

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.507 of 2024

- 1. Shri Pradip Debbarma,**
S/o. Shri Jamini Debbarma of village Ramnath Thakur para, P.O. Jonmejoy Nagar, P.S. Radhapur, District West Tripura.
- 2. Shri Moynal Hossasin,**
S/o. Late Abdul Hasem of village Ashabari, P.O. Boxanagar, P.S. Kalamchoura, District-Sepahijala, Tripura.
- 3. Shri Kanai Lal Das,**
S/o. Shri Sudhan Chandra Das, Village & P.O. Veluarchar, P.S. Kalamchoura, District-Sepahijala, Tripura.

....Petitioner(s)

Versus

- 1. The State of Tripura**
Represented by the Chief Secretary, Government of Tripura, New Secretariat Building, P.O & P.S. N.C.C., Agartala, West Tripura-799010
- 2. The Secretary, Education Department,**
Government of Tripura New Secretariat Building, P.O & P.S. N.C.C, Agartala, West Tripura-799010.
- 3. The Director, Directorate of Secondary Education,**
Government of Tripura, P.O. Agartala, P.S. West Agartala, District-West Tripura, 799001.
- 4. The Director, Directorate of Elementary Education,**
Government of Tripura, P.O. Agartala, P.S. West Agartala, District West Tripura-799001.

....Respondent(s)

For Petitioner(s)	:	Mr. BN Majumder, Sr. Advocate Mr. DJ Saha, Advocate
For respondent(s)	:	Mr. M. Debbarma, Addl. G.A
Date of hearing and Delivery of Judgment & Order	:	25.07.2024
Whether fit for reporting	:	No

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

Heard Mr. BN Majumder, learned senior counsel assisted by Mr. DJ Saha, learned counsel appearing for the petitioners. Also heard Mr. M. Debbarma, learned Addl. G.A appearing for the respondents.

2. By means of filing the instant writ petition, the petitioners have tried to make out a case that in view of the order passed by the Hon'ble Supreme Court of India in SLP(C) No.18993-19049/2014, SLP(C) No.19588-19637/2014, SLP(C) No.21249/2014 dated 29.03.2017, the petitioners' employment in class IX and above has been protected. The main contention of the petitioners as has been gathered from the submission of Mr. Nandi Majumder, learned senior counsel for the petitioners is that those teachers who are employed in class XI and above form a different class than that of class of teachers whose services have been terminated in the light of the case of *Tanmoy Nath and others vs. State of Tripura and others* reported in (2014) 2TLR 731 and other.

3. The dispute raised here has a checkered history. In *Tanmoy Nath* (*supra*), a division bench of this court after comprehensive discussion on the matter and on consideration of rival submissions of the parties, declared the revised employment policy of 2003 as unconstitutional and set aside the entire selection process including the appointments of all teachers numbering 10,323. Paragraphs 121 to 129 of the judgment contain the operative direction, which are extracted hereunder:

“121. It has been urged that even if we set aside the selections, our judgment should be prospective in nature. It has also been urged by Mr. Sankar Deb, learned Sr. Counsel for the petitioners, that those portions of the policy which are bad may be severed and those portions which can be upheld may be retained, but the appointments already made need not be disturbed. Reliance has been placed on the judgments of the Apex Court in A.P. Public Service Commission v. K. Sudharshan Reddy and others, (2006) 5 SCC 505, AIR 1957 SC 628, (2000) 7 SCC 719. These judgments have no applicability to the cases in hand and we are not all in agreement with this submission. The selections have been totally unfair. The selections have not been made in a transparent manner. The citizens of this country have not been treated equally. Most of the clauses of the policy are illegal and unconstitutional. The entire policy is bad because it gives no

guidelines and, therefore, the entire selection will have to be, must be and is accordingly set aside.

122. Though we have set aside the selections, we are concerned with the education of the small children who are innocent and have no concern with the illegalities of the selection. We, therefore, direct that the teachers whose selections have been set aside shall continue to function in their present place of postings till 31-12-2014, i.e. the end of the academic session of this year.

123. The State on or before 31-12-2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31-12-2014.

124. It is not for this Court to frame guidelines but if the State does not frame any guidelines, then the State shall follow the following directions while making selections. If the State frames its own guidelines, it must ensure that they are in tune with the law laid down by the Apex Court as discussed by us above and in light of the directions given hereinafter.

(i) Fresh applications shall be invited for all the posts;

(ii) Even those who have applied earlier will have to apply again though they may be given relaxation in age and no fees may be charged from them;

(iii) The State shall clearly set out the number of posts in each category of teachers;

(iv) In case of undergraduate teachers, the State if it is so advised may divide the posts sub-division wise so that the primary school teachers are local people as far as possible;

(v) In respect of graduate teachers, the State may divide the posts district wise;

(vi) In case of postgraduate teachers, there will be no zone wise division of posts;

(vii) In case the State decides to make division of posts region wise, as indicate hereinabove, then the candidates must be asked to apply only for one region of their choice. It should also be specified in the advertisements that once a candidate applies under any category then he shall not be permitted to change his category and the roll number should be allocated in such a fashion that the category and region of each candidate is clearly depicted in the roll number itself.

(viii) For each category of teachers, a written test preferably an objective (MCQ) test must be held;

(ix) This test should be conducted by an independent body like the Tripura Public Service Commission or the Tripura Central University;

(x) The test should be multiple choice question and the answer sheet should be checked through a computer keeping in view the large number of candidates involved;

(xi) At least 50% of the total marks shall be awarded on the basis of the performance in the written test, i.e. in case a candidate

obtains 70 marks out of 100 in a written test, 35 marks out of 50 shall be awarded to him towards the total assessment;

(xii) In the case of Post Graduate Teachers another 20 marks shall be awarded for the marks received in the qualifying course, i.e. B.A./B.Sc./B.Com (Honours) or post-graduation, i.e. M.A./M.Sc./M.Com. Therefore, if a candidate has obtained 50% marks in the qualifying course, he would get 10 out of 20 under this head. A candidate, who has higher qualifications, for example he is an Hons. Graduate and has also done his post-graduation or has done his post-graduation in 2(two) subjects, then he may be awarded 5 more. Similarly 5 more marks shall be awarded to those candidates who have obtained Ph. D. or similar qualifications. Since consistency has an important role, 5 marks each i.e. 10 marks shall be awarded for the marks obtained in Madhyamik and Higher Secondary examination respectively. Therefore, if a candidate has 40% marks in Madhyamik he will get 2 out of 5 and if he has 60% marks in Higher Secondary he will get 3 marks. Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. but the State must lay down clear-cut guidelines as to how these marks have to be allotted. Therefore, the interview board will have the liberty to award 5 marks on the basis of oral interview.

(xiii). In case of Graduate Teachers, 50% marks shall be allocated for the performance in the written test, 20% marks for the marks obtained in the qualifying course i.e. Graduation, 5 marks on the basis of marks obtained in Higher Secondary and 5 marks for the marks obtained in Madhyamik and 10 marks shall be awarded on the basis of percentage of marks for candidates when done post graduate. Similarly, Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. and 5 for performance in interview.

(xiv). For Under Graduate Teachers 50% shall be allocated for performance in the written test, 10 marks for the marks obtained in Madhyamik, 10 marks for the marks obtained in Higher Secondary and 15 marks shall be awarded to those candidates who are qualified as per the NET guidelines i.e. they have passed TET or B. Ed or 2(two) years Diploma in Teaching. 5 Marks for higher qualifications. Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. and 5 for performance in interview.

(xv). We may make it clear that 50% seats shall be filled in only on the basis of merit. In the State of Tripura the reservation is as follows :

Scheduled Tribe – 31%

Scheduled Caste – 17%

General Category - 52%

Therefore, if there are 1000 posts in a particular category of “Teachers’ at least 165 Scheduled Tribe candidates should be

selected on the basis of merit amongst Scheduled Tribes, 85 candidates belonging to Scheduled Castes be selected on the basis of merit drawn out amongst the Scheduled Caste category and 260 out of the unreserved/general category shall be appointed strictly on the basis of merit drawn out as above.

(xvi). The State must also ensure that in accordance with the Persons with Disability Act and the law laid down by the Apex Court in a number of cases including Union of India and Anr. Vs. National Federation of the Blind and Ors., [(2013)10 SCC 772] adequate numbers of posts are reserved for persons with disabilities.

(xvii). In case the States so desires, it may reserve a small percentage of posts for Ex-servicemen or wards of those who have died fighting for the Country or have been severely disabled. However, the reservation under this head shall be horizontal and not above 5%. The number of posts in this category should also be clearly defined.

(xviii). The State may, if it so desires, also out of this 50% give some weightage to persons who have been waiting for the appointment for a long time. Therefore, there can be additional 20 marks to be awarded for seniority i.e. 1 mark for each year of seniority subject to a maximum of 20 marks. Similarly, the State may also give some weightage to members of the needy families out of these 50% posts and may allot 10 marks for those persons who belonged to the needy category. Therefore, the remaining 50% of posts the marking may be out of 130 i.e. 20 marks for seniority and 10 marks for need.

(xix). Effectively, those selected only on the basis of the merit shall be graded out of a maximum of 100 marks but for those who are given benefit of seniority and/or belonging to a poor family the marking will be out of 130 marks. It is, however, made clear that the State at the time of framing of the policy shall also lay down clear-cut guidelines how the needy families are to be identified. (i) The identification must be done on clearly set out criteria i.e. to say the upper income limit should be clearly defined. (ii) It should be clearly stated that no member of the family should be in government/organized employment. (iii) It should be clearly stated that the land of the family should be below a certain area. We also make it clear that any certificate given to a person said to be needy can be challenged by the unsuccessful candidates if they feel that this certificate has been wrongly given.

125. We would also like to make it clear that other than the benefits indicated by us above there can be no reservation/preference on the basis of age. There shall be no preference to dependent government servants or retired government employee or retrenched employees etc. There can be no reservation for linguistic or religious minorities or on area wise basis. It is further made clear that if the persons who are selected in the previous selection are again selected then the service rendered by them earlier shall be counted for the purpose of seniority, pension and all other purposes.

126. We may make it clear that the benefit to the candidates on the ground of being needy shall not be granted on the basis of the BPL certificates since we have found that there are no guidelines for issuing the BPL certificates. Other guidelines can also be laid down so that the needy can be identified properly.

127. Since we have set aside the revised employment policy which applies to a large category of posts and not merely to teachers, we would like to make it clear that our judgment shall be prospective in nature and shall not affect the appointments already made unless the said appointments are already under challenge before the Court on the ground that the employment policy is illegal.

128. We are also of the considered view that in future the State should not wait for years on end to make the recruitments. In each year before 31st July the State shall identify the number of posts which shall fall vacant in every category of teachers on account of retirements, creation of new posts etc. in the next calendar year. To this 10 to 20% may be added as the posts for anticipated and unforeseen vacancies which may occur due to resignation or death of serving teachers. The test for these posts should be held every year and Select List should be prepared by 31st December of every year so that when the new academic year starts in January these teachers are selected and no school is without a teacher at any given time. While issuing this direction we are taking support from the judgment of the Apex Court in *Malik Mazhar Sultan and Anr. Vs. U.P Public Service Commission and Ors.*, [2008 (17) SCC 703] wherein the Apex Court passed time bound directions for recruitment of civil judges. In our opinion, the requirement of adequate number of teachers is even more important than that of Judges and no post of teacher shall remain vacant. The "Select List" shall be valid for a period of 1 or 2 years but before the validity of the „Select List" comes to an end the State must ensure that fresh test is carried out and fresh selection is made.

129. All the writ petitions are disposed of in the aforesaid terms. No order as to costs."

4. SLP was carried out before the Hon'ble Supreme Court, which was dismissed asking the State-respondents to allow them to appear in fresh selection process till they attain the age of 45(forty five) years.

5. Thereafter, so many writ petitions were filed where clarification/interpretations of some of the observations made in the judgment of *Tanmoy Nath*(supra) were sought for. The terminated teachers even approached the Hon'ble Supreme Court for clarification and to obtain certain orders considering their continuation in service. But, their services

were only extended till completion of fresh selection process and appointment of teachers thereof. But, the termination of 10,323 teachers was not interfered with.

6. The disputes arose in the light of two judgments passed by two different learned Judges of this Court. The first one was passed by one of the learned Judges (*T. Amarnath Goud, J.*) directing the State-respondents to consider the representations of the petitioners that they were not served with any notice before termination order. But when similar matter came up before me (*Arindam Lodh, J.*), this court having taken a different view referred the matter to the Full-bench of this Court for decision to the dispute raised by the petitioners. The Full-bench of this court disposed of the reference vide judgment and order dated 26.09.2023 in WP(C) No.893 of 2022. The said writ petition was filed by similarly situated terminated graduate teachers on the ground that no show-cause notice was issued upon them which resulted in breach of principles of natural justice. The Full-bench of this Court in its judgment held that serving of show cause notice was not at all required considering the context of the case. It was observed thus:

“[25] Besides, principle of natural justice is not a straightjacket formula. It depends upon various facets in the administration of justice and it is established that there is exception to rules of natural justice. The present case falls within such exception where rules of natural justice would not be applicable because of large scale corruption, favouritism, nepotism and arbitrariness found in the entire selection process. The entire selection process was vitiated by fraud and arbitrariness which has already been declared illegal and appointments of the persons so selected were terminated.

[emphasis supplied]

[26] The appointments of the petitioners and other teachers were vitiated from the very inception which resulted in the issuance of their termination orders and in that case, the principles of natural justice were not violated, if no opportunity was given to the employees concerned to have their say in the matter before their appointments were recalled and terminated.

[27] As an upshot of the above discussions and the reasons recorded, we are of the unanimous view that no interference is called for in the impugned orders whereby the services of the petitioners have been terminated. The reference is answered accordingly. The instant writ petition is dismissed with a cost of Rs.25,000/- to be deposited in the Tripura State Legal Services Authority.”

7. The present petitioners have approached this Court, by filing the instant writ petition stating *inter alia* that they were not noticed before serving termination order against them. A learned Single Judge, as I said earlier directed the State-respondents to dispose of the representations submitted by the petitioners with speaking order. Accordingly, the competent authority had passed an order dated 02.05.2024(Annexure-7 to the writ petition) disposing of the representation submitted by the petitioners in compliance of the order dated 03.05.2023 passed in WP(C) No.334 of 2021. The said impugned order dated 02.05.2024 is under challenge before this Court.

8. In view of the challenge of the order dated 02.05.2024, this Court has meticulously perused the same. On perusal of the entire order dated 02.05.2024(supra), in my opinion, in no way the same can be treated as a non-speaking order. The authority concerned has referred to all the orders passed by different courts and thereafter regretted it.

9. Mr. Nandi Majumder, learned senior counsel for the petitioners has emphatically urged this court that the decision of the full bench of this court was concerned about the graduate teachers and not post-graduate teachers. I have given thoughtful consideration to the above submissions and perused the record. Here, true it is, all the petitioners are post-graduate teachers. But, they were appointed under the same policy which was quashed and set aside

by this court having found that there were large scale corruptions, nepotism and favoritism.

9.1 Furthermore, while dealing with different writ petitions filed by similarly situated teachers, it was categorically held by this court that there was no requirement to serve notice upon the teachers whose services had been terminated by the order of this Court and affirmed by the Supreme Court allowing their age relaxation upto 45 years to appear in any fresh selection process to be undertaken by the State-respondents. Pertinent to mention herein that upper age limit for Government employment in the State of Tripura is 42 years.

9.2 It has been emphatically submitted by learned senior counsel for the petitioners that the services of the petitioners would not be governed by the principles or by the decisions rendered in the case of *Sri Pranab Deb Vs. The State of Tripura and 2 Ors.*, i.e. the Full-bench decision, because the present petitioners are the post-graduate teachers.

10. In view of this submission, I have revisited the judgment passed in the case of *Tanmoy Nath*(supra) as well as the judgment of the *Pranab Deb*(supra). In the case of *Tanmoy Nath*(supra), this court did not make any distinction between the classes of teachers. The selection process which was set aside involved not only the primary or graduate teachers, but also the post-graduate teachers. So, the present petitioners also fall within the purview of the decision rendered in the case of *Tanmoy Nath*(supra).

10.1 To reinforce his submission, Mr. Nandi Majumder, learned senior counsel has relied upon one clarificatory order passed by Supreme Court in

SLP(C) Nos.18993-19049/2014 dated 29.03.2017. While disposing of the petition, the Hon'ble Supreme Court observed thus:

“4. Since we do not find any ground to interfere with the impugned order, the directions in para 123 now required to be suitably modified. We, therefore, direct:

(a) New Employment Policy should be framed by the State by 30th April, 2017 if not already framed and advertisements for filling up the vacancies may be issued latest by 31st May, 2017.

(b) The fresh selection process be completed on or before 31st December, 2017 and till the fresh process is completed, the teachers already appointed shall continue.

(c) The candidates who participated in the selection process pursuant to the advertisements in question, whether selected or not, will be allowed to participate in the fresh selection process by relaxing their age but subject to their having necessary qualifications.

(d) The qualifications in the case of teachers governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall be in conformity with the relevant statutory provisions of the said Act.

(e) The qualifications of teachers employed for Classes IX and above shall be strictly in compliance with the relevant provisions concerning such appointments.

5. Subject to the aforesaid modifications, the view taken by the High Court in the impugned order is affirmed and the special leave petitions are dismissed.”

10.2 Learned senior counsel appearing for the petitioners has laid much emphasis on the observation made by the Hon'ble Supreme Court in Clause (e), and he submits that in view of the modifications/clarifications made in Clause (e), the Supreme Court of India has segregated the post-graduate teachers employed for Classes IX and above. His contention is that the services of post-graduate teachers cannot be terminated in view of the clarificatory order passed by Hon'ble Supreme Court as reproduced here-in-above. I am unable to digest this submission of learned senior counsel appearing for the petitioners.

10.3. To summarize, the above contention of learned senior counsel appearing for the petitioners, means that the post-graduate teachers

employed for Classes IX and above form a different class and they cannot be equated with the graduate and other categories of teachers.

11. In my opinion, this Clause (e) should not be read isolatedly and it should be read in conjunction with the other directions made in the order dated 29.03.2017(supra). This direction cannot in any way be treated as an order allowing the petitioners or post-graduate teachers alike to continue their services even after the completion of the fresh selection process and appointments thereof. The order dated 29.03.2017 crystallizes that the State Government was asked to frame a new policy immediately if it was not framed for filling up required vacancies. It was specifically directed under Clause (b) that the State Government should undertake a fresh selection process which had to be completed by 31st December, 2017 as the services of the petitioners and like other teachers were extended till completion of the fresh selection process.

11.1 In furtherance thereof, the petitioner or the persons alike were given opportunities to appear in any of the fresh selection process initiated by the State-respondents till they attain the age of 45 years. In my view, the directions or observations made in Clause (e) of the order reproduced herein-above, imply that all the appointments of teachers for Classes IX and above must be in conformity with the relevant Recruitment Rules prescribed for appointment of the post-graduate teachers (PGT). Under Clause (e), the Supreme Court specifically directed the State Government not to compromise with the qualifications. By the said observation, the Supreme Court, in my opinion, has never segregated the post-graduate teachers from

the other categories of teachers and it is apparent that the Supreme Court dismissed the application.

11.2 Moreso, in my opinion, if the petitioners need any clarification of the order dated 29.03.2017, then, should approach to Hon'ble Supreme Court only, but not to this Court.

11.3 Mr. Nandi Majumder, learned senior counsel for the petitioners has not pressed any other points in support of the prayers made in the writ petition.

12. As I have already observed that the order of the Hon'ble Supreme Court dated 29.03.2017(supra) has not intended to segregate the post-graduate teachers from other categories of teachers, the present case as tried to be projected by the present petitioners have no legs to stand.

12.1 The directions made in Clause (b) of the said order dated 29.03.2017 makes it crystal clear that the teachers are allowed to continue till the fresh selection process is completed. It cannot be interpreted that by this direction or observation, the employment of post-graduate teachers are protected and they do not require to appear or participate in the fresh selection process to be undertaken by the State-respondents.

13. For the reasons stated and recorded here-in-above, I do not find any merit in the present writ petition.

14. This Court has observed that many of the teachers whose services have been terminated are knocking the doors of the Court time and again and already have wasted valuable time of this Court. All the writ petitions are found to be frivolous. In the present petition, they are trying to interpret an order which was passed in the year 2017 (29.03.2017). Suddenly, the

petitioners have tried to project a case which is simply an abuse of the process of the Court. When the matter is well settled, this kind of approach of the petitioners and the teachers alike should not be taken leniently. As such, necessary costs are to be imposed for wasting the valuable time of this Court with such frivolous petition. I deprecate the approach of the petitioners. Without preparing themselves for appearing and participating in the selection process, they are unnecessarily knocking the doors of the court most capriciously and whimsically, which should not be permitted.

15. In view of this, I am constrained to impose cost of Rs.50,000/-(rupees fifty thousand) only on the petitioners of the present writ petition, and the same has to be deposited with the State Legal Services Authority, Agartala within 30(thirty) days from today.

Accordingly, the instant writ petition stands dismissed in the above terms.

सत्यमेव जयते

JUDGE

Rohit

SAIKA
T KAR

Digitally signed
by SAIKAT KAR
Date: 2024.07.30
10:48:47 +05'30'