

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.109 of 2023

Sri Biswajit Som

..... Appellant(s);

Versus

The State of Tripura & others

.....Respondent(s).

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

For Respondent(s) : Mr. D. Sarma, Addl. G.A.,
Mr. Raju Datta, Advocate.

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

Order

05/02/2024

Heard Mr. C.S. Sinha, learned counsel for the writ petitioner/appellant herein and Mr. D. Sarma, learned Additional Government Advocate for the respondents-State. Also heard Mr. Raju Datta, learned counsel for the respondents-Tripura Public Service Commission (TPSC).

2. The learned Writ Court has negated the claim for seniority made by the petitioner/appellant herein above three candidates recommended to the post of Junior Architect (Group-B Non-Gazetted) by the impugned order dated 26.09.2022 passed in WP(C) No.699/2021.

3. The appellant, though in the select list prepared by TPSC as on 23.04.2008, was at serial No.4 below the private respondents No.5, 6 & 7, but his case was kept in abeyance as it was found that he would not be entitled to age relaxation beyond 37 years of age as per Rule 6 of the Recruitment Rules of Junior Architect. He fought a litigation. The learned Appellate Court by judgment and order dated 05.09.2013 directed the State to reconsider the case for grant of relaxation of age in favour of the appellant in the light of the

observations made therein above also giving due consideration to the observations made by the learned Single Judge. The State was directed to comply with the judgment by 31.10.2013. It was also indicated that if it is found that claimant is entitled to relaxation, if necessary, a supernumerary post shall be created for him. Petitioner was finally appointed by office order dated 04.03.2014 issued by the Public Works Department, Government of Tripura after giving him the relaxation.

4. Appellant approached this Court after a round of litigations under the RTI Act to obtain the select list. The select list was also summoned by the learned Writ Court during course of the proceedings of the writ petition. Appellant's grievance was that though his appointment has been reckoned from the date of others, but his seniority has been unsettled.

5. Mr. C.S. Sinha, learned counsel for the appellant, has pointed out to the memorandum dated 13.08.2019 which contains the fixation of pay in respect of the appellant for the post of Junior Architect (Group-B Non-Gazetted). It is pointed out that his date of appointment has been treated with effect from 30.05.2008. The seniority list dated 20.08.2021 [Annexure-11] of Junior Architect (Degree Holder), Group-B (G) where appellant stands at serial No.4 below the private respondents.

6. Learned counsel for the appellant submits that though appellant has been appointed later on after a litigation, but his seniority has not been properly fixed. Learned Writ Court, despite calling for the select list, failed to remedy the injustice caused to the petitioner/appellant herein on the ground that the seniority list has been prepared in the year 2016 and it is difficult for the

Court to unsettle the position regarding seniority position of all the Junior Architects without any materials in that regard. Therefore, the impugned order may be interfered.

7. Mr. D. Sarma, learned Additional Government Advocate for the respondents-State and Mr. Raju Datta, learned counsel for the respondents-TPSC, submit that even as per the case set up by the appellant as per the select list at Annexure-R/13, appellant got 55 marks in the same unreserved category as that of the private respondents who got 69, 64 and 59 marks respectively who were above him. Appellant was appointed in March, 2014 after granting relaxation in age in terms of Rule 6 of the Recruitment Rules of Junior Architect upon a decision of the cabinet. The appointment has been given effect to from the original date i.e. 30.05.2008, but the seniority list does not suffer from any infirmity as the private respondents were above him in the common merit list prepared by the TPSC in respect of the recruitment exercise held under the advertisement of 2007 for the post of Junior Architect in the Public Works Department, Government of Tripura. Learned Writ Court, taking into consideration all these facts, rightly refused to grant any relief as neither any case was made on merits, nor the seniority position could be unsettled when other incumbents ranked above him in the merit list have been in service since 2008.

8. We have considered the submission of learned counsel for the parties and taken note of the materials placed from record. We have also gone through the impugned order.

The factual narrative need not be repeated again. The case of the appellant hinges upon the select list in which he is found to be below the private respondents in the same unreserved category. As such, delay in his appointment compared to the others in March, 2014 would have made no difference as his appointment was given effect to from the same date i.e. 30.05.2008 like the others, but this did not unsettle the seniority position of the private respondents who were above him in the common merit list in the same category. The litigation journey does not enure any benefit to the appellant on that count; neither the learned Division Bench made any observation to that effect while disposing of the writ appeal for the State to reconsider his case for relaxation of age vide judgment dated 05.09.2013. As such, we do not find any infirmity in the impugned order of the learned Writ Court.

9. The instant appeal is dismissed. Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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