

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.654 OF 2023**

Sri Dipak Rudra Paul

.....Petitioner(s)

Versus

The State of Tripura and ors.

.....Respondent(s)

WP(C) NO.655 OF 2023

Sri Prakash Paul

.....Petitioner(s)

Versus

The State of Tripura and ors.

.....Respondent(s)

For the Petitioner(s) : Mr. Somik Deb, Sr. Advocate.
Ms. R. Chakraborty, Advocate.

For the Respondent(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. Kohinoor N. Bhattacharjee, G.A.
Mr. R. Datta, Advocate.
Mr. K. Nath, Advocate.

Date of hearing and delivery of
Judgment & Order : 14.08.2024.

Whether fit for reporting : YES.

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

Both the writ petitions are heard and taken up together for disposal since common questions of law and facts are involved.

2. The brief facts of WP(C) No.654 of 2023 is that for filling up four posts of Junior Scientist, the respondent-Tripura State Pollution Board (in short 'TSPSB') issued an advertisement, maintaining the same qualifications, as stipulated in the Notification dated 06.05.2011. Being allured by the said advertisement, the petitioner applied for the said post. Thereafter, the petitioner was called in to appear before the Selection Committee, for facing the interview for appointment to the said post. Accordingly, the Member Secretary TSPCB issued a Memorandum dated 28.11.2012, thereby offering an appointment, to the petitioner, to the post of Junior Scientist (Group-B) on purely temporary basis. The merit list that was prepared for selection to the said post of Junior Scientist, TSPCB was also furnished to the petitioner under RTI Act, wherefrom it transpires that the petitioner was placed at Serial No.1 of the said merit list. The Member Secretary, TSPCB issued a Memorandum dated 27.12.2022, thereby publishing a Draft Seniority List of Junior Scientists of the TSPCB, whereby, the petitioner was placed at Serial No.2, and the private respondent was placed at serial no.1. Feeling aggrieved by his placement at Serial No.2 of the Draft Seniority List, as was noted in the memorandum dated 27.12.2022, despite his placement at Serial No.1 in the merit list, the petitioner submitted a detailed representation dated 24.01.2023, inter alia referring to the

attendant facts and circumstances and various decisions holding the field. Without paying any heed to the issues raised by the petitioner, by the above representation dated 24.01.2023, and without recording any reason therefore, the Member Secretary, TSPCB issued a Memorandum dated 19.09.2023, thereby publishing the Final Seniority List of Junior Scientist of TSPCB, thereby affirming the seniority position, as obtaining on 27.12.2022, wherein, the petitioner was placed at Serial No.2. But the private respondent was placed at Serial No.1 thereof. Hence, this writ petition.

3. The brief fact of WP(C) No.655 of 2023 is that for filling up of six posts of Junior Environmental Engineer, the respondent-TSPCB issued an advertisement, maintaining the same qualifications, as stipulated in the Notification dated 06.05.2011. Being allured by the said advertisement, the petitioner had applied for the said post. Thereafter, the petitioner was called in, to appear before the Selection Committee, for facing the interview for such appointment to the said post. He emerged out successful. Accordingly, the Member Secretary, TSPCB issued a Memorandum dated 28.11.2012, thereby offering an appointment to the petitioner, to the post of Junior Environmental Engineer (Group-B), on purely temporary basis. The merit list that was prepared for selection to the said post of Junior Environmental Engineer, TSPCB

was also furnished to the petitioner, wherefrom it transpires that the petitioner was placed at Serial No.1 of the said Merit List. The Member, Secretary, TSPCB issued a Memorandum dated 27.12.2022, thereby publishing a Draft Seniority List of Junior Environmental Engineers of the TSPCB, whereby, the petitioner was placed at Serial No.3, and the private respondent Nos. 5 & 6 were placed at Serial Nos.1 & 2 respectively thereof. Feeling aggrieved by his placement at Serial No.3 of the Draft Seniority List, as was noted in the Memorandum dated 27.12.2022, despite his placement at Serial No.1 in the Merit List, the petitioner submitted a detailed representation dated 24.01.2023, *inter alia* referring to the attendant facts and circumstances and various decisions holding the field. Without paying any heed to the issues raised by the petitioner, by the above representation dated 24.01.2023, and without recording any reason, the Member Secretary, TSPCB issued a memorandum dated 19.09.2023, thereby, publishing the Final Seniority List of Junior Environmental Engineer of TSPCB affirming the seniority position, as obtaining on 27.12.2022, wherein, the petitioner was placed at Serial No.3, but the private respondent Nos. 5 & 6 were placed at Serial Nos.1 & 2 respectively thereof. Hence, this writ petition.

4. Heard Mr. Somik Deb, learned Sr. counsel appearing for the petitioners as well as Mr. P. Roy Barman, learned

Sr. counsel assisted by Mr. K. Nath, learned counsel appearing for private respondents and Mr. R. Datta, learned counsel appearing for respondents-TSPCB and Mr. Kohinoor N. Bhattacharjee, learned G.A. appearing for the State-respondents.

5. Mr. Somik Deb, learned Sr. counsel appearing for the petitioners submits that the question is whether joining before would supersede the merit list because the petitioners topped the merit list. In the offer of appointment issued to the petitioner dated 28.11.2012, the petitioners were directed to join the said post by 10.12.2012 and the petitioners joined the said post on 07.12.2012 and 05.12.2012 much prior to the date set out in their offer of appointment. So as per the merit list/score list, the petitioners ought to have been shown as senior to the private respondents in the merit list.

6. To prove this argument, learned counsel referred following Judgments of the Hon'ble Supreme Court.

6.1. ***Chairman, Puri Gramya Bank and anr. Vs. Ananda Chandra Das and ors.***, dated ***September 12 1994*** reported in ***1994 [1994] SUPP. 3 SCR***, wherein it is stated thus:-

"The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the selection board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board has prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is

as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuteous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court, is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died.

6.2. Para-18 of the reportable Judgment of Hon'ble Supreme Court titled as ***Sudhir Kumar Atrey Vs Union of India and ors***, which is produced here-in-under:-

"18. We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment/continuous offication may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary."

6.3 ***Para-17*** and ***19*** of the Reportable Judgment of the Hon'ble Supreme Court titled as ***Dharmendra Prasad and ors. Vs. Sunik Kumar and ors.***, vide number ***Civil Appeal No.9248 of 2019***:-

" 17. We find that the method of giving appointment to the senior most person of each category is only a fortuitus circumstance as such appointments were made dehors the merit. Regulation 20 mandates the appointing authority to make the appointments from amongst the candidates in order in which they stand in the list prepared under Regulations 16(2), 17 or 18. Any appointment made by the Nigam in contravention of the statutory Regulations cannot defeat the rights of the appellants only because they have not challenged the appointment of their juniors at an earlier point of time. Regulation 23 provides that seniority of persons appointed in any branch of service shall be made as per substantive appointment. The appointment in Regulation 23 has to be read in terms of Regulation 20 mandating the manner of appointment. Therefore, irrespective of the date of appointment, the seniority has to be fixed as per the merit of the candidates determined by the Selection Committee.

19. We do not find any merit in the argument raised by the State that the seniority has to be fixed as per Rule 5 of the Uttarakhand Government Servant Seniority Service Rules, 2002. Such Rules were not adopted to be applicable to the Nigam. The Rules were approved by the Board of the Nigam on 24th September, 2007 proposing that the provision shall be made in the proposed service regulations but the Rules were made applicable in the year 2011 only. Such is the finding recorded by the High Court which is not disputed by the appellants or by the writ petitioners. Such Rules have been framed under the proviso to Article 309 of the Constitution and they are not applicable to a creation under a Statute. These Rules are applicable to government servants in respect of whose recruitment and condition of service Rules may be or have been made by the Government under the proviso to Article 309 of the Constitution. Since the employees of the Nigam are not government servants nor are their service conditions governed by Rules framed under the proviso to Article 309 of the Constitution, therefore, such Rules unless adopted by the Nigam cannot be extended to the employees of the Nigam."

6.4. **Para-7** of the Judgment of the Hon'ble High Court of Delhi titled as **Sh. Adil Rashid Siddiqui Vs. Union of India** bearing No.**WP(C) No.393 of 2012** dated **20.01.2012**:-

"7. The learned counsel for the petitioner in support of his contention that the petitioner is entitled to seniority with reference to the year of vacancy placed reliance on clause IV of the letter of appointment of the petitioner, which, inter alia, stipulated that "the seniority of the candidates should be fixed on the basis of the ranks of the candidates in the examination and not on the basis of their date of appointment". In our opinion, the reliance on the aforesaid clause in the appointment letter is wholly misplaced. What the aforesaid stipulation in the appointment letter means is that the seniority of those who were selected along with the petitioner would be determined with reference to their merit and not with reference to the date of their joining. To illustrate, if five persons are selected together and the person at serial No.1 joins after the person at serial No. 2 in the merit list, the person at serial No. 1 in the merit list, would be placed above the person at serial No. 2 irrespective of the date on which he joins. But, it does not mean that they would get seniority with reference to the year in which the vacancies against which they were appointed had arisen. We pointedly asked the learned counsel for the petitioner as to whether any person lower to the petitioner in the order of merit was placed above the petitioner in the impugned seniority list. The learned counsel for the petitioner frankly conceded that no person placed below the petitioner in the order of merit was given seniority above the petitioner in the impugned seniority list.

For the reasons given hereinabove, we find no merit in the writ petition and the same is hereby dismissed, without any order as to costs.

6.5. Relevant portion of the Hon'ble Supreme Court Judgment titled as **Suresh Chandra Jha Vs. State of Bihar and ors.**, bearing No.**Appeal(civil) 4760 of 2006** dated **10.11.2006:-**

"There is no dispute that the appellant was ranked higher to respondent no.8. There is also no dispute that in the appointment letter the appellant was given six weeks time to join. Merely because respondent no.8 joined earlier that did not in any way affected the merit placement."

7. Stating the Judgments above, learned Sr. counsel appearing for the petitioners submits that the Hon'ble Supreme Court consistently viewed that when a person selected has been given time to join and within that period if he joins, regardless of the fact that the person who is inferior in the merit list even if he joins earlier, the selected person will be entitled to regain his original merit list.

8. Mr. R. Datta, learned counsel appearing for the respondent-TSPCB submits that in the cases in hand, seniority has been fixed on confirmation as their services are made on a purely temporary basis and all the Judgments referred by the learned Sr. counsel appearing for the petitioners relates to permanent appointments, not temporary appointments. The respondent-TSPCB follows guideline laid down in the office order dated 12th July, 1960 which is a Government guideline.

In the said office order it is stated that "*provided that where persons recruitment initially on a temporary basis are confirmed subsequently in a order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original of merit.*" Further, the notification for advertisement was issued by the Government, not by respondent- TSPCB.

9. On the other hand, Mr. P. Roy Barman, learned Sr. counsel appearing for the private respondents submits that the official respondents are following the office order dated 12th July 1960 wherein it is stated that seniority shall follow the order of confirmation and not the original order of merit. Learned Sr. counsel further submits that there is no merit list in these present cases as there was no written or selection test as there is only a scorecard.

10. In reply to the argument made, learned Sr. counsel appearing the respondents, Mr. Somik Deb pointed out para-6.5 of the affidavit-in-opposition of respondent-TSPCB wherein it is stated that the merit list for the appointment is the post of Junior Scientist has been prepared by the Selection Committee and in the merit list the petitioners are placed above the private-respondents. Learned Sr. counsel further submits that the memorandum relied upon by the respondents is applicable to the State Government but the

respondent concerned herein which is an PSU i.e. an autonomous body and there is nothing to record to show that they have followed the said memorandum dated 12th July, 1960. A fair reading of the office order dated 12th July, 1960 reveals that it would only apply to the determination of seniority in Central Civil Services and Civil posts under Tripura Administration and not to PSU/Autonomous body.

11. It is not a disputed that except for the scorecards, there is no other merit list. The same has been confirmed by Mr. R. Datta, learned counsel appearing for the respondents-TSPCB. Admittedly, both the petitioners and the un-official respondents joined before the cutoff date and the consideration is expected to be made based on the merit list, which is supposed to be the scorecard and the same has not been disputed by the respondent-TSPCB. The scorecard has not been disputed by the unofficial respondents herein. According to the scorecard, the mark scored by the petitioner of WP(C)654 of 2023, Sri Dipak Rudra Paul is 29 and the mark scored by unofficial respondent No.5 i.e. Mr. Gautam Ghosh is 27. In WP(C)655 of 2023, the petitioner Sri Prakash Paul scored 37 and the unofficial respondent No.5, Sri Subrata Majumder scored 27, and the unofficial respondent No.6, Smt. Satarupa Sengupta scored 36. Though the learned Sr. counsel appearing for the unofficial respondents has placed reliance on the General

Principle for determination of seniority of various categories of person employed under Tripura Administration, they are only applicable in the Central Civil Services and the Civil post under Tripura Administration. To show that the said principles are also applicable to the respondent-TSPCB is the grey area that has not been substantiated to say that the same principles were adopted and were applicable. It is also evident from the notification dated 11th March, 2019 that the name of the petitioner of WP(C) No.654 of 2023 i.e. Sri Dipak Rudra Pal is shown at serial No.6, and the unofficial respondent is shown at serial No.7. Even if the respondent No.5 in WP(C) No.654 of 2023 reported to duty on 05.12.2012 and the petitioner on 07.12.2012 and respondent Nos.5 and 6 of the WP(C) No.655 of 2023 reported to duty on 04.12.2012 and 05.12.2012 and the petitioner on 05.12.2012 as against the cutoff date for reporting which is indicated as joining on or before 10th December 2012, the unofficial respondents cannot take advantage on the ground that they reported prior to the reporting of the petitioner. It is settled law that if more candidates than one are selected, the seniority is as per the rank of the direct recruits subject to adjustments of the candidates selected applying the rule of reservation and the roster. Mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board. The same is opined by the Hon'ble Apex Court in **Chairman,**

Puri Gramya Bank and anr. Vs. Ananda Chandra Das and ors
(supra).

12. The said principle has also been settled by the Hon'ble Apex Court in its Judgment passed in **Sudhir Kumar Atrey Vs. Union of India(supra)**. The para-18 of the said judgment is again reproduced herein for reference:-

"18. We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment/continuous offication may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary."

13. The same is also again reiterated by the Hon'ble Apex Court in **Dharmendra Prasad and ors. Vs. Sunil Kumar and ors.,(supra)**. Paras-17 and 19 of the same are reproduced herein again for reference:-

" 17. We find that the method of giving appointment to the senior most person of each category is only a fortuitus circumstance as such appointments were made dehors the merit. Regulation 20 mandates the appointing authority to make the appointments from amongst the candidates in order in which they stand in the list prepared under Regulations 16(2), 17 or 18. Any appointment made by the Nigam in contravention of the statutory Regulations cannot defeat the rights of the appellants only because they have not challenged the appointment of their juniors at an earlier point of time. Regulation 23 provides that seniority of persons appointed in any branch of service shall be made as per substantive appointment. The appointment in Regulation 23 has to be read in terms of Regulation 20 mandating the manner of appointment. Therefore, irrespective of the date of appointment, the seniority has to be fixed as per the merit of the candidates determined by the Selection Committee.

19. We do not find any merit in the argument raised by the State that the seniority has to be fixed as per Rule 5 of the Uttarakhand Government Servant Seniority Service Rules, 2002. Such Rules were not adopted to be applicable to the Nigam. The Rules were approved by the Board of the Nigam on 24th September, 2007

proposing that the provision shall be made in the proposed service regulations but the Rules were made applicable in the year 2011 only. Such is the finding recorded by the High Court which is not disputed by the appellants or by the writ petitioners. Such Rules have been framed under the proviso to Article 309 of the Constitution and they are not applicable to a creation under a Statute. These Rules are applicable to government servants in respect of whose recruitment and condition of service Rules may be or have been made by the Government under the proviso to Article 309 of the Constitution. Since the employees of the Nigam are not government servants nor are their service conditions governed by Rules framed under the proviso to Article 309 of the Constitution, therefore, such Rules unless adopted by the Nigam cannot be extended to the employees of the Nigam."

14. The same is again reiterated by the Hon'ble Apex Court in ***Suresh Chandra Jha Vs. State of Bihar and ors(supra)***. The same is produced here-in-under:-

"There is no dispute that the appellant was ranked higher to respondent no.8. There is also no dispute that in the appointment letter the appellant was given six weeks time to join. Merely because respondent no.8 joined earlier that did not in any way affected the merit placement."

15. It has been the consistent view of the Hon'ble Supreme Court that when the employer/department concerned gives a date for joining and the person selected joined in the stipulated cutoff date, then the seniority has been drawn upon the merit list and date of joining in such circumstance cannot have any primacy over the merit position. In both the writ petitions the cutoff date was the 10th of Decemer 2012 and the petitioners joined on the 7th of December 2012 and 5th of December 2012. As such, taking into consideration the array of the Hon'ble Supreme Court Judgments as relied upon by the learned Sr. counsel appearing for the petitioners, wherein it is viewed that if a person selected joined

in the stipulated cutoff date, then the seniority has to be drawn upon the merit list and date of joining in such circumstance cannot have any primacy over the merit position. Further, this Court is also in terms with the submission of the learned Sr. counsel appearing for the petitioners on the point of the merit list. In view of the same, these present writ petitions stands allowed and thus disposed.

16. As a sequel, stay if any stands closed. Pending application(s), if any also stands closed.

JUDGE

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