

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.143 of 2025

1. Smti Rupanjali Saha

W/o:- Sandip Kumar Roy
D/o Rakhal Chandra Saha
Bankumari, Bartilla
P.O. Jogendra Nagar, PIN;799004
P.S. East Agartala, West Tripura.

.....Petitioner(s).

Versus

1. The State of Tripura

Represented by the Secretary to the Government of Tripura,
Department of Education, New Secretariat, Agartala,
P.O.- New Secretariat, PIN-799010
P.S. NCC, District: West Tripura, Tripura.

2. The Director of Higher Education,

Government of Tripura, Shiksha Bhavan, Office Lane,
Agartala, Tripura, PIN: 799001

3. Tripura Public Service Commission

Represented by its Secretary,
Akhaura Road, Agartala, PIN-799001
P.S. West Agartala,
District: West Tripura.

.....Respondent(s).

For Petitioner(s)	:	Mr. Amrit Lal Saha, Advocate.
For Respondent(s)	:	Mr. Raju Datta, Advocate.
	:	Mr. H. Sarkar, Advocate.
Date of hearing & date of delivery of Judgment :		19.05.2025
Whether fit for reporting :		Yes

_B_E_F_O_R_E_

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER(ORAL)

Heard Mr. Amrit Lal Saha, learned counsel appearing for
the petitioner.

Also heard Mr. H. Sarkar, learned counsel appearing for
the State-respondents and Mr. Raju Datta, learned counsel
appearing for the respondent-TPSC.

[1] Before advertizing to the issues involved in the writ proceeding, for convenience of discussion and consideration, the involved facts and the attending circumstance, as revealed from the pleadings of the parties and the annexed documents thereto, are highlighted hereinbelow in short outline:

i) The TPSC issued an advertisement bearing no.08 of 2014 dated 10.06.2014 for selection for the post of Asstt. Professor in Govt. General Degree Colleges in different disciplines and accordingly the petitioner as UR category candidate participated and was selected against the subject- Physiology.

ii) Said recruitment was challenged in the High Court by filing several writ petitions and the Division Bench of the High Court analogously decided those petitions 26.02.2016 titled as '*Smti Bijaya Bhattacharjee Vs. The State of Tripura & ors.*, WP (C) 172 of 2025' decided with other writ petitions and finally set aside the selection process with directions to the TPSC to prepare API scores of each candidate in accordance with the guidelines of UGC without inviting any fresh application in this regard and then to call top 05 candidates for interview where there was only one vacant post and 8 most meritorious candidate in case of two vacancies and three times the number of vacancies in all other cases. Regarding reservation/de-reservation of posts also some other directions were also issued.

iii) After said judgment was passed by the High Court, the selection process was again initiated vide letter issued by the Under Secretary, Govt. of Tripura in Education (Higher) Department on 21.07.2016 (Ext. R/2 of the counter affidavit), and the vacancy position against Human Physiology subject was shown there as 11 posts (SC-02

and ST-09) and there was no post notified for UR category at that time. The result of such selection was published by TPSC vide notification dated 04.10.2016 (Annexure R/4) but due to non availability of suitable candidate, said 11 nos. of post could not be filled up.

iv) Thereafter, the Education (Higher) Department issued another letter dated 29.07.2017 to the TPSC for filling up of total 182 posts of Assistant Professor in Government General Degree Colleges and accordingly, TPSC issued advertisement no. 19 of 2017 for filling up of total 18 posts (SC-03, ST-09, UR-06) against the discipline Physiology along with other posts in respect of other subjects. Thereafter, vide notification dated 02.01.2019 (Annexure R/7) said selection process with some other selection processes were cancelled by TPSC.

v) On 23.08.2019, the petitioner through her Advocate sent one notice to the Secretary cum Commissioner of Education (Higher) Department, Govt. of Tripura requesting for resuming the process of recruitment in terms of said judgment of the High Court as she was running the age of 40 at that time and was likely to cross the upper limit of age. In turn, the Director of Education (Higher) Department sent a reply on 19.9.2019 informing that after the amendment of Recruitment Rules is finalized, immediately requisition would be sent to TPSC for recruitment for the post of Assistant Professor and reference therein was also made in respect of para no. 4 of the Memorandum dated 20.08.2018 of GA (P&T) Department to the effect that if the petitioner applied for the post of Assistant Professor in respect of earlier advertisement no.19/2017, she would be entitled to one time relaxation in upper age limit.

vi) On 16.10.2020, the Education (Higher) Department sent another requisition to the TPSC vide Annexure R/8 for filling up of further 40 posts of Assistant Professor in such Govt. (General) Degree Colleges and reference therein was made to one memorandum bearing no. F.20(1)-GA(P&T)/18 dtd. 20.08.2018 of GA(P&T) Department, Govt. of Tripura quoting the followings-

"As regards the candidates who has participated in the cancelled recruitment processes, they are to be given one time relaxation in upper age limit to enable them to participate once in the fresh recruitment process subject to providing documentary evidence of their participation in the earlier recruitment process for the same post(s)."

vii) TPSC accordingly issued Advertisement No.01/2021 (Annexure R/9) for filling up of said 40 posts of which for the subject Human Physiology the posts as notified was total 04 in numbers with break up- ST-03, PH-01 but no post for UR category was shown available there. In the Advertisement also, said one time relaxation regarding upper age was noted.

viii) In the year 2022, further advertisement vide Advertisement No.08/2022 (Annexure R/12) was also issued by TPSC for filling up of further 40 posts of Assistant Professors in such Degree Colleges and at that time, there were two posts against subject- Human Physiology under UR category. Total posts for such Human Physiology as per said Advertisement was 05 with the break up- SC-01, ST-02 & UR-02. Necessary age relaxation, in this advertisement, was initially allowed only for candidates of Physical Education, Commerce and Mathematics. However, another corrigendum notification was again issued on 26.04.2022 (Annexure R/13) by TPSC providing such age relaxation in

upper age in respect of SC & UR category of candidates against subject Human Physiology in view of the fact that in Advertisement no.01/2021, there was no post meant for SC and UR category against this subject. As per communication 04.11.2022 of TPSC to the State Government, two candidates of UR category were also selected against Human Physiology subject.

ix) Now, the TPSC has again published another Advertisement bearing no. 5/2025 (Annexure 5) for filling up of total 201 nos. of posts of Assistant Professor against different discipline and in respect of subject Human Physiology, steps for recruitment is being taken in respect of total 14 posts with the break up- UR 05(2 reserved for women), SC 02 & ST 07 (3 reserved for women). It appears that following a representation dated 07.02.2025 submitted by one candidate of Philosophy subject to TPSC authority praying for age relaxation on the ground that in earlier Advertisements of the year 2021 and 2022, due to non-availability of posts of subject Philosophy, that candidate could not appear, the TPSC has issued one notification dated 07.03.2025 (Annexure R/18) giving one time relaxation of age in respect of subject Philosophy (only for UR, ST & PH candidates), Sanskrit (only for SC candidates), Economics (only for SC & ST candidates) and so on, as the previous Advertisement No.01/2021 and No.08/2022 did not contain such posts. But no such age relaxation has been further provided for UR category of candidates of Human Physiology subject.

x) The petitioner submitted one representation on 07.02.2025 to the Education (Higher) Department and then to TPSC on 18.02.2025 for allowing her one time relaxation in upper age in her case but no reply has been received by her in respect of the same. But she received one

message that her age was not suitable for the post of Human Physiology.

xi) The petitioner also filed WP (C) 127 of 2025 but said petition has been withdrawn at the motion stage. And now after the latest notification of TPSC dated 07.03.2025 and 10.03.2025, this fresh writ petition is filed. According to the petitioner, by notification dated 07.03.2025, age relaxation was granted only in respect of some specified subjects and vide notification dated 10.03.2025, TPSC asked the concerned candidates to submit documentary evidence to show their participation in the Advertisement No.19 of 2017 to avail such age relaxation benefit. According to the petitioner she applied for the post in respect of Advertisement no. 19 of 2017 and therefore, she has right and legitimate expectation to be considered for such age relaxation.

[2] With that factual background, Mr. Amrit Lal Saha, learned counsel submits that the initial advertisement No.08/2022 issued by the TPSC for filling up 05 nos. of vacant post (SC:01, ST:02, UR:02) in respect of discipline Human Physiology was taken up and the petitioner was in the know of that advertisement but in the said advertisement no age relaxation was given in respect of candidates of Human Physiology subject. Thereafter, Mr. Saha, learned counsel submits, another notification in the form of corrigendum was issued by the TPSC on 26.04.2022 wherein such age relaxation was also given in respect of SC & UR category of candidates against Human Physiology subject, but the notification itself indicates that no publication was made for general information in this regard and, therefore, it was not within the knowledge of the petitioner and hence she could not submit any application in that recruitment process. Learned counsel also submits

that even till today any such notification dated 26.04.2022 is not found available in the website of TPSC.

[3] Mr. Saha, learned counsel also refers to the direction no.1 of the judgment of the Division Bench of this Court in above said WP(C) No.172 of 2015 wherein the direction was issued that no fresh application would be invited and only the candidates who had already applied shall be considered for appointment to the post of Assistant Professor and, therefore, it was not obligatory for the petitioner to apply again for selection against any such post lateron. Mr. Saha, learned counsel referring to one copy of acknowledgement placed under *Annexure-10* submits that in the recruitment processes initiated in the year 2017 the petitioner duly applied, but said selection process was cancelled by the State Government and, therefore, she is now entitled to get one time age relaxation, at least once, in subsequent selection processes.

[4] Mr. Saha, learned counsel also submits that the petitioner filed said previous writ petition number WP(C) No.127 of 2025 with similar relief, but certain facts were required to be introduced further in the proceeding and, therefore, the writ petition was withdrawn and the present writ petition has been filed after incorporating those new facts. Mr. Saha, learned counsel emphatically submits that in the previous writ petition no decision was given on merit by the Court as it was withdrawn at motion stage and in absence of any issue wise decision or decision on merit, the principle of *res judicata* will not be applicable. Mr. Saha, learned counsel in addition further submits that when fundamental right of a person is infringed, normally a constitutional court does not shut the door to the petitioner on any such technical ground of withdrawal of previous writ petition. Mr. Saha, learned counsel tries to buttress his

submission relying on a decision of Hon'ble Supreme Court in ***Sarguja Transport Service versus State Transport Appellate Tribunal, M.P., Gwalior, & Others (1987) 1 SCC 5***, more particularly the paragraph nos.8 & 9, as extracted hereunder:

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao v. State of U.P.*¹ [1(1962) 1 SCR 574. AIR 1961 SC 1457] in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in *Daryao* case is to be found at page 593 and it is as follows:

If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other.

9. The point for consideration is whether a petitioner after with-drawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Daryao* case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting

tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.

Finally Mr. Saha, learned counsel prays for allowing the writ petition by giving a chance to the petitioner to appear in the ongoing selection process of 2025 by providing one time age relaxation to her.

[5] In reply, Mr. Raju Datta, learned counsel, submits that the corrigendum notification dated 26.04.2022 as stated above was duly uploaded in the website of the TPSC and some indications is available on the bottom note of the said corrigendum itself that copy of said notification was sent to both IT Cell and RTI Cell. Mr. Datta, learned counsel also in alternately submits that even if said notification was not uploaded in the website for general information, but the first advertisement issued in connection with said Advertisement No.8/2022 was duly uploaded in the website and the petitioner was also in the know of the same, but she did not challenge said notification despite the fact that such age relaxation was only given to the candidates applying

for the subjects Physical Education, Commerce and Mathematics and no such relaxation was provided to UR category candidates of Physiology subject, therefore, she is now stopped from claiming any such one time relaxation in the ongoing recruitment process. Mr. Datta, learned counsel also submits that present writ petition is not maintainable in its present form as the previous writ petition bearing number WP(C) No.127 of 2025 was filed before the Court seeking similar relief, but same was withdrawn on 07.03.2025 without seeking liberty to file a fresh writ petition on the same reliefs. According to Ld. Counsel, Mr. Datta, said fact is not disputed by the petitioner, otherwise they would submit rejoinder challenging the specific plea taken in paragraph no.4 of the counter affidavit submitted by TPSC.

[6] Mr. Datta, learned counsel also similarly relies on the same decision of Hon'ble Apex Court as rendered in ***Sarguja Transport supra***. Further, Mr. Datta, learned counsel also relies on another decision of the Hon'ble Supreme Court rendered in ***Avinash Nagra versus Navodaya Vidyalaya Samiti & Others, (1997) 2 Supreme Court Cases 534*** wherein at para 13 it was observed that the High Court also was right in its conclusion that the second writ petition was not maintainable as the principle of constructive *res judicata* would apply there, inasmuch as the petitioner filed the writ petition in the first instance, but withdrew the same without permission of the Court with liberty to file the second writ petition and, therefore, the second writ petition was not maintainable. Another decision on the same point as relied on by Mr. Datta, learned counsel, is ***MJ Exporters Private Limited versus Union of India & Others, (2021) 13 SCC 543*** wherein also the followings were observing in paragraph no.15:

15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which are laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which principles are extendable to writ proceedings as well as held by this Court in Sarguja Transport Service v. STAT [6 (1987) 1 SCC 5 : 1987 SCC (Cri) 19] would squarely be applicable.

[7] Finally Mr. Datta, learned counsel relies on a recent decision of Hon'ble Supreme Court in case of **State of Orissa & Anr. vs. Laxmi Narayan Das(Dead) through legal representatives & Others, (2023) 15 SCC 273** wherein at paragraph no.37 the followings were observed:

37. On the question, as to whether after the withdrawal of a suit claiming the same relief without having permission to institute fresh one for the same relief, a writ petition will be maintainable before the Court, the guidance is available from the judgment of this Court in M.J. Exporters Private Limited v. Union of India, wherein the principle of constructive res judicata was applied. The case concerns a litigant who sought to file a fresh writ petition after withdrawal of the earlier writ petition filed for the same relief without permission to file fresh one. The Court held that the principles contained in Order 23 Rule 1 CPC are applicable even in writ proceedings. Para 15 thereof is extracted below:

"15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which are laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which principles are extendable to writ proceedings as well as held by this Court in Sarguja Transport Service v. STAT [19 (1987) 1 SCC 5: 1987 SCC (Cri) 19]"

[8] Mr. H. Sarkar, learned counsel for the State Respondents also in the same way submits that present writ petition is not maintainable for the grounds as raised by the TPSC.

[9] Mr. A.L. Saha, learned counsel in reply submits that against the advocate notice issued by the petitioner, the Director of Higher

Education specifically mentioned that one time age relaxation would be granted to the petitioner in terms of the memorandum issued by GA(P&T) Department vide no.F.20(1)-GA(P&T)/18 dated 20-08-2018. So, the petitioner is now entitled to get said one time age relaxation now. Mr. Saha, learned counsel also refers to the paragraph no.9 of the counter affidavit submitted by the State-respondents which is also for useful reference extracted hereunder:

9. That, with reference to the averments made in para-5 of the writ petition, the answering Respondents stated that the averment made in this para is a fact that Petitioner couldn't apply against the Advt. 01/2021 as there was no UR seat for Human Physiology and in the subsequent advt. i.e. No.08/2022 there was no upper age relaxation given for Human Physiology except Mathematics, Physical Education & Commerce; therefore, the petitioner may be given one-time relaxation in upper age limit against the advt. No.05/2025 if she could provide documentary evidence of participating in the Advt. No.19/2017 but not against the Advt. 08/2014. In this regard, a letter vide No.F.1(687)-DHE/Estt(G)/2019/1798 dated 19.09.2019 had been issued to the Ld. Advocate against the legal notice dated 23.08.2019 issued on behalf of Smt. Rupanjali Saha.

Mr. Saha, Ld. Counsel refers the abovenoted averments of the counter affidavit to strength his submission that the state government is also of the view that the petitioner is entitled to get such onetime relaxation against the present advertisement of the year 2025, but such submission is not convincing, for, said paragraphs mainly contains the averments of the writ petitioner made in the writ petition and not the opinion of the state government.

[10] This court has considered the submissions of both sides and have meticulously gone through the record. Two primary issues arise here in this writ petition for decision of the Court and these are- firstly, whether the petitioner is entitled to get one time age relaxation in the

ongoing recruitment process despite the fact that she did not participate in the recruitment process of 2022 and secondly, whether the present writ petition is not maintainable in view of the fact that previous writ petition was withdrawn by her. So far the first point of challenge is concerned, it appears that there was no direction for the High Court in the said judgment passed in WP(C) No.172 of 2015 for giving any such age relaxation to the applicant in any such future recruitment process. Rather from the letter dated 19.09.2019 was issued by the Director of Higher Education Department to the learned counsel of the petitioner to the effect that proposal for amendment of the recruitment rules was under consideration of the State and as per paragraph no.4 of memorandum dated 20.08.2018 issued by GA(P&T) Department was relevant for the consideration of the petitioner as she was worried about crossing of her upper age limit and as per para 4 of the said memorandum, if she applied for the post of Assistant Professor with reference to earlier Advertisement No.19/2017, she would be given such onetime age relaxation in upper age limit to participate once in fresh recruitment process subject to providing documentary evidence of her participation in the said earlier recruitment process of 2017. Mr. Saha, learned counsel has also brought to the notice of related document containing acknowledgment to show that the petitioner applied in the said recruitment process of 2017. Anyway, as indicated above, TPSC issued Advertisement No.01/2021 (*Annexure R/9*) subsequently for filling up of 40(forty) posts of Assistant Professor out of which only three posts (ST:03 PH:01) were meant for subject Human Physiology. But, as at that time there was no post of UR category in that advertisement against physiology subject, so in the recruitment process of the year 2022, by a corrigendum notification dated 26.04.2022

(Annexure- R/13), such benefit of age relaxation was extended in case of SC and UR category of candidates in respect of subject Human Physiology. Admittedly the petitioner did not avail that opportunity.

[11] Though it is argued before the Court that it was not within the knowledge of the petitioner that such subsequent notification extending such benefit to UR category of candidates was issued by TPSC as the same was not found in the website of the TPSC, but no such averments is made or ground is taken by the petitioner either in the writ petition or by filing a rejoinder. Even if it is presumed that such subsequent notification was not uploaded in the website of TPSC or no newspaper publication was made in this regard, in that case certainly there would be serious grievances of the petitioner persisted at that time that despite assurance given by the State, no such benefit was being extended to the UR category candidates, and in that case, certainly she would challenge the same before the Court or at least would submit one representation to the TPSC or to the State ventilating her such grievances, but nothing as such was done by her. Therefore, this ground as being raised now only during hearing of the case, cannot be entertained. If a notification or advertisement was published for general information, and if a person despite the same did not respond to it, for whatsoever reason as stated, said person cannot derive any subsequent legal right to claim for the same in any other subsequent recruitment process. It is not a case that such one time age relaxation was given to a particular person like the petitioner, rather State as a matter of policy decision, extended such benefit in general for all applicants who had meanwhile crossed the upper limit of the age and could not participate in the earlier recruitment process as same was cancelled. Therefore, any particular candidate cannot retain a choice of

availing the same in any particular recruitment processes subsequent thereto as per his/her convenience. Therefore, the claim of the petitioner of such onetime age relaxation in the present recruitment process is not tenable at law.

[**12**] So far second point of challenge is concerned, it is admitted position that with similar reliefs, earlier the petitioner submitted writ petition bearing number WP(C) No.127 of 2025 which was withdrawn by her on 07.03.2025 without reserving her liberty to file a fresh writ petition with similar reliefs. All the above referred pronouncements of Hon'ble Apex Court have made it settled that the principle of constructive *res judicata* is applicable in writ proceeding and withdrawal of any such writ petition without having liberty or permission to file fresh writ petition for the same relief, precludes him for filing the same again. It is also a fact that while said writ petition was withdrawn no liberty or permission was obtained from the court by the petitioner for submitting fresh writ petition with similar relief. Thus, the present writ petition is not maintainable. Therefore, both the points are decided accordingly against the petitioner.

In view of above discussion the writ petition is dismissed.

No order as to costs.

Pending application(s), if any, shall also stands disposed of.

JUDGE

SATABDI DUTTA

Digitally signed by SATABDI DUTTA
Date: 2025.05.21 13:02:04 +05'30'

Rik