

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.249 of 2024

Sri Prasad Biswas, son of Sri Pranab Kanti Biswas, resident of Durgapur,
P.O. Paiturbazar-799279, P.S. Kailasahar, District- North Tripura.

.....**Petitioner**

-VERSUS-

- 1. The State of Tripura**, represented by its Principal Secretary,
Rural Development Department, Government of Tripura, New Secretariat
Complex, Agartala, West Tripura.
- 2. The Principal Secretary**, Government of Tripura, Rural Development
Department, New Secretariat Complex, Agartala, West Tripura.
- 3. The Additional Secretary**, Government of Tripura, Rural
Development Department, New Secretariat Complex, Agartala, West
Tripura.
- 4. The Deputy Secretary**, Government of Tripura, Rural Development
Department, New Secretariat Complex, Agartala, West Tripura.
- 5. The Chief Engineer**, Rural Development Department, P.N. Complex,
Gorkhabasti, Agartala, West Tripura.
- 6. The Executive Engineer**, Rural Development Planning and Monitoring
Cell, Government of Tripura, Gorkhabasti, Agartala, West Tripura.
- 7. The Executive Engineer**, Rural Development Division, Kailasahar,
Government of Tripura, Kumarghat, Unakoti, Tripura.
- 8. Tripura Public Service Commission**, represented by the Secretary,
having its office at Akhaura Road, P.O. Agartala-799001, P.S. West
Agartala, District- West Tripura.

....**Respondents**

For Petitioner (s)	:	Mr. S. Lodh, Advocate
For Respondent (s)	:	Mr. M. Debbarma, Addl. GA
Date of hearing & delivery of judgment & order	:	25.11.2024
Whether fit for reporting	:	Yes / No.

**HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)**

By means of filing the instant writ petition, the petitioner has
prayed for the following reliefs:

*“As to why a writ in the nature of Certiorari should not be issued
Quashing/ Setting aside the Order vide No.F.15(35)/CE /RD/Court
Case/21-22/1418 dated 07.01.2023 issued by Disciplinary Authority i.e.*

the Secretary to the Government of Tripura, Rural Development Department, Government of Tripura;

AND

As to why a writ in the nature of Certiorari should not be issued Quashing/ Setting aside the letter vide No.F.6(1094)-SM/TPSC/2022 dated 22.12.2022 issued by the respondent No.8 whereby concurrence was given to the proposed penalty by the Disciplinary Authority in respect of the petitioner;

AND

As to why a writ in the nature of Certiorari should not be issued Quashing/ Setting aside the letter vide No.F.4(73)- CE/RD/EXPN/21-22(PART)/1221 dated 05.12.2022 whereby the respondent No.5 did not consider the case of the petitioner for promotion to the post of Assistant Engineer;

AND

As to why a Writ in the nature of Mandamus should not be issued directing the State Respondents to promote the petitioner to the post of Assistant Engineer under the State Respondents w.e.f. the date when similarly situated employees were promoted by the State Respondents to the post of Assistant Engineer, Rural Development Department;

AND

As to why such other order/orders should not be passed so as to give full relief to the petitioner and, upon causes shows, to make the Rule absolute.”

2. Heard Mr. S. Lodh, learned counsel appearing for the petitioner as well as Mr. M. Debbarma, learned Additional GA appearing for the respondents-State.

3. The simple case of the petitioner, is that, he is an Engineer and while he was discharging his duties as Junior Engineer, he was asked to appear in Departmental Examination for promotion to the post of Assistant Engineer under the respondents. The petitioner had appeared in the Departmental Examination under ‘Tripura Engineering Officers Training and Departmental Examinations Rules’, 1983 (for short, ‘Rules,1983’), and came out successfully in the year 2005. It is pertinent to mention herein that this is second round of litigation. The petitioner had approached this court with a writ petition bearing no. W.P.(C) 1020 of 2022 raising his grievances against the promotion of his juniors in the post of Assistant

Engineer by Memo dated 15.11.2022. The said writ petition was disposed of on 29.11.2022 with the following directions:

“In view of this, I direct the respondents to consider the representation of the petitioner within a period of 7 (seven) days from today and, if the petitioner is found eligible and senior to the private respondents, then, his name must be considered in accordance with rule governing promotion of the Junior Engineers to the post of Assistant Engineers”.

4. In compliance with the said Order dated 29.11.2022, the petitioner submitted his representation on 07.12.2022 before the respondent no. 5. The said representation of the petitioner was disposed of by the respondent stating *inter alia* as under:

“(iii) The Recruitment Rules(RR) of Assistant Engineer was last amended vide Notification No. F.CE/RD/RR/2015-16 dtd. 25/06/2015 repealing the Recruitment Rules, 2007. Said RR has been circulated to all DM & Collectors, Superintending Engineers and Executive Engineers for information of all concerned. In the said amended Recruitment Rule at point 11(b), it is clearly indicated that for promotion to the post of Assistant Engineer, the candidate should have to pass departmental Examination in Accounts paper and Simple Rules paper subject to revision by the Govt. from time to time. Many of your seniors as well as juniors including some of the private respondents have passed the departmental examination in Accounts paper and Simple Rules paper as per the amended RR. Promotion is always processed on the prevailing RR. So, as on date provision of RR, 2007 has no effect in promotion process. Due to non clearance of Departmental examination in one of the paper as per RR, 2015 your candidature can not be considered in the on going adhoc promotion process to the post of Assistant Engineer.

(iv) Vide Memorandum No. F.4(73)-CE/RD/EXPN/21-22(Part)/1112 dtd. 15/11/2022 Full duty charge (FDC) has been assigned to 22 Nos Junior Engineer, Gr I (Deg & Dip). In the said order it is clearly written that 'This is a completely temporary stop gap arrangement for functional of the newly created RD Circle / Division and Sub-Division offices pending regular promotion in respect to the newly created post / vacancies. Assignment of FDC may be withdrawn/rescinded at any time at the discretion of the department'. Eligibility criteria of regular promotion has not been maintained for assignment of FDC but in the said Memorandum, your name could not be considered since the DP against you is not yet closed. Your case for assignment of FDC to the post of AE will be considered after DP is closed. Regular/adhoc promotion can be considered only on seniority, availability of vacancy, Integrity & Vigilance clearance certificate and subject to passing of departmental examination as per prevailing Rule at the time of promotion”.

5. I have perused the aforesaid Grounds of rejection of the representation of the petitioner.

6. Firstly, I would like to deal with the grounds mentioned in Point No. (iii) of the reply of the Respondents dated 05.12.2022. In this regard, I specifically hold that the service conditions of the petitioner for promotion to the post of Assistant Engineer would be governed by Rules of 1983, when he was asked to appear in the Departmental Examination, the petitioner had appeared and successfully came out with the said examination entitling him to get the promotion to the post of Assistant Engineer. The grounds taken by the respondents that he would be governed by Rules of 2015, cannot be accepted by this court since in the Gazette notification dated 16.01.2009, at the conclusion, it is specifically stated that, *“if an officer has already passed the prescribed departmental Examinations while holding any other post under the Government he/she need not be required to pass the examination again”*.

In the Recruitment Rules, dated 16.01.2009, exemption has been given to those Junior Engineers who had successfully appeared in the Departmental Examination before introduction of Rules of 2009. Since the petitioner had successfully appeared in the Departmental Examination in the year 2005, so withholding of his promotion on the ground that his promotion would be governed by the amended Rules of 2015, will not hold the water. Accordingly, this ground is rejected. So, the petitioner is eligible and entitled to be considered for promotion to the post of Assistant Engineer.

7. It is specifically stated in the instant writ petition that juniors of the petitioner have been promoted to the post of Assistant Engineer, but, on

ad hoc basis. Though the promotion is *ad hoc* or regular, senior in the cadre shall not be deprived of. The legitimate right should be considered in the next higher post. In view of the above, it is directed that the respondents shall consider the promotion of the petitioner from the date when his juniors were promoted to the post of Assistant Engineer.

8. However, I have taken into consideration the Ground No. (iv) of the reply of the respondents, that promotion of the petitioner to the post of Assistant Engineer could not be considered due to pending departmental proceeding. In view of this, I direct that the promotion of the petitioner, with effect from the date when his juniors were promoted to the post of Assistant Engineer, should be kept in seal cover. The seal cover will be opened after conclusion of the departmental proceeding.

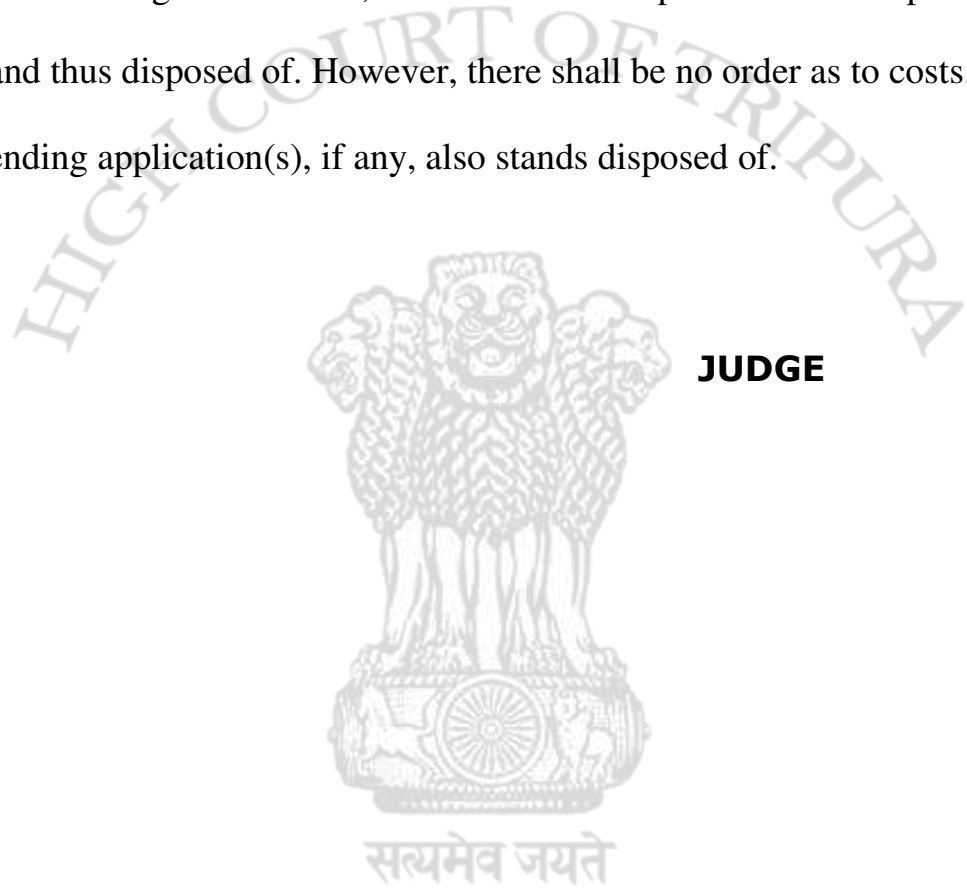
9. In the present writ petition, the petitioner has prayed for a direction upon the competent authority of the respondents to dispose of the departmental proceeding. Learned counsel for the petitioner has submitted that the departmental proceeding initiated against the petitioner has not been completed as yet, though this court on 29.05.2020 passed in W.P(C) 994 of 2017 has remanded back the matter before the disciplinary authority with the following order:

“9. Under the circumstances, only on this ground impugned order of penalty dated 1st August, 2017 is set aside. The matter is placed back before the disciplinary authority to pass a fresh order in accordance with law without taking into consideration the report of the said committee. By now the disciplinary authority may have changed. Previously the petitioner was granted an opportunity of personal hearing. Considering such factors, the disciplinary authority shall grant a personal hearing to the petitioner before passing a fresh order. It is clarified that if the disciplinary authority forms an opinion that the said Charge Article II is established against the petitioner, he would not be bound by any of the penalties previously imposed by the earlier disciplinary authorities which penalty orders have been set aside by this Court in WP(C) No.331/2011 and now in this case”

10. In view of this, I direct the respondents to complete the departmental proceeding within a period of 2(two) months from the date when the competent authority of the respondents shall receive a copy of this order either from the learned Additional Government Advocate or from the counsel of the petitioner.

11. In the light of above, the instant writ petition stands partly allowed and thus disposed of. However, there shall be no order as to costs.

Pending application(s), if any, also stands disposed of.



SANJAY GHOSH

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