

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.465 of 2023

Sri Uttam Kumar Das
S/o Sri Nitya Lal Das resident of Dhaleswar,
Ashram Chowmuhani, Swami Vivekananda Lane,
PO-Dhaleswar, PS-East Agartala, District: West Tripura.

....Petitioner(s)

Versus

- 1. **The State of Tripura,**
represented by its Secretary, Social Welfare & Social Education Department, Government of Tripura, New Secretariat Complex, Agartala, West Tripura.
- 2. **The Secretary,**
Social Welfare & Social Education Department, Government of Tripura, New Secretariat Complex, Agartala, West Tripura
- 3. **The Director,**
Social Welfare & Social Education Department, Government of Tripura, Ujan Abhoynagar, Agartala, West Tripura-799005
- 4. **Tripura Public Service Commission,**
represented by its Secretary, having his office at Akhaura Road, Agartala, West Tripura
- 5. **The Secretary, Tripura Public Service Commission**
having his office at Akhaura Road, Agartala, West Tripura
- 6. **The Chairman, DPC/Selection Committee (Chairman, Tripura Public Service Commission)** having his office at Akhaura Road, Agartala, West Tripura
- 7. **Sri John Calvin Debbarma,**
at present posted as Joint Director at the office of Directorate of Social Welfare & Social Education, Ujan Abhoynagar, Agartala, West Tripura
- 8. **Dr. Chandrani Biswas,**
at present posted as Joint Director at the office of the Directorate of Social Welfare and Social Education Department, Ujan Abhoynagar, Agartala, West Tripura

....Respondent(s)

For Petitioner(s)	:	Mr. Sankar Lodh, Advocate
For respondent(s)	:	Mr. S. M. Chakraborty, Adv. General Mr. Tapash Datta Majumder, Sr. Adv. Mr. Mangal Debbarma, Addl. GA Mr. Mintu Debbarma, Advocate
Date of hearing & delivery of Judgment & Order	:	26/03/2025
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner. Also heard Mr. S. M. Chakraborty, learned Advocate General assisted by Mr. Mangal Debbarma, learned Addl. GA appearing for the respondents no.1, 2 and 3 and Mr. Tapash Datta Majumder, learned senior counsel assisted by Mr. Mintu Debbarma, learned counsel appearing for the respondents no.7 and 8.

2. Admittedly, the petitioner, Sri Uttam Kumar Das and Sri John Calvin Debbarma (respondent no.7) as well as Dr. Chandrani Biswas (respondent no.8) were working along with Sri Arun Kumar Debbarma, Sri Bijan Chakraborty and Sanjit Rupini as Deputy Director/Programme Officer in Education (Social Welfare & Social Education) Department [for short, 'SW&SE'], Government of Tripura. Vide Notification dated 18.01.2023 in exercise of Article 309 of the Constitution and in supersession of the earlier Recruitment Rules for the post of Joint Director (SW&SE), 3(three) posts of Joint Director were created as promotional post from the post of Deputy Director/Programme Officer with 5(five) years of experience in the feeder post.

3. In 2021, a promotion policy was framed by the State vide Notification No.F.2(24)-GA(P&T)/2021 dated 22.06.2021 (*Annexure R-1*) for doing promotional exercises as a stop-gap arrangement in view of the fact that the judgment and order dated 09.04.2015 of the High Court was challenged before the

Hon'ble Supreme Court vide SLP(C) No.19765-19767 of 2015 and meanwhile, a large number of posts had fallen vacant to be filled up on promotion to avoid hindrance in the day-to-day discharge of administration of the State Government. The relevant paragraph nos.6 and 7 of the said promotion policy of 2021 are extracted hereunder for purposeful reference:

"6. Now, the State Government hereby notifies the following Promotion Policy, 2021 as follows:

(i) Rule 9 of the Tripura SC & ST Reservation Rules, 1992 and the provisos thereto shall be read in such a manner that only those SC & ST candidates who have qualified solely on the basis of merit and have never taken the benefit of reservation, will be treated to be own merit candidates and entitle to occupy the posts meant for general category and reservation shall be made cadre-wise.

(ii) 100 point roster shall apply only where the number of posts in the cadre is 4(four) or more.

(iii) Where the post in the cadre are 3(three) or less, the 3(three) point replacement roster shall be followed.

(iv) Single post or small cadres cannot be combined to make the number of posts more than 3(three).

7. Following the above policy, the DPC will identify employees eligible for promotion to a particular post against the available vacancies. After this exercise, DPC shall consider another exercise taking into account the procedure as stated in the rule 9(2) of the Tripura SC & ST Reservation Rules, 1992. Due to such exercise, if any candidate is found not considered in the process as stated in the above process, then such candidates shall be considered for ad-hoc promotion by creating supernumerary post(s)."

4. After that policy came into force, the concerned DPC of the said SW&SE Department made a promotional exercise for filling up the said posts of said Joint Director on 04.04.2023 and above six persons were found to have come into the zone of consideration for such exercise. As it appears from said DPC minutes, two out of said three sanctioned posts of Joint Director are to be filled up from UR category and one post is to be filled up from ST category. After necessary consideration of candidature as well as eligibility of above said 6(six) officers, the DPC finally recommended Sri Arun Kumar Debbarma for

promotion against ST post and Sri Bijan Chakraborty and Dr. Chandrani Biswas (respondent no.8) against 2(two) UR vacant posts. Simultaneously, the DPC also proposed for promotion of one ST candidate, namely, Sri John Calvin Debbarma against creation of supernumerary post and on such recommendation of the DPC, the State issued a Notification dated 22.05.2023 (Annexure-6) by promoting the above said 4(four) persons on *ad-hoc* basis with a request to the officers to join their places of posting by 24.05.2023 positively. The said notification is under challenge in this writ petition by the petitioner.

5. The grievance canvassed in this writ petition by the petitioner is that as per said DPC minutes, there were 3(three) sanctioned posts [2(two) UR category and 1(one) ST category], but the respondent no.7 i.e. John Calvin Debbarma was recommended against supernumerary post without considering the fact that as per 100 point roster, 4th post should be filled up from SC category, and the petitioner here among the six persons, only belongs to SC category. However, later on from the counter affidavit, it came to light that there are only 3(three) promotional posts of Joint Director wherein 100 point roster will not be applicable, rather replacement roster will be applicable as per the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and according to the State, as per said replacement roster, there was no vacancy for SC category of candidate.

6. During the course of hearing, Mr. Lodh, learned counsel for the petitioner submits that as per said replacement roster, one ST candidate was only supposed to be promoted to the post of Joint Director and accordingly the same was done by the Department by promoting one Sri Arun Kumar Debbarma, but as per the promotional policy of 2021 as framed by the State, more particularly, in paragraph 7 of the same, it is envisaged that after this exercise of promotion, the DPC shall consider another exercise taking into account the procedure as stated in Rule 9(2) of the Tripura SC & ST Reservation Rules, 1992 and due to such exercise, if **any candidate** is found not considered in the process as stated in the above process, then such **candidates** shall be considered for *ad-hoc* promotion by creating **supernumerary post(s)**.

[emphasis supplied]

6.1 According to learned counsel for the petitioner, as per said Paragraph 7, the responsibility of the department was to give promotion to Sanjit Rupini and also to Uttam Kumar Das (present petitioner) by creating supernumerary posts along with said John Calvin Debbarma (respondent no.7) as all the three were senior to said Smt. Chandrani Biswas (respondent no.8) who was given promotion under the UR quota. But, here, according to learned counsel, Mr. Lodh, the State has committed discrimination by only promoting John Calvin Debbarma by creating such supernumerary post to the utter deprivation of the said present petitioner and Sanjit Rupini. Mr. Lodh, learned

counsel also tries to impress that the words mentioned in paragraph 7 of the said policy i.e. "*due to such exercise, if any candidate is found not considered in the process*" though denote singularity in number but the subsequent wordings of said paragraph i.e. "*such candidates shall be considered for ad-hoc promotion by creating supernumerary post(s)*" denotes plurality and therefore, what is mentioned in the former part of the clause in singular form will also to be automatically interpreted to cover the plurality of "*any person*" and therefore, it was the duty of the concerned Department to promote the petitioner by creating a supernumerary post and thus there has been violation of Article 14 of the Constitution by causing discrimination to the petitioner.

7. Mr. S. M. Chakraborty, learned Advocate General, argues that the promotion policy of 2021 was not challenged by the petitioner and even he also did not challenge the decision of the DPC and therefore he is estopped from challenging the same in the hearing now. Learned Advocate General also contends that the entire writ petition was projected by misconception of facts that 100 point roster was applicable in case of the petitioner and not the replacement roster. Learned Advocate General further argues that promotion is not a matter of right and therefore the claim of the petitioner is required to be turned down. Learned Advocate General with all emphasis submits that the words "*any person*" as mentioned in paragraph no. 7 of the said promotion policy will denote only "a single person" and cannot be interpreted to cover plurality and the words "*such candidates*" as

mentioned in said Rules are merely a typographical mistake, rather it should be considered as "such candidate" and not "such candidates".

8. Learned senior counsel, Mr. T. D. Majumder on the other hand, submits that Dr. Chandrani Biswas was promoted as she was UR candidate and Sri John Calvin Debbarma was senior to the present petitioner in the seniority list and therefore, he was also rightly promoted by creating supernumerary post as per the policy of the State Government framed in 2021 and in no way the petitioner can supersede him.

9. This Court has given due consideration to the submissions made by all the parties and also have meticulously perused the records. The core issue here for decision is interpretation of the provisions of paragraph 7 of the promotion policy dated 22.06.2021. As per said provision after due promotional exercise if any candidate is found not considered in the process as stated in the said paragraph then such candidates shall be considered for *ad-hoc* promotion by creating supernumerary posts. Though the learned Advocate General submits that in the first part of said sentence of paragraph no.7, consciously it was mentioned as "*if any candidate is found not considered*" by the policy maker, therefore, in the later part of that sentence "*such candidates shall be considered*" should be understood as said candidate by ignoring the letter 's' in word 'candidates', however, such interpretation is not accepted by this court for the reason that all the words were used consciously by

the policy maker in the said policy and the words "such candidates" are followed by other two words "*supernumerary post(s)*" and such use of word post(s) itself indicates that the basic intention of the policy maker was to mean plurality. In this regard, assistance may also be taken from Section 13 of the General Clauses Act, 1897 where it is envisaged that the words in the singular form shall include the plural, and vice-versa.

10. This Court has also gone through the decision of the DPC. From their minutes dated 04.04.2023, it reveals that the promotion was to be given on the basis of merit-cum-seniority and after consideration of ACR grading of the eligible candidates, but detailed discussion as to how such assessment was made, was not reflected in the minutes. However, there being no specific challenge on that point, this Court is not embarking upon that issue. However, what is revealed from the final decision of the DPC is that the above said 3(three) persons, namely Sri Arun Kumar Debbarma, Sri Bijan Chakraborty and Smt. Chandrani Biswas, were proposed for promotion against three sanctioned posts along with promotion of Sri John Calvin Debbarma by creation of such supernumerary post. The DPC did not give any further reason as to why it considered only the case of Sri John Calvin Debbarma to be promoted by creation of such supernumerary post leaving the other two candidates namely, Sri Uttam Kr. Das and Sanjit Rupini apart. In that perspective, this Court vide order dated 26.07.2024 directed the State-respondents to clarify by affidavit as to why after fulfillment of

the three vacancies as per Replacement Roster Policy, only one supernumerary post was created to accommodate said John Calvin Debbarma whereas the other two persons including the petitioner were also senior to respondent no.8, Smt. Chandrani Biswas. Thereafter, one additional affidavit was submitted, but this court was not satisfied with the reply given by the State in this regard. Then, liberty was given to learned Addl. GA, Mr. Mangal Debbarma vide order dated 02.08.2024 to seek instructions about the cadre strength of the post of Joint Director, (SW & SE) and also to seek instruction from the GA (P&T) Department and also from the parent department of the petitioner i.e. the Social Welfare & Social Education Department as to why only one supernumerary post was created, but ultimately, the State-respondents failed to answer the query of this court made in this regard.

11. The grievance of the petitioner that when the petitioner himself was senior to respondent no.8, like respondent no.7 and was deprived of getting promotion after promotional exercise was done by the concerned department as per the promotional policy of 2021, it was incumbent upon the concerned department to explain as to why they felt it necessary to give promotion to respondent no.7 only by creating a supernumerary post and by depriving two others who were senior to said respondent no.7 and stood on the same footing like respondent no.7, especially when the Promotion Policy of 2021 does not restrict the creation of supernumerary post more than one. This

Court finds force in the submission of Ld. Counsel Mr. Lodh. Lack of any reasoning or justification in giving promotion to respondent no.7 alone depriving the petitioner, manifests discriminatory treatment towards the petitioner.

12. In view of the above, the State-respondents are directed to examine and consider the case of the present petitioner for the purpose of promotion to the post of Joint Director by creation of a supernumerary post like Sri John Calvin Debbarma, if he is otherwise found eligible to get promotion. As Sri Sanjit Rupini is not before this Court, no observation is being made in respect of said Sri Sanjit Rupini. In case, the petitioner is considered for promotion, his pay and allowances shall be fixed notionally with all financial benefits with effect from the date of promotion of other four persons till the date of his joining to the post of Joint Director. The entire exercise shall be completed within 8(eight) weeks from the date of receipt of copy of this order.

Needless to say, if any further grievance persists to the petitioner against the decision of the Respondents, he may approach appropriate authority in accordance with law.

13. With the above observations and directions, the instant writ petition stands disposed of.

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

JUDGE

Rohit