

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

W.A. No.139 of 2023

1. Dr. Sukomal Sarkar, son of late Nirod Baran Sarkar, resident of Melarmath, Gangail Road, Agartala, P.O. Agartala, P.S. West Agartala, Sub-division Agartala, District West Tripura, aged about 54 years.

.....Appellant

_V_E_R_S_U_S_

1. The State of Tripura, through the Secretary to the Government of Tripura, Health & Family Welfare Department, New Secretariat Complex, Agartala, P.O. Agartala Secretariat, PIN-799010, West Tripura.
2. The Deputy Secretary to the Government of Tripura, Health & Family Welfare Department, New Secretariat Complex, Agartala, P.O. Agartala Secretariat, District: West Tripura, PIN-799010.
3. The Director of Medical Education, Government of Tripura, Bidur Karta Chowmuhan, Agartala, P.O. Agartala, P.S. West Agartala, District: West Tripura, PIN-799001.
4. The Principal, Agartala Government Medical College & GBP Hospital, P.O. Kunjaban, P.S. New Capital Complex, Agartala, District: West Tripura.
5. Dr. Dipen Roy, son of Sri Dilip Roy, resident of Akhaura Road, P.O. Agartala, P.S. West Agartala, District: West Tripura.

.....Respondents

For Appellant(s)	:	Mr. S. M. Chakraborty, Sr. Advocate. Mr. Somik Deb, Sr. Advocate. Mr. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing and Judgment and order	:	24.04.2024
Whether fit for reporting	:	YES/NO

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

[T. AMARNATH GOUD, JJ]

Mr. Somik Deb, learned senior counsel and Mr. S. M. Chakraborty, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the appellant also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

[2] The present appeal has been filed as per Tripura High Court Rules as per notification dated 21.03.2023 regarding practice and procedure for filing writ appeal preferred against the impugned judgment and order dated 30.08.2023 passed in WP(C) No.194 of 2022 passed by the learned Single Judge.

[3] The appellant has prayed for the following reliefs:

“i. Admit this writ appeal.

ii. Call for the relevant records, pertaining to the impugned judgment & order (Oral) dated 30.08.2023 (Annexure-8 supra), passed in WP(C) No.194 of 2023.

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 30.08.2023 (Annexure-7 supra) passed in WP(C) No.194 of 2023, and thereafter, allow this writ appeal.”

[4] The facts leading to this case, in brief is that the appellant is an MS in Orthopaedics and while working in the post of Medical Officer, under the Tripura Health Services [THS for short] he was declared as full time Registrar/Tutor vide notification dated 16.02.2012. In recognition of such service as Registrar in the Department of Orthopaedics, Agartala Government Medical College (AGMC for short) and GBP Hospital, Agartala, Head of the Department, Orthopaedics, AGMC & GBP Hospital, Agartala wrote a Letter dated 06.02.2020 to the Principal, wherein a categorical statement was made with reference to the appellant and to another Dr. Tushar Kanti Chowdhury to the effect that the said two Senior Registrars, working in the Department for the last several years deserve immediate uplift of their status to the post of Assistant Professor, but the same was not considered by the respondents. Copies of the Certificate of M.S. Degree & the Letter dated 06.02.2020, were annexed to the WP, as Annexures 1 & 3 respectively.

[5] The appellant, in the WP, contended that the In-Charge Head of the Department, the respondent No.4 had issued a Certificate dated 22.08.2017, certifying that the appellant had served in the Department of Orthopaedics as a Registrar/Senior Resident in AGMC and GBP Hospital, Agartala, under the Health and Family Welfare Department, Government of Tripura, for the period from 01.05.2011 to 25.09.2012, and that the appellant is working in the same Department as Registrar from 30.09.2016 till the date of issuance of the Certificate.

[6] Having all the eligibility to be appointed to the post of Assistant Professor in the Department of Orthopaedics, AGMC and GBP Hospital, Agartala, but for certain unintelligible reason, the respondents have not considered it necessary & appropriate to absorb the appellant in the post of Registrar/Tutor in the Department of Orthopedics in which he has been serving as such from the year 2012. Despite the devoted service of the appellant in the post of Registrar/Tutor, since his engagement, the respondents have not even paid the special allowance of Rs.3,000/- per month for working as such, and trying to disown their responsibility & liability to recognize the said service of the appellant in the post of Registrar/Tutor.

[7] The respondent No.5, who is only a Diploma holder in Orthopedics, has been absorbed as Basic Teacher in the post of Registrar/Tutor when the appellant being a holder of Masters Degree in the said subject has been ignored. By a Notification dated 12.09.2017, twenty three numbers of Medical Officers, who were working in different Grades in Tripura Health Services and were engaged as Basic Teacher (Tutor, Senior Resident, Registrar) in the AGMC & GBP Hospital within the period of 2005 to September, 2015 and still working under the AGMC as Basic Teacher have been absorbed on regular basis with effect from 22.08.2017 in the pay scale of Rs. 13,575-37,000/- with Grade pay of Rs.3,700/-, Special Allowance of Rs.3,000/- and other allowances as admissible.

[8] In the Notification dated 12.09.2017, it has been specifically mentioned that the said absorption on regular basis in the post of Basic Teachers have been made for those who were engaged as Basic Teacher in the AGMC & GBP Hospital, Agartala within the period of 2005 to September, 2015 and still working under the AGMC as Basic Teacher. The said criteria shown to have been followed by the State respondents for the purpose of regularization is not at all applicable in case of the private respondent No.5 as he never acted as Basic Teacher in the AGMC and GBP Hospital, Agartala within the period of 2005 to September, 2015.

[9] The first posting of the respondent No.5 as Medical Officer was in the year 1992 in Sonamura Rural Hospital. In the year 2000, he went for PG (Diploma) in Wardha and after completion of the same he returned in the year 2002, and joined the said Sonamura Rural Hospital. In the year 2003, he was transferred to Dharmanagar and worked there up to 2007. In the year 2007, he was

transferred to Udaipur and worked there up to May, 2012. Only in the month of May, 2012, the said respondent No.5 was transferred to the AGMC & GBP Hospital, Agartala, and thereby he had no occasion/scope to work in the post of Basic Teacher in the AGMC & GBP hospital from 2005 to September, 2015. Hence, the respondent No.5 was most wrongly & illegally absorbed in the post of Basic Teacher (Registrar/Tutor) in the AGMC & GBP Hospital, Agartala in regular capacity depriving the appellant, who has been working as Basic Teacher continuously in the said hospital, since his initial engagement with effect from 16.02.2012, and also that the appellant is a Masters Degree Holder (MS three years course in Orthopedics) when the respondent No.5 is a PG Diploma Holder in Orthopedics.

[10] Furthermore, the appellant contended that one Dr. Anupam Debnath, who has been appointed to the post of Assistant Professor in the Department of Orthopedics by notification dated 22.06.2020, who is admittedly junior to the appellant, said Dr. Anupam Debnath was appointed to the post of Assistant Professor in the AGMC & GBP Hospital, Agartala in regular capacity without following the procedure of such appointment as no open advertisement was made for the said post, inviting application from the other eligible candidates and selection through the Tripura Public Service Commission.

[11] That apart from his continuous working in the post of Basic Teacher in the AGMC & GBP Hospital, Agartala from 16.02.2012, it would appear from the Certificate dated 12.05.2011, issued by the RIMS, Imphal that during the 3 years period of Post Graduate Training, the appellant took active part in teaching programmes of the Institute.

[12] Being highly aggrieved, the appellant filed a writ petition, marked as WP(C) No.430 of 2020, inter alia praying for his regularization to the post of Registrar of AGMC & GBP Hospital, however, the said writ petition was withdrawn with a liberty to file afresh. After withdrawal of the said writ petition, the appellant submitted a Demand Notice dated 22.03.2023, upon the respondents, to regularize the service of the appellant to the post of Registrar in the Department of Orthopedics, in the AGMC & GBP Hospital, Agartala, by taking into account his past service rendered by him in the said post following the notification dated 16.02.2012, and thereby pay the arrear allowances to the appellant, which he is entitled at the rate of Rs.3,000/- per month.

[13] Seeing no response thereto, the appellant presented another writ petition, marked as WP(C) No.434 of 2021 before this Court inter alia praying for regularization of the appellant to the post of Registrar of AGMC & GBP Hospital, which was disposed of, thereby directing the appellant to approach before the appropriate forum, if he is aggrieved by any decision/action of the Government. Pursuant thereto, the appellant was under the reasonable & legitimate expectation that the respondents would consider the genuine case of the appellant in a positive manner, whereas, on the contrary, the respondent No.2 issued an Order dated 04.10.2021, thereby rejecting the claim of the appellant, regarding his regularization/absorption in the post of Registrar.

[14] In view of above and having heard the learned counsel appearing for the parties, the learned Single Judge has observed as under:

“.....14. Learned senior counsel for the petitioner at the end has submitted that since the petitioner has performed knee replacement surgery for the first time in the State of Tripura successfully in AGMC & GBP Hospital, Agartala in the year 2023, as such the respondent-authorities should consider him for being engaged/absorbed in the Tripura Medical Education Service for providing better and specialized healthcare service to the inhabitants of the State. In the present writ petition considering the nature of the challenge, this Court is not required to make any comments on such a plea. However, it is up to the competent authority under the Tripura Medical Education Department to take into consideration such plea if raised by the petitioner. Writ petition is, therefore, dismissed.....”

[15] Being aggrieved by and dissatisfied with the same, the present appeal has been preferred by the appellant before this Court for redress.

[16] Mr. S. Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the appellant has submitted that at the time of passing the impugned Judgment & Order (Oral) dated 30.08.2023, the learned Single Judge has failed to appreciate that by the notification dated 12.09.2017, it was specifically mentioned those Medical Officers (of different Grades) of THS, who were engaged as Basic Teacher (Tutor, Senior Resident/Registrar) in AGMC & GBP Hospital, within the period 2005 to September, 2015 and still working under AGMC, as Basic Teacher, were absorbed on regular basis with effect from 22.08.2017, along with the Special Allowance of Rs.3,000/- and other allowance as admissible, in AGMC under Tripura Medical Education Services (Administrative & Faculty). In such view of the matter, it can be stated that the appellant has been working in the post of Basic Teacher in the AGMC & GBP Hospital from

16.02.2012 itself, issued by the RIMS, Imphal during the 3 years training of the petitioner and as such, the appellant squarely covers the said condition of the notification dated 12.09.2017.

[17] He was engaged as Basic Teacher i.e. Registrar in AGMC & GBP Hospital and within the period of 2005 to September, 2015 the appellant joined the post of Basic Teacher from 16.02.2012. Hence, the appellant is wholly entitled to be absorbed as Basic Teacher, i.e., Registrar/Tutor in AGMC & GBP Hospital, on regular basis, with effect from the date of his initial engagement, i.e., 16.02.2012 and also the Special allowances of Rs.3,000/-.

[18] At the time of passing of the impugned Judgment & Order dated 30.08.2023 the learned Single Judge has failed to appreciate that the first posting of the respondent No.5 as Medical Officer was in the year 1992 in Sonamura Rural Hospital. In the year 2000, he went for PG (Diploma) in Wardha and after completion of the same he returned in the year 2002, and joined the said Sonamura Rural Hospital. In the year 2003, he was transferred to Dharmanagar and worked there upto 2007. In the year 2007, he was transferred to Udaipur and worked there upto May, 2012. Only in the month of May, 2012, the said respondent No.5 was transferred to the AGMC & GBP Hospital, Agartala, and thereby he had no occasion/scope to work in the post of Basic Teacher in the AGMC & GBP hospital from 2005 to September, 2015. Hence, the respondent No.5 was most wrongly & illegally absorbed in the post of Basic Teacher (Registrar/Tutor) in the AGMC & GBP Hospital, Agartala in regular capacity depriving the appellant, who has been working as Basic Teacher continuously in the said hospital, since his initial engagement w.e.f. 16.02.2012 and also that the appellant is a Masters Degree Holder whereas, on the contrary, the respondent No.5 is a PG Diploma Holder in Orthopedics.

[19] The impugned Judgment & Order dated 30.08.2023, the learned Single Judge has failed to appreciate that even though, the appellant has been performing his duties as Registrar, but he has not been paid the Special Allowance of Rs.3,000/-, since the date of his inception to the said post, i.e., 16.02.2012. In the year 2012, the appellant was holding the post of Senior Registrar, which is a Grade-III post under the THS. Thereafter, after completion of five years of service in the said post, the appellant was promoted to Grade-II, under the THS in the year 2021. Even though, Assistant Professor is a Grade II post, and the appellant was

promoted to Grade-II, but he was not given the status of Assistant Professor of Tripura Medical Education Service.

[20] Pursuant to the Notification dated 16.02.2012, the appellant absorbed as Full Time Registrar/Tutor in the AGMC & GBP Hospital, and subsequently, by various correspondences, the said status of the appellant was duly recognized. Subsequent Notification dated 12.09.2017 would not have any inroad on to the status, previously conferred on to the appellant. A contrast of the Notification dated 16.02.2012 & the Notification dated 12.09.2017 would make a revelation that none of the 14 persons, whose names find place in the Notification dated 18.02.2012, find mention in the latter Notification dated 12.09.2017.

[21] Without soliciting his consent, the appellant was sent on deputation, and thereafter, the aforementioned deputation was treated as transfer, and therefore, he continued to work in District Hospital Gomati Tripura, which was previously named as Tripura Sundari District Hospital, Udaipur. The impugned Judgment & Order dated 30.08.2023, the learned Single Judge has failed to appreciate that on being sent on deputation, as a Grade-III Medical Officer of THS, by a Notification dated 31.12.2021, the appellant was promoted to Grade-II of THS, from the feeder post of Grade-III of THS. Unless, the service in the feeder category is regular, no promotion can be accorded. In other words, a promotion pre-supposes that a government servant was holding the feeder post in a substantive capacity.

[22] It has been further contended that the post of Senior Registrar/Tutor of Tripura Medical Education Service is equivalent to the post of Grade-III of THS, and that the post of Assistant Professor of Tripura Medical Education Service is equivalent to the post of Grade-II of THS. Since, the initial appointment of the appellant was to the post of Senior Registrar/Tutor, and thereafter, only by way of deputation, and that too, without obtaining his consent, he was sent on deputation, in the equivalent post of Grade-III of THS, and consequent upon his promotion to Grade-II of THS, the lien that the appellant was holding, in the substantive capacity of Senior Registrar/Tutor of Tripura Medical Education Service, would not stand forfeited and that on to his repatriation, the appellant is entitled to urge for his restoration of his status, i.e., the corresponding status of Grade-II of THS, namely, Assistant Professor of Tripura Medical Education Service.

[23] Vide notification dated 04.08.2015, the Tripura Medical Education (Administration & Faculty) Service Conditions Rules, 2015 was promulgated, with a specific stipulation that the same would come into force, from the date of its publication in the Official Gazette. Rule-9 of the said Rules has created a legal fiction, inter alia mandating that the Registrar/Senior Resident of the AGMC & GBP Hospital would be considered as members of Tripura Medical Education (Administration & Faculty) Service Conditions, on & from the date of commencement of the service. By virtue of the notification dated 16.02.2012, the appellant on being appointed as full time Registrar/Tutor, on the strength of the said Rule of the Rules, became a member of Tripura Medical Education (Administration & Faculty) Service Conditions and the fortuitous circumstance, namely, at that relevant time, the appellant was sent on deputation, but without his consent, would not have any bearing whatsoever on to the appellant.

[24] Rule-10 of the Tripura Medical Education (Administration & Faculty) Service Conditions Rules, 2015, which inter alia conceives of option, has no application to the case of the appellant inasmuch as the Proviso appended thereto mandates that any person from THS, appointed as Basic Teacher, in the Tripura Medical Education (Administration & Faculty) Service, who has failed to be selected/appointed as Assistant Professor in the said service, shall be eligible for opting out from Medical Education Service.

[25] A bare reading of the texts of both Annexure-1 & Annexure-II of Schedule II(A), can under no circumstances, be applied to the appellant inasmuch as at the relevant time, the appellant was serving on deputation in the Tripura Health Service, and not the Tripura Medical Education Service, and neither he was holding any teaching post in any Medical College nor was he holding any post, under the Tripura Medical Education (Administrative & Faculty) Service Conditions, and therefore, given a chance, the appellant could not have fitted himself in either of the two options of Annexure-1 & Annexure-II of Schedule II(A) of the Tripura Medical Education (Administration & Faculty) Service Conditions Rules, 2015.

[26] On the relevant date, namely, 12.11.2017 as would be manifest from the notification dated 12.11.2017, the private respondent No.5 was holding a post, in the Tripura Health Service, and that at the time of his absorption, in the Tripura Medical Education Service, he was not holding any post thereat, and therefore,

applying the same yardstick as that of the appellant, the private respondent was also ineligible to be absorbed in the Tripura Medical Education (Administration & Faculty) Service Conditions Rules, 2015. As such, the impugned Judgment & Order dated 30.08.2023, passed by the learned Single Judge, needs set aside.

[27] Mr. M. Debbarma, learned Addl. G.A. has submitted that the appellant was never appointed on regular post to the post of full time Registrar/Tutor as per the said notification. The appellant is not similarly situated with others who have exercised their option in the option form and submitted accordingly, and after that they were absorbed as Basic Teacher (Registrar) in the Department of Orthopaedics, AGMC & GBP Hospital, whereas, other doctors had also exercised the said option submitted the same within the stipulated time period.

[28] Furthermore, it has been contended that Dr. Dipen Roy has completed Post Graduate Diploma in Orthopaedics, in the year 2001, whereas, Dr. Sukomal Sarkar was only MBBS till 2010. Therefore, it is evident that the appellant was less qualified than Dr. Dipen Roy at that time. Since, the appellant has not impleaded said Dr. Anupam Debnath as a party to the writ petition, no relief could be granted to the appellant.

[29] The appellant never joined or served as a fulltime Registrar/Tutor and therefore has never got the benefit for the said post. In support of the said claim, the appellant failed to submit the joining report as Registrar/Tutor, neither could he place any document showing that he drew Rs.3000/- as a special allowance for the said post. Furthermore, according to Tripura Medical Education (Administrative & Faculty) Service Conditions Rules, 2015, there is no post named as "Senior most Registrar" or "Senior Registrars", as mentioned in the Letter dated 06.02.2020 (Annexure-3 to the connected WP).

[30] Pursuant to the joining of his service, the respondent No.5 started serving as Registrar from 08.11.2014 and thereafter, on 13.11.2014 he was declared as fulltime Registrar in Department of Orthopaedics in GBP & AGMC Hospital. It was further contended that the appellant was first sent on deputation and thereafter the aforementioned deputation was treated as transfer and therefore, he continued to work in District Hospital Gomati Tripura, which was previously named as Tripura Sundari District Hospital, Udaipur. The appellant was subsequently transferred from District Hospital Gomati Tripura. Udaipur to AGMC and GBP

Hospital by Order dated 08.09.2016, wherein the post of the appellant was referred to as Grade-IV of THS.

[31] The Tripura Medical Education (Administrative & Faculty) Service Conditions Rules, 2015 (referred to as the Principal Rules, 2015) came into effect on 21.09.2015. The said Service Conditions Rules, 2015 were framed under proviso to Article-309 of the Constitution of India and all other enabling powers in this behalf. The appellant has neither exercised the option for absorption nor is eligible for such absorption. The appellant after being deputed to the Tripura Sundari Hospital, Udaipur continued to work over there and thereafter his deputation was converted into transfer and/or he was transferred to Tripura Sundari Hospital, Udaipur (presently known as District Hospital Gomati Tripura).

[32] It was further alleged that the appellant claimed to be the Registrar of Orthopaedics Department, which falls under the Tripura Medical Education, and again, the appellant stated that he was promoted from Medical Officer, Grade-III to Medical Officer, Grade-II, which is under the Tripura Health Service. Both the claims made by the appellant on out in Paragraphs 6 & 7 are contradictory to his statement made on oath, in Paragraph-11, as one person cannot hold two posts simultaneously in different departments. The appellant failed to show any document that he even applied to be absorbed as a faculty teacher in due time and under due procedure. The contentions of the appellant are completely false and hence should be dismissed. The appellant had suppressed various documents along with the Principal Rules, 2015 along with the amendments, with a mala-fide intention.

[33] In view of above and having heard the learned counsel appearing for the parties, we are of the opinion that the representation was rejected by the competent authority but, the reasons as assigned in the order is not satisfactory explained. In that impugned order only 2015 Rules referred and under Rule 5(b) his option has not been exercised, thus rejected his case. It has been specifically said that on the date of appointment he should exercise his option so on the date of his appointment in 2012 question of option does not arise thus, how these 2015 rules can be made retrospective effect. Unless an express provision is made and also gives all those employees who are appointed prior to 2015 Rule to sensitize them about the new rules that they are to exercise their option since 2012 they have not exercised their option and for that, appropriate time was also given, such attempt

was not taken by the respondent. So in such case did the respondent inform him that according to new rules option is necessary and the appellant has to exercise his option.

[34] What happened to the procedure that the respondents suppose to follow that has not been uttered in the impugned order and opportunity was also not given for his option and that is why the appellant did not exercise his option. According to Rule-5(b) of the rules, at the time of appointment the appellant has to exercise his option. Since there is no specific reply to this question, it can be presumed that this rule has not applicability in the case in hand. Now, by way of 2016 amendment, the appellant falls under this amendment and in terms of this rule whether the respondents gave an opportunity for exercising the option or the appellant is not at all eligible for the same, nothing has been uttered by the respondent side. More so, the Rules referred is 2015 and the appointment is of 2012. Rule-5(b) cannot have retrospective effect on 2012. The impugned order of the respondent is a non-speaking and un-reasoned order on the said issue. There is no discussion by the respondent in the impugned order about amended Rules and opportunity of option. When the Rules are framed in 2015, the appointment is much before and thus it cannot be said or construed that the petitioner is supposed to exercise option *suo moto*. It is the bounded duty of the government respondents to sensitize its employees about the change in service conditions subsequent to their appointment.

[35] In view of the law as has been articulated in a large number of cases where this Court has observed that any discriminatory action on the part of the government would be liable to be struck down. Hence, in this case, it can safely be said that the appellant was not provided opportunity to exercise his option. In absence of any such material it can well be inferred that the appellant had no knowledge about the option called by the respondents.

[36] In that view of the matter, this Court is of the considered view that ends of justice would be met if the matter is remand back to the appropriate authority for fresh adjudication and take steps in accordance with law as early as possible. And accordingly, the same is ordered. Thus, the order of the learned Single Judge and the impugned proceeding of rejection stand set aside since the same are unreasoned. As a sequel, miscellaneous applications pending, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

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