

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 261 OF 2022

Sri Sudang Mog,
S/O Lt. Keochai Mog,
Resident of –Vill-South Chakma,
P.O. Manpathar, P.S.-Santirbazar,
District-South Tripura, PIN-799155.

.....**Petitioner.**

Vrs.

- 1. The State of Tripura**, to be represented by the Secretary, Health & Family Welfare Department, Govt. of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, PIN-799010.
- 2. The Director of Health Services**, Govt. of Tripura, Gorkhabasti, P.N.Complex, Agartala, West Tripura.
- 3. The Deputy Secretary to the Govt. of Tripura**, Health & Family Welfare Department, Agartala, West Tripura.
- 4. Sri Bikash Debbarma**, Inspecting Officer (Drugs), RIPSAT, Kunjaban, Agartala, notice to be served through the Director of Health Services, Govt. of Tripura.
- 5. Smt. Lipika Debbarma**, Inspecting Officer (Drugs), Teliamura Sub-Divisional Hospital, Khowai Tripura, notice to be served through the Director of Health Services, Govt. of Tripura.

..... **Respondents.**

Present:

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|------------------------|---|---|
| For the petitioner (s) | : | Mr. P. Roy Barman, Senior Advocate.
Mr. Samarjit Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.
Ms. N. Ghosh, Advocate.
Ms. A. Debbarma, Advocate.
Mr. P. Chakraborty, Advocate. |
| For the respondent (s) | : | Mr. Somik Deb, Senior Advocate.
Ms. Adwitiya Chakraborty, Advocate.
Mr. P. Maishan, State Counsel.
Mrs. R. Chakraborty, Advocate.
Ms. S. Nag, Advocate.
Mr. S. Majumder, Advocate.
Mr. K. Debnath, Advocate.
Mr. A. Baran, Advocate. |

Date of hearing and : **06.05.2024**
 date of delivery of
 judgment and order

Whether fit for : **Yes**
 reporting

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

By means of filing the instant writ petition, the petitioner has challenged the *ad-hoc* promotion of the respondents no. 4 and 5 to the post of Inspecting Officer (Drugs) made under Notification dated 31st December, 2021 [*Annexure-8* to the writ petition].

2. It is the plea of the petitioner that, though, since entry into the service he was all along senior to the respondents no. 4 and 5 in the feeder post i.e. in the grade of Pharmacy (Allopathy), he has not been considered for promotion to the next higher post i.e. the post of Inspecting Officer (Drugs) under the State-respondents.

2.1 The background facts, in brief, are that the petitioner joined the post of Pharmacist (Allo) on 31.12.1992 with Diploma in Pharmacy under the State-respondents. After serving so many years in the post of Pharmacist, the petitioner pursued Degree course in Pharmacy (Allo), and in the year 2018, the petitioner came out successfully with Degree in Pharmacy(Allo). There is no dispute that in the final seniority list of Pharmacist (Allo) [*Annexure-4* to the writ petition] published vide Memo. dated 25.01.2017, the name of the petitioner appeared at Sl. No.153 whereas the name of the respondents no. 4 and 5 appeared at Sl.Nos.168 and 209 respectively in the grade of Pharmacist (Allo).

2.2 To meet the administrative exigency, the Health & Family Welfare Department, Government of Tripura issued a Notification dated 31st

December, 2021 [*Annexure-8* to the writ petition] whereby and whereunder the respondents no.4 and 5 namely, Bikash Debbarma and Smt. Lipika Debbarma were promoted to the post of Inspecting Officer (Drugs) on *ad-hoc* basis subject to final outcome of SLP(C) No. 19765-19767 of 2015 pending before the Hon'ble Supreme Court of India.

3. Here, the question falls for consideration is that as to why the petitioner was not considered for promotion though admittedly he is senior to those of the respondents no. 4 and 5 in the grade i.e. in the post of Pharmacist (Allo). The reason as it appears from the counter affidavit is that while consideration of promotion from the post of Pharmacist (Allo) to the post of Inspecting Officer (Drugs), the petitioner had no required qualification prescribed for promotion to the post of Inspecting Officer (Drugs). It is asserted in the counter affidavit submitted by the State-respondents that in the final seniority list related to the Pharmacist (Allo), the qualification of the petitioner was shown as Madhyamik and Diploma in Pharmacy. It has further been stated in the counter affidavit that as per Recruitment Rules (for short, 'RR'), the required qualification for promotion to the post of Inspecting Officer (Drugs) is Pharmacist having Degree in Pharmacy from a recognized Institute/University with minimum 5 years' service experience in the grade.

4. Contrary thereto, the respondents no. 4 and 5 had required qualification as per RR and for that reason they had been considered for promotion to the post of Inspecting Officer (Drugs) on the recommendation of DPC [*Annexure-R/2* to the counter affidavit filed by the State-respondents]. Pertinently, as I said earlier, the petitioner had acquired Degree in the year 2018.

5. In the above premises, I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner and Mr. Somik Deb, learned senior counsel assisted by Ms. A. Chakraborty, learned counsel appearing for the respondent no.5 and Mr. P. Maishan, learned counsel appearing for the State-respondents.

5.1 Mr. Roy Barman, learned senior counsel has candidly submitted that non consideration of promotion of the petitioner to the post of Inspecting Officer (Drugs) is illegal, arbitrary and in total disregard of Clause 11 of the RR applicable to the petitioner as well as the respondents no. 4 and 5. Learned senior counsel has drawn the attention of this Court that though the petitioner had entered into the service in the year 1992 with Diploma in Pharmacy, but, till publication of the final seniority list in the year 2017 he was shown as senior to respondents no. 4 and 5 despite the fact that both the said respondents had entered into service in the year 2011 with Degree in Pharmacy to the post of Pharmacist (Allo) and the said seniority position was settled. According to learned senior counsel for the petitioner while preparing the seniority list *qua* its publication, the State-respondents had correctly interpreted the Clause 11 of the RR after considering the qualification of the petitioner obtaining Degree in Pharmacy (Allo). But, the State-respondents had promoted the respondents no. 4 and 5 in supersession of the petitioner and thus deprived of the legitimate right of the petitioner to be considered for promotion to the post of Inspecting Officer (Drugs). Mr. Roy Barman, learned senior counsel argues that the notification dated 31st December, 2021 promoting the respondents no. 4 and 5 to the post of Inspecting Officer (Drugs) deserves interference by this Court. According to learned senior counsel, Clause 11 of the RR only requires qualification of obtaining Degree

in Pharmacy with minimum 5 years' experience. Clause 11 does not lay down any criteria prescribing any time period required to be served after acquisition of the Degree in Pharmacy so long as the Degree is acquired to make the Pharmacists with Diploma in Pharmacy eligible for promotion to the post of Inspecting Officer (Drugs). Thus, according to learned senior counsel, in absence of any such criteria, supersession of the petitioner by his juniors under notification dated 31st December, 2021 deserves interference by this Court.

5.2 To support his contention, Mr. Roy Barman, learned senior counsel has placed reliance to the decision of the Hon'ble Supreme Court in the case of *T. Valsan (D) Thr.Lrs. & Ors. Vs. K. Kanagaraj & Ors.*, reported in *AIR 2023 SC 2860 : (2023) 7 SCC 614*.

6. In rebuttal, Mr. Deb, learned senior counsel appearing for the respondent no.5 has submitted that the State-respondents while promoting the respondents no. 4 and 5 had considered the fact that at the time of promotion, the petitioner had no requisite qualification. For consideration of promotion to the post of Inspecting Officer (Drugs) from the post of Pharmacist (Allo), one must have Degree in Pharmacy with minimum 5 years' service experience, which the petitioner did not have. Proceeding further, learned senior counsel appearing on behalf of the respondent no.5 submits that in the final seniority list published in the year 2017, the qualification of the petitioner in the said list was shown as Madhyamik and Diploma in Pharmacy and thus, the said seniority list was considered for promotion of the respondents no. 4 and 5 to the post of Inspecting Officer (Drugs).

6.1 Mr. Deb, learned senior counsel has tried to interpret the word 'in' by placing reliance upon the decision of Hon'ble Supreme Court in *G. Sundareswararao Vs. Govt. of A.P. & Ors.*, reported in *(1996) 8 SCC 234*.

Learned senior counsel has also cited the following decisions as a matter of interpretation of Clause 11 of the Recruitment Rules:

- (i) ***Shailendra Dania & Ors. Vs. S.P. Dubey & Ors., (2007) 5 SCC 535***, paras **26,27,30,37,43** and **44**;sds
- (ii) ***N. Suresh Nathan & Ors. Vs. Union of India & Ors.,(2010) 5 SCC 692***, paras **7, 8,12,25, 49** and **50** &
- (iii) ***Challa Jaya Bhaskar & Ors. Vs. Thungathurthi Surender & Ors., (2010) 13 SCC 348***, paras **27,28,29** and **30**.

7. I have considered the submissions advanced by learned counsel appearing for the parties as well as perused the pleadings averred in the writ petition, counter affidavits filed by the State-respondents and the respondent no.5 and the relevant documents enclosed to the writ petition to decide the instant dispute raised in the writ petition.

8. Considering the facts and submissions of learned counsel appearing on behalf of the parties to the *lis*, in my opinion, the controversy lies in a short compass. Entire case depends upon the interpretation of Clause 11 of the RR. For this purpose, and for convenience as well as for brevity, the entire RR is reproduced hereunder *in extenso*:

“RECRUITMENT RULES FOR THE POST OF INSPECTING OFFICER(DRUGS) UNDER THE HEALTH & FAMILY WELFARE DEPARTMENT, GOVERNMENT OF TRIPURA.

1	Name of Post(s)	Inspecting Officer (Drugs)
2	No. of Post(s)	11(eleven) plus additional post(s) as and when created.
3	Classification	Group- 'A' Gazetted
4	Scale of pay	Rs.13,575-37,000/- (Pay Band-4), Grade pay of Rs.3,700/- per month subject to revision by the Government from time to time.
5	Method of recruitment Whether by direct Recruitment or by promotion Or by deputation/transfer and Percentage of the vacancies to be filled by various Method	(i) 75% by direct recruitment as per Rule 49 of the Drugs & Cosmetic Act,1940 and Rules,1945. (ii) 25% by promotion.
6	Age limit for direct	Up to 40 years. Upper age limit is

	<i>Recruitment</i>	<i>relaxable by 5(five) years in case of SC/ST/PH candidates and Governments servant.</i>
7	<i>Educational & other qualifications required for direct recruitment</i>	<i>Degree in pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a university established in India by law.</i>
8.	<i>Whether age and educational qualification prescribed for direct recruitment will apply in case of promotes</i>	<i>No.</i>
9.	<i>Period or probation, if any</i>	<i>2(two) years.</i>
10.	<i>Whether Selection Post or Non-Selection post</i>	<i>Not applicable.</i>
11.	<i>In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer is to be made</i>	<i>Promotion:- Pharmacists, having Degree in Pharmacy from a recognized Institute/University with minimum 5(five) years service experience in the grade.</i>
12.	<i>If a DPC exists, What is its composition</i>	<i>Group-A DPC</i>
13.	<i>Circumstances in which TPSC is to be consulted in making recruitment</i>	<i>As required under the Tripura Public Service Commission (Exemption from Consultation) Regulations, 1973</i>

Sd/-
(B. Basfore)
Deputy Secretary to the
Government of Tripura”

9. Again, for convenience, Clause 11 of the RR to fill up the post of Inspecting Officer (Drugs) can be segregated hereunder:

“11.	<i>In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer is to be made</i>	<i>Promotion:- Pharmacists, having Degree in Pharmacy from a recognized Institute/University with minimum 5(five) years service experience in the grade.”</i>
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10. On plain reading of the criteria for promotion to the relevant post, in my opinion, the said criteria contains two parts—(i) A Pharmacist must have Degree in Pharmacy from a recognized Institute/University; (ii) such Pharmacist having Degree in Pharmacy must have minimum 5 years’ service experience in the grade.

11. So, according to me, on plain reading of the language of the aforesaid criteria for promotion to the post of Inspecting Officer (Drugs), a Pharmacist must possess Degree in Pharmacy with minimum 5 years' experience in the grade. Pertinently, "in the grade" means "in the post of Pharmacist". One interesting feature in the said criteria is that obtaining of Degree in Pharmacy is a necessity, and a pre-condition too for promotion to the post of Inspecting Officer (Drugs). Clause 11 of RR in clear and unambiguous words suggests only minimum duration of service in the feeder grade together with Degree in Pharmacy to enable a Pharmacist to be considered for promotion. In that event, in my considered view, it is very hard to digest the submission of learned senior counsel appearing on behalf of the respondent no.5 that Clause 11 of the RR stipulates to count the period of experience only from the date of acquisition of Degree in Pharmacy.

12. In the case of ***T. Valsan*** (supra) the number of years of service of the Degree holder Engineers and the Diploma holder Engineers are specifically mentioned to move to the higher post, which is absent in the instant case. As such, it cannot be said that the case of ***T. Valsan*** (supra) is squarely applicable to the facts of the instant case. Similarly, in the case of ***G. Sundareswararao*** (supra) as cited by Mr. Deb, learned senior counsel appearing on behalf of respondent no.5, Rule 4(b) of *A.P. Institute of Preventive Medicine Service Ad Hoc Rules* [for short, 'A. P. Ad hoc Rules'] which appeared to be determinative rule to the merits of the said cited case reads thus:

"Must have not less than 5 years' experience as Postgraduate in the analysis of Food under the control of Chief Public Analyst/Government Analyst who is appointed under the Prevention of Food Adulteration Act, 1954."

13. On meticulous reading of both Rule 4(b) of 'A.P. Ad hoc Rules' and Clause 11 of the RR of the case in hand, *I find the foundational structures of the said two Rules are quite distinct to each other. On bare perusal of Rule 4(b), it crystallizes that a candidate must have not less than 5 years' experience as Post-graduate in the analysis of Food. To say it otherwise, a candidate must render service for minimum 5 years in the analysis of food as Postgraduate, that is, after acquiring Postgraduate degree. In the context of the present case, the Clause 11 prescribing the promotional criteria, the legislature has not structured the said criteria in the manner as it has been structured in Rule 4(b) of 'A.P. Ad Hoc Rules'. As a matter of re-iteration, in the instant case, a clear distinction is that the Clause 11 only stipulates that one must have minimum 5 years' service experience in the grade, but, the framers of the Rules has not stipulated any number of years or experience required after acquiring Degree in Pharmacy for consideration of promotion to the next higher post. In my opinion, it makes the entire thing different in respect of the application of the principles delineated in the case of **G. Sudareshwar Rao** (supra) than that of the case in hand.*

[Emphasis supplied]

14. We may gainfully refer to the decision of the Hon'ble Supreme Court in **D. Stephen Joseph Vs. Union of India & Ors.**, reported in (1997) 4 SCC 753 where the Hon'ble Apex Court had considered the case of N. **Suresh Nathan Vs. Union of India**, 1992 Supp (1) SCC 584 and **M.B. Joshi Vs. Satish Kumar Pandey**, 1993 Supp (2) SCC 419 and interpreted the fact of counting the period of experience in reference to a particular statutory rule. Para 5 of the judgment in the case of **Stephen Joseph** (supra) may be reproduced hereunder for convenience *in extenso*:

5. It appears to us that the State Government is labouring under a wrong impression as to the applicability of the past practice as indicated in Suresh Nathan case [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] . This Court in the said decision, has only indicated that past practice should not be upset provided such practice conforms to the rule for promotion and consistently for some time past the rule has been made applicable in a particular manner. In our view, the decision in Nathan case [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] only indicates that past practice must be referable to the applicability of the rule by interpreting it in a particular manner consistently for some time. Any past practice dehors the rule cannot be taken into consideration as past practice consistently followed for long by interpreting the rule. It may be indicated here that a similar question also came up for consideration before this Court in M.B. Joshi v. Satish Kumar Pandey [1993 Supp (2) SCC 419 : 1993 SCC (L&S) 810 : (1993) 24 ATC 688] . The decision in Suresh Nathan case [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] was distinguished in the facts of that case and it was indicated that when the language of the rule is quite specific that if a particular length of service in the feeder post together with educational qualification enables a candidate to be considered for promotion, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education.

15. In the instant case, the language of the rule of promotion from the post of Pharmacist i.e. the feeder post to the post of Inspecting Officer (Drugs) as contemplated in Clause 11 of the RR is quite specific where there is no provision to count the experience only from the date of acquisition of Degree in Pharmacy. The basic principles of interpretation of a statute are stated by **Tindal C.J.** in *Sussex Peerage Case [(1944) 11 Cl. & Fin 85: SER 1034]*, which still holds the field. It was held that- “*if the words of the statute in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law giver.*” [ER.p.1057]. So, there cannot be any quarrel in the bar that plain meaning of a statute or rule is the accepted principle of interpretation.

[Underlined for emphasis]

16. It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

17. The language of the Clause 11 of the RR is very clear and unambiguous where the requirement of promotion to the post of Inspecting Officer (Drugs) is only Degree in Pharmacy and 5 years' experience in the Grade i.e. in the post of Pharmacist. *The language is very explicit where it is not provided that for promotion to the post of Inspecting Officer (Drugs) from its feeder post required 5 years' experience will be counted from the acquisition of Degree in Pharmacy or to say it otherwise by no means, Clause 11 of RR provides that a candidate eligible for promotion from the post of Pharmacist to the post of Inspecting Officer (Drugs) requires to serve 5 years in the said grade, i.e. in the post of Pharmacist after acquisition of Degree in Pharmacy.*

[Emphasis supplied]

18. In view of such plain language in Clause 11, if the submissions of Mr. Deb, learned senior counsel is accepted that 5 years' experience should be counted from the date of acquisition of Degree in Pharmacy, then, it would amount to incorporation or addition of another essential criteria in Clause 11 of the RR, which is not stipulated, or for more clarity, according to this Court, it would *de hors* the RR *vis-à-vis* the legislative intendment. In this situation, in my opinion, due weightage should be given to the intention of the framers of the Rules.

19. For the reasons stated and discussed here-in-above, it is held that the petitioner is entitled to get promotion to the post of Inspecting Officer (Drugs), even on *ad hoc* basis, prior to the promotion of respondents no. 4 and 5. Thus, the promotion of the respondents no. 4 and 5 to the post Inspecting Officer (Drugs) before consideration of the promotion of the petitioner to the said higher post, is illegal, arbitrary and *de hors* Clause 11 of the RR and is liable to be set aside. Accordingly, it is set aside.

20. However, I have been informed that there were only two vacant posts of Inspecting Officer (Drugs). In this circumstance, following directions are made:

- (i) the petitioner is to be treated as senior to both the respondents no. 4 and 5 and accordingly, relevant seniority is to be corrected;
- (ii) the promotion of the petitioner would be made to be effective from the date when his juniors, that is, respondents no. 4 and 5 were promoted to the post of Inspecting Officer (Drugs);
- (iii) if the competent authority of the State-respondents decides not to disturb the promotion of either of the respondents No. 4 and 5, in that case, the promotion of the petitioner would be given effect by creating a supernumerary post;
- (iv) the petitioner would be entitled to all financial and service benefits from the date when respondents no. 4 and 5 were promoted to the post of Inspecting Officer (Drugs); however, financial benefits including salary would be fixed notionally for the purpose of pension, if any;

- (v) there shall be no arrears of salary; and
- (vi) the entire exercise shall be completed by the State-respondents within a period of three months from the date of receipt of the copy of this order.

21. With the aforesaid observations and directions, the instant writ petition stands allowed and disposed.

JUDGE