

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.242 of 2021

WA No.243 of 2021

WA No.244 of 2021

IN WA No.242 of 2021

SMT. Parul Rani Barman,

D/o Shri Sunil Barman, resident of village- Bhuiyar Tilla, PO
& PS Melaghar, District- Sepahijala Tripura.

-----Appellant(s)

Versus

1. THE STATE OF TRIPURA.

represented by the Secretary-cum-Commissioner to the
Health & Family Welfare Department, Government of
Tripura, P.O.- Kunjanban, P.S.- New Capital Complex,
District- West Tripura.

2. THE DIRECTOR,

Health and Family Welfare Department, Government of
Tripura, PO- Agartala, P.S.- West Agartala, District- WEST
Tripura.

---- Official respondent(s)

3. SMT. RITA RABI DAS,

D/O- unknown, Notice to be served through Respondent
NO.2.

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D/O- Unknown, Notice to be served through Respondent NO.2.

----- **Private respondent(s)**

IN WA No.243 of 2021

SMT. PIYALI DAS,

W/o- Sri Pinak Deb, R/o - P.O. and Vill- Marachara, P.S.- Kamalpur, District- Dhalai Tripura.

-----**Appellant(s)**

Versus

1. THE STATE OF TRIPURA.

represented by the Secretary-cum-Commissioner to the Health & Family Welfare Department, Government of Tripura, P.O.- Kunjanban, P.S.- New Capital Complex, District- West Tripura.

2. THE DIRECTOR,

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IN WA No.244 of 2021

SMT. SAMPA DAS,

D/o Shri Krishnadhan Das, resident of Joynagar, PO- Agartala, PS-West Agartala, District – West Tripura.

-----Appellant(s)

Versus

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represented by the Secretary-cum-Commissioner to the Health & Family Welfare Department, Government of Tripura, P.O.- Kunjanban, P.S.- New Capital Complex, District- West Tripura.

2. THE DIRECTOR,

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---- **Private respondent(s)**

For Petitioner(s)	:	Mr. Samarjit Bhattachajee, Adv.
For Respondent(s)	:	Mr. D. Sharma, Addl. G.A.
Date of hearing	:	12.03.2024
Date of delivery of	:	18.03.2024
Judgment & order	:	
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

The three writ petitions are arising out of the common question and seeking common relief and accordingly arguments are heard by way of common judgment.

02. The original writ petitions were filed seeking for the following reliefs:

- i) Admit this Writ Appeal;
- ii) Call for the relevant records, pertaining to the impugned Judgment and Order (Oral) dated 01.04.2021, passed in W.P.(C) No.1471 of 2017, W.P.(C) No.1472 of 2017 and W.P.(C) No.1475 of 2017;

iii) After hearing the parties, in terms of the GROUNDS set forth above, be pleased to quash/set aside the impugned Judgment & Order (Oral) dated 01.04.2021, passed in W.P.(C) No.1472 of 2017, passed by the Learned Single Judge, and thereafter, allow this Writ Appeal, thereby granting the reliefs, as sought for in the Writ Petition [W.P.(C) No.1471 of 2017, W.P.(C) No.1472 of 2017 and W.P.(C) No.1475 of 2017];
iv) And pass any other Order(s) as may be deemed fit and proper for ends of justice.

03. By the common judgment and order dated 01.04.2021 the writ petitions are dismissed and thereafter the present writ appeals are filed by the present appellants seeking redressal from the court.

04. The facts of the case are that the petitioners completed 3 years & 6 months Diploma Course in General Nursing & Midwifery (GNM for short) from the East West School of Nursing, Bangalore, under the Karnataka State Diploma in Nursing Examination Board, within the period with effect from 01.09.2009 to 31.08.2012 and from 01.09.2012 to 28.02.2013. The result of internship was published on 28.02.2013 but the marksheet issued by the concerned Board after verification was in the month of May, 2013. Thereafter, the Director of Health Services, Government of Tripura issued an employment notification by way of newspaper publication vide Advertisement No.ICA/O/131/16 stating that a Walk-in-interview would be held for selection of candidates for filling up of vacant post of staff nurse under the Health and Family Welfare Department, Government of Tripura on fixed pay basis. The essential qualifications were HS(+2) Examination passed and Diploma in GNM course or degree in Nursing (B.Sc. in Nursing) from the institution recognized by the Indian Nursing Council. Thereafter, the appellant herein being eligible for the said post went for Walk-in-Interview in the said exam as aforestated.

05. The selection to the post of Staff Nurse is made on the basis of seniority and the seniority has to be drawn up on the basis of the date of publication of the result of internship. On the other hand, the respondent had considered the seniority on the basis of the date of issuance or publication of marksheet of internship which is illegal. The Director of Health Services had issued two orders dated 04.05.2016 and 13.05.2016 where the detailed description of the Board members was mentioned who had conducted the interview. Due to mistake in determining the seniority the private respondents in the writ petition who completed their internship posterior to the date of completion of internship by the present appellants were selected and appointed and the appellants herein were deprived. Thereafter on 05.01.2017 the appellants submitted an application to the Health Minister, Government of Tripura seeking for rectification of the mistake done in the recruitment process where the candidates those who were selected were on the basis of seniority and thus the appellants inspite of being passed out in the month of February, 2013 were not recruited and the private respondents who passed out in the month of May, 2013 were recruited.

06. In terms thereof, one Smt. Satarupa Majumder enforced the RTI Act seeking for information from the office of the Director of Health Services, regarding the recruitment procedure. In response to that RTI reply dated 30.01.2017 it was mentioned that the determination of seniority was made from the date of publication of final year marksheet for B.Sc. Nursing candidates and date of publication of internship marksheet for GNM passed

candidates and thus for determining the seniority the date of publication of the result was overlooked by the official respondents.

07. The petitioners contended that the respondents did not select the petitioners and their names are not found in the selection list. Hence, the writ petition is filed.

08. It is the case of the petitioners that despite their eligibility and criteria as qualified persons and being completed their Nursing course prior to the private respondents, the petitioners were deprived of their selection. It is also contended that by way of an RTI, the mode of selection was obtained and one of the criteria was that the seniority of the candidates was also taken into account. For the purpose of seniority, it is the date of issuance or publication of mark-sheet of internship and the certificate was issued accordingly.

09. Since the petitioners have completed their nursing course much prior to the private respondents, their candidature cannot be denied and as a sample case the petitioner Piyali Das in WP(C)No.1471 of 2017 completed her course from 01.09.2009 to 31.08.2012 (for theoretical and practical training) and from 01.09.2012 to 28.02.2013 (for 6 months internship training) and certificate was issued in the month of May, 2013 and whereas one of the private respondents completed the course from 31.08.2009 to 13.04.2013 and the certificate was issued on 25.06.2013. Hence the procedure adopted was not justified and prayed to set aside the selection procedure and provide the petitioners' employment.

10. The counsel for the appellants relied on the following citations in **Dr. (Major) Meeta Sahai versus State of Bihar &**

Ors. [Civil Appeal No.9482 of 2019 arising out of Special Leave Petition **(Civil) No.12245 of 2017]**.

11. Learned Addl. G.A. appearing for the official respondents contended before this court that the selection procedure was in a fair and transparent manner and there is no violation in the procedure and the question of setting aside the order in writ, does not arise. He also contended that the procedure of Walk-in-interview was duly notified and the documents were verified and also in the interview the selection committee has duly interacted with the candidates and finalized the selection list. He also contended that the petitioners have approached before this court with delay and on the ground of laches also. The appellant does not have any basis to claim relief and the same needs to be dismissed.

12. In support of his submission, Learned Addl. G.A. has relied upon few citations regarding the present context in **D. Sarojakumari vs. R. Helen Thilakom and Others** reported in **(2017) 9 SCC 478** and **Ashok Kumar and Another vs. State of Bihar and Others** reported in **(2017) 4 SCC 357**.

13. The counsel for the appellant-petitioners in reply to the submission of Learned Addl. G.A. has contended that there is no delay in dismissing the ground on laches. Since, the petitioners had updated through RTI enclosing the copies and the procedure as to how the interview was conducted before this court.

Heard both the sides.

14. Having perused the records and the submissions made by the Learned counsel for the parties we are of the considered opinion that admittedly, there are laches. In so far as the facts are

concerned the Director of Health Services, Government of Tripura issued an Employment Notification by way of newspaper publication vide Advertisement No.ICA/O/131/16 notifying that a Walk-in-Interview would be held for selection of candidates for filling up vacant posts of Staff Nurse under the Health & Family Welfare Department, Government of Tripura on fixed pay basis on 16.05.2016. For the sake of convenience, the said notification is herewith extracted:

EMPLOYMENT NOTIFICATION

A walk-interview will be held for selection of candidates for filling up vacancies in the post of staff nurse under the health & family welfare department, government of Tripura on purely temporary and fixed pay basis@10,130/- being 75 % of the minimum slab of entry level pay in the pay band-2 along with Grade pay of 4200/- plus additional remuneration increased by the government from time to time.

Vacancies:300[SC-46,ST-85,UR-161,Ex-Serviceman(SC)-

1,Ex-serviceman(ST)-3,Ex-Serviceman(UR)-4,

Essential Qualification:-

A. HS(+2stage) Examination Passed

And

B. Diploma in General Nursing & Midwifery course or degree in nursing (B.Sc in Nursing) course from the institution recognised by the Indian Nursing Council.

Venue of interview:-

Office Of The Deputy Drugs Controller, Government Of Tripura, Pandit Nehru Complex, Gurkhabasti PO:-Kunjaban Agartala.

Date and time Of Interview:-

16th may 2016 from 11.00 AM to 2.00PM [for the candidates of west & Shipahijala Tripura District.]17th may 2016 from 11.00 AM to 2.00PM [for the candidates of Khowai & Dhalai District] 18th may 2016 from 11.00 AM to 2.00PM [for the candidates of Gomati & South Tripura District]19th may 2016 from 11.00 AM to 2.00PM [for the candidates of North and Unakoti District.]

The eligibility willing candidates (male and female) residing permanently in the state of Tripura within the age limit of minimum 18 yrs and maximum 40 yrs as on the date of interview (relaxable for 5 years ST, SC and in service candidate) and having registration certificate of Tripura nursing counselling may appear before the interview board on scheduled date time and venue all original testimonials and attested/self attested copies of relevant documents along with application plain papers stating all the particulars as mentioned below:-

1.Name of the post applied for. 2. Name of the candidate (in Block letters) 3.Fathers/Husbands name, 4. Parmanent address, 5. Present address to which the communication is to be made 6. Contact no. 7.Whether ST SC or ex Serviceman, 8.Whether belongs to BPL,AAY, 9.Date of Birth, 10. Educational and other qualification (mentioning year of passing total marks obtained and percentage of marks obtained), 11.Expirence if (any), 12. Employment Exchange Reg. No,

13. Nationality, 14. Religion, 15, Monthly family income of all source, 16. Co-curricular activity(Cultural, Sports,etc if any).

The candidates not having registration of Tripura Nursing counselling are not entitled to appear before the interview board .No TA & DA is admissible for appearing before the interview board .the number of vacancies may increase or decrease at any time before or after interview.

**S/D
(Dr.J.K.varma)
Director of Health Services,
Government of Tripura.)**

15. Considering the arguments of the appellants that the appellant-petitioners were qualified and have completed the nursing course from 01.09.2009 to 31.08.2012 (for theoretical and practical training) and from 01.09.2012 to 28.02.2013 (for 6 months internship training) and certificate was issued in the month of May, 2013 and the private respondents completed her course from 31.08.2009 to 13.04.2013 and the certificate was issued on 25.06.2013. During argument before the Court, Learned counsel has taken one of the private respondent as a sample case, all though, there are number of private respondents in all other related cases. It is the case of the petitioners that the official respondents did not consider their appointment as Staff Nurse in terms of seniority but only considered the private respondents who have completed their course and obtained the certificate subsequent to the petitioners and thus they are juniors to the petitioners and they cannot be appointed and the petitioners cannot be rejected.

16. To the above argument it becomes necessary to say that no doubt the petitioners obtained the certificate is much prior to the private respondents but this is not the only criteria in terms of the notification. The very purpose of the appointment of the candidates for selection is by way of Walk-in-interview and before

taking interview, the credentials of the candidates would be scrutinized and once the candidate comes out of the interview board successfully, then only they would be selected.

17. Mere possessing the certificate by the petitioner prior to the private respondents is not the only criteria for providing the appointment to the petitioners and not to find their name in the merit/selection list. No arguments is advanced and no mistakes have been pointed out in so far as the interview is concerned. Unless any malafides are attributed and they are proved, it cannot be said that the selection committee acted malafide and deprived the eligible candidates. It is not a case of malafides.

18. During the course of arguments this court has enquired with regard to the available vacancies and in all fairness it was reported that in spite of Walk-in-interviews all posts are not filled and there were still vacancies.

19. Learned Addl. G.A. has strongly objected the contention as raised by the appellant. He has stated that the appellants herein have participated in the fresh selection process and if the appellants were aggrieved by the decision to hold a fresh process, they did not adopt their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition.

20. Dr. Alak Dewan, Joint Director, Health Services present in court has assisted on the issue of filling up the further vacancies and submitted that the subject matter involved in these writ petitions pertains to 2016 selection and the writ petitions came to be filed in 2017. Thereafter, the Government has issued recruitment rules and selection procedure in 2018 and accordingly,

the official respondents have taken steps for issuing fresh notification and the present selection procedure includes (i) written test and (ii) interview, apart from verification of credentials. The selection process has commenced and shortly the list of selected candidates would be released.

21. The Hon'ble Supreme Court of India, in **D. Sarojakumari vs. R. Helen Thilakom and Others** reported in **(2017) 9 SCC 478** in paras 5-9 and 11, held as under:

"5. In Dr. G. Sarana vs. University of Lucknow: (1976) 3 SCC 585 the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows:-

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.....

6. In Madan Lal & Ors. vs. State of J&K : (1995) 3 SCC 486, the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows:-

9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.....

7. In Manish Kumar Shahi vs. State of Bihar : (2010) 12 SCC 576 , this Court held as follows :-

23.....Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name (1995) 3 SCC 486 (2010) 12 SCC 576 does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.

8. In the case of Ramesh Chandra Shah and others vs. Anil Joshi : (2013) 11 SCC 309 the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of

recruitment itself. They were not permitted to raise such an objection. This Court held as follows:-

24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.

9. The same view has been taken in *Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and others* : (2016) 1 SCC 454.

11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this, we need not go into the other issues raised."

22. In **Ashok Kumar and Another vs. State of Bihar and Others** reported in **(2017) 4 SCC 357** the Hon'ble Supreme court observed as under:

"12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

15. In *Manish Kumar Shah v. State of Bihar*: (2010) 12 SCC 576, the same principle was reiterated in the following observations :

16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission.

This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in *Madan Lal v. State of J. and K.*: (1995) 3 SCC 486, *Marripati Nagaraja v. Government of Andhra Pradesh and Ors.*: (2007) 11 SCC 522, *Dhananjay Malik and Ors. v. State of Uttaranchal and Ors.*: (2008) 4 SCC 171, *Amlan Jyoti Borooah v. State of Assam*: (2009) 3 SCC 227 and *K.A. Nagamani v. Indian Airlines*: (2009) 5 SCC 515."

In the present context in **Union Public Service Commission versus M. Sathiya Priya & Ors.** reported in **(2018) 15 SCC 796** which the apex court has observed as under:

"16. The learned counsel for UPSC, drawing the attention of the Court to the contents of the affidavit filed by UPSC before CAT, submits that the Selection Committee also reviews and determines the overall grading recorded in the Annual Confidential Reports to ensure that the overall grading in the Annual Confidential Reports is not inconsistent with the grading/remarks under various specific parameters or attributes. It is brought to the notice of the Court that the Selection Committee takes into account orders regarding appreciation for meritorious work done by the officers concerned and also keeps in view orders awarding penalties or any adverse remarks duly communicated to the officers, which even after due consideration of their representation by the suitable forum, are not expunged. The aforementioned norms are uniformly applied to all the States/Cadres in the matter of induction into the All India Services.

19. No doubt, the Selection Committee may be guided by the classification adopted by the State Government but, for good reasons, the Selection Committee may evolve its own classification which may be at variance with the grading given in the Annual Confidential Reports. As has been held by this Court in the case of UPSC v. K. Rajaiah, and others (2005) 10 SCC 15, the power to classify as "Outstanding", "Very Good", "Good" and "Unfit" is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Authorities in the Annual Confidential Reports is not binding on the Selection Committee. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of grading at variance with that of the State Government, reasons be recorded. But having regard to the nature of the function and the power confined to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision. It is relevant to note that no allegations of malice or bias are made by the first respondent at any stage of the proceedings against the Selection Committee or UPSC.

23. In the matter on hand, we find that neither the decision nor the decision-making process was actuated with malice, and no grave mistake was committed by the Selection Committee leading to arbitrariness. We find that it is not a case of pick and choose, but the selection has been made rationally. The applicant respondent no.1 was duly considered by the Selection Committee. However, on an overall assessment of her service records, her name was not included in the select list due to the statutory limit of its size and as officers with higher grading were available for inclusion in the select list as per the provisions of Regulation 5(5) of the Regulations."

23. In view of the above discussion and the circumstances, this court feels that the petitioners have not made out the case to consider their prayer and to set aside the selection procedure also the court does not find any relevance with the citations as aforestated by the counsel for the petitioners. Thus, writ petitions

are devoid of merit and the order of the Learned Single Judge stands confirmed and the writ appeals stands dismissed.

Pending application/s, if any, also stands dismissed.

JUDGE

JUDGE



**MOUMITA
DATTA**

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