

**HIGH COURT OF TRIPURA
AGARTALA**

WA 5 of 2025

The State of Tripura And Others

---Appellant(s)

Versus

Shri Sushanta Deb

---Respondent(s)

For Appellant(s)	:	Mr. S. M. Chakraborty, Advocate General. Mr. Kohinoor N. Bhattacharjee, GA. Ms. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. P Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate. Ms. A. Debbarma, Advocate. Mr. D. Paul, Advocate.
Date of hearing	:	30.07.2025
Date of pronouncement	:	05.08.2025
Whether fit for reporting	:	Yes.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

Dr. T. Amarnath Goud, J

[1] This is an appeal under Chapter VIII, Rule-B(A) of the High Court of Tripura Rules, 2023 preferred against the Judgment & Order dated 01.10.2024 passed in WP(C) 95 of 2024 passed by the learned Single Judge.

[2] It is the case of the appellants that in the instant Writ Petition, the petitioner has prayed for necessary directions from the this Court to re-publish the Merit List, dated 13.09.2023, in c/w Advt. No. 01/2020 and Notification, dated 12.02.2021, for the posts of Group-C, [Lower Division Clerk (LDC), Agriculture Assistant (Except TAFS Grade-III), Agriculture Assistant (TAFS Grade-III), Junior Operator Junior Multi-Tasking Operator (Uncommon)], after including the name of the petitioner therein, as the petitioner's name has been excluded even after securing 119.75 marks, whereas many candidates were recommended even after scoring lesser marks than the petitioner, viz., candidates vide S1. Nos. 706 & 1010 were recommended for the post of Agri. Asstt. (TAFS Grade-III) & Lower

Division Clerk (LDC) against UR vacancies after scoring 117.5 & 114.25 respectively. The writ court allowed the writ petition, as the writ court fell short in appreciating the fact of over age of petitioner, when calculated in the light of Revised Adv. dated 12.02.2021. Hence, the State Respondents are preferring this Appeal.

[3] It is contended by learned Advocate General that writ court has fallen in gross error in holding that since the earlier notification dated 27-11-2020 was not cancelled by notification dated 12-02-2021, hence the date of age limit mentioned in notification dated 27-11-2020 should be considered as the cutoff date of age limit of the petitioner. Notification dated 12-02-2021 clearly mentions in the following manner:

"This is issued in Revision of advertisement No 01-2020 F vide No. 10(28)/DESMP/ESTT/2020/4295 dated 27-11-2020."

[4] So, it is clear that the notification dated 12-02-2021 has been revised and changed thereby mentioned in the notification dated 27-11-2020 to the extent. According to the appellants, this has escaped the consideration of the Ld. Single Judge. The words and figures in notification dated 12-02-2021 that in revision of advertisement No. 01/2020 dated 27-11-2020 means that the contents of earlier notification have been revised/changed to the extent that the contents of earlier notification dated 27-11-2020, except those which has been specifically saved in notification dated 12-02-2021, were cancelled. The Notification dated 12-02-2021 has specifically saved only that those candidates who have already applied for one of the 1500 Lower Division Clerks (LDC), Group C, Non- Gazetted post(s), need not apply again for any of the added 910 other Group C posts and their candidature for all 2410 Group C posts will be considered based on their educational qualification etc. But regarding age limit a new specific provision has been made at the bottom of the page 2 of notification dated 12-02-2021 "Age limit for direct recruitment has been prescribed afresh is 18 to 41 years i.e a general candidate should be within the age limit of 18-41 years as on 12-03-2021, the last date of submission of application but the Ld. Single Judge has failed to appreciate this.

[5] This provision of the said notifications appears to have totally escaped the notice of the writ court and the writ court has failed to consider that notification dated 12.02.2021 has been issued in Revision of earlier notification dated 27.11.2020 and age limit has been prescribed in the new notification. The word "This is issued in Revision of advertisement No.01/2020 dated 27.11.2020 and that Revision means change appears to have totally escaped the notice and consideration of the writ court.

[6] Most importantly, the respondent-petitioner has not challenged the notification dated 12.02.2021. Their entire case rests on the premise that the earlier notification's age limit should prevail, despite the express revision. A revised notification, unless successfully challenged and struck down, carries the force of law. By failing to challenge the validity or applicability of the notification dated 12.02.2021, particularly its clear prescription of the new age limit, the respondent-petitioner has implicitly accepted its terms. It is not open to the respondent-petitioner to selectively apply provisions from a superseded notification while ignoring the superseding one, especially when the superseding notification explicitly addresses the very point of contention.

[7] Finally it is contended by learned Advocate General that for these compelling reasons, it is clear that the writ court's interpretation is fundamentally flawed, ignoring the explicit language and legal effect of the revised notification dated 12.02.2021. The respondent-petitioner's failure to challenge the superseding notification further underscores the validity of the revised age limit.

[8] Therefore, the judgment of the writ court, being based on an erroneous premise and a misinterpretation of the relevant notifications, is unsustainable in law and ought to be set aside. It is humbly prayed that this Court may be pleased to dismiss the judgment of the writ court by allowing the instant appeal, thereby upholding the validity and applicability of the age limit prescribed in the notification dated 12.02.2021. It is also submitted before this Court that no posts are currently vacant, reinforcing the necessity for finality and adherence to the terms established by the revised notification.

[9] On the contrary, it is contended by Mr. P Roy Barman, learned senior counsel for the respondent herein that the judgment rendered by the writ court is not only just and proper but also a well-reasoned application of established legal principles, requiring no interference or re-interpretation by this Court. The contentions of the learned Advocate General, seeking to overturn this sound judgment, are based on a fallacious premise and an attempt to introduce new facts at the appellate stage.

[10] Firstly, the core of the State-Appellant's argument hinges on the notification dated 12.02.2021, claiming it "revised" the age limit. However, it is a crucial and undisputed fact that the notification dated 12.02.2021 was never brought to the notice of the writ court during the proceedings. It is further contended that new facts or documents, not presented before the writ court, cannot be introduced as a matter of right at the appellate stage to rescue a party's case. The writ court's decision was rendered based on the materials and arguments presented before him at that time. To now contend that the Single Judge "failed to appreciate" a document that was not even placed on record is an attempt to create a ground for appeal where none existed. The State-Appellants cannot be permitted to benefit from its own omission or oversight in the original proceedings.

[11] Secondly, even assuming, without conceding, the existence and tenor of the notification dated 12.02.2021, the writ court's decision aligns perfectly with the principles laid down by the Hon'ble Apex Court regarding changes in recruitment rules. A fundamental principle of service jurisprudence is that the rules of the game cannot be changed once the game has begun. The initial notification dated 27.11.2020 clearly laid down the conditions, including the age limit, at the time the recruitment process commenced.

[12] In ***Tej Prakash Pathak and Ors. vs. Rajasthan High Court and Ors.*** reported in ***(2025) 2 SCC 1***, the Hon'ble Supreme Court, in Paragraph 14, unequivocally stated:

14. The doctrine proscribing change of rules midway through the game, or after the game is played, is predicated on the rule

against arbitrariness enshrined in Article 14 of the Constitution. Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the concept of equality in all matters relating to public employment. These two articles strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles alike to all similarly situate and not to be guided by any extraneous or irrelevant considerations. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest.

[13] Furthermore, in Paragraph 42 of the same judgment, the Apex Court reiterated this stance, observing:

42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non- arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

[14] Applying this binding dictum to the present case, the "game" commenced with the notification dated 27.11.2020, which prescribed the initial age limit. Any subsequent notification, even if purporting to "revise" the age limit, cannot unilaterally alter a crucial eligibility criterion to the detriment of candidates who applied or became eligible based on the original advertisement, especially in the absence of explicit retrospective application of such a change. The writ court, in upholding the age limit as per the earlier notification, was therefore entirely consistent with this established legal principle. The mere use of the word "revision" in a subsequent notification, particularly when it was not even presented to the original forum, cannot be used to retrospectively divest a candidate of their accrued eligibility.

[15] In light of the fact that the notification dated 12.02.2021 was not before the writ court, and considering the well-settled legal position enunciated by the Apex Court in **Tej Prakash Pathak** (supra), the judgment of the writ court is not only unimpeachable but also reflects a correct application of law to the facts as they were presented. The State-Appellants cannot now introduce new documents and seek to discredit a judgment that was meticulously rendered on the available record.

[16] Therefore, the judgment of the writ court is just and proper and needs no interference or re-interpretation by this Court. The instant appeal, being based on subsequently introduced facts and a misapplication of legal principles, ought to be dismissed.

[17] We have heard learned Advocate General appearing for the State-Appellants and learned senior counsel for the Respondent-Petitioner.

[18] The core contention of the learned Advocate General is that the writ court erred in appreciating the legal effect of the notification dated 12.02.2021, which explicitly stated that it was "issued in Revision of advertisement No. 01-2020 F vide No. 10(28)/DESMP/ESTT/2020/4295 dated 27-11-2020." It was argued that the term "revision" unequivocally implies a change or supersession of the earlier advertisement's contents to the extent revised.

[19] It is brought to our attention that the notification dated 12.02.2021 specifically prescribed a fresh age limit for direct recruitment, stating: "Age limit for direct recruitment has been prescribed afresh is 18 to 41 years i.e a general candidate should be within the age limit of 18-41 years as on 12-03-2021, the last date of submission of application." This, the State-Appellants contend, constitute a clear and specific revision of the age limit, which was not merely an addition but a supersession of previous provisions concerning age. While the revised notification saved the applications of candidates who had already applied for LDC posts, it did not save the prior age limit, instead, introducing a new one.

[20] A crucial point emphasized by the State-Appellants is that the respondent-petitioner did not challenge the validity or applicability of the notification dated 12.02.2021. The absence of such a challenge implies an acceptance of the terms contained therein, including the revised age limit. It is a settled principle that a party cannot selectively rely on superseded provisions while ignoring the operative ones.

[21] Upon careful consideration of the submissions, we find substantial merit in the arguments advanced by the learned Advocate General. The phrase "in Revision of advertisement" unequivocally signifies that the subsequent notification dated 12.02.2021 was intended to modify, alter, and supersede the relevant provisions of the earlier notification dated 27.11.2020. This is not merely an addition but a deliberate re-statement and re-definition of certain terms, including the age limit.

[22] The specific prescription of a "fresh" age limit of "18 to 41 years as on 12-03-2021" in the notification dated 12.02.2021 clearly demonstrates the intention to replace the earlier age criterion. The saving clause in the revised notification pertains only to the applications already submitted for LDC posts, indicating that the intention was to carry forward those applications under the new conditions, not to preserve all conditions of the prior advertisement, particularly those expressly revised. It is also submitted before this Court that no post is lying vacant as of today, further reinforcing the need for finality and adherence to the terms established by the governing notification, which is the revised one.

[23] Furthermore, it is a fundamental aspect of legal proceedings that a document or notification, if it is to be challenged, must be done so in appropriate proceedings. In the present case, the respondent-petitioner did not initiate any challenge to the notification dated 12.02.2021. Consequently, its provisions, including the revised age limit, are binding and applicable. The writ court's judgment, by relying solely on the earlier notification without considering the subsequent operative one, has unfortunately overlooked this crucial aspect.

[24] Furthermore, the judgment of the Apex Court in **Tej Prakash Pathak** (supra) as likely to be relied upon by the respondent-petitioner, is distinguishable and not applicable to the facts of the present case.

[25] Therefore, we are satisfied that the writ court is not correct in holding that the age limit mentioned in the notification dated 27.11.2020 should be considered as the cut-off date. The notification dated 12.02.2021 effectively superseded the earlier provision regarding the age limit for direct recruitment.

[26] In light of the aforesaid detailed discussion and finding, the instant appeal is allowed setting aside the judgment and order dated 01.10.2024 passed by the writ court in W.P.(C) No. 95 of 2024. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

B.Palit, J

Dr. T. Amarnath Goud, J

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