

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.188 of 2019

1. Rupak Das, son of Sri Ramendra Kumar Das, Resident of Vill. and P.O.- Masli, P.S.- Manu, District- Dhalai, Tripura.
2. Uttam Podder, S/o Rabati Mohan Podder, Amjadnagar, P.O. Sarasima, Belonia, South Tripura.
3. Somen Karmakar, S/o Jagabandhu Karmakar, Near ICDS No.8 tilla Bijohnagar, South Tripura (PIN 799145).
4. Gayatri Chakraborty, D/o Sri Sibesh Chakraborty, 152, Madhya Banamalipur, Agartala.

..... Appellant(s)

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Health and Family Welfare Department, New Secretariat, P.O.- New Capital Complex, Agartala, West Tripura.
2. The Director of Health Services, Government of Tripura, Pandit Nehru Complex, Gorkhabasti, P.O.- Kunjaban, Agartala, West Tripura.
- 2(A). Dr. Biplab De, Asstt. Professor, Regional Institute of Pharmacy Science and Technology (RIPSAT), Agartala (Tripura).
- 2(B). Dr. Chandan Debbarma, now posted as SDMO, Longthari Valley, Dhalai District, Tripura.
- 2(C). Dr. Ranjit Chatterjee, Br. Officer (Homeo), Directorate of Health Service, Agartala, Tripura,
- 2(D). Shri Maharam Debbarma, Special Officer (TW) (Retired), Superi-bagan (near Dasarath Bhavan), Krishna nagar, Agartala, 799001.
- 2(E). Shri Ratan Mallik, Extension Officer, Directorate for Welfare of Scheduled Castes, Pandit Nehru Complex, Agartala 799006.
3. Sri Soumen Pal, son of Sri Santosh Pal, Resident of Vill- Durganagar, P.O.- Ranirbazar, West Tripura.
4. Sri Shimul Chakraborty, son of Sri Milan Chakraborty, Resident of Vill- Tolamura, P.O.- Jitendranagar, Udaipur, Gomati, Tripura.
5. Sri Jayanta Baidya, son of Badal Baidya, Resident of Vill- Shanchandranagar, P.O.- Subhasnagar, Belonia - 799155, South Tripura.
6. Sri Rahul Dey, son of Late Subal Dey, Resident of Vill- Sukanta Palli, P.O.- Manu Bazar, Sabroom, South Tripura.

7. Sri Dipak Biswas, son of Sri Dulal Biswas, Resident of Vill- South Chandrapur, Udaipur – 799120.
8. Smt Indrani Nath, wife of Sri Victor Das, Resident of Vill and P.O.- Khas Chowmuhan, Melaghar, Sepahijala, Tripura.
9. Sri Raju Pal, son of Manik Chandra Pal, Resident of Vill- East Badharghat, P.O.- Madhuban – 799003, Agartala, West Tripura.
10. Sri Litan Miah, son of Tajul Islam, Resident of Vill and P.O.- East Kanchanbari - 799264, Natun Bazar, unakoti, Tripura.
11. Md. Safar Uddin, son of Md. Kutu Miah, Resident of Vill- North Fulbari, P.O.- Fulbari, North Tripura - 799262.
12. Sri Subhendu Nath, son of Sri Shib Charan Nath, Resident of Vill - Madhuban Road, Paddapur, P.O.- Dharmanagar, North Tripura.
13. Sri Rassel Ahmad, son of Sri Farid Miah, Resident of Vill - Durganagar, Bishalgarh, Sepahijala, PIN - 799102, Tripura.
14. Sri Prasenjit Debnath, son of Late Narayan Debnath, Resident of Vill - Baidyar Dighi (Kasba), P.O.-Dhajanagar, PS- Bishalgarh, Sepahijala, Tripura, PIN- 799102.
15. Smt. Bina Saha, wife of Priyadyuti Barman, Resident of Vill - Dharmanagar, P.O. and P.S - Teliamura, Khowai, Tripura, PIN - 799205.
16. Sri Suraj Kumar Nath, son of Sri Bhola Chandra Nath, Resident of Vill - West Jalefa, P.O.- Jalefa Bazar, Sabroom, South Tripura.
17. Md. Islam Uddin, son of Fazlu Miah, Resident of Vill - Dhaliarkandhi, P.O.- Tilla Bazar, P.S.- Irani, Kailashahar, Unakoti, Tripura.
18. Sri Ruhidas Debanth, son of Sri Shyamal Debnath, Resident of Vill - North Muhuripur, P.S.- Baikhora, P.O.- Muhuripur, Santirbazar, South Tripura, PIN - 799142.
19. Sri Jakir Miah, son of Sri Manik Miah, Resident of Vill - Tamshabari, Uttar Oara, P.O. and P.S. - Sonamura, Sepahijala, Tripura, PIN - 799131.
20. Sri Baptu Chanda, son of Bhanu Pratap Chanda, Resident of Vill and P.O. - Gakulnagar, P.S. - Kumarghar, Unakoti, Tripura, PIN - 799290.
21. Sri Mithun Debnath, son of Sri Suresh Debnath, Resident of Vill - Haripur, P.S. - Hrishmukh, P.S. - Belonia, South Tripura, PIN - 799156.
22. Sri Keshab Debnath, son of Sri Durjamani Debnath, Resident of Vill - Paschim Ghilatali, P.O. - Ghilatali Bazar, P.S. - Kalyanpur, Teliamura, Khowai, Tripura, PIN - 799203.

23. Smt. Sunita Ghosh, daughter of Himal Ghosh, Resident of Vill - Krishnanagar, Belonia, South Tripura.
24. Sri Sekhar Das, son of Chatal Chandra Das, Resident of Vill - South Maheshpur, P.O. - Kathalia, Sonamura, Sepahijala, Tripura.
25. Sri Samir Das, son of Kumud Ranjan Das, Resident of Vill - Maheshkhola, P.O. - Anandanagar, West Tripura, PIN - 799004.
26. Smt. Rakhi Das Baisnab, wife Suprasad Patanayak, Resident of Vill and P.S. - Baikhora, Santirbazar, South Tripura.
27. Sri Banti Das, son of Manik Das, Resident of Vill - Durgapur, P.O. - Rajnagar, P.S. - P.R.Bari, Belonia, South Tripura, PIN - 799150.
28. Sri Manash Das, son of Late Paresh Das, Resident of Vill and P.O. - Chhailengta, LTV, Dhalai, Tripura.
29. Sri Nirmal Das, son of Bisnucharan Das, Resident of Vill - Balurchara, P.O. - M.T. Para, P.S. - Teliamura, Khowai, Tripura, PIN - 799205.
30. Sri Debabrata Das, son of Sri Laxman Das, Resident of Vill and P.O. - N.B.C. Nagar, P.S. - Belonia, South Tripura, PIN - 799155.
31. Sri Sunil Sarkar, son of late Sentu Sarkar, Resident of Vill - South Ghilatali, P.S. - Ghilatali Bazar, P.S. - Kalyanpur, Khowai, Tripura, PIN - 799203.
32. Sri Mintu Das, daughter of Harendra Das, Resident of Vill and P.O. - Rajnagar, Udaipur, Gomati, Tripura, PIN- 799116.
33. Sri Suman Das, son of Sri Rakhal Das, Resident of Vill and P.O. - Madhavnagar, P.S. - Manubazar, Sabroom, South Tripura, PIN - 799156.
34. Sri Hemendra Tripura, son of Barna Chandra Tripura, Resident of Vill - North Kalapania, P.O. - Satchand, P.S. - Manu Bazar, Sabroom, South Tripura.
35. Sri Victor Debbarma, son of Sri Subhas Debbarma, Resident of Vill - Kasham Kobra, P.O. and P.S. - Mandai, West Tripura, PIN - 799245.
36. Sri Utpal Debbarma, son of Sri Rabindra Debbarma, Resident of Vill and P.O. and P.S. - Lefunga, West Tripura, PIN - 799210.
37. Sri .Joygan Bongcher, son of Sri Saman Kumar Bongcher, Resident of P.O. and P.S. - Taidu, Garjan Tilla, Gomati, Tripura, PIN - 799101.
38. Smt. Bani Debbarma, daughter of Late Bisnu Debbarma, Resident of Vill - Jangaliapara, Bishramganj, P.O. and P.S. - Bishramganj, Sepahijala, Tripura, PIN - 799103.

39. Sri .Dhanaraj Debbarma, son of Sri Dhurjati Prasad Debbarma, Resident of Vill - Krishnanagar, near TRTC, Thakur Palli Road, Agartala, PIN - 799001.
40. Sri Nexon Chakma, son of Sri Susendra Chakma, Resident of Vill - Srirampur, P.O. and P.S. - Kanchanpur, North Tripura, PIN - 799270.
41. Smt. Karabi Debbarma, daughter of Sri Bishnu Charan Debbarma, Resident of Vill and P.O. - Manik Bhandar, P.S. - Kamalpur, Dhalai, Tripura, PIN - 799287.
42. Sri .Dipu Debbarma, son of Sri Rabi Chandra Debbarma, Resident of Vill - Anandamoni Sadhu Para, P.O. - T.E.College (NIT), P.S. - Jirania, West Tripura, PIN - 799046.
43. Sri Sambhu Lal Chakma, son of Sri Kripamoy Chakma, Resident of Vill and P.O. and P.S. - Manikpur, LTV, Dhalai, Tripura, PIN - 799273.
44. Sri Tutan Debbarma, son of Sri Dharendra Debbarma, Resident of Vill and P.O. - Behalabari, P.S. - Champahour, Khowai, Tripura, PIN- 799201.
45. Sri Swkangrai Jamatia, son of Biswajaga Jamatia, Resident of Vill - Dewanbari, P.O. - Pitra, P.S. - Killa, Udaipur, Gomati, Tripura, PIN - 799116.

..... Respondent(s)

For Appellant(s) : Mr. S. M. Chakraborty, Sr. Advocate,
Mr. G.K. Nama, Advocate,
Ms. P. Chakraborty, Advocate.

For Respondent(s) : Mr. Pradyot Maishan, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. D. PURKAYASTHA

Date of hearing : **08.01.2024**

Whether Fit for Reporting : **YES**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Mr. G. K. Nama, learned counsel together with Ms. P. Chakraborty, learned counsel for the appellants. Also heard Mr. Pradyot Maishan, learned counsel for the State.

[2] This appeal arises out of the judgment dated 30.07.2019 passed in WP(C) No.664 of 2017 by 4(four) out of the 11(eleven) writ petitioners. The writ petitioners had laid a challenge to the selection process to the post of Pharmacist (Allopathy) under employment notification dated 27.05.2016 to be filled up from the eligible candidates having essential qualifications/ experience. For the post of Pharmacist (Allopathy), 80 posts were advertised containing the breakup of the vacancies as per the Unreserved and Reserved categories. The candidates required the essential qualifications of H.S.(+2 stage) with science passed from recognized institution and Diploma in Pharmacy from a recognized institution. The recruitment was held under revised General Employment Guidelines contained in memorandum dated 23rd July, 2016 which provided for selection of candidates by open interview for Group-C and Group-D posts to be filled up by direct recruitment. The writ petitioners alleged malpractices in the selection exercise. They alleged that less than one minute time was allotted per candidate for interview which was too short and absurd. The petitioners have admitted that none of the candidates were asked a single question. Even some of the members of the interview board were not present when the petitioners were interviewed and there was no direction in the advertisement for producing any evidence of income but the petitioners had admitted that they were called upon to state and produce testimonials relating to their status as BPL/AAD. The interview board ought to have followed the Employment Guidelines of 2016 and selected the suitable candidates based on the policy parameters viz.-

(1) Merit on result - 75 marks.

(2) Seniority- 15 marks, 1 for each year from the year of passing.

(3) Need i.e. family with income below 1.5 lakh and the family without a government employee.

[3] Writ petitioners had urged this Court to declare the selection process as unfair, improper, illegal and fraught with extreme malpractices. They sought quashing of the appointment of selected candidates who were impleaded as private respondents.

[4] The official respondents replied the allegations made by the petitioners and asserted that by a fair process, the interview board had ascertained the academic performance, personality, aptitude, general performance etc. in the interview by questioning the candidates who were interviewed. Thereafter, on the basis of the recommendation of the interview board the appointments were made from the selected candidates only. They have categorically asserted that the petitioners knowing fully well the method of selection by walk-in-interview appeared before the interview board without raising any objection at all. The objection was raised after completion of the recruitment process when they were not selected. They also stated that recommendations have been made in strict adherence to the guidelines. Writ petitioners are estopped from raising any question against the selection process after participating in the process without demur.

[5] The respondents Nos.1 & 2 had filed an additional reply on 28.2.2019 before the Writ Court stating that the interview board was formed according to the government policy.

[6] Rejoinder affidavit was also filed by one of the writ petitioners reiterating the contentions made in the writ petition. It was also asserted that no information was available to the board for assessing the income profile for purpose of determining whether one candidate can be brought within the 'need' category. One example of Soumen Pal has been cited but without further reference or details.

[7] The learned Advocate General representing the State had produced the records of the selection process under File No.2(1-273)-MS/Estt/2017 relating to the appointment of the Pharmacist (Allo) under the Health and Family Welfare Department and the supplementary File No. 2(1-273)-MS/Estt/2017(Sub-IV) relating to appointment of Pharmacist(Allo), Laboratory Technician and O.T. Assistant in terms of the order dated 04.10.2018 as taken note of in para 11 of the impugned judgment. Learned Advocate General had also emphatically submitted that the allegations are without any foundation and these are on mere assumptions without any valid foundation. The guidelines were properly observed as would be evident from the records. Learned Advocate General also took the writ court to the records of assessment in the selection process, the formation of various boards and submitted that the selection was properly made and thereafter panels were prepared for the Unreserved and Reserved Categories. No allegations of bias was attributed to the selection board. Moreover, the allegations of high handedness, nepotism and unfairness are totally absent in the records. Allegations are laid without any material. He submits that the writ petition was hit by the law of estoppel.

[8] After hearing the case of the parties and taking note of the pleadings on record the learned Writ Court also referred to several decisions such as:

(i) ***Uttar Pradesh Secondary Education Service Commission Versus Smt. Santosh Chowdhary and others*** reported in 1990 (Supp) SCC 711.

(ii) ***Joginder Singh and Others versus Roshan Lal and Others*** reported in (2002) 9 SCC 765.

(iii) ***Sadananda Halo and Others versus Momtaz Ali Sheikh and Others*** reported in (2008) 4 SCC 619.

(iv) *Dilip Kumar Garg and Another versus State of Uttar Pradesh and Others* reported in (2009) 4 SCC 753.

(v) *Madras Institute of Development Studies and Another versus K. Sivasubramaniyan and Others* reported in (2016) 1 SCC 454.

[9] The findings of the learned Writ Court read as under:

“19. Having appreciated the submissions of the learned counsel for the parties and scrutinized the records as produced by the official respondents, this court does not find any illegality in constitution of the selection committee/board or in the selection process. Though allegation of malpractice has been raised, but that allegation is not even supported by necessary pleadings or particulars. No bias against any member of the selection board has been attributed by any candidate. On scrutiny of the records of selection, this court does not find any apparent error or trace of malpractice. So far the objection raised in respect of very short time for interview, this court is of the view that the selection process is dissected in various parts including the scrutiny of records and viva voce. Mere statement that no question was put to the petitioners or any of the petitioners is not sufficient. Such allegation has to be established by the person who alleged likewise. He had to immediately react to the method by filing the representation or raising protest. In this case, what has been observed is that no such protest was raised. Only after selection was made, the petitioners started agitating their grievance against their non-selection. From the reports, as relied, it transpires clearly that the grounds as raised are not sufficient to reverse the selection. The petitioners cannot be allowed to turn around and challenge the selection process after their discovery that they were not selected. It is well settled law that unless material irregularity or illegality in the selection process is established by the petitioner, the law of estoppel would operate against him and he would not be allowed to challenge the selection after participation. Moreover, it has not been disputed by the petitioners that the candidates who are selected lack the required qualification or eligibility. No other perspective fact which would persuade this court to interfere has been laid.

20. Having observed thus, this court does not find any merit in this writ petition and accordingly, it is dismissed. However, there shall be no order as to costs.

Records as produced be returned forthwith.”

[10] The learned Writ Court in categorical terms gave a finding on scrutiny of the records of selection that it did not find any apparent error or trace of malpractice. The writ court also dealt with the objection raised in respect of very short time for interview by holding that the selection process is dissected in various parts including the scrutiny of records and viva voce. The learned court held that after the selection has been made the petitioners have started agitating their grievance against their non-selection. They cannot be allowed to turn around and challenge the selection process after

they discover that they were not selected unless material irregularity or illegality in the selection process is established by the petitioner. The law of estoppel would operate against them. Moreover, it has not been disputed by the petitioners that the candidates who are selected lack the required qualifications or eligibility.

[11] Learned senior counsel for the appellants has summarized the findings of the learned Writ Court on three grounds, such as:

(i) That, petitioners were stopped from challenging the selection process after having participated and failed in it.

(ii) That, there is no materials to establish the charges of irregularity, illegality or malpractices.

(iii) That, there was no allegation of bias against the member of the selection board.

[12] Mr. S. M. Chakraborty, learned senior counsel for the appellants has drawn the attention of this court to category-2 of the revised General Employment Guidelines contained in memorandum dated 23rd July, 2016 (Annexure-8 to the rejoinder affidavit). Attention has been drawn to the information obtained under RTI dated 30th June, 2017 which is also enclosed to the rejoinder affidavit. Specific reference has been made to the case of one Sri Soumen Pal, private respondent No.3 that the computation of marks for seniority, merit and GK i.e. 72 does not equate with the marks given by the board i.e. 90 marks. As such, there is an apparent error in the allocation of marks given by the board which the learned Writ Court has not properly appreciated. He submitted that the selection process undertaken does not indicate that the criteria laid down under the revised General

Employment Guidelines have been adhered to by the selection board. However, when being specifically asked the learned senior counsel for the appellants has, however, not been able to show any materials to assail the findings of the learned Writ Court arrived at after perusal of the original records that there were no errors or malpractices found in the selection process. The document obtained under RTI was placed before the learned Writ Court and it appears that the original records relating to the selection process were also produced by the learned Advocate General. From perusal of the impugned judgment and the findings rendered by the learned Writ Court at Para-19, it is apparent that on scrutiny of the records of selection, the Court did not find any apparent error or trace of malpractices. No tangible material has been produced nor such ground has been taken in the writ appeal to question the findings of the learned Writ Court on this count which have been recorded after scrutiny of the original records and also taking into consideration the information obtained under RTI as relied upon by the petitioners in reference to the illustration of one Sri Soumen Pal, who was the respondent No.3.

In this regard the observation of this court in the case of ***Dr. Md. Mijan Hossain vs. State of Tripura***, reported in ***2017 SCC Online Tri 33*** are extracted as under:

“9. In an intra-court appeal, we are not required to reexamine and re-appreciate the pleadings and evidence adduced by the parties before the writ Court so meticulously as is required by a regular appellate authority. In an an-intra court appeal, the appellate Forum is to consider as to whether the writ Court has failed to exercise its power/jurisdiction as conferred under Article 226 of the Constitution and as to whether any finding of the writ Court was suffered from perversity or that any statutory provision or settled position of law has been ignored by the writ Court. The decision of the writ Court is not required to be interfered by this appellate Forum simply on the ground that another equally possible view may be taken and thereby to substitute the view taken by the writ Court. If the decision of the

writ Court is supported by some material and logic acceptable by law, the appellate Forum is not required to interfere with the decision of the writ Court.”

[13] We are, therefore, not inclined to upset the findings of the learned Writ Court derived after scrutiny of the original records only on the mere saying of the petitioners/appellants herein. Finding recorded by the Writ court after scrutiny of the original records matters cannot be doubted unless the aggrieved party like the appellants herein are able to demonstrate and make out a clear case of error on the part of the Writ Court amounting to perverse findings.

[14] The learned Writ Court has apart from the aforesaid findings also rightly observed that these writ petitioners have after participating in the selection process and without any objection or demur questioned the selection process only after they were not selected. As such, they are estopped from doing so. The Writ Court is not supposed to indulge in an inquiry if the petitioners or if the aggrieved candidates have failed to make out the case on the basis of the pleadings and the records/enclosures relied upon by them. We, therefore, do not find any error in the findings of the Writ Court on any of these counts.

Accordingly, the instant appeal being devoid of merits is dismissed. Pending application(s), if any, also stands disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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