

HIGH COURT OF TRIPURA
AGARTALA
WP(C) 844/2021

1. Sri Rajib Halder, son of Shri. Santosh Halder, resident of village - Santirbazar, PO and PS - Santirbazar, District - South Tripura, Pin – 799114, Age-39.
2. Sri. Abhimanyu Debnath,
Son of Shri. Makhanlal Debnath, resident of Village Dhaleshwar, road no.10, P.O - Dhaleshwar, P.S - East Agartala, District - West Tripura, Pin – 799007, Age-38.
3. Sri. Ratnadip Purkayastha,
Son of Sri. Ranjit Purkayastha, resident of Shyamalima Apartment, near ILS Hospitals, P.O - Secretariat, District - West Tripura, Pin – 799010, Age-40.
4. Smt. Anita Das,
Wife of Sri. Ramakrishna Debnath, resident of - Paradise Chowmuhani, PO - Agartala, P.S - West Agartala, District - Tripura, Pin – 799001, Age-39.
5. Smt. Ruparna Banik,
Wife of Rakesh Das, resident of Village - Rabindrapally, Quarter Complex, near Paradise Chowmuhani, P.O - Agartala, West Tripura, PIN – 799001, Age-40.
6. Sri. Indrajit Roy,
Son of late Surya Mohan Roy, Bardowali, Near Chowdhury Mill, Agartala, PO and P.S - A.D Nagar, District - Tripura, Pin – 799003, Age-38.
7. Sri. Ashutosh Das,
Son of Jagadish Das, resident of Village Chulubari, PO - Bamanchara, P.S - kamalpur, District - Dhalai Tripura, PIN – 799286, Age-37.
8. Sri. Sudipta Das,
Son of Late Samarendra Das, resident of village - Kalachari No.1, PO - Garadtilla and P.S - Santirbazar, District - Tripura, Pin – 799114, Age-40.
9. Sri. Prasenjit Laskar,
Son of Late Badal Lascar, resident of village - Ujan Abhoynagar, Near ward Office No.11 District - Tripura, Pin – 799005, Age-41.
10. Sri. Amitabha Deb,
son of Late Ajit Kumar Deb, resident of Village - Chaudhury Tilla, Indranagar, Agartala, District - West Tripura, PIN – 7990022, Age-40.
11. Sri. Karnajit Chowdhury,
Son of Sri. Kinkar Chowdhury, resident of village - Ramnagar Road no.9, Agartala, District - Tripura, Pin – 799002, Age-40.

12. Sri. Bhaskar Deb

Son of Sri. Bhanu Chandra Deb, resident of Village - Ramnagar Road No.4,
P.O - Ramnagar, P.S - West Agartala, PIN – 799002, Age-39.

-----Petitioner(s)

Versus

1.The State of Tripura,

Represented by the Commissioner and Secretary, Public Works Department,
Government of Tripura, having his office at New Secretariat Complex, PO -
Kunjaban, PS - New Capital Complex, Sub-Division - Sadar, District - West
Tripura.

2.The Commissioner and Secretary,

Public Works Department, Government of Tripura, having his office at New
Secretariat Complex, P.O - Kunjaban, P.S - New Capital Complex, Sub-
Division - Sadar, District - West Tripura.

3.The Deputy Secretary,

Public Works Department, Government of Tripura, having his office at New
Secretariat Complex, PO - Kunjaban, P.S - New Capital Complex, Sub-
Division - Sadar, District - West Tripura.

4.The Chief Engineer,

Public Works Department, Government of Tripura, having his office at New
Secretariat Complex, P.O - Kunjaban, P.S - New Capital Complex, Sub-
Division - Sadar, District - West Tripura.

5.The Tripura Public Service Commission,

Represented by its secretary, having his office at Akhaura Road, P.O -
Agartala, P.S - West Agartala, Sub-Division - Sadar, District - West Tripura.

6.The Secretary,

Tripura Public Service Commission, having his office at Akhaura Road, P.O -
Agartala, P.S - West Agartala, Sub-Division - Sadar, District - West Tripura.

-----Respondent(s)

WP(C) 1028/2022

1.Sri Jitendra Kumar Das (41 years),

S/o- Sri Monoranjan Das, East Shibnagar, P.N, Deb Road, Dist.- West
Tripura, Pin-799004.

2.Smt. Smita Saha (36 years),

W/o- Sri Subhadip Roy, Flat no- 2A4, 2nd Floor, Dream Exotica Apartment,
VIP Road, Pin- 799006, Dist.- West Tripura.

3.Sri Bimal Chandra Barman (36 years),

S/o-Sri Raiharan Barman, P.O-Bezimara, Sonamura Dist.- Shepahijala,
Tripura.

4.Sri Nirmal Kundu (36 years),
S/o-Sri Kajal Kundu, near Jogendranagar Girl's school, Agartala, West
Tripura, Pin-799004.

5.Sri Sudip Deb (37 years),
C.o-Lt. Kajal Kanti Deb, R.o- Dhaleswar, Road 10,P.O-Dhaleswar, Dist.-
West Tripura, Pin- 799007.

6.Sri Manab Chowdhury (37 years),
S.o- Sri Sachitra Chowdhury, R.o- K.K. Nagar, Bishalgarh, Dist.- Shepahijala
Tripura, Pin- 799102.

7.Smt. Nandita Sarkar (36 years),
W/o- Sri Rupen Das, R/o- Matripalli, Badharghat, P.O-A.D. Nagar, Pin-
799003, Dist.- West Tripura.

8.Sri Sarbajit Karmakar (35 years),
S.o- Sri Lakshmi Narayan Karmakar, R/o-Type-3/20, Housing Broad
Complex, Chanban, Udaipur, District - Gomati Tripura, 799120.

... Petitioner(s)

Versus

1.The State of Tripura,
Represented by the Secretary to the Government of Tripura, PWD (Roads and
Buildings), New Capital Complex, P.O- Kunjaban, P.S- N.C.C. Dist.-West
Tripura, Pin-799006.

2.The Secretary to the Government of Tripura,
Department of Finance, New Capital Complex, P.O- Kunjaban, P.S-N.C.C,
Dist.-West Tripura, Pin-799006.

3.The Chief Engineer, PWD (R & B),
Government of Tripura, New Capital Complex, P.O- Kunjaban, P.S- N.C.C,
Dist.-West Tripura, Pin-799006

4.Tripura Public Service Commission,
Represented by Chairman, Akhaura Road, Agartala, Tripura, Pin-799001,
Dist.-West Tripura.

5.Sri Sanjib Kumar Deb,
TES Grade -IV (Asst. Engineer).

6.Sri Abhijit Deb
TES Grade -IV (Asst. Engineer).

7.Sri Sudipta Bhowmik
TES Grade -IV (Asst. Engineer).

8.Sri Biswajit Paul,
TES Grade -IV (Asst. Engineer).

9.Sri Siddhartha Sankar Deb,
TES Grade -IV (Asst. Engineer).

10.Sri Partha Pratim Debnath,
TES Grade -IV (Asst. Engineer).

11.Sri Biswajit Majumdar,
TES Grade-IV (Asst. Engineer).

12.Sri Simitabha Chakraborty,
TES Grade -IV (Asst. Engineer).

13.Sri Surajit Debnath,
TES Grade-IV (Asst. Engineer),

14.Sri Smriti Debnath,
TES Grade-IV (Asst. Engineer).

15.Sri Partha Roy,
TES Grade -IV (Asst. Engineer).

16.Sri Subhash Chandra Debnath,
TES Grade -IV (Asst. Engineer).

17.Sri Sukanta Majumdar,
TES Grade -IV (Asst. Engineer).

18.Sri Siddhartha Bhattacharjee,
TES Grade-IV (Asst. Engineer).

19.Sri Rabin Dey,
TES Grade -IV (Asst. Engineer).

20.Sri Jayanta Chowdhury,
TES Grade -IV (Asst. Engineer).

21.Sri Raja Das,
TES Grade -IV (Asst. Engineer).

22.Sri Chayan Das,
TES Grade -IV (Asst. Engineer).

23.Sri Titu Debnath,
TES Grade -IV (Asst. Engineer).

24.Sri Sribash Banik,
TES Grade -IV (Asst. Engineer).

25.Sri Anika Das,
TES Grade-IV (Asst. Engineer).

26.Smt. Sangeeta Chakraborty Goswami,
TES Grade -IV (Asst. Engineer)

27.Sri Tapan Chandra Paul,
TES Grade -IV (Asst. Engineer).

28.Sri Partha Sarathi Banik,
TES Grade -IV (Asst. Engineer).

29.Sri Biplab Bhowmik,
TES Grade -IV (Asst. Engineer).

30.Sri Bulbul Chandra Das,
TES Grade -IV (Asst. Engineer).

31.Sri Rajat Chakraborty,
TES Grade -IV (Asst. Engineer).

32.Goutam Ghosh,
TES Grade -IV (Asst. Engineer).

33.Smt. Jhuma Rani Das,
TES Grade -IV (Asst. Engineer).

34.Sri Partha Sarathi Bhowmik,
TES Grade -IV (Asst. Engineer).

35.Sri Anjan Biswas
TES Grade -IV (Asst. Engineer).

The notices upon the respondent Nos. 5 to 35 are to be served through the Engineer-in-Chief, Public Works Department, Government of Tripura, Civil Secretariat, New Capital Complex, P.O.- Agartala Secretariat - 799010, District - West Tripura.

...Respondents.

In WP(C) 844 of 2021

For the petitioners : Mr.Somik Deb, Sr. Advocate.
Mr. P. Debbarma, Advocate.

For the respondents : Mr. D. Sarma, Addl. G.A.
Mr. Raju Datta, Advocate.

In WP(C) 1028 of 2022

For the petitioners : Mrs. S. Deb(Gupta), Advocate

For the respondents : Mr. D. Sarma, Addl. G.A.
Mr. P. Roy Barman, Sr. Advocate.
Mr. Raju Datta, Advocate.
Mr. K. Nath, Advocate.

Date of hearing &
delivery of judgment : **02.12.2024**
and order

Whether fit for : No
reporting

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order(oral)

The matters are taken up together since common questions of law and facts are involved in both the writ petitions.

2. By means of filing the above two writ petitions, the petitioners have challenged the fitment of the private respondents as promotee to the post of Assistant Engineer. The claim of the petitioners is that since the private respondents are fitted against the posts under promotional quota, their prospect of promotion to the post of Assistant Engineer is stalled.

3. The fact of the case is that the private respondents were appointed under the 'Tripura Engineering Service Rules, 1989' [for short, 'Rules of 1989'] prior to the appointment of the petitioners. In the year 2007 the Rules of 1989 had been amended. The private respondents had challenged the 'Tripura Engineering Service (4th amendment) Rules, 2007' [for short, 'Rules of 2007'] by way of filing a writ petition before this Court ventilating their grievances that their right which they accrued under the Rules of 1989 had been curtailed by the amended Rules of 2007. The matter was heard by this

Court and this Court while disposing of WP(C) No. 290 of 2008, tilted as **Shri Rajesh Ghosh & Ors. Vs. The State of Tripura & Ors.** held and directed as under:

“10. Therefore, the writ petition is partly allowed. The challenge to the constitutional validity of the amendment made in the Rules in 2007 is not accepted. However, a writ is issued that 12% of the vacancies in Grade-IV in the rank of Assistant Engineer existing prior to 23rd April, 2007 shall be filled up on the basis of the departmental examination. The State shall framed the syllabus for such examination within 3(three) months from today. Thereafter, the Public Service Commission should complete the entire examination process within three months thereafter.”

4. In terms of the said direction, the State proceeded and the Tripura Public Service Commission [for short, ‘TPSC’] conducted examination. The petitioners, the private respondents herein participated in the examination and having succeeded they were appointed to the post of Assistant Engineer in the year 2015. A notification was issued by the State-respondents where they were treated as direct recruitee, which, thereafter was rectified by the same respondents treating them as promotee to the post of Assistant Engineer. Here is the grievance of the petitioners.

5. According to the petitioners, in the present two writ petitions, the private respondents should be treated as direct recruitee and should not be treated as promotee to the post of Assistant Engineer.

6. On the aforesaid facts, I have heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Debbarma, learned counsel and Mrs. S. Deb (Gupta), learned counsel appearing for the petitioners. I have also heard Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents, Mr. Raju Datta, learned counsel appearing for the respondent-TPSC and Mr. P. Roy

Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the private respondents.

7. Both Mr. Deb, learned senior counsel and Mrs. Deb(Gupta), learned counsel appearing for the petitioners have submitted in similar tune that though the private respondents had been appointed as Assistant Engineer through departmental examination, yet they should be treated as direct recruitee in terms of the Rules of 2007, but, the State-respondents have committed serious error of law when they have treated the private respondents as promotee in terms of the previous repealed Rules of 1989.

8. On the other hand, Mr. Sarma, learned Addl. G.A. appearing for the State-respondents along with learned counsel appearing for the private respondents have in similar tune submitted that the private respondents were appointed to the post of Assistant Engineer on promotion. In pursuance of the Courts order, this Court in the case of **Rajesh Ghosh** (supra), has not accepted the constitutional validity of amended Rules of 2007. However, the Court had permitted the State-respondents to take departmental examination. The private respondents were appointed through departmental examination. As such, the posts against which the private respondents were appointed, those posts should be treated as promotional posts and their fitment against the promotional quota is valid.

9. Mrs. Deb(Gupta), learned counsel appearing for the petitioners in WP(C) No. 1028 of 2022 has cited a judgment passed by Hon'ble Supreme Court in **State of Himachal Pradesh & Ors. Vs. Raj Kumar & Ors.**, reported in **2022 LiveLaw (SC) 502**.

10. I have perused the said decision and considered that the facts of that case are not in any way relevant to the facts of these writ petitions.

11. I have considered the submissions of learned counsel appearing for the parties.

12. The petitioners of the present two writ petitions and the private respondents were first appointed as Junior Engineer Grade-I (Degree holder). The private respondents were senior to the present petitioners. While the private respondents were discharging their duties as Junior Engineer Grade-I, the State-respondents came up with an amendment of Rules of 1989 abolishing the process of promotion on the basis of departmental examination. The private respondents had challenged it stating *inter alia* that their vested right had been curtailed by the amended Rules of 2007. The Court considered the issues involved in the case of **Rajesh Ghosh** (supra) and held that the amended Rules should be given prospective effect and the petitioners, the private respondents herein, had acquired vested right prior to the amended Rules. Ultimately, the Court directed that 12% of the vacancies in Grade- IV in the rank of Assistant Engineer existing prior to 23rd April, 2007 would be filled up on the basis of departmental examination. This decision or direction of the Court has not been challenged. Thereafter, departmental examination was conducted and the private respondents were appointed to the post of Assistant Engineer.

13. According to this Court, considering the methodology of appointment of the private respondents, in the rank of Assistant Engineer cannot be treated as direct recruitee. Departmental examinations are meant for departmental candidates i.e. the internal candidates. Direct recruitment is

made only from freshers i.e. fresh candidates. As such, the submission of learned counsel appearing for the petitioners that the appointments of the private respondents should be treated as direct recruitee cannot in any way be accepted. Accordingly, the said submission is rejected.

14. Admittedly, the private respondents were appointed in the post of Assistant Engineer as departmental candidates and having passed departmental examination they were appointed in the rank of Assistant Engineer on promotion. So, their treatment as promotee and availing the vacancies of promotional quota of Assistant Engineer cannot be interfered with.

15. As such, the challenge made in these two writ petitions cannot sustain and accordingly, both the writ petitions stand dismissed.

JUDGE

