

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.683 of 2023

Smt. Manti Karmakar,
daughter of Swapan Karmakar, resident of Ward
No.3, Nandi Para, near PWD Office, Bankar,
Belonia, South Tripura, PIN-799155, aged about
29 years

..... **Petitioner**

– **V e r s u s** –

- 1. The State of Tripura,**
represented by the Commissioner & Secretary,
Department of Secondary Education,
Government of Tripura, having his office at
New Secretariat Complex, Gorkhabasti,
Agartala, PO-Kunjaban, PS-New Capital
Complex, Sub-Division-Sadar, District-West
Tripura.
- 2. The Commissioner & Secretary,**
Department of Secondary Education,
Government of Tripura, having his office at
New Secretariat Complex, Gorkhabasti,
Agartala, PO-Kunjaban, PS-New Capital
Complex, Sub-Division-Sadar, District-West
Tripura.
- 3. The Director,**
Department of Secondary Education,
Government of Tripura, having its office at
Siksha Sadan, Office Lane, Agartala, District-
West Tripura, PIN-799001.
- 4. The Member Secretary,**
Teacher's Recruitment Board, Tripura, Office of
the Director of School Education, Government
of Tripura

..... **Respondents**

For the Petitioner(s)	: Mr. Somik Deb, Sr. Advocate, Mr. P. Chakraborty, Advocate.
For the respondent(s)	: Mr. Dipankar Sharma, Addl. GA.
Date of hearing & delivery of Judgment & Order	: 9th September, 2024
Whether fit for reporting	: YES

HOB'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER (ORAL)

Heard Mr. Somik Deb, learned senior counsel appearing for the petitioner and also heard Mr. D. Sharma, learned Addl. GA appearing for the State-respondents.

[2] The instant petition relates to a claim for appointment as Post Graduate Teacher [PGT] under Advertisement No.90 dated 2nd May, 2022 [Annexure-1]. The Clauses of the advertisement which are relevant for consideration of the case of the petitioner are briefly extracted hereunder:

“Online applications are invited with effect from 12.05.2022 (from 4:00 PM) to 20.05.2022(up to 4:00 PM) from Indian Nationals having permanent residence in Tripura for selection of candidates for recruitment to the post of "Post Graduate Teacher (For Class XI-XII)" through "Selection Test for Post Graduate Teacher (STPGT) - 2022" under Secondary Education Directorate, Education (School) Department, Government of Tripura. All posts are permanent and period of probation is 2-years. Subject-wise vacancy position is as follows:

Sl. No.	Subject	Vacant posts					Remarks
		UR	SC	ST	Total		
1	Sociology	39	13	23	75	Out of 75 posts in each subject 3 posts are reserved for PH category (Blind & Low Vision - 01, –partially deaf or Hard of hearing – 01 & Locomotor-01) and out of 75 posts in each subject 1 post is reserved for Ex-Servicemen (UR Category)	
2	Geography	39	13	23	75		
3	Economics	39	13	23	75		
4	Psychology	39	13	23	75		

1. Essential Minimum Qualification:

(a) Post Graduate in relevant subject/allied subject (equivalency of which to be determined by equivalent committee) with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed) from NCTE recognised institution.

OR

(b) Post Graduate in relevant subject/allied subject (equivalency of which to be determined by equivalent committee) with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed) from National Council for Teacher Education recognised institution (in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007).

OR

(c) Post Graduate in relevant subject/allied subject (equivalency of which to be determined by equivalent committee) with at least 50% marks (or its equivalent) from recognized University and B.A. Ed./B.Sc. Ed. from any NCTE recognised Institution.

NB: Relaxation up to 5% in the qualifying marks will be allowed to the candidates belonging to SC/ST/PH category.

2. Age: Up to 40 years as on 02.05.2022. Upper age limit is relaxable by 5 years for SC/ST/PH and Government Servant provided that government employees belonging to SC/ST/PH category shall not get relaxation over and above general relaxation of 5

years available to them. Upper age limit is also relaxable for Ex-Serviceman (ESM) as per norms.

NB: (1) Permissible age relaxation will be applicable for candidates from discharged ad-hoc 10,323 teachers as per memo of GA(P&T) dated 05.11.2020. (Candidates belonging to this category must click yes in the relevant point of online application to get the benefit)

3. Pay: Rs.26,015/- fixed per month (Group C Non-Gazetted) being 75% of basic pay (Level-10) of Tripura State Pay Matrix, 2018.

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5. Procedure of online Submission of Application:

While applying online the candidate must ensure that she/he understands and fulfils the norms of eligibility. Before applying online please ensure to have the following for uploading:

- *Scanned image of latest passport size photograph of candidate (In JPG/JPEG format only, Size: up to 100 KB).*
- *Scanned image of full signature of candidate (In JPG/JPEG format only, Size: up to 60 KB).*

Notes:

- a) It must be ensured that image of the photograph and full signature of the candidate for uploading must be clear or else your candidature will be summarily cancelled without further notification.
- b) Admit Card will not be generated if any irrelevancy is noticed in image of the photograph and full signature of the candidate.
- c) Uploading of any irrelevant photograph/signature will invite cancellation of candidature and appropriate action will be taken against the candidate.
- d) Online Application can be submitted by logging on to the official website of Teachers Recruitment Board, Tripura, www.trb.tripura.gov.in and by no other means.
- e) Since provision of pre-test scrutiny of mark-sheets/certificates/documents is not there, a candidate needs to satisfy herself/himself that every input in the online application is correct as per criteria and terms and conditions of the test."

[3] Under the advertisement, the essential minimum qualification required was Post Graduate in the relevant subject/allied subject with Bachelor of Education [B.Ed] from NCTE recognised institution. Online applications were to be made by 20th May, 2022. Clause-5 contains the procedure of online submissions of the application. Clause-5(e) thereof provides that since provision of pre-test scrutiny of mark-sheets/certificate/documents is not there, a candidate needs to satisfy herself/himself that every input in the online application is correct as per criteria and terms & conditions of the test. Steps to be followed in the process of filling up the online application have been delineated thereafter. Clause-9 provides for scrutiny of documents and indicates that candidates who

remain absent on the scheduled date of scrutiny of documents, his/her candidature would be summarily rejected without further notification.

[4] The advertisement under the heading 'Important' further provides that "candidates must be in possession of minimum required qualification and mark sheet(s)/certificate of the academic and professional qualification as on the last date of submission of application as mentioned in this notice. Scheduled Caste (SC) and Scheduled Tribe (ST) Certificate issued by competent authority of Tripura will only be valid".

[5] The writ petitioner obtained 79 marks. While filling up the online application in the subject of Sociology as UR candidate, she also filled up the column relating to the Post Graduation qualification obtained from Sabarmati University having scored 62% marks out of total marks of 1600. The petitioner was not offered any appointment after scrutiny which compelled her to approach this Court. W.P.(C) No.780 of 2022 was however dismissed but Review Petition No.26 of 2023 was disposed of by order dated 15th May, 2023 in the following manner:

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. K. Debnath, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned counsel appearing for the State-respondents.

Mr. Deb, learned senior counsel for the petitioner has submitted that the statement made by the State-respondents that "39 nos. of posts have been filled up including one post which is reserved for UR Ex-Servicemen category" as reflected in the order dated 15.03.2023 passed by this Court in WP(C) No.780 of 2022 titled as *Manti Karmakar Vs. The State of Tripura and 4 Ors.* is entirely a false statement. According to learned senior counsel appearing for the petitioner, 39th post, which is reserved for the Ex-Servicemen category has not been filled up at all till today.

Mr. Deb, learned senior counsel for the petitioner has drawn my attention to the notification dated 16.09.2022(internal page 7 of the notification) in support of his submission that 39th post reserved for Ex-Servicemen category has not been filled up.

If the statement of the learned senior counsel is correct, the respondents may consider the case of the petitioner whether she can be appointed to the post of Post Graduate Teacher against the 39th post reserved for candidate under Ex-Servicemen category, however, must be in accordance with relevant law.

With the above observation and directions, the instant review petition stands disposed.

[6] The claim of the petitioner was rejected vide memo dated 10th July, 2023 on the following grounds:

“7. For compliance with the Judgment and Order of the Hon’ble High Court of Tripura this Directorate took opinion from the Law Department and the view of the Law Department is:

“Hence in the present case the petitioner is a UR candidate.

In absence of any stipulation in the advertisement RRs that in the vacant of non-availability of suitable candidate under ex-serviceman category, suitable candidate from UR category will be considered for appointment, there may be no scope for consideration in the present case.”

8. The Directorate of Sainik Welfare, Tripura in its views requests the Department to follow the Rule 13(6) of “The Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (as amended up to May 2007).

9. In Rule 13(6) it is clearly mentioned that “(6) In case appropriate category of Ex-serviceman and Physically handicapped persons are not available in a recruitment year to fill up the posts reserved for them, the vacant posts would be carried forward to the next recruitment year. If no suitable candidate is available in the second recruitment year, the vacant post will again be carried forward to the third recruitment year. Even if no candidate is available in the third year, the post will be filled up by a person of appropriate category.

In view of the above, this Directorate it is decided that, since the creation of 75 posts of Post Graduate Teachers in Sociology, recruited only once in the year 2022 and thereafter no recruitment has been made for the post of Post Graduate Teacher in Sociology Subject, so, in accordance with the Recruitment Rules (RR) for the post of Post Graduate Teacher and as per Rule 13(6) of the “Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (as amended up to May 2007), there is no scope to consider the case of Smt. Manti Karmakar and to issue an offer of appointment to the post of Post Graduate Teacher in Sociology.”

[7] The impugned order dated 10th July, 2023 has been challenged in the present writ petition. The petitioner has also sought a declaration that Rule 13(6) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is unconstitutional as being beyond the rule making power vested under Section 17 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and also *ultra vires* the Articles 14, 15, 16 & 19 of the Constitution of India.

[8] The pleadings have been advanced by both the sides. Upon hearing learned counsel for the parties and upon going through the relevant pleadings on record, the following questions arise for consideration:

(i) Whether the petitioner was eligible on the cut-off date of 20th May, 2022 on the criteria of possession of minimum required qualification and mark-sheets/certificates of the academic and professional qualifications?

(ii) Whether Rule 13(6) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is *ultra vires* the Constitution and the rule making power under the Tripura Scheduled Cases and Scheduled Tribes Reservation Act, 1991?

(iii) Whether the petitioner is entitled to be appointed against the one vacancy of Ex-Serviceman in UR category which remains unfilled and was carried forward for the next year in terms of Rule 13(6) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992?

[9] We propose to answer the aforesaid issues one after the other and while doing so refer to the relevant pleadings and the documents on record relied upon by learned counsel for the parties. On the first issue, the respondents have taken the plea that the petitioner did not possess the mark-sheet/certificate of Post-Graduation on the cut-off date, i.e. 20th May, 2022. During scrutiny on 10th August, 2022, she produced the provisional mark-sheet of Post Graduation from Sabarmati University which was dated 21st July, 2022. As such, on the cut-off date of application, she did not possess the minimum eligibility qualification and

mark-sheet/certificate of Post Graduation. On the other hand, the petitioner has referred to notice dated 2nd May, 2022 [Annexure-6] issued by Sabarmati University declaring the results of Semester IV (Session January-2020) of Distance Learning Course. The notice further states that results shall be available on the official website of Sabarmati University before 15th May, 2022. The petitioner has enclosed undated web copies of the results of all the 4(four) Semesters and contended that these results were published on 15th May, 2022. Therefore, while filling up her online application, she had consciously stated that she possessed Post Graduate Qualification with 62% marks. These 62% marks in a total of 1600 marks do actually tally with the provisional mark-sheets and also the physical mark-sheets which have been produced by learned counsel for the petitioner for all 4(four) Semesters issued on 8th June, 2022. It is, therefore, true that the relevant details filled up by the petitioner in her online application as to Post Graduation are correct. This could not have been possible had the results not been declared before the cut-off date.

[10] It is now well accepted policy of educational institutions and universities to publish results on the websites as issuance of physical copy of the mark-sheets or certificates do take considerable time in view of the large number of candidates participating in any such examination process. The results are declared on website to enable the candidates to apply for different courses within time which are generally during the months of May and June. As such, the contention of the respondents that the petitioner was not eligible and did not possess the minimum qualification of Post Graduation by the cut-off date i.e. 20th May, 2022 or did not have the mark-sheet/certificate of such qualification in her hand cannot be accepted on these inferential reasonings. At the time of

scrutiny of her results, she had duly produced the physical mark-sheet dated 21st July, 2022 which has been obviously issued after some delay from the date of publication of result by the university on 2nd May, 2022 and declaration of individual results of students on website on 15th May, 2022. This was not a ground of rejection of her claim in the impugned order dated 10th July, 2023. Therefore, on the basis of the aforesaid reasons in the light of the facts and circumstances discussed above, the first issue is answered in favour of the petitioner.

[11] Having answered so, we move on to the second issue.

Petitioner has laid a challenge to Rule 13(6) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 as being *ultra vires* the Constitution and the rule making power of the State. The themes and objects of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and Section 17 being the rule making power of the State Government have been adverted to. The learned counsel for the petitioner, in support of the plea that Rule 13(6) which provides for carry forward of horizontal reservation, is contrary to the law declared by the Apex Court relied on the following judgments:

- (i) *Indra Sawhney and others versus Union of India and others*, reported in (1992) Supp. (3) SCC 217, paragraph 812.
- (ii) *Jitendra Kumar Singh and another versus State of Uttar Pradesh and others*, reported in (2010) 3 SCC 119, paragraph-83 to 85.
- (iii) *Saurav Yadav and others versus State of Uttar Pradesh and others*, reported in (2021) 4 SCC 542, paragraphs-59.1 to 59.4 & 60.
- (iv) *State of Tamil Nadu and others versus K. Shobana and others*, reported in (2021) 4 SCC 686, paragraph-17.

[12] It is submitted that by the very object and purposes for which the Scheduled Castes and Scheduled Tribes Reservation Act, 1991 has been framed, the rule making authority by way of a subordinate legislation cannot frame a provision to carry forward un-reserved vacancy of Ex-serviceman category which is a case of horizontal reservation. As such, not only is the Rule-13(6) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 beyond the power of horizontal reservation conferred upon the State under Article 16(1) of the Constitution of India being conceptually different from vertical reservation provided under Article 16(4) and 16(4-A) of the Constitution of India but also beyond the parent act. As such, the rule may be declared *ultra vires*. The vacancy of Ex-serviceman(UR) in horizontal reservation category which remains unfilled cannot be carried forward to subsequent years. Therefore, the claim of the petitioner is fit to be considered in the un-reserved post left unfilled by Ex-serviceman on the basis of his own merit.

[13] On the contrary, Mr. Dipankar Sharma, learned Additional Government Advocate appearing for the State has referred to Clause 14 of the Schedule of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 which is in the following terms.

“14. There shall be 3% reservation for the Physically handicapped and 2% reservation for the Ex-serviceman only in direct recruitment. Physically handicapped and Ex-serviceman of Scheduled Caste category, Scheduled Tribe category and un-reserved category shall be accommodated respectively against the points reserved for the Scheduled Castes, the Scheduled Tribes and the Unreserved points of the 100 Point Roster. However, where posts are more than 400, the roster point shall stand extended up to 400 point to accommodate all categories i.e. Scheduled Castes, Scheduled Tribes & Unreserved. But where posts are less than 400, the reservation will be on replacement basis against the posts ear-marked and shown category-wise i.e. Scheduled Castes, Scheduled Tribes & Unreserved. The reservation for the physically handicapped and ex-servicemen shall be made according to the post based 100-point roster as well as the replacement roster in the following manner:

Cycle/Roster Point No. & Category	To be Reserved for	Category wise reservation of post on replacement basis
1/32-UR	PH-Blindness or low vision	UR-17
1/50-UR	Ex-serviceman	UR-26
1/54-ST	PH-Hearing impairment	ST-17
1/83-ST	Ex-serviceman	ST-26
1/98-UR	PH-LoCo motor disability or cerebral palsy	UR-51
2/04-SC	PH-Blindness or low vision	SC-18
2/46-UR	Ex-serviceman	UR-76
2/61-UR	PH-Hearing impairment	UR-84
2/49-SC	Ex-serviceman	SC-26
2/64-ST	PH-LoCo motor disability or cerebral palsy	ST-51
3/25-UR	PH-Blindness or low vision	UR-117
3/42-UR	Ex-serviceman	UR-126
3/43-ST	Ex-serviceman	ST-76
3/70-ST	PH-Hearing impairment	ST-84
3/90-UR	PH-LoCo motor disability or cerebral palsy	UR-151
4/04-SC	PH-LoCo motor disability or cerebral palsy	SC-52
4/38-UR	Ex-serviceman	UR-176
4/53-UR	PH-Blindness or low vision	UR-184
4/77-ST	PH-Hearing impairment	ST-117
4/99-ST	Ex-serviceman	ST-124

[14] He submits that in the absence of a challenge to the provisions of the main Act and the Schedule, challenge to Rule 13(6) should fail. Learned counsel for the State has tried to further advance his submission that provision for horizontal reservation to Ex-serviceman category though horizontal in nature cuts across all reserved categories as well including Scheduled Caste and Scheduled Tribe category as provided under Clause 14 of the Schedule to the Act of 1991. As such, it does not deviate from the ceiling of 50% fixed as per the decision in *Indra Sawhney* case. Therefore, Rule 13(6) of the Tripura

Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is not beyond the rule making power of the State Government under the parent Act.

[15] Rule 13(6) of the Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is extracted hereunder:

“13(6) In case appropriate category of Ex-serviceman and Physically handicapped persons are not available in a recruitment year to fill up the posts reserved for them, the vacant posts would be carried forward to the next recruitment year. If no suitable candidate is available in the second recruitment year, the vacant post will again be carried forward to the third recruitment year. Even, if no candidate is available in the third year, the post will be filled up by a person of appropriate category.”

[15] Learned counsel for the State-respondents has further relied upon *Aryavrat Gramin Bank versus Vijay Shankar Shukla*, reported in (2007) 12 SCC 413 to submit that there are other meritorious candidates in the waiting list after the last candidate who has been appointed. Therefore, petitioner could not be appointed on the vacant post left due to absence of any Ex-serviceman in UR category. He has referred to the list of candidates above the petitioner at Page 75 and 76 of the additional affidavit dated 11th July, 2024 filed by the respondents No.1 to 4 which is reproduced hereunder:

“That, the Teachers Recruitment Board, Tripura (TRBT) conducted the test on 17.07.2022 and after that prepared a merit sheet of candidates who scored 50% (UR category) and 45% (SC & ST category) or above in the selection test and called 59 candidates for scrutiny.

(a) Sl. No. 01 Sibu Telenga scored 120 marks out of 150. But his name was not recommended by TRBT for appointment as he was absent during scrutiny.

(b) Sl. No. 07 Bithi Chakrabarty scored 106 marks out of 150. But her name was not recommended by TRBT for appointment as she did not possess B.Ed degree before the cutoff date i.e. 20.05.2022.

(c) SL. No. 21 Mou Choudhury scored 97 marks out of 150. But her name was not recommended by TRBT for appointment as she did not possess Master degree before the cutoff date i.e. 20.05.2022.

(d) Sl. No. 23 Uma Baidya scored 95 marks out of 150. But her name was not recommended by TRBT for appointment as she did not possess Master degree before the cutoff date i.e. 20.05.2022.

(e) Sl. No 33 Deharjoy Reang scored 89 marks out of 150. But his name was not recommended by TRBT for appointment as he was absent during scrutiny.

(f) Sl. No. 40 Piyali Debnath scored 83 marks out of 150. But her name was not recommended by TRBT for appointment as her percentage of marks in Post graduation is below 50%.

(g) Sl. No 45 Shamir Debbarma and SL. No 46 Manti Karmakar both of them scored 79 marks out of SL. No. 46 Manti Karmakar was not recommended for appointment by TRBT as she did not possess Masters Degree on or before 20.05.2022.

Even if the online mart sheet of the petitioner is considered as valid than also TRBT cannot recommend her name in place of Shamir Debbarma because clause 8 of notification directs that “when two or more candidates obtain same marks, relative position would be judged in terms of seniority of date of birth of the candidates. In case date of birth is same then seniority of the date of obtaining requisite academic qualification for appearing in the said examination would be judged.

4. That, Mou Choudhury (SL. No. 21) and Uma Baidya (SL. No. 23) both received higher marks than Manti Karmakar (79 out of 150), but as they did not possess Master degree before the cutoff date i.e. 20.05.2022 like the petitioner their names are not recommended. In terms of the Scrutiny list the position of the petitioner was at serial number 46, Mou Choudhury (SL. No. 21) and Uma Baidya (SL. No. 23) were evidently above her but as they also did not possess Master degree before the cut-off date they are also not recommended by TRBT. They might not have approached the High court but it would not change the legal position. If the Respondent which is a 'State' under Article 12 of the Constitution of India was to be asked by the High Court to act in terms of the select list, it would have been obligated to appoint only those persons whose names appear high on the said list.”

[16] We have given anxious consideration to this issue. The preamble to the Tripura Scheduled Castes and Scheduled Tribes Reservation Act 1991 provides for reservation for vacancies in services and posts for the members of the Scheduled Castes and the Scheduled Tribes. Section 2(o) provides that Scheduled Castes or Scheduled Tribes shall have the same meaning as has been assigned to them respectively in Clause (24) and Clause (25) of Article 366 of the Constitution of India. Section 4 provides for reservation for Scheduled Castes and Scheduled Tribes in services and posts under the State to be filled up by direct recruitment. Seventeen percent reservation has been provided for Scheduled Castes and thirty one percent reservation for the Scheduled Tribes in the manner set out in the Schedule. Under Section 5 such reservation is also provided for admission to educational institutions and undergoing any kind of training. Section 8 provides for offences and penalties for breach of the rules.

Section 17 provides for rule making power of the State Government which is as under:

“[17.] **Power to make rules.**

(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely -

(a) The form in which every establishment shall submit annual report to the State Government regarding the number of persons recruited in such establishment.

(b) Any other matter which has to be or may be prescribed by rules made in this behalf.

(3) In making any rule the State Government may direct that a breach thereof shall be punishable [with imprisonment which may extend to five years and also with fine which may extend to rupees ten thousand.]

(4) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid for the session aforesaid the Legislative Assembly makes any modification in the rule or decides that the rule shall not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

[17] Schedule-14 of the Tripura Scheduled Castes and Scheduled Tribes Reservation (Fourth amendment) Act, of 2020 is reproduced hereunder:

2. **Amendment of the Schedule :-**

The following paragraphs are inserted below the paragraph-13 of the Schedule appended to the Principal Act:-

14. (1) There shall be 2% reservation for the Ex-serviceman in direct recruitment only. Separate roster for Ex-Serviceman accommodating the Ex-serviceman of Scheduled Castes category, Scheduled Tribes category and un-reserved category shall be prepared in accordance with the 100 Point Roster provided in the Schedule appended to the Tripura Scheduled Castes and the Scheduled Tribes Reservation Act, 1991 as below:

(a) When the cadre strength is less or up-to 100, the roster point for Ex-serviceman shall be extended up-to 100, and replacement roster shall be followed between SC Ex-servicemen and ST Ex-servicemen on alternative basis, eg- the first 50 post shall be reserved for UR Ex-Serviceman and the 99 roster point reserved for ST category, the immediate post before the 100 post shall be reserved for ST Ex-servicemen. In the next cycle the 50% roster point shall be reserved for UR Ex-servicemen and the 97th roster point shall be reserved for SC category, the immediate post before the 100 post shall be reserved for SC Ex-servicemen on replacement basis, and

(b) When the cadre strength is more than 100, the roster point shall be extended up-to 500 posts roster i.e. to covered 10(ten) reserved post for Ex-Serviceman as per 100 point roster. According to 100 points roster as provided in the Schedule appended to The Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991-

the first reserved post for Ex-serviceman shall be for UR category
the second reserved post for Ex-serviceman shall be for ST category

the third reserved post for Ex-serviceman shall be for UR category
the fourth reserved post for Ex-serviceman shall be for SC category,
the fifth reserved post for Ex-serviceman shall be for UR category,
the sixth reserved post for Ex-serviceman shall be for ST category,
the seventh reserved post for Ex-serviceman shall be for UR category,
the eight reserved post for Ex-serviceman shall be for ST category,
the ninth reserved post for Ex-serviceman shall be for UR category and
the tenth reserved post for Ex-serviceman shall be for SC category as roster given below:

Reservation position	Category-wise Reservation Roster Point
1 st reserved post for Ex-servicemen (50 th post)	50 th roster point unreserved post shall be reserved UR Ex serviceman
2 nd reserved post for Ex-serviceman (99 th post)	99 th roster point reserved for ST category, the immediate post before 100 th post, shall be reserved for ST Ex-serviceman
3 rd reserved post for Ex-serviceman (150 th post)	150 th roster point unreserved post shall be reserved UR Ex-serviceman.
4 th reserved post for Ex-serviceman (197 th post)	197 th roster point unreserved for SC category, the immediate post before 200 th post, shall be reserved for SC Ex-serviceman
5 th reserved post for Ex-serviceman (250 th post)	250 th roster point unreserved post shall be reserved UR Ex-serviceman.
6 th reserved post for Ex-serviceman (299 th post)	299 th roster point reserved for ST category, the immediate post before 300 th post, shall be reserved for ST Ex-serviceman
7 th reserved post for Ex-serviceman (350 th post)	350 th roster point unreserved post shall be reserved UR Ex-serviceman.
8 th reserved post for Ex-serviceman (399 th post)	399 th roster point reserved for ST category, the immediate post before 400 th post, shall be reserved for ST Ex-serviceman.
9 th reserved post for Ex-serviceman (450 th post)	450 th roster point unreserved post shall be reserved UR Ex-serviceman.
10 th reserved post for Ex-servicemen (497 th post)	497 th roster point reserved for SC category, the immediate post before 500 th post, shall be reserved for SC Ex-serviceman.

14(ii) Separate record shall be maintained for the Ex-serviceman to give effect to the reservation policy as enumerated in paragraph 14(i) above;

14(iii) Except as provided under paragraph 14(i) and 14(ii) above, all other matters relating to reservation of the Ex-serviceman shall be governed exclusively by executive instruction to be issued by the Government from time to time and not according to the provisions of this Act.”

[18] Schedule as provided under Sections 4 and 5 contains Clause 14 relied upon by learned counsel for the State as extracted hereinabove. In the factual background the relevant provision of the Act of 1991 and the Rule of 1991 we proceed to deal with the second issue posed earlier, i.e. whether Rule 13(6) of the 1992 Rules which provide for carry forward of unfilled vacancies of Ex-servicemen category is ultra vires the Constitution and the rule making power under the parent Act of 1991. Conceptually vertical reservation and horizontal reservation are different. We may usefully refer to the opinion of the

Apex Court, on this issue, in case of *Indra Sawhney* (supra), particularly paragraph 812 which is extracted hereunder:

812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

Horizontal reservation to an Ex-serviceman thus would cut across vertical reservation in the appropriate category. If he belongs to SC/ST category he will be placed in that quota by making necessary adjustments, similarly if he belongs to open category, he will be placed in that category by making necessary adjustments. Even after providing for those horizontal reservations, the percentage of reservations in favour of backward classes or SC/ST will remain the same.

[19] In case of *Jitendra Kumar Singh* (supra), this issue had again come up for consideration. The Apex Court, was of the clear opinion that it will not apply to the horizontal reservation in favour of women and therefore not attract the carry-forward rule. The State's action to fill up 57 unfilled vacancies reserved for women by offering them to male candidate instead of carrying them forward was held to be in consonance with the mandate of *Indra Sawhney* (supra) dated 26.02.1999. The relevant discussion on this issue is at paragraphs 83 to 85 which are reproduced hereunder :

“83. We have considered the submissions made by the learned counsel. It is accepted by all the learned counsel for the parties that these vacancies had to be filled by applying the principle of horizontal reservation. This was also accepted by the learned Single Judge as well as by the Division Bench. This is in consonance with the law laid down by this Court in Indra Sawhney case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] : (SCC pp. 735-36, para 812)

“812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4)] may be called vertical reservations, whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations—what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains—and should remain—the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

84. Paras 2 and 4 of the aforesaid Instructions which are relevant are hereunder:

“2. The reservation will be horizontal in nature i.e. to say that category for which a woman has been selected under the aforesaid reservation policy for posts for women in public services and on the posts meant for direct recruitment under the State Government, shall be adjusted in the same category only;

4. If a suitable woman candidate is not available for the post reserved for women in public services and on the posts meant for direct recruitment under the State Government, then such a post shall be filled up from amongst a suitable male candidate and such a post shall not be carried forward for future;”

The learned Single Judge whilst interpreting the aforesaid, has observed that it does not specifically provide for posts which are not filled up by women candidates to be filled up from the male candidates. This view is contrary to the specific provision contained in Para 4. The aforesaid provision leaves no matter of doubt that any posts reserved for women which remain unfilled have to be filled up from amongst suitable male candidates. There is a specific prohibition that posts shall not be carried forward for future. Therefore, the view expressed by the learned Single Judge cannot be sustained.

85. We may also notice here that in view of the aforesaid provisions, the State has not carried forward any of the general category posts reserved for women and outstanding sportspersons. Furthermore, all the posts remaining unfilled in the category reserved for women have been filled up by suitable male candidates, therefore, clearly no post has been carried forward. Therefore, the mandate in Indra Sawhney [1992 Supp (3) SCC 217:1992 SCC (L&S) Supp 1: (1992) 22 ATC 385] and G.O. dated 26-2-1999, have been fully complied with. We are also of the opinion that the conclusion recorded by the Division Bench is without any factual basis. The factual position was brought to the notice of the Division Bench in the Recall/Modification Application No. 251407 of 2007. However, the recall/modification application was rejected. We are, therefore, of the opinion that the Division Bench erred in issuing the directions to the appellants to fill in the unfilled vacancies reserved for women candidates from suitable male candidates. This exercise had already been completed by the appellant State.”

[20] Further, the same issue came up for consideration before a three Judge Bench of the Apex Court in case of *Saurav Yadav and others versus*

State of Uttar Pradesh and others, reported in (2021) 4 SCC 542. The Apex Court delineated the features of vertical reservation. It held that they can be filled only by candidates of social category concerning SC/ST/OBC. Mobility from the reserved to unreserved category is possible based on merit. In case of migration from reserved to open category, vacancy in reserved category is to be filled up by another person from the same category. Where vacancies cannot be filled up by specified categories due to shortfall of candidates, vacancies are to be carried forward or dealt with appropriately by rules. However, in respect of horizontal reservation it was held that they are not in violate pools and are premised on their overlaps and interlocking reservations. They must be calculated concurrently along with inviolate vertical reservation quotas. They cannot be carried forward. First rule for filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in merit list in open category and then in quota for such horizontal category within particular specified social reservation. In this regard, the concurring opinion of Hon'ble Justice Ravindra Bhat at paragraphs 59 to 60 of the judgment is reproduced hereunder as they are illuminating on the issue at hand.

“59. The features of vertical reservations are:

59.1. They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC).

59.2. Mobility (“migration”) from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.

59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank.

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be “carried forward” or dealt with appropriately by rules.

60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are “interlocking”

reservations [The expression used by B.P. Jeevan Reddy, J., in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1.] . As a sequel, they are to be calculated concurrently and along with the inviolate “vertical” (or “social”) reservation quotas, by application of the various steps laid out with clarity in para 21.3 [Ed. : See also paras 21.4, 21.6, para 23.11 r/w para 43 and paras 30 to 43.] of Lalit, J.'s judgment. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.”

[21] The Apex Court at paragraph 59.4 while dealing with vertical reservation held that if the vacancies cannot be filled by the specified categories due to shortfall candidates, the vacancies are to be “carried forward” or dealt with appropriately by rules. Whereas at paragraph 60, the Apex Court held that horizontal reservation on the other hand by their very nature are not inviolate pools or carved in stone. They cannot be carried forward.

[22] From perusal of Clause 14 of the amended Schedule as per the Fourth Amendment Act of 2020 to the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991, it appears that while delineating reservation for Ex-serviceman in direct recruitment, the Schedule also has prescribed category-wise reservation point to the post reserved for Ex-serviceman falling at different roster points in the cycle, sometimes available for un-reserved category of Ex-serviceman and at other times reserved for ST and SC Ex-serviceman. The Schedule has fixed roster points for accommodating or interlocking horizontal reservation guaranteed to Ex-serviceman category but even if an Ex-serviceman is to be accommodated in either of the categories, i.e. UR or SC and ST, the nature of the reservation for Ex-serviceman will not change from horizontal reservation to vertical reservation. In that event, following the ratio laid down by the Apex Court in the cases relied upon above, unfilled vacancies of Ex-serviceman cannot be carried forward to the next recruitment year. Therefore,

Rule 13(6) of the Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is contrary to the constitutional scheme under Article 16(1) read with Article 4 and 4(A) of the Constitution of India and also the law laid down by the Apex Court in case of *Indra Sawhney* (supra) and more specifically in case of *Saurav Yadav* (supra) referred to hereinabove. The only exception to carry forward unfilled vacancies of horizontal reservation has been carved out for persons suffering from disability under Section 34 sub-section (2) of Rights of Persons with Disabilities Act, 2016. As such, Rule 13(6) of the Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 being violative of the above constitutional provisions and beyond the scope of the rule making authority are held to be ultra vires.

[23] Having said so, in answer to the third question posed earlier, what relief is the petitioner entitled to? In this regard, we may usefully refer to the statements made by the respondents at paragraph 3 of the additional affidavit dated 11th July 2024 extracted hereinabove. It is apparent that the last selected candidate as per the merit list is a ST candidate, namely, Shamir Debbarma who got 79 marks out of 150. One vacancy of UR category of Ex-serviceman, however, remained unfilled as no eligible candidate was found in that category (Annexure-RR/1 and RR/2). It appears from the merit list enclosed to the affidavit of the State and the statements made in the additional affidavit dated 11th July, 2024 that there are certain candidates whose names have not been recommended as they did not possess the Master degree before the cut-off date. For example, one Mou Choudhury placed at serial No.21 had scored 97 marks, one Uma Baidya placed at serial No.23 had scored 95 marks are obviously above the petitioner.

[24] Therefore, in view of the proposition that has been held in answer to issue No.1 and 2, the respondents have to recast the merit list taking into account the list of candidates who are below the last selected candidate. This has to be done taking into account the proposition laid down by this Court that in case the results of the said candidates were published on the website of the concerned university and that the results incorporated in their online application of Post Graduation Course did match with the results furnished in the physical copy of the mark-sheet produced at the time of scrutiny, their candidature ought not to be declared ineligible for having not possessed the physical mark-sheet on the cut-off date i.e. 20th May, 2022. After recasting the list of the remaining candidates below the last selected candidate, the next successful candidate would be considered for offering appointment to the one un-reserved vacant post which remains unfilled due to unavailability of any Ex-serviceman candidate. This exercise follows the answer to the second question that the un-reserved vacancy of Ex-serviceman could not be carried forward to the next recruitment year since Rule 13(6) of the Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 has been declared *ultra vires*. The respondents would undertake this exercise within a reasonable period preferably within a period of 12 weeks from the date of receipt of copy of this judgment.

[25] With these observations and directions, the writ petition is disposed of. Pending application(s), if any, also stands disposed of.

(S. DATTA PURKAYASTHA, J)

(APARESH KUMAR SINGH, CJ)