

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.45 of 2023

1. Sri Jatindra Das, (age- 49 years) S/o Lt. Gadadhar Das, resident of Baishgharia, P.O. Teliamura-799205, P.S.-Teliamura, District-Khowai, Tripura, (Inspector of Police (UB))
2. Sri Rakhil Mitra, (age- 48 years) S/o Sri Jagadish Mitra, resident of Abhoynagar, P.O. Nalua-799156, P.S. Belonia, District- South Tripura, (Inspector of Police (UB))
3. Sri Subrata Barman, (age- 45 years) S/o Sri Ashutosh Barman, resident of Thakurpara, Melaghar, P.O and P.S. Melaghar, District- Sepahijala, Tripura, Pin- 799115, (Inspector of Police (UB))
4. Sri Babul Das, (age- 45 years) S/o Sri Judhisthir Das, resident of Shanmura, P.O. Lankamura-799009, P.S. West Agartala, District- West Tripura, (Inspector of Police (UB))
5. Sri Sukanta Das, (age-54 years) S/o Lt. Ramesh Chandra Das, resident of Chandanmura, P.O. Battali-799115, P.S. Sonamura, District- Sepahijala, Tripura, (Inspector of Police)
6. Sri Nayanmani Namasudra, (age- 46 years) S/o Lt. Gunamani Namasudra, resident of West Dalucherra, P.O. Jayanti Bazaar, P.S. Salema, District- Dhalai, Tripura, (Inspector of Police (UB))
7. Sri Paritosh Das, (age- 47 years) S/o late Prafulla Chandra Das, resident of Laltila, P.O. Moharchara-799203, P.S. Teliamura, District- Khowai, Tripura, (Inspector of Police (UB)).
8. Sri Anupam Das, (age- 44 years) S/o Sri Balaram Das, resident of Ramnagar Road No.2 end, P.O. Ramnagar-799002, P.S. West Agartala, District- West, (Inspector of Police (UB))
9. Sri Arunodaya Das, (age-53 years), S/o Lt. Jugendra Chandra Das, resident of Mulanchakra Road No.1, P.O. A.D. Nagar-799003, P.S. A.D. Nagar, District- West Tripura, (Inspector of Police (UB))
10. Sri Ratan Mani Debbarma, (age- 47 years) S/o. Sri Uday Debbarma, resident of Khutamura, P.O. Birendranagar- 799045, P.S. Radhapur, District- West Tripura (Inspector of Police (UB))
11. Sri Amendra Debbarma, (age- 45 years) S/o Lt. Chandra Kumar Debbarma, resident of Bhakta Das Para, P.O. Uttar Maharani Pur- 799205, P.S. Kalyanpur, District- Khowai, Tripura, (Inspector of Police (UB))
12. Sri Sanjit Debbarma, (age- 49 years) S/o Lt. Adhir Debbarma, resident of Amntali, P.O. Brajapur-799102, P.S. Bishalgarh, District- Sepahijala, Tripura, (Inspector of Police (UB))
13. Sri Jubaraj Chakma, (age- 48 years) S/o Lt. Sundar Mohan Chakma, resident of Hazachari, P.O. Suknachari-799104, P.S. Silachari, District- Gomati, Tripura, (Inspector of Police (AB))

14. Sri Ashok Debbarma, (age- 49 years) S/o Lt. Gopal Debbarma, resident of Peratia, P.O. A.R. Para-799102, P.S. R.K. Pur, Udaipur, District- Gomati, Tripura, (Inspector of Police (AB))

15. Sri Pramode Debbarma, (age- 44 years), S/o Lt. Bijoy Debbarma, resident of Basanta Sardar Para, P.O. Uttar Dash Garia, P.S. Sidhai, District- West Tripura, (Inspector of Police (UB))

16. Sri Bikan Debbarma, (age- 44 years) S/o Lt. Bharat Chandra Debbarma, resident of Rasupara, P.O. Champaknagar, P.S. Jirania, District- West Tripura, (Inspector of Police (UB))

.....Appellant(s);

Versus

1. The State of Tripura (To be represented by the Secretary, Department of Home, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, P.S.- New Capital Complex, Agartala, West Tripura, PIN- 799010.

2. The Director General of Police, Government of Tripura, A.K Road, Agartala, West Tripura, PIN- 799001.

3. The Principal Secretary, GA (P&T) Department, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S.- New Capital Complex, Agartala, West Tripura, PIN 799010

4. The Inspector General of Police (Administration), O/o the Director General of Police, Government of Tripura, A.K Road, Agartala, West Tripura, PIN- 799001.

5. Tripura Public Service Commission to be represented by its Secretary, Government of Tripura, A.K Road, Agartala, West Tripura, PIN-799001

6. Smt. Ila Deb, W/o Sri Habul Sarkar of Badharghat near BOC, P.S. Amtali, Agartala, West Tripura.

7. Sri Sourav Dasgupta, S/o Lt Santosh Lal Dasgupta of Ramnagar Road No.4, P.S. West Agartala, West Tripura.

8. Sri Partha Sarathi Paul, S/o. Lt. Ashutosh Paul of Palace Compound, near Sale Tax Office, P.S.- East Agartala, West Tripura.

9. Sri Pranab Sengupta, S/o Lt. Tegendranath Sengupta of Office Tilla Nutan Palli, P.S. Bishalgarh, Sepahijala District.

10. Sri Rathindra Ch. Ghosh, S/o Lt. Nibaran Chandra Ghosh of A.D. Nagar Police Quarters Complex, P.S. A.D. Nagar, West Tripura.

11. Sri Dhiraj Laskar, S/o Lt. Manindra Chandra Laskar of Police Quarter Lane, P.S. A.D. Nagar, Agartala, West Tripura.

12. Sri Pradyut Ch. Datta, S/o Sri Pramesh Ch. Datta of Natun Palli, P.S. Dharmanagar, North Tripura.

13. Sri Swapan Ch. Das, S/o Lt. Kshitish Chandra Das of Gajaria S.D Mission, P.S. A.D. Nagar, Agartala West Tripura.

14. Sri Benu Lal Kar, S/o Lt. Shital Chandra Kar of Ramnagar Road No.4 (Near Sankar Chowmuhani), P.S. West Agartala, West Tripura.

15. Sri Debashish Banerjee, S/o Lt. Debabrata Banerjee of Krishnanagar, Kadamtali, P.S. West Agartala, West Tripura.
16. Sri Shyamal Chakraborty, S/o Lt. Haran Chakraborty of A.D. Nagar Road No.1, P.S. A.D. Nagar, Agartala, West Tripura.
17. Sri Kamal Kar Chowdhury, S/o Lt. Naresh Kar Chowdhury of Ramnagar Road No.2, P.S. West Agartala, Agartala, West Tripura.
18. Sri Ranendu Kishore Bhattacharjee, S/o Lt. Rabindra Kumar Bhattacharjee, 1/A By- Lane Srinagar, Milanchakra, P.S. A.D. Nagar, Agartala, West Tripura.
19. Sri Kapil Das, S/o Lt. Krishna Mohan Das of Badharghat (Matripalli), P.S. A.D. Nagar, Agartala, West Tripura
20. Sri Paloram Das, S/o Lt. Sudhan Chandra Das of Beltali, A.D. Nagar, Road No.9, P.S. A.D. Nagar, West Tripura.
21. Sri Anup Kumar Das, S/o Lt. Amarendra Das of Town Rajarbag, PS-R.K. Pur, Gomati District.
22. Sri Priti Ranjan Laskar, S/o Lt. Rati Ranjan Laskar of Dhaleswar Road No.14, P.S. East Agartala, West Tripura.
23. Md. Abdul Matin, S/o Lt. Habib Ali of Jamirala College Road, P.S. Dharmanagar, Dharmanagar, North Tripura.
24. Sri Kanti Lal Baidya, S/o Lt. Anil Chandra Baidya of Kalyani, P.S. East Agartala, Agartala, West Tripura.
25. Sri Ratan Kumar Deb, S/o Lt. Haripada Deb of Ramnagar, A.K Road, P.S. West Agartala, West Tripura.
26. Sri Balaram Sen, S/o Lt. Ashutosh Sen of Shyamalima Apartment, Flat No.4/10 Block- 4, Near ILS Hospital, PS- New Capital Complex, Agartala, West Tripura.
27. Sri Subrata Chakraborty, S/o Lt. Sudhir Bandhu Chakraborty of Haneman Homeo Hall, 91 Motor Stand Road, P.S. East Agartala, West Tripura.

.....Respondent(s)

For Appellant(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. Saktimoy Chakraborti, Advocate General,
Mr. P. Roy Barman, Sr. Advocate,
Mr. D. Sarma, Addl. G.A.,
Mr. Samarjit Bhattacharjee, Advocate,
Mrs. Pinki Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Date of hearing : **18.11.2025**

Date of Judgment & Order : **10.12.2025**

Whether Fit for Reporting : **YES**

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

- 1) This Writ Appeal is preferred by the appellants challenging the judgment dt.09.01.2023 of the learned Single Judge in WP(C) No.670/2021.
- 2) The Appellants and the Respondents No.6 to 27 are employed as Inspectors of Police in the Tripura Police Service under the control of respondents No.1- 4.
- 3) The issue in this Appeal relates to promotion to the post of Tripura Police Service Grade-II (for short “TPS Grade-II”) from the post of Inspector of Police.

Relevant provisions of the Tripura Police Service Rules, 1967

- 4) Rule 3 of the Tripura Police Service Rules, 1967 (for short ‘the Rules’) provides that the Tripura Police Service shall consist of Grade-I (Selection Grade) and Grade II posts.
- 5) Rule 5 of the Rules provides for appointment to the Tripura Police Service by direct recruitment (50%) and promotion (other 50%) through a Selection process.
- 6) Rule 13 provides for constitution of a Selection Committee.
- 7) Rule 14 mentions the conditions of eligibility and procedure for selection. It states:

“14.Conditions of eligibility and procedure for selection:

(1) The Committee shall consider from time to time, the cases of officers eligible under clause (b) of sub-Rule (1) of Rule 5, who have served in the cadre of Inspectors of Police and Subedars of Tripura State Rifles battalion for not less than 5 years, and prepare a list of officers recommended taking into

account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be on merit and suitability in all respects for appointment to the service with due regard to seniority.

(2) The names of persons included in the list shall be arranged in order of merit and forwarded to the State government.

(3) Minimum educational qualification for promotion to Grade –II of the service shall be Graduation.

(4) The Committee shall not consider the cases of the officers in the feeder posts who have attained the age of 53 years on the 1st day of January of the year in which the Committee meets.”

- 8) Rule 34 of the Rules deals with the power to relax the Rules. It states:

“34. Power to relax:

Where the State Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions of these Rules with respect of any class or category of persons or posts.”

W.P.(C) No.582 of 2021 and the judgment dt.27.8.2021 passed therein

- 9) Some of the private respondents filed W.P.(C) No.582 of 2021 in this High Court contending that they were eligible for promotion to the post of TPS Grade-II but had crossed the prescribed age of 55 years on 1.1.2021; that they had given representations to the Director General of Police, Govt. of Tripura on 7.7.2021 to consider their promotion to the rank of TPS Grade-II seeking relaxation of the age bar prescribed in Rule 14(4) of the Rules; that after 2013, the respondents No.1-4 could not do any exercise for promotion to

the TPS Grade-II due to interim order passed by the Supreme Court in a pending matter; that the Director General of Police had considered the said representations and by a communication dt.8.7.2021 addressed to the Principal Secretary, General Administration (P&T), Govt. of Tripura proposed to consider one-time relaxation of age criteria as per Rule 14(4) of the Rules; but the respondent No.1 had not accepted the same.

10) The Advocate General, appearing for the State Government contended in that Writ Petition that the petitioners in that Writ Petition had not submitted any representation to the State Government regarding their grievance and had straightaway filed the Writ Petition and it is premature.

11) The learned Single Judge then disposed of the said W.P.(C) No.582 of 2021 on 27.8.2021 directing the petitioners in the said Writ Petition to submit representations to the State Government seeking such relaxation under Rule 35 of the age requirement prescribed under Rule 14(4) of the Rules and directed the respondents to consider the same in 7 days and also further directed the respondents not to proceed further with the process of promotion initiated under the notification dt.18.8.2021.

12) Thereafter the petitioners in W.P.(C) No.582 of 2021 gave a representation dt.30.8.2021 to the Secretary, Home Department contending that due to no fault of theirs, they had become age barred and in such a situation, relaxation of age criteria should be done keeping in view the letter dt.8.7.2021 issued by the Office of the Director General of Police to the Principal Secretary, General Administration (P&T) Department quoting earlier instances of grant of such age relaxation by invoking Rule 34 of the Rules.

13) The said representation dt.30.8.2021 was however rejected on 8.9.2021 by the Principal Secretary, General Administration (P&T) Department (respondent No.3).

The order dt.8.9.2021 of the Principal Secretary, General Administration (P&T) Department

14) The following reasons were given in his order dt.8.9.2021 by the Principal Secretary, General Administration (P&T) Department for rejecting the representation of the petitioners in W.P.(C) No.582 of 2021:

(i) Certain promotions had been granted to the post of TPS Gr-II in 2007 and 2010 by relaxing the eligibility criteria of age, educational qualification and tenure period of service. Challenging the said relaxation granted in the year 2010, some Inspectors of Police and Subedars of TSR Battalions had filed Writ Petitions in the High Court.

As per judgment of this Court pronounced on 01.02.2021, thirteen Inspectors of Police and seven Subedars of the TSR battalions who were allowed promotion in 2013 with the relaxation, and had to be reverted back to their substantive feeder post of Inspector of Police/Subedars of TSR Battalions; those who were reverted had approached the Supreme Court by filing an SLP; and on 29.06.2021, the Supreme Court had stayed the reversion.

(ii) There might be many people who had already retired from Government service without getting benefit of promotion, since promotion of State Government employees had remained withheld for long time due to the pendency of the SLP in the Supreme Court, and if the promotion is considered by relaxing the age in favour of the above retired persons, then those who

have already retired from service without getting benefit of promotion, may prefer claim for promotion by seeking relaxation of age.

(iii) It was stated that if the relaxation of the age is being considered in favour of the persons making the representation (respondents No.6 to 27), then other incumbents concerned who are in the feeder post of TCS/TFS etc. may also prefer claim for relaxation of age; and those who are currently eligible to be considered for promotion as per existing rules, may be deprived of promotion, and this would create administrative inconvenience.

(iv) It was stated that as per Rule 14(4) of the TPS Rules, 1967 and the TPS 14th Amendment Rules, 2013, there was no provision for relaxation of age for promotion to the post of TPS Gr-II from the feeder post of Inspectors of Police, and so the claim of respondents No.6 to 27 for relaxation of age, is not justified, and cannot be considered.

(v) It was also stated that as per a Promotion Policy notified on 22.06.2021 to fill up vacant posts by making promotions on ad-hoc basis, there is no provision allowing age relaxation.

W.P.(C) no. 670 of 2021 and the impugned judgment of the learned Single Judge

15) The respondents No.6 to 27 had filed the W.P.(C) No.670 of 2021 against the respondents No.1 to 5 challenging the order dt.08.09.2021 of the Principal Secretary, General Administration (P&T) Department rejecting representations dt.30.08.2021 submitted by them to the Home Department.

16) By judgment dt.09.01.2023, learned Single Judge allowed the said W.P.(C) No.670 of 2021.

17) He noted that previously respondents No.6 to 27 had filed a Writ Petition being WP(C) No.582/2021 before this Court, and the said Writ Petition had been disposed of on 27.08.2021 directing respondents No.1 to 5 to consider the representation of the said persons, but the same had been rejected.

18) The learned Single Judge then referred to Rule 14(4) of the TPS Rules, 1967 which specifically directed the Committee which considers promotions to positions in the Tripura Police Service, to not consider cases of officers in the feeder posts who have attained the age of 55 years on the first day of January of the year in which the Committee meets, and also Rule 34 which confers on the State Government 'Power to relax', and held that he did not find any logical ground for non-consideration of the promotion of the respondents No.6 to 27 to TPS Grade-II posts.

19) He also observed that the respondents No.1 to 5 had not taken into account the fact that a status quo order had been passed by the Supreme Court in regard to promotion of State Government employees because of which the State Government had not been making promotions, and they are making promotions as per the policy decision taken by it on 22.06.2021 by promoting persons on ad-hoc basis to augment efficiency in administration. He held that since the promotion of the respondents could not be considered due to the order passed by the Supreme Court, and not because of any fault on their part, and since the Inspector General of Police of Tripura on 08.07.2021, had recommended their promotion by invoking Rule 34 of the Rules, and since he is the best person to know the interest of the State in protecting the

discipline of the Police Administration, the request for relaxation of age should have been accepted by the respondents No.1 to 5.

20) He further observed that the stand taken in the impugned rejection order by the respondents No.1 to 5 that if senior officers are promoted then junior officers may raise their claim, and there may be legal complications in future, is not in consonance with the object of the legislation; that the respondents No.6 to 27, being senior most eligible police officers for promotions to the post of TPS Gr-II, had a legitimate expectation of fair treatment in their service career, and any infringement would form the basis of judicial review. According to him, the Rule of Equity does not suggest that junior officers can claim advantage over senior officers, and if senior officers are promoted, junior officers cannot have any grievance, and the apprehension of the respondents No.1 to 5 that junior officers may be deprived of promotion, has no substance at all.

21) He therefore held that the State Government's decision in rejecting the request of the respondents No.6 to 27 for relaxation was unrealistic, unreasonable, arbitrary, and violates Article 14 of the Constitution of India.

22) He also held that in his opinion, if in appropriate cases the respondents No.1 to 5 failed to address the object of the legislation, then the power to relax Rule would be frustrated, and so the Court has to step in to protect the hardship caused by the action of the respondents No.1 to 5 in not exercising the power of relaxation to remedy the injustice caused to employees.

23) Certain decisions of the Supreme Court were also quoted by the learned Single Judge as to the exercise of power of relaxation in service rules.

24) He then directed the respondents No.1 to 5 to relax the age bar of respondents No.6 to 27 for consideration of their promotion to the next higher rank of TPS Gr-II, and directed the entire process to be completed within three weeks by setting aside the order dt. 08.09.2021 of the third respondent.

The instant Writ Appeal

25) The appellants then filed the instant Writ Appeal, and sought leave to file the said appeal in IA No.02/2023 contending that they are likely to be affected if the judgment of the learned Single Judge is implemented. They also filed IA No.01/2023 for condoning the delay of 88 days in preferring the appeal.

26) By common order dt.09.07.2024, IA No.01/2023 and IA No.02/2023 were both allowed. The appeal was then admitted on 23.07.2024.

Consideration by the Court

27) The contention of the counsel for the appellants is that in the very same Tripura Police Service, there are direct judgments of a Division Bench of the Gauhati High Court (Agartala Bench) in the case of *State of Tripura & others v. Raju Ghosh*¹ (Judgment dt.02.03.2013 in WA No.23, 32 & 33 of 2012) setting out the manner in which the power of relaxation is to be exercised while affecting promotions under the TPS Rules, 1967 which was also followed in the judgment dt.24.05.2019 in *Raju Ghosh and others v.*

¹ 2013 Supreme (Gau) 120 = 2013 LIC 2054 = 2013 2 GauLD 801

*State of Tripura and others*² by learned Single Judge of this High Court (who is also the Judge who passed the impugned judgment).

28) They alleged that the attention of the learned Single Judge was not drawn either by respondents No.6 to 27, or by respondents No.1 to 5 to both these judgments, though they are fully aware of them. They further contended that since the learned Single Judge himself in *Raju Ghosh (2 Supra)* referred to above followed the Division Bench judgment in *Raju Ghosh (1 Supra)*, he could not have given directions in the impugned judgment contrary to the judgment in *Raju Ghosh (1)*, and contrary to his own decision in *Raju Ghosh (2)*.

29) In the judgment in *Raju Ghosh (1)*, the Division Bench upheld the decision of the Single Judge that relaxation of educational qualification, experience and age limit under Rule 34 can be done only when the Government is not in a position to fill up vacancies. But if there are persons eligible for consideration of promotion to TPS Gr-II, even prior to grant of such relaxation under Rule 34, their cases must be considered, and then, if there are still vacancies which remain, then cases of others can be considered for promotion after giving the relaxation. It held as under:

" 69. On proper scrutiny of the Second Proviso to Rule 5, it appears that the government/authority has the power to consider the case of either the group of Subedar or Inspector of Police in the feeder post for filling up the vacancies arising against the promotion quota when the members of either of the group are not available due to non-eligibility and the said aspect was also not placed before the Council of Ministers. As a result, the Council of Ministers did not get opportunity to

² Judgment dt.24.5.2019 in W.P.(C).No.157 of 2013 and batch (Justice Arindham Lodh) (Tripura High court)

consider that aspect. Had they been informed then they might not have agreed to the proposal for relaxation as for the feeder post of Subedar for whom 36% quota is earmarked. As a result, the Council of Ministers did not get any opportunity to take a conscious decision and acted only on the proposal for relaxation made in memorandum dated 19th February, 2010 upon which the impugned notification dated 9 th March, 2010 was issued.

70. Learned Single Judge admittedly did not interfere with the impugned memorandum wherein the proposal for relaxation was made and the notification dt.9th March 2010, and accepted the contention that the Government has the power of relaxation of any rule including the condition of recruitment like educational qualification, experience and the age limit exercising the power vested on it under Rule 34, particularly when the government is not in a position to fill up the vacancies, but at the same time, learned single judge also considered that though the writ petitioners were eligible for consideration of promotion to TPS Grade-II even prior to relaxation of the rules, their cases were not considered even though the vacancies were available, and the Council of Ministers were admittedly not informed regarding the availability of Subedars for filling up the posts of TPS Grade-II within the quota fixed for them and if received such an information , the Council of ministers might not have approved the proposal for relaxation of qualification at that stage and the cases of the petitioners could have been considered for filling up within their respective quota in terms of second proviso to Rule 5 before relaxation. Taking note of the said aspect learned single Judge directed for considering the cases of the petitioner first and then go for considering the cases of others who became eligible after relaxation.

71. In view of the above, we are of the opinion that the direction of the learned Single Judge for considering the case of the petitioners, at the first instance, depriving the others who became eligible after relaxation, created a separate class within the class, as contended by Mr. Gupta, cannot be accepted as the petitioners themselves are a class as they have earned their eligibility for consideration prior to relaxation of the rules. Thus, the direction of the learned Single Judge is neither unreasonable nor perverse and even not in disregard of any established principle of law. Hence, we are reluctant to interfere with the judgment of the learned Single Judge. Appeals preferred by the State are dismissed."

(emphasis supplied)

30) As rightly contended by the counsel for the appellants, this decision of the Division Bench of the Gauhati High Court in **Raju Ghosh (1)** having been followed by the learned Single Judge (who passed the impugned judgment) in his judgment **Raju Ghosh (2)** (judgment dt.24.05.2019 in WP(C) 157/2013).

31) In **Raju Ghosh (2)**, the learned single Judge held:

"17. To sum up, the learned Single Judge as well as the Division Bench of the then Gauhati High Court in their respective judgments criticised the role of the proposal makers and indicated that the Council of Ministers was misinformed and thus was misdirected in approving the said proposal of the concerned respondents. The said judgment and orders are also specific that in filling up the 51 vacancies of TPS Grade-II posts, the State-respondents are to first consider the case of the petitioners being they were/are eligible candidates in all respects, without any relaxation thereof and it is only after consideration of the case of the petitioners and in the event of non-availability of the eligible Inspector of police/Subedars of

TSR, in the exigencies of public service, the vacancies may be filled up, either by the Inspector of Police/Subedars of TSR, after exceeding their respective proportion of vacancies, by invoking the power of relaxation, as contained in the Rule 34 of the TPS Rules.

... ..

27. In the light of above submissions and discussions, I have revisited the relevant notifications wherein the number of vacancies are notified which according to me is very specific to 51 posts of TPS Grade-II officers and looking back to the order, I further fortify that the notifications only are confined to the said 51 posts and filling up of the said 51 posts would be made after first considering the eligible officers on the basis of their respective merits prescribed in Rule 14 of the TPS Rules and only on non-availability of eligible officers either from the Inspectors of Police or Subedars, the relaxation clause under Rule 34 of the TPS Rules would be invoked. According to me, if the number of eligible officers in the post of Inspector of Police does not come within the ambit of eligibility criteria, then the said number of posts can be filled up from the eligible officers holding the posts of Subedars of TSR by way of interchanging and vice versa in terms of the second proviso to Rule 5 of the TPS Rules.”

(emphasis supplied)

32) In our opinion, having regard to the above decisions binding on the respondents and this Court, it was incumbent on the respondents to have brought both these decisions to the notice of the learned Single Judge, when the learned Single Judge was hearing WP(C) No.670/2021 out of which this appeal arises.

33) When questioned about their omission to do so, no satisfactory answer is forthcoming from counsel for respondents (the State as well as the

private respondents) as to why they suppressed before the learned Single Judge the Division Bench judgment in ***Raju Ghosh (1)*** as well as his own judgment in ***Raju Ghosh (2)***.

34) We are constrained to observe that this conduct on part of the respondents is unfair, and they cannot take advantage of the absence of the appellants before the learned Single Judge, and seek to get, and also get a favourable order contrary to the above two decisions.

35) The reasoning of the learned Single Judge in the impugned judgment finding fault with the rejection order dt.08.09.2021 passed by the third respondent cannot also be sustained because the opinion of the Inspector General of Police relied upon by him itself runs contrary to the principles laid down in the case of ***Raju Ghosh (1) and Raju Ghosh (2)***, which the IGP is expected to know and follow, and which he did not do in his recommendation.

36) In ***Ashok Kumar Uppal v. State of Jammu and Kashmir***³, ***State of Maharashtra v. Jagannath Achyut Karandikar***⁴, ***J.C.Yadav v. State of Haryana***⁵ and ***Sandeep Kumar Sharma v. State of Punjab***⁶ cited by the learned Single Judge, the relaxation already granted by the State was in question. They are not cases where the High Court had issued any Mandamus to the State to grant relaxation of age or educational qualification or experience.

37) It is trite that a Writ of Mandamus can be issued by the High Court where there is in existence an enforceable right and also a corresponding obligation. (***Amarendra Kumar Mohapatra v. State of***

³ (1998) 4 SCC 179

⁴ 1989 Supp (1) SCC 393

⁵ (1990) 2 SCC 189

⁶ (1997) 10 SCC 298

*Orissa*⁷). The respondents No.6 to 27 have not been able to show any such right conferred on them to get relaxation of age or a corresponding obligation on the State to be able to seek a Writ of Mandamus.

38) That apart Rule 34 as stated above states:

“34. Power to relax:

Where the State Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions of these Rules with respect of any class or category of persons or posts.”

39) By use of the word ‘may’, it is clear that the State Government is conferred with the discretion to relax the Rules where it thinks that it is necessary and expedient to do so.

40) But where the State Government feels that it might result in complications and chaos if such relaxation is granted, unless the reasons given by it are perverse or irrational, Court ought not to interfere with its refusal to exercise the discretion to relax the rules.

41) In the order dt.8.9.2021 passed by the Principal Secretary, General Administration (P&T), mentioned supra, he had mentioned the following two important reasons:

a) There might be many people who had already retired from Government service without getting benefit of promotion, since promotion of State Government employees had remained withheld for long time due to the pendency of the SLP in the Supreme Court, and if the promotion is considered by relaxing the age in favour of the above retired persons, then those who

⁷ (2014) 4 SCC 583

have already retired from service without getting benefit of promotion, may prefer claim for promotion by seeking relaxation of age.

b) It was stated that if the relaxation of the age is being considered in favour of the persons making the representation (respondents No.6 to 27), then other incumbents concerned who are in the feeder post of TCS/TFS etc. may also prefer claim for relaxation of age; and those who are currently eligible to be considered for promotion as per existing rules, may be deprived of promotion, and this would create administrative inconvenience.

42) These are reasons which cannot be termed as arbitrary or unreasonable and could not be brushed aside lightly as the Single Judge has done. The Single Judge erred in placing reliance on the doctrine of legitimate expectation to grant relief to the private respondents.

43) In *Rewa Tollway (P) Ltd. v. State of M.P.*⁸ the Supreme Court explained the limited scope of 'legitimate expectation' and held that it primarily grants an applicant the right to a fair hearing before a decision that negates a promise or withdraws an undertaking from which an expectation of certain outcome or treatment arises. It does not, however, create an absolute right to the expected outcome. The protection of legitimate expectation is subject to overriding public interest, which means that even if an individual's expectation is reasonable and based on a past practice or representation by the executive or legislature, it can be denied if justified by a significant public necessity. The Court also highlighted that in matters of policy change, the judiciary typically refrains from interfering, unless the decision is arbitrary, unreasonable, or not in public interest. It held that this balanced approach

⁸ (2024) 9 SCC 680, at page 692

ensures that while individuals can expect consistent treatment based on past practices or promises, the Government retains the flexibility to respond to evolving needs and priorities.

44) When possible administrative complications are offered as justification for not exercising the discretion to grant age relaxation to private respondents, the Court must not brush them aside particularly when they are good reasons.

45) For all the aforesaid reasons, we hold that the judgment of the learned Single Judge cannot be sustained.

46) Accordingly, the Writ Appeal is allowed; the impugned judgment dt.09.01.2023 of the learned Single Judge in WP(C) No.670/2021 is set aside; any promotions made pursuant to the order of the learned Single Judge in the said Writ Petition are also set aside, and respondents No.6 to 27 shall be reverted to the substantive post they were holding before they were promoted to the post in TPS Gr-II pursuant to the impugned judgment. The respondents No.1 to 5 shall then proceed to consider the cases of all eligible persons as per Rule 14 of the TPS Rules, 1967 for promotion to the post of TPS Gr-II officers without any age or other relaxation.

47) This exercise shall be done within 8(eight) weeks from today.

48) Pending application(s), if any, shall stand disposed of.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

Pijush/

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