

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.50 of 2023

Sri Dilip Kumar Debbarma,
Son of Lt. Chandrabadan Debbarma, resident of Nandan Nagar, Near Auxiliam
Girls School, P.O. Kunjaban, P.S. New Capital Complex, District West Tripura,
Pin 799006, Age 52 years

..... Appellant(s)

V E R S U S

1. The State of Tripura,
Represented by Principal Secretary, School Education Department, Govt. of
Tripura, New Capital Complex, P.O. Secretariat, P.S. New Capital Complex,
District West Tripura, Pin 799010
2. The Principal Secretary,
Department of Finance, Govt. of Tripura, New Capital Complex, Government of
Tripura, P.O. Secretariat, P.S. New Capital Complex, Dist West Tripura, Pin
799010
3. The Director of Secondary Education,
Directorate of Secondary Education, Government of Tripura, Siksha Bhavan,
Office Lane, P.O. Agartala, P.S. West Agartala, District West Tripura, Pin
799001
4. Sri Phiranjana Tripura,
Son of Lt. Shyampadma Tripura, resident of Sukanta Palli, Ujan Abhoynagar,
P.O. Abhoynagar, P.S. New Capital Complex, Agartala, District West Tripura,
Pin 799005, Age 55 years
5. Mrs. Kalpana Debbarma,
Wife of Chiroin Reang, resident of Madhya Banamalipur, North West Corner of
Central Jail (Old), Near Volcan Club, Agartala, West Tripura, Age 56 years
6. Sri Madhusudhan Debbarma,
Son of Lt. Ram Chandra Debbarma, resident of North Banamalipur, Khaswring
Kami, Opp. side of Young Corner Club, Agartala, West Tripura, Age 53 years
7. Sri Shukurai Debbarma
Son of Lt. Baishakh Chandra Debbarma, resident of Vill Bania Bari, P.O.
Madhuchowdhury Para, P.S. Lefunga, Mohanpur, West Tripura, Pin 799211, Age
57 years
8. Sri Rabindra Debbarma,
Son of Lt. Kartik Chandra Debbarma, resident of Vill + P.O. Barkathal, Sub-
Division Mohanpur, District West Tripura, Pin 799211, Age 54 years.
9. Sri Rajesh Debbarma,
Son of Lt. Ram Chandra Debbarma, resident of Pratap Roy Road, Krishnanagar,
Near Judge Quarter, Agartala, P.S. West Agartala, District West Tripura, Pin
799001, Age 52 years

..... Respondent(s)

For Appellant(s) : Mr. A. Bhaumik, Advocate.
For Respondent(s) : Mr. P. Roy Barman, Senior Advocate.
Mr. D. Sarma, Addl. G.A.
Mr. Kawsik Nath, Advocate.
Date of hearing &
delivery of Judgment : **12th March, 2024.**
Whether fit for reporting : YES

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

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Bhaumik, learned counsel for the appellant as well as Mr. D. Sarma, learned Addl. G.A. for the State respondents and Mr. P. Roy Barman, learned senior counsel for the private respondents.

[2] Appellant is aggrieved by the impugned judgment dated 28.11.2022 passed by the learned Single Judge in WP(C) No.400 of 2021 whereby learned Writ Court allowed the writ petition preferred by the private respondents granting the followings reliefs:

“Without entering into the controversy further and taking into consideration of the submissions of Mr. Sarma, learned Addl. G.A. for the State-respondents that process of preparing the fresh seniority list is under process pursuant to which the notification dated 25.05.2022 is being issued, I direct the respondents to recast the seniority list of the Assistant Headmasters who were appointed under notification dated 01.02.1996, taking into account the seniority position of the initial select list, the respondents published under the said notification dated 01.02.1996 in appointing the petitioners on ad-hoc basis in the post of Assistant Headmaster. Needless to say, the respondents shall provide all consequential benefits to the petitioners. It is made clear that all further promotions of the petitioners would be made as per the recast seniority list which will be prepared after receipt of this order.

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

[3] Mr. A. Bhaumik, learned counsel submits that the ad-hoc service period of the present appellant was regularized and his seniority was reckoned w.e.f. the date of initial entry in service vide notification dated 10.07.2020 by

virtue of a judgment dated 10.07.2018 rendered by this Court in WP(C) No.438 of 2017.

[4] After publication of the final seniority list, the writ petitioners/private respondents approached the Writ Court in WP(C) No.400 of 2021 claiming similar relief. They also contended that their ad-hoc services i.e. from the date they assume charge of office on 30.08.1996 be also counted for the purposes of seniority. The present appellant was also impleaded as private respondent. The learned Writ Court upon hearing counsel for the parties directed the respondents to recast the seniority of the Assistant Headmasters who were appointed under notification dated 01.02.1996 taking into account the seniority position of the initial select list. The learned Writ Court also directed all consequential benefits to the petitioners and that further promotion of the petitioners shall be made as per the recast seniority list.

[5] Learned counsel for the appellant submits that the private respondents had approached the Writ Court after 4 years from the date of filing of his writ petition. They were fence sitters and therefore, their cause of action was barred by delay and laches since valuable right had accrued in favour of the present appellant. It is submitted that the seniority list is being recast after granting the benefit of ad-hoc service to the private respondents which would upset the position of the present appellant who is shown above the private respondents in the seniority list dated 10.07.2020. Therefore, the impugned directions may be set aside. Learned counsel for the appellant has placed reliance upon a decision of the Apex Court in the case of *Vijay Kumar Kaul and others vs. Union of India and others, (2012) 7 SCC 610*, in particular paragraphs No.26, 27 and 28 quoted hereunder:

“26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.

28. In the case at hand, as the factual matrix reveals, the appellants knew about the approach by Parveen Kumar and others before the Tribunal and the directions given by the Tribunal but they chose to wait and to reap the benefit only after the verdict. This kind of waiting is totally unwarranted.”

[6] Mr. P. Roy Barman, learned senior counsel for the writ petitioners submits that it is not in dispute that the private respondents entered into service on ad-hoc basis and have been senior to the present appellant all through in service. So far as the counting of ad-hoc services of the present private respondents is concerned, the principle of law and the ratio rendered by the Apex Court in the case of ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, (1990) 2 SCC 715***, applies to both the present appellant and the private respondents. It is further submitted that the private respondents were shown as senior in the seniority list dated 02.05.2005. The learned Writ Court in the case of the present appellant in its judgment dated 10.07.2018 had also applied the ratio rendered by the Apex Court in the case of ***G.P. Doval and others vs. Chief Secretary, Government of U.P. and others, (1984) 4 SCC 329***, and reiterated in the judgment of the Constitution Bench in the case of ***Direct Recruit Class II Engineering Officers' Association (Supra)***. The private respondents approached the Writ Court without any delay after the seniority list was recast showing the present

appellant as senior to them though he was junior to them in the earlier seniority list of 02.05.2005. As such, the cause of action was neither delayed nor could be barred by laches as the writ petitioners/private respondents approached the Court without any delay.

[7] We have considered the submissions of learned counsel for the parties.

[8] The facts borne from record reveal that at the time of initial entry in service on ad-hoc basis, the private respondents were ranked senior to the present appellant on the post of Assistant Headmaster under a special recruitment drive held vide notification dated 01.02.1996. Not only the appellant but the private respondents have also been promoted thereafter as Headmasters. It is not in dispute that the seniority list of Headmaster/Headmistress, High School/Inspector of Schools/Assistant Headmaster/Assistant Headmistress, H.S. School/Project Officer etc. as on 31.01.2005 was published on 02.05.2005 wherein the private respondents herein were ranked senior to the present appellant. The writ petitioner/present appellant approached this Court earlier in WP(C) No.438 of 2017 with a prayer that his services from the date of initial appointment i.e. in 1996 be regularized with consequential seniority and benefits should flow therefrom. The learned Writ Court, taking into consideration the ratio rendered by the Apex Court in the case of ***G.P. Doval and others (Supra)*** and the Constitution Bench decision in the case of ***Direct Recruit Class II Engineering Officers' Association (Supra)*** and also similar direction passed in the case of ***Sri Chitta Debbarma vs. The State of Tripura and others*** in WP(C) No.399 of 2013, found no distinguishable feature in the case of the writ petitioner/present appellant which

required further scrutiny. Consequently, the respondents were directed to regularize the service of the writ petitioner/present appellant on the post of Assistant Headmaster, Higher Secondary School from the date when he was appointed on ad-hoc basis i.e. when he assumed charge of office on 30.08.1996. The respondents were further directed to recast the seniority of the present appellant with all consequential benefits flowing thereof including promotion and other benefits which the writ petitioner/present appellant was entitled under the law within a stipulated period. The appellant got the benefit of ad-hoc service counted for the purpose of reckoning his seniority from 30.08.1996. Thereafter, the seniority list was published on 10.07.2020 in respect of the cadre of Headmasters to which the private respondents herein and the appellant had already been promoted. It is only after the publication of the revised final seniority list of Assistant Headmaster and Headmaster to which cadre the present private respondents belong along with the appellant herein, that they approached the Writ Court as their seniority had been upset and they were shown as junior at Sl. Nos.71, 97, 99, 59, 61, 100 whereas the appellant was shown at Sl. No.4. As such, prior to that, the private respondents did not have any occasion to question the seniority position as they ranked senior to the appellant herein since 2005. If the appellant and the private respondent stand on similar footing on the issue of counting of the period of ad-hoc service, the State respondent ought to have applied the ratio of ***Direct Recruit Class II Engineering Officers' Association (Supra)*** as relied upon by the learned Writ Court in the case of the present appellant also, to all those similarly situated persons, otherwise, it would not only result in discrimination vis-a-vis individual persons who joined their services as Assistant Headmaster under the

same recruitment exercise on ad-hoc basis during the relevant year 1996 but would also lead to multiplicity of litigation. If similarly situated persons are not treated alike, it would not only cause injustice but lead to serious heart burn to those who are made junior by revision of seniority list. The State is not expected to compel every person to approach this Court for similar relief.

[9] The case of the present appellant has been decided by the learned Writ Court earlier on the application of a principle laid down by the Constitution Bench judgment in the case of ***Direct Recruit Class II Engineering Officers' Association (Supra)***. If the private respondents and others stand on similar footing, the State should have applied such principle uniformly to similarly situated persons who have joined service under the same recruitment exercise for the purposes of counting their ad-hoc service. It is, rather, strange on the part of the appellant to contend that the appellant does not have any grievance so far as counting of their ad-hoc services are concerned but his seniority would get affected if the relief granted by the learned Writ Court in the case of the private respondents herein who are similarly situated like him are not interfered. This Court cannot lose sight of the larger objective to ensure that the action of the State does not result in disparities and discrimination between similarly situated persons often leading to multiplicity of litigations before this Court.

[10] There is no quarrel so far as the principle laid down by the Apex Court in the case of ***Vijay Kumar Kaul and others (Supra)*** as relied by learned counsel for the appellant is concerned. It is, indeed, obligatory on the part of a litigant to come to the Court at the earliest or within a reasonable time

otherwise in the meantime, interest of third parties get ripened and further interference after enormous delay is likely to usher in a state of anarchy. However, when the facts of the case of *Vijay Kumar Kaul and others (Supra)* is looked into, it appears that the appellants had approached the Apex Court on denial of their plea to relate back their appointment as per their placement in the merit list by ante-dating it from the date one Parveen Kumar had been issued appointment letter in the same exercise. The appellants had participated in a selection process conducted by a Second Field Ordnance Depot (2 FOD) in the year 1984 for the post of Lower Division Clerks (LDCs). Despite their selection for the post in question they were not issued appointment letters on the pretext that there was a ban on appointments. In December 1993, pursuant to an order dated 24.08.1993 passed by the Chandigarh Bench of the Central Administrative Tribunal, respondent No.4 therein was issued appointment letter, whereas appellants No.1 to 3 were given appointment in May 1996 on the basis of directions issued on 24.07.1995 by the High Court of Jammu and Kashmir in SWP No.1052 of 1991. Parveen Kumar and others, whose names had figured in the select list, being aggrieved due to non-appointment, had earlier preferred OA No.539-HP of 1986 before the Chandigarh Bench of the Tribunal which had allowed it vide order dated 25.08.1987 directing the respondent to issue appointment letters to them. The respondents instead of appointing the said Parveen Kumar and others against the vacancies in 9 FOD, where there were ten vacancies of LDCs, appointed them against the vacancies falling in 2 FOD where there were 27 vacancies for LDCs with effect from 01.01.1990. Then Parveen Kumar and others filed second OA No.1476-PB of 1991 before the Chandigarh Bench of the Tribunal with a prayer to issue a

direction to the respondents to appoint them as LDCs with effect from 01.05.1985 with all consequential benefits including seniority, pay and allowances, etc. on the foundation that similarly situated persons were selected along with them had been appointed with effect from 1985. The Tribunal allowed the application vide order dated 13.10.2000 directing that their appointment should be treated with effect from 01.05.1985 and they shall be extended the benefit of fifty per cent of back wages and other consequential reliefs. This order was called in question before the High Court of Punjab and Haryana. The Division Bench of the High Court by order dated 12.07.2001 set aside the order of the Tribunal to the extent of grant of back wages but did not interfere with the direction ante-dating their date of appointment and other consequential reliefs granted by the Tribunal. After the High Court of Punjab and Haryana passed the order, the respondents conferred the benefit on said Parveen Kumar and others. Thereafter, the appellants i.e. Vijay Kumar Kaul and others submitted a series of representations to extend to them the similar benefits on the foundation of parity. The said prayer was negatived by the respondents by order dated 21.07.2004 whereafter they approached the Principal Bench of the Tribunal in OA No.2082 of 2004 alleging grave injustice and seeking equal treatment vis-a-vis similarly placed employees. They also complained that their seniority position and prospects for promotion would be immensely affected. The Apex Court in the aforesaid circumstances, after consideration of several decisions held that it is the duty of the Writ Court to take into consideration the balance of justice or injustice in entertaining or declining such petition on the ground of delay and laches. It was also observed that a litigant who invokes the jurisdiction of a Court for claiming seniority

should come at the earliest or at least within a reasonable span of time otherwise interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

[11] The principle laid down by the Apex Court in the case of ***Vijay Kumar Kaul and others (Supra)*** would not strictly apply to the case of the present parties at hand for the reason that the private respondents herein, had the occasion to approach the Writ Court only after the seniority list was recast on 10.07.2020 by placing the present appellant much ahead of them at Sl. No.4 by counting his ad-hoc services from the date of initial entry in service in 1996 though the writ petitioners/private respondents herein, also entered the service in the same year under the same recruitment exercise and were shown senior in the seniority list of 02.05.2005 above the present appellant for a continuous period of 15 years till the seniority list was revised. The seniority had to be recast pursuant to the directions of the Writ Court in the case of the present appellant in WP(C) No.438 of 2017 wherein the learned Writ Court applied the ratio of ***Direct Recruit Class II Engineering Officers' Association (Supra)*** and directed the respondents to count the ad-hoc period of service of the present appellant for the purposes of regularizing his service from the date of initial entry in service. The principle relied upon by the learned Writ Court in the case of present appellant from the case of ***Direct Recruit Class II Engineering Officers' Association (Supra)*** should have been applied uniformly by the State respondents to all similarly situated persons, otherwise grave disparity in treatment of similarly situated persons was bound to result. The State respondent chose to apply the direction of the Writ Court to the case of the present appellant only and recasted the seniority list. The appellant does not

dispute that the private respondents stand on similar footing so far as their entry in service as Assistant Headmaster under the said recruitment exercise is concerned and also does not question the counting of their period of ad-hoc service for the purposes of regularization in service from the initial date of entry in service. If the principle laid down in the case of ***Direct Recruit Class-II Engineering Officers' Association (Supra)*** is applied to all similarly situated persons, there is no reason why the seniority of the private respondents also do not deserve to be reckoned from the initial date of appointment as that of the appellant. In the case of the ***Vijay Kumar Kaul and others (Supra)*** the appellant approached the Principal Bench of the Tribunal for the first time in the year 2004 whereas the respondent No.4, Parveen Kumar and others had approached the Tribunal twice, first in 1987 and then again in 1991 whereafter they were granted the relief of reckoning their services as LDCs w.e.f. 01.05.1985 with consequential benefits including seniority, pay and allowances. In those circumstances, the Apex Court found that the appellants had not approached the Court within a reasonable time and interest of third party had got ripened which should not be interfered after enormous delay as it would usher in a state of anarchy.

[12] In the facts of the present case, we feel that if an exercise is being held for restoring the seniority of the private respondents on similar principles as applied to the appellant and that too when the private respondents approached the Writ Court without any delay after revision of the seniority list on 10.07.2020, it cannot be said that their writ petition was barred by laches and enormous delay which would upset a vested right of the appellant. The present exercise of counting of ad-hoc services of the private respondents and

restoration of their seniority which may result consequent thereto, would only remedy the injustice which would have resulted because of disparity in treatment vis-a-vis, the appellant herein who is similarly situated.

[13] Having regard to the reasons recorded hereinabove and the discussion made, this Court does not find any reason to interfere in the impugned judgment. The instant appeal is accordingly dismissed. Consequently, I.A. No.01 of 2023 is also dismissed.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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