

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.57 of 2023

Sri Ranjib Nath (35),

Son of Sri Raicharan Nath, resident of South Nayapara, near Indian Oil Quarter, College Link Road, Ward No.-12, P.O. Dharmanagar, P.S. Dharmanagar, District-North Tripura, PIN-799250

---Appellant.

Versus

1. Union of India

Represented by Secretary of Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, having its main office at Room No.524 (B-III), Antyodaya Bhawan, New Delhi-110003.

2. The Secretary

Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, having its main office at, Room No.524 (B-III), Antyodaya Bhawan, New Delhi- 110003.

3. The State of Tripura

Represented by Directorate of Education (Higher), having its office at Directorate of Secondary Education, 1st Floor, Shiksha Bhavan, Agartala, Tripura, PIN:799001.

4. The Director,

Directorate of Education (Higher), having his office at Directorate of Secondary Education, 1st Floor, Shiksha Bhavan, Agartala, Tripura, PIN: 799001.

5. Tripura Public Service Commission,

Represented by the Chairman, Tripura Public Service Commission, having his office at Akhaura Road, Agartala, Tripura, PIN-799001.

6. The Chairman,

Tripura Public Service Commission, having his office at Akhaura Road, Agartala, Tripura, PIN-799001.

7. The Member(s),

Tripura Public Service Commission, having his office at Akhaura Road, Agartala, Tripura, PIN-799001.

8. The Secretary

Tripura Public Service Commission, having his office at Akhaura Road, Agartala, Tripura, PIN-799001.

9. Sri Liton Mia,

Son of late Rafik Mia, Resident of Khilpara B.O, near Udaipur, Gomati, Tripura, PIN-799114.

---Opposite parties/Respondents

For the Appellant(s)	:	Ms. R. Guha, Advocate. Mr. MS Dey, Advocate. Mr. M. Debnath, Advocate. Ms. Sudipa Nath, Advocate.
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI Mr. D. Sarma, Addl. G.A. Mr. P. Roy Barman, Sr. Advocate. Mr. R. Datta, Advocate. Mr. Kawsik Nath, Advocate. Mr. Dipjyoti Paul, Advocate.
Date of hearing and delivery of Judgment & Order	:	03.04.2024.
Whether fit for reporting	:	Yes

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R (O R A L)**

[T. Amarnath Goud, J]

Heard Ms. R. Guha, learned counsel appearing for the appellant. Also heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Dipjyoti Paul, learned counsel appearing for the unofficial respondent No.9. Mr. B. Majumder, learned Dy.SGI is

present on behalf of the respondent Union of India and Mr. D. Sarma, learned Addl. GA is present for the State respondents.

[2] This present writ appeal is preferred against the impugned Order dated 30.03.2023 passed by the learned Single Judge in WP(C) 910 of 2021 seeking the following reliefs:

“(i) Issue Notice to Opposite Parties;

(ii) Admit the instant Writ Appeal;

(iii) Set aside the impugned Order, dated 30.03.2023, passed by the Hon’ble Single Judge, High Court of Tripura, in W.P.(C) 910 of 2021.

(iv) Accept the prayers of the W.P.(C) 910 of 2021, made by the Appellant herein, i.e., to set aside the name of the Opposite Party No.9 listed in Serial No.11 in the impugned Notification No.F.11(36-46)/RECTT./ TPSC/2020 (VOL-1), dated 01.12.2021 and to appoint the Appellant herein in the post of Assistant Professor, Government (General) Degree Colleges in Tripura, Group-A Gazetted and/or to formulate a medical Board and evaluate the Disability of Opposite Party No.9 and/or to cancel and/or quash and/or revoke the Disability Certificate of the Opposite Party No.9.

(v) Cost of and incidental to this proceeding may be directed to be borne by Opposite Party Nos.1 to 9.....”

[3] The case of the appellant in brief is that Tripura Public Service Commission (TPSC for short), respondent No.5 herein published one advertisement in their website and various other newspapers inviting online application from citizens of India for selection of candidates to fill 40 vacancies of Assistant Professor in various subjects. The appellant herein applied for the post submitting copy of his documents and according to the API score of the applicants, subject wise name of the candidates was listed. In the aforementioned list of candidates, total 11 number of

candidates were selected to appear in the interview in 'Bengali' subject. It is contended that among those 11 candidates, only 4 candidates were physically handicapped and were competing for only one post. It is contended that on 26.01.2021, the appellant along with the unofficial respondent No.9 appeared in the interview under physically handicapped category in Bengali subject, wherein respondent No.9 was selected in the UR Physically Handicapped Category.

[4] Aggrieved thereby, the appellant preferred a writ petition being WP(C) 910 of 2021 before the learned Single Judge, seeking following reliefs:

- "(i). Admit the instant writ petition;
- (ii). Issue Rule NISI
- (iii). A Rule be issued out of and under the seal of this Hon'ble Court commanding the Respondents and each one of them to show cause why a writ of or in the nature of Certiorari, shall not be issued directing the Respondents and each of them to strikeout the name of Respondent No.9, listed in Serial No.11 in the impugned Notification No.F.11(36-46/RECTT./TPSC/ 2020 (VOL-1), dated 01.12.2021.
- (iv). A Rule be issued out of and under the seal of this Hon'ble Court commanding the Respondents and each one of them to show cause why a writ of or in the nature of Mandamus shall not be issued, to include the name of the Petitioner and recruit him in the post of Assistant Professor, Government (General) Degree Colleges in Tripura, Group-A Gazetted.
- (v). A Rule be issued out of and under the seal of this Hon'ble Court commanding the Respondents and each one of them to show cause why a writ of or in the nature of Mandamus shall not be issued, directing the Respondents and each one of them for formulate a medical Board and evaluate the Disability of Respondent No.9.
- (vi). A Rule be issued out of and under the seal of this Hon'ble Court commanding the Respondents and each one of them

to show cause why a writ of or in the nature of Certiorari, shall not be issued directing the respondents and each of them to cancel and/or quash and/or revoke the Disability Certificate of the Respondent No.9.

- (vii). A Rule be issued out of and under the seal of this Hon'ble Court commanding the Respondents and each one of them to show cause why a writ of or in the nature of Mandamus shall not be issued, directing the Respondents and each one of them to protect the right of the Petitioner guaranteed under Article 14, 16, 21 and 309 of the Constitution of India.
- (viii) A Rule be issued out of and under the seal of this Hon'ble Court commanding the Respondents and each one of them to show cause why a writ of or in the nature of Certiorari, shall not be issued directing the respondents and each of them to produce all the records and/or documents in relation to the instant matter.
- (ix). Be kind enough to pass an Ad-interim order in terms of Prayer (iii);
- (x). To make the Rule absolute if no cause or sufficient cause is shown or made in regard to prayer (ix);
- (xi). Cost and incidentals of this application be borne by the Respondents....."

[5] Having receipt of the notice in connection with the writ petition, all the respondents including respondent No.9 appeared and denied the allegations of committing irregularities as averred in the writ petition. Learned Single Judge, on perusal of relevant records and after hearing of the learned counsel for the respective parties, passed the following order on 30.03.2023 in WP(C) 910 of 2021:

".....13. I have given my thoughtful consideration to the submissions advanced by learned counsel appearing for both the parties.

The conversation between the petitioner and respondent no.9 is a disputed question of fact which cannot be decided in this writ petition. Keeping in mind the submission of Mr. Debnath, learned counsel for the petitioner that the doctors concerned of the State Disability Board have not assessed the extent of disability of the person following the guidelines issued by the Government of India, I am of the opinion that this Court has no expertise to

assess the extent of disability. The State Disability Board is constituted by the Government to make assessment of the extent of disability of a person. The doctors are experts on this subject. They had issued the certificate and assessed the extent of disability after examining the physical condition of respondent no.9. This Court cannot take a different view than that of the view expressed by the Board. Moreso, the guidelines issued by the Government of Tripura, is not meant for the courts, it is for the doctors to follow the guidelines. There is no evidence that the doctors did not follow the referred guidelines.

14. In the light of the above discussions, I do not find any merit in the present writ petition and, accordingly, the same stands dismissed.....”

[6] Ms. R. Guha, learned counsel for the appellant submits that learned Single Judge has failed to appreciate the fact that the respondent No.9 is not qualified with benchmark disability under the guidelines published by the Ministry of Social Justice and Empowerment, Acts and Rules of Central Government as well as State Government. She further contends that the appellant is suffering from about 60% disability which is much higher than the unofficial respondent No.9. According to her, the doctors committed an error in issuing certificate reflecting 50% disability towards the respondent No.9. Learned counsel, therefore, urges this Court to declare the respondent No.9 as unqualified for the post of Assistant Professor (Bengali) and also to declare the appointment of the said respondent as null and void. She further prays to appoint the appellant in the said position.

[7] On the other hand, Mr. P. Roy Barman, learned senior counsel assisted by Mr. D. Paul, learned counsel appearing for the unofficial respondent No.9 opposes the contention of the learned

counsel for the appellant. He submits that learned Single Judge observing all the relevant facts by order dated 30.03.2023, rejected the reliefs as sought for by the petitioner and the same should not be interfered with. Mr. Roy Barman, learned senior counsel contends that it is clear from the certificate issued by the State Disability Board that the respondent No.9 has been suffering from disability to the extent of 50 percent and he has been renewing the certificate from time to time and his disability is in the nature of 'Non-progressive' and 'not likely to be improved'. He, therefore, prays that the instant writ appeal filed by the appellant be dismissed as devoid of merit.

[8] Heard the submissions made by the parties. Perused the record.

[9] The main case of the appellant revolves around the fact that whether the disability certificate of the unofficial respondent No.9 has been issued following all the norms and also the claim of the appellant that he is having more disability than the unofficial respondent No.9. It is seen from the record that except on the said ground of disability, no further argument has been advanced.

[10] It is the competent authority concerned who can decide whether the disability certificate of the respondent No.9 has been issued following all the norms or not. No material evidence is placed

on record to consider whether the appellant or the unofficial respondent is having more disability. The appellant has never approached any authority concerned challenging the disability certificate of the respondent No.9 for cancellation of the same and the said certificate is valid as on today.

[11] Since the disability certificate of the respondent No.9 is not under challenge, this Court feels that the notification dated 1st December, 2021 issued by the TPSC is proper. This Court cannot go into the issue of disputed question of facts with regard to decide the disability of the appellant and the opposite party/respondent No.9 and the same is not within the arena of this writ appeal under Article 226 of the Constitution of India. We find no merit in the appeal filed by the appellant herein.

[12] With the above observation, since the disability certificate issued in favour of respondent No.9 holds good as on today and the same has never been under challenge before any authority concerned, the impugned notification dated 1st December, 2021 issued by the TPSC placing the name of respondent No.9 at serial No.11 is confirmed. We find no infirmity in the order impugned passed by the learned Single on 30.03.2023 in WP(C) 910 of 21 and accordingly, the same is also affirmed.

In view of the above, the present writ appeal filed by the appellant is dismissed. As a sequel, stay if any, stands vacated.

Pending application(s), if any, also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J



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