(24)-GA (P&T)/2021 dated 22/06/2021 issued by the G.A. (P&T), Government of Tripura, subject to the final outcome of the verdict in SLP(C) 19765-19767 of 2015 pending before the Hon’ble Supreme Court of India. Thus, till date, Out of total 23 posts (15 civil + 8 Mechanical), already 15 posts (11 Civil+4 Mechanical) through promotion has been filled up out of total 18 posts (12 civil + 6 Mechanical) against the promotion quota.

Thus, the claim of the Petitioner that 40% of Promotion Posts have not been filled up is not a fact.

Copy of the Notification dated 22/06/2021 is enclosed as Annexure-R/1.

10) That , with regard to the averments made in Para 4 of this Writ Petition, the answering Respondents submit that the Hon’ble High Court in Judgment dated 19/04/2018 passed in Case No.W.P.(C) 375/2018 and W.P.(C) 377/2018 directed that:-

“..... This Court considers appropriate to dispose of the petition with the direction to the State Government that after due determination of vacancies of the posts of Assistant Engineer (Agriculture/Civil/Mechanical) may initiate the process to fill the promotion quota after considering the eligibility of Junior Engineer Grade-I in accordance with Law”.

Following the above direction, it is to mention herewith that the total No. of vacant posts identified are:-

- i) Out of 15 posts (12 posts for promotion and 3 posts for direct recruitment) against Assistant Engineer (civil), out of which, 11 promotion posts have been filled up since 2018.
- ii) Out of 8 post (6 posts for promotion and 2 posts for direct recruitment) against Assistant Engineer (Mechanical), out of which, 04 promotion posts have been filled up since 2018.

- iii) Out of 5 post for direct recruitment (3 Civil & 2 Mechanical), a proposal/ requisition for filling up 4 posts (3 Civil & 1 Mechanical), have been sent to the Tripura Public Service Commission (TPSC) and accordingly TPSC advertised for recruitment vide Advt. No.3/2023.”

[6] Respondent-Tripura Public Service Commission (TPSC) has also filed a separate counter-affidavit. Their stand is contained in paragraph Nos. 4 to 7. According to them the TPSC has concurred the proposal of the department for promotion to the post of Assistant Engineer [(Mechanical) (Degree & Diploma)] subject to creation of supernumerary post under Department of Agriculture & Farmer's Welfare, Government of Tripura on ad-hoc basis as one time measure as recommended by the Selection Committee meeting held on 26.09.2022 subject to the condition as mentioned in the notification dated 22.06.2021 which is the Ad-hoc Promotion Policy. In the said meeting the Selection Committee recommended 3(three) Junior Engineer, Grade-I Degree holder and 1(one) Junior Engineer, Grade-I Diploma holder for promotion to the post of Assistant Engineer, Mechanical (Degree & Diploma) as mentioned in DPC minutes dated 26.09.2022 (Annexure-R/1 & R/2).

[7] It is further stated that as per requisition of the Public Works Department, Government of Tripura for recruitment to 4(four) numbers of post of Assistant Engineer (Civil/Mechanical), Group-A Gazetted under the Department of Agriculture and Farmers Welfare, Government of Tripura vide letter dated 25.03.2021, the Commission verified all the papers related with the recruitment process and found all the documents in order. Thereafter, Commission floated an advertisement vide advertisement No.03/2023 dated 11.01.2023 for inviting online applications for recruitment.

[8] Learned counsel for the respondent-Commission has also referred to requisition of the Public Works Department, Government of Tripura

dated 16.09.2016 for recruitment of 6(six) numbers of Assistant Engineer (Civil/Mechanical), Group-A Gazetted under the RD Department and the Agriculture Department, Government of Tripura. An advertisement was issued bearing No.21/2017 dated 13.11.2017. However, the said advertisement was cancelled by a notification dated 02.01.2019 issued by the TPSC.

[9] Respondent-Commission denied the statement made at paragraph Nos.5 & 6 of the writ petition that as per Recruitment Rules, 2010 which provides for seniority between direct recruits and promotees, the direct recruits shall become senior to the ad-hoc promotees, if they are not promoted in the same year or that the direct recruits will go ahead of ad-hoc promotees in seniority. The respondent-Commission further denied that the attempt to fill 20% direct recruitment quota only by suspending the 40% promotion quota is ex-facie unfair and illegal.

[10] Mr. G.K. Nama, learned counsel for the petitioners submits that petitioners apprehend that their seniority might be affected because of direct recruitment even after their promotion on ad-hoc basis vide notification dated 14.09.2022. The respondent- State and respondent-Commission are, therefore, required to adhere to Rule-6 to the Recruitment Rules, 2010, which provides for fixation of seniority between the direct recruits and promotees.

[11] The learned counsel for the respondent-State and respondent-Commission both have allayed the apprehension of the petitioners on that score. They submit that as per Ad-hoc Promotion Policy dated 22.06.2021 inter se seniority list is determined but such promotion is subject to the outcome of the Special Leave Petition pending before the Apex Court. Petitioners' apprehension that their seniority on ad-hoc promotion as Assistant Engineer, Agriculture

(Civil/Mechanical) is likely to be affected by a process of direct recruitment initiated under advertisement No.3/2023 is misplaced. The process of direct recruitment under this advertisement has not been completed. The seniority of the direct recruits to be recruited under advertisement No. 03/2023 could be determined only from the date on which they are borne on the cadre. Therefore, the apprehension of the petitioners is misplaced.

[12] I have considered the submissions of the learned counsel for the parties and taken note of the materials placed on record. Specifically, I have also referred to the Recruitment Rules, 2010. Rule-6 of the Recruitment Rules, 2010 is extracted hereunder:

“6. Seniority:-

The State government shall prepare a list of members of the Service arranged in order of seniority as determined in the manner specified below:-

(i) The relative seniority of direct recruits and of promotes shall be determined according to the rotation of vacancies filled in a recruitment year between the direct recruits and the promotees which shall be based on the quotas of vacancies reserved for Direct recruitment and promotion.

(ii) Seniority of Degree Holder Engineers and Diploma Holder Engineer shall be determined separately and not clubbed together.”

[13] Petitioners bear a misplaced apprehension that direct recruitment being undertaken under advertisement No.03/2023 for the post of Assistant Engineer in the Department of Agriculture is likely to affect their seniority. Petitioners who were appointed in different points of time on the post of Junior Engineer, Grade-I in the Department have been conferred promotion by notification dated 14th October, 2022 on ad-hoc basis as per the notification dated 22.06.2021. Due to pendency of Special Leave Petition(C) No.19765-19767 of 2015 such promotions are subject to final outcome of the Special Leave Petition pending in the Hon’ble Supreme Court of India. Direct recruits to be recruited

under advertisement No.03/2023 have not even been borne in the cadre. In any case seniority among the direct recruits and promotees have to be prepared in a manner prescribed under Rule-6 of the Recruitment Rules, 2010 which says that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies filled in a recruitment year between the direct recruits and the promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion. The State has undertaken the task of identifying the quota of promotional post against which the promotion of certain Junior Engineers like the petitioners have been made vide notification dated 14.10.2022. In such circumstances, as is also the case of the respondent-Commission and the respondent-State, the apprehension of the petitioners that petitioners seniority is likely to be affected because of the direct recruitment to the post of Assistant Engineers, Department of Agriculture under advertisement No.03/2023 is misplaced. Needless to say, the Department is obliged to follow the principles prescribed under Rule-6 of the Recruitment Rules-2010 at the time of fixation of seniority of the petitioners *vis-a-vis* direct recruits.

Accordingly, the instant writ petitions are disposed of with the aforesaid observation. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ