

**HIGH COURT OF TRIPURA
AGARTALA**

I.A. No.01/2023 in W.A. No.49/2023

Smt. Sarmistha Roy

..... Appellant/Applicant(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

I.A. No.01/2023 in W.A. No.47/2023

Shri Jayan Debbarma

..... Appellant/Applicant(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

I.A. No.01/2023 in W.A. No.48/2023

Shri Soumitra Debnath

..... Appellant/Applicant(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

For Appellant/Applicant(s) : Mr. C.S. Sinha, Advocate.

For Respondent(s) : Mr. Dipankar Sarma, Addl. G.A.,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. D. Paul, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

02/07/2024

**I.A. No.01/2023 in W.A. No.49/2023;
I.A. No.01/2023 in W.A. No.47/2023;
I.A. No.01/2023 in W.A. No.48/2023:**

Heard Mr. C.S. Sinha, learned counsel for the appellant/applicants,
Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the
State respondents and Mr. Samarjit Bhattacharjee, learned counsel for the
private respondent.

2. All these 3(three) appeals [W.A. No.47/2023; W.A. No.48/2023 and W.A. No.49/2023] arise out of common impugned judgment dated 01.12.2022 passed by the learned Writ Court in WP(C) No.622/2021 [Sri Jayan Debbarma vrs. The State of Tripura & others], WP(C) No.624/2021 [Sri Soumitra Debnath vrs. The State of Tripura & others] and WP(C) No.623/2021 [Smt. Sarmistha Roy vrs. The State of Tripura & others]. These three appeals got segregated in course of time and two of the other appeals [W.A. No.47/2023 and W.A. No.48/2023] which could not be taken up yesterday have been notified to be heard together today with consent of the parties.

3. All these appeals suffer from a delay of 128 days for condonation of which I.A. No.01 of 2023 in W.A. No.47/2023, I.A. No.01 of 2023 in W.A. No.48/2023 and I.A. No.01 of 2023 in W.A. No.49/2023 have been preferred. Since common legal issue is involved in all these appeals and the delay is not inordinate and further due to explanation urged by the appellants in the respective interlocutory applications, delay of 128 days in preferring the connected appeals is condoned without any serious objection on the part of the respondents.

W.A. No.49/2023;
W.A. No.47/2023;
W.A. No.48/2023:

4. Since all these appeals arise out of common impugned judgment and involve identical legal issues, they have been heard together and would be disposed of by this common order. For convenience sake, facts borne out from the record of W.A. No.49 of 2023 are being referred to hereinafter.

5. Appellants have been appointed on the basis of an advertisement dated 07.03.2015 after facing a practical test and an interview before the selection committee to the post of Jr. DTP Operator. So far as their appointment is concerned, it is not in question or in dispute. Petitioners approached the Writ Court on the question of fixation of their seniority. According to them, the advertisement did not stipulate that seniority would be determined on the basis of their marks. The petitioners and other candidates got selected only on the basis of the interview and practical marks. No written test was held. Therefore, the seniority list should have been prepared on the basis of the respective age of the candidates as there are no rules prescribing fixation of seniority. The respondents contested their prayer. They relied upon the "General Principles for Determination of Seniority of Various categories of Persons Employed under Tripura Administration" (Annexure-R/2 to the counter affidavit), Clause-4 whereof provides as under:

"4. DIRECT RECRUITE:

Notwithstanding the provision of para-3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

6. The seniority list prepared on the basis of combined marks obtained in practical test and interview were also furnished by the respondents in their counter affidavit which has been extracted in the impugned judgment. Appellant Smt. Sarmistha Roy got 28 marks, appellant Sri Soumitra Debnath got 27 marks and appellant Sri Jayan Debbarma (ST) got 21 marks in their respective categories. Learned Writ Court on consideration of the rival

submission and pleadings has been pleased to dismiss the writ petitions as being bereft of merits, *inter alia*, holding as under:

"I have gone through the different clauses of the said office order as annexed therewith under the caption "General Principles for Determination of Seniority of Various categories of Persons Employed under Tripura Administration". Clause 4 is relevant to answer the question posed by learned counsel for the petitioners and is extracted here-in-below in extenso, for convenience:

"4. DIRECT RECRUITE:

Notwithstanding the provision of para-3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

Admittedly, proviso to Clause 4 has no relevance to decide the question raised.

Firstly, I have taken into consideration the submission of Mr. Sinha, learned counsel appearing on behalf of the petitioners that there was no proper selection process in the appointment of the petitioners. I am really surprised to the said submission of learned counsel of the petitioners for the reason that the petitioners themselves have stated in the above writ petitions that in response to the advertisement, dated 07.03.2015, they appeared in the selection process, faced interview and got selected on the basis of merits. In view of this, it cannot be said that they were not appointed through proper selection process where many candidates appeared and participated in the process. Appearing before the selection process and being appointed through marks they obtained in the said selection process, now, they cannot take the plea that there was no proper selection process. All the participants appeared before the selection process knowing fully the contents of the advertisement and the criteria stipulated therein. It is not the grievance of the petitioners that there were irregularities and illegalities in their appointment. As such, this submission of learned counsel appearing for the petitioners, according to me, is frivolous and bereft of any merit.

Second main contention of the learned counsel of the petitioners is that the seniority should be determined on the basis of the age of the selected persons. In the context of the same, I am not in agreement with this submission of the learned counsel. When there is specific rule of determination of seniority of the persons employed under the Tripura Administration including respondent-departments, then, no other criteria for determination of seniority will be applicable, and thus, the respondents have not committed any error in following the general principles for determination of seniority as applicable in the State of Tripura Administration.

In view of this, I do not find any illegalities and irregularities in determining the seniority of the petitioners and other similarly situated persons on the basis of their marks in order of merit in compliance of Clause 4 of General Principles for Determination of Seniority of Various categories of Persons Employed under Tripura Administration as enumerated in the Annexure enclosed with the office order dated 18.05.2006.

With the above observations, the instant writ petitions stand dismissed being bereft of merit. Pending application(s), if any, shall also stand disposed."

7. Learned counsel for the appellants has sought to question the preparation of seniority list on the basis of Annexure-R/1 at page-39 in W.A. No.49 of 2023 which contains the mark-sheet of the practical examination of 23 candidates submitted by the Committee members to the Director, G.A. (Ptg. & Sty) Department, Government of Tripura. This Annexure-R/1 does not reflect the name of appellants Smt. Sarmistha Roy and Sri Soumitra Debnath but does reflect the name of Sri Jayan Debbarma who got 15 marks in the practical examination. However, this alleged discrepancy has been explained by learned counsel for the State and the private respondent relying upon paragraph-12 of the counter affidavit of the State respondents.

8. Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the State, has pointed out that Annexure-R/1 does not reflect the total marks obtained on the basis of practical test and interview by those 23 candidates. In fact, as per paragraph-13 of their counter affidavit, 247 candidates have participated and based upon the aggregate marks obtained by each such candidate in practical test and interview, the combined merit list was prepared in consonance with the General principles for determination of seniority of various categories of persons employed under the Government of Tripura under memorandum dated 18.05.2006 (Annexure-R/2).

Mr. Samarjit Bhattacharjee, learned counsel for the private respondent, submits that name of the private respondent appear at Sl. No.1 of the seniority list.

9. We have considered the submissions of learned counsel for the parties.

The position in law so far as fixation of seniority is concerned, in such circumstances, is laid down in the decision rendered by the Apex Court in the case of *D.P. Das vrs. Union of India & others* reported in (2011) 8 SCC 115, relevant paragraphs-18 to 21 whereof are extracted hereunder:

"18. The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account. The Supreme Court in *M.B. Joshi v. Satish Kumar Pandey* [1993 Supp (2) SCC 419 : 1993 SCC (L&S) 810 : (1993) 24 ATC 688 : AIR 1993 SC 267] has laid down that it is the well-settled principle of service jurisprudence that in the absence of any specific rule the seniority amongst persons holding similar posts in the same cadre has to be determined on the basis of the length of the service and not on any other fortuitous circumstances.

19. Determination of seniority is a vital aspect in the service career of an employee. His future promotion is dependent on this. Therefore, the determination of seniority must be based on some principles, which are just and fair. This is the mandate of Articles 14 and 16.

20. In *Govt. Branch Press v. D.B. Belliappa* [(1979) 1 SCC 477 : 1979 SCC (L&S) 39 : AIR 1979 SC 429] , a three-Judge Bench of this Court construing Articles 14 and 16 interpreted the equality clause of the Constitution as follows: (SCC pp. 485-86, para 24)

"24. ... The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1)."
(See AIR para 24 at p. 434.)

21. Another three-Judge Bench of this Court in *Bimlesh Tanwar v. State of Haryana* [(2003) 5 SCC 604 : 2003 SCC (L&S) 737] , while dealing with the question of absence of a rule governing seniority, held that an executive order may be issued to fill up the gap. Only in the absence of a rule or executive instructions, the court may have to evolve a fair and just principle of seniority, which could be applied in the facts and circumstances of the case. (See para 47 at p. 619.)"

10. The present case is not one of those where rules are absent in the matter of fixation of seniority. The memorandum dated 18.05.2006 does provide for General principles for determination of seniority of various categories of persons employed under Tripura Administration. Petitioners are direct recruits. As such, Clause-4 of the Annexure quoted above provides that

the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. Therefore, the contention of the petitioners that their appointment was made only on the basis of interview and, therefore, in absence of any statutory rules their seniority ought to have been fixed as per their age is not tenable in law. Moreover, challenge to the impugned seniority list is belated raised in the year 2021 while their appointments have been made way back in 2015.

11. As such, we do not find any merit in their plea. Needless to say, the department is obliged to follow the principles laid down in the memorandum dated 18.05.2006 for the purposes of preparing the *inter se* seniority list of the candidates appointed under the advertisement dated 07.03.2015 to the post of Jr. DTP Operator.

12. The writ appeals [W.A. No.49/2023, W.A. No.47/2023 & W.A. No.48/2023] being devoid of merit are accordingly dismissed.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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