

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.119 of 2024

- 1. The High Court of Tripura**, represented by the learned Registrar General, having his office at Hon'ble High Court of Tripura, P.O. & P.S. N.C.C., Sub-Division- Sadar, Agartala, District- West Tripura.
- 2. The Registrar General**, having his office at the Hon'ble High Court of Tripura, P.O. & P.S. N.C.C., Sub-Division- Sadar, Agartala, District- West Tripura.
- 3. The Registrar General (Administration P & M)** In-Charge having his office at the Hon'ble High Court of Tripura, P.O. & P.S. N.C.C., Sub-Division- Sadar, Agartala, District- West Tripura.

.....Appellants

(Respondents in Writ Petition)

Versus

- 1. Sri Abhijit Das**, son of late Jatindra Chandra Das, Resident of Village & P.O. Indranagar (South), Surjya Sen Road, P.S. East Agartala, District- West Tripura.

.....Respondent.

(Petitioner in writ petition)

- 2. The State of Tripura**, represented by the Secretary & Commissioner, Finance Department, New Secretariat Complex, Agartala, P.O & P.S. N.C.C, Agartala, District West Tripura, 799010.
- 3. The Secretary & Commissioner**, Department of Finance, New Secretariat Complex, Agartala, P.O. & P.S. N.C.C, Agartala, District West Tripura, 799010.
- 4. Sri Arindam Das**, son of Sri Sital Chandra Das, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O- Kunjaban, P.S- New Capital Complex. Sub-Division- Agartala, District- West Tripura.
- 5. Sri Indu Bhusan Sarkar**, son of Sri Naresh Ch. Sarkar, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.-Kunjaban, P.S- New

Capital Complex. Sub-Division-Agartala, District- West Tripura.

6. Sri Anil Majumder, son of Sri Balahari Majumder, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.- Kunjaban, P.S.- New Capital Complex. Sub-Division- Agartala, District- West Tripura.

7. Sri Krishnadhan Debnath, son of Sri Surjya Kumar Debnath, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O- Kunjaban, P.S- New Capital Complex. Sub-Division- Agartala, District- West Tripura.

8. Sri Biswajit Mallik, son of Sri Radhasshyam Mallik, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.- Kunjaban, P.S- New Capital Complex. Sub-Division- Agartala, District- West Tripura.

9. Sri Daya Sankar Chakma, son of Sri Gyana Lal Chakma, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.-Kunjaban, P.S.- New Capital Complex. Sub-Division-Agartala, District- West Tripura.

.....**Respondent(s)**

For the Appellant(s) : Mr. Bibhal Nandi Majumder, Sr. Adv.
Mr. Dhrubajyoti Saha, Advocate.

For the Respondent(s) : Mr. Kohinoor N. Bhattacharya, G.A.
Mr. Somik Deb, Sr. Advocate
Mr. Samarjit Bhattacharjee, Advocate.
Ms. Sujata Deb (Gupta), Advocate.
Ms. Rajasree Purkayastha, Advocate.
Mr. Saptarshi Majumder, Advocate.
Mr. Pannalal Debbarma, Advocate.
Mr. Abir Baran, Advocate.

WA No.120 of 2024

1. The High Court of Tripura, represented by the learned Registrar General, having his office at Hon'ble High Court of Tripura, P.O. & P.S. N.C.C., Sub-Division- Sadar, Agartala, District- West Tripura.

2. The Registrar General, having his office at the Hon'ble High Court of Tripura, P.O. & P.S. N.C.C., Sub-Division- Sadar, Agartala, District- West Tripura.

3. The Registrar General (Administration P & M) In-Charge having his office at the Hon'ble High Court of Tripura, P.O. & P.S. N.C.C., Sub-Division- Sadar, Agartala, District- West Tripura.

.....**Appellants**

(Respondents in Writ Petition)

Versus

1. Sri Hiralal Hrishidas, son of late Bishnu Hrishidas, resident of Village-79 Tilla, P.O. Kunjaban, P.S. East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799006.

.....Respondent.

(Petitioner in writ petition)

2. The State of Tripura, represented by the Secretary & Commissioner, Finance Department, New Secretariat Complex, Agartala, P.O & P.S N.C.C, Agartala, District West Tripura, 799010.

3. The Secretary & Commissioner, Department of Finance, New Secretariat Complex, Agartala, P.O&P.S. N.C.C, Agartala, District West Tripura, 799010.

4. Sri Arindam Das, son of Sri Sital Chandra Das, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.- Kunjaban, P.S.- New Capital Complex. Sub-Division- Agartala, District- West Tripura.

5. Sri Indu Bhusan Sarkar, son of Sri Naresh Ch. Sarkar, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.-Kunjaban, P.S.- New Capital Complex. Sub-Division-Agartala, District- West Tripura.

6. Sri Anil Majumder, son of Sri Balahari Majumder, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.- Kunjaban, P.S.- New Capital Complex. Sub-Division- Agartala, District- West Tripura.

7. Sri Krishnadhan Debnath, son of Sri Surjya Kumar Debnath, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.- Kunjaban, P.S.-

New Capital Complex. Sub-Division- Agartala, District-West Tripura.

8. Sri Biswajit Mallik, son of Sri Radhasshyam Mallik, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.- Kunjaban, P.S.- New Capital Complex. Sub-Division- Agartala, District- West Tripura.

9. Sri Daya Sankar Chakma, son of Sri Gyana Lal Chakma, working in the post of Head Clerk, having his office at the Hon'ble High Court of Tripura, P.O.-Kunjaban, P.S.- New Capital Complex. Sub-Division-Agartala, District- West Tripura.

10. Sri Abhijit Das, son of late Jatindra Chandra Das resident of village & P.O. Indranagar (South) Surja Sen Road, Agartala, West Tripura

.....**Respondent(s)**

For the Appellant(s)	: Mr. Bibhal Nandi Majumder, Sr. Adv. Mr. Dhrubajyoti Saha, Advocate.
For the Respondent(s)	: Mr. Kohinoor N. Bhattacharya, G.A. Mr. Samarjit Bhattacharjee, Advocate. Ms. Sujata Deb (Gupta), Advocate. Mr. Arjun Acharjee, Advocate. Ms. Rajasree Purkayastha, Advocate.
Date of hearing	: 17.06.2025.
Date of delivery of Judgment & Order	: 24.06.2025
Whether fit for reporting : Yes	

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

[Dr. T. Amarnath Goud, J]

Heard Mr. B. Nandi Majumder, learned senior counsel assisted by Mr. D.J. Saha, learned counsel appearing for the Appellants-High Court. Also heard Mr. Somik Deb, learned senior counsel assisted by Mr. P.L. Debbarma, learned counsel appearing

for the respondent No.1 in WA 119 of 2024 and Mr. A. Acharjee, learned counsel appearing for respondent No.1 in WA 120 of 2024. Mr. Kohinoor N. Bhattacharya, learned GA assisted by Mr. D. Sarma, learned Addl. GA appearing for the State-respondents; Mr. Samarjit Bhattacharjee, Ms. Rajashree Purkayastha and Mrs. S. Deb (Gupta), learned counsels appearing for their respective clients (private respondents).

[2] The present WA 119 of 2024 has been preferred against the decision made in WP(C) 335 of 2021 and the present WA 120 of 2024 has been preferred against the decision made in WP(C) 177 of 2022 by the learned Single Judge. These writ appeals filed by the appellants arise out of common cause of action challenging the same impugned judgment and order of the learned Single Judge dated 15.12.2023 passed analogously in W.P.(C) No.335 of 2021 & W.P.(C) 177 of 2022 and the reliefs sought for in these appeals are also similar in nature. Accordingly, the present writ appeals are taken together for consideration and disposal of the same in a common judgment.

[3] The facts, in brief, are that the writ petitioners in WP(C) No.335 of 2021 and WP(C) No.177 of 2022 respectively [the respondents No.1 in the present WA 119 of 2024 & WA 120 of 2024 respectively] were initially appointed in the year 2000 to the post of Lower Division Assistant/Typist in the Agartala Bench of the then Gauhati High Court (The High Court of Assam, Meghalaya,

Nagaland, Manipur, Tripura, Mizoram & Arunachal Pradesh). Since then they had been rendering their services in the Agartala Bench of the then Gauhati High Court. Thereafter, on completion of 12 (twelve) years of their services, they had been promoted to the post of Bench Assistant in the Agartala Bench in the Pay Band-2 of Rs.5,310-24,000/- with Grade Pay of Rs.2,000/- vide notification dated 05.11.2012 & notification dated 16.04.2012 respectively. Thereafter, within a short span, they again had achieved another promotion to the post of Senior Administrative Assistant under the High Court of Tripura after bifurcation from the then Hon'ble Gauhati High Court, in the Pay Band-2 of Rs.5,310-24,000/- with Grade Pay of Rs.2,100/- vide notification dated 06.08.2013.

[4] It was contended on behalf of the writ petitioners before the learned Single Judge that the private respondents namely, Sri Arindam Das, Sri Anil Majumder, Sri Krishnadhan Debnath, Sri Chinmoy Debbarma and Sri Dayasankar Chakma were appointed to the post of Lower Division Assistant/Typist in the Agartala Bench of the then Gauhati High Court with effect from 01.04.2002 i.e. after about two years from the date of initial appointment of the petitioners to the said post of Lower Division Assistant/Typist. Subsequently, the Registrar General, High Court of Tripura vide notification dated 18.02.2016 promoted nine persons including the petitioners and the aforesaid private respondents to the post of Head Clerk Grade in the Pay Band-2 of Rs.5,700-24,000/- with

Grade Pay of Rs.4,200/- in order of preference therein noting that the same represents their inter se seniority. The petitioner in WP(C) No.335 of 2021 and the petitioner in WP(C) No.177 of 2022 were placed at Serial No.8 and 9 respectively in the seniority list i.e. at the bottom of private respondents, according to the petitioners they had been superseded by the private respondents.

[5] Being aggrieved by the aforesaid seniority position, the petitioners had submitted their representations for correction of their seniority position, but, those were rejected vide communication dated 28.04.2016 on the ground that they had poor recordings in their Annual Confidential Reports (ACRs, for short) than that of the private respondents. Having dissatisfied with the said reply dated 28.04.2016, petitioner Sri Abhijit Das had submitted another representation to the High Court on 30.12.2020 ventilating his grievances, but, that representation was not considered. Thereafter, another Notification dated 23.03.2021 was issued by the High Court of Tripura whereunder one of the private respondents, namely, Sri Arindam Das was again promoted to the post of Superintendent (Group-B Gazetted) regardless of their original i.e. initial seniority position.

[6] The petitioners, having been aggrieved and dissatisfied, had preferred the two writ petitions i.e. WP(C) No.335 of 2021 and WP(C) No.177 of 2022 respectively. WP(C) No. 335 of 2021 has been taken up as lead case by the learned Single Judge for deciding

both the cases and the reliefs sought for by the petitioner in the said WP(C) 335 of 2021 [i.e. respondent No.1 in the present WA 119 of 2024] are reproduced hereunder:

“(i) “Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued for directing them, to transmit the records, relevant to the subject matter of this writ petition for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Notification dated 18.02.2016 (Annexure-6 supra) insofar as the same places the petitioner below the private respondents, the impugned Communication dated 28.04.2016 (Annexure-9 infra) & the impugned Notification dated 23.03.2021 (Annexure-11 supra);

(ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued for mandating/directing the respondents, to revoke/rescind the impugned Notification dated 18.02.2016 (Annexure-6 supra) insofar as the same places the petitioner below the private respondents, the impugned Communication dated 28.04.2016 (Annexure-9 supra) & the impugned Notification dated 23.03.2021 (Annexure-11 supra), and thereupon, restore the seniority of the petitioner over the private respondents, and grant promotion to him to the post of Superintendent (Group-B Gazetted), with effect from the date of promotion of the private respondent, namely, Sri Arindam Das, with all consequential benefits thereof;

(ii)(a) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued for mandating/directing the respondents to place the petitioner above the private respondents, thereby interfering with the impugned Notification dated 18.02.2016, the impugned Communication dated 28.04.2016 and the impugned Notification dated 23.03.2021, and accord promotion to the petitioner to the post of Head Clerk Grade above the private respondents with all consequential benefits thereof;

(ii)(b) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not be issued for restraining/prohibiting the respondents, from according any promotion, in favour of the private respondents, in furtherance of the impugned Notification dated 18.02.2016, the impugned Communication dated 28.04.2016 and the impugned Notification dated 23.03.2021, till the final decision of this writ petition.....”

[7] Learned Single Judge upon hearing the submissions made by both the sides and on perusal of records, decided the case of the writ petitioners on 15.12.2023 in a common judgment passed in WP(C) No.335 of 2021 & WP(C) 177 of 2022 in the following manner:

“.....45. In the opinion of this court, true it is, that the claim of seniority or promotion thereof is not a fundamental right, but it is a civil right; however, when such right is regulated by a statute, then any departure would be arbitrary resulting hostile discrimination, thus to offend Articles 14 and 16(2) of the Constitution of India. Strict observance to such statutory provision with some advisories would keep up morale of the employees in the organization they work.

46. In the instant case, the fundamental principles of seniority-cum-merit have been obliterated, and in my opinion, it needs reconsideration. Accordingly, I remit the matter to Hon’ble the Chief Justice of the High Court to revisit the challenge posed by the petitioners *vis-a-vis* reconstruction of the seniority position of the petitioners and the private respondents impleaded in the above two writ petitions.

The matter be placed accordingly before Hon’ble the Chief Justice.

The instant writ petitions, accordingly, stand disposed.”

[8] Aggrieved by the above-quoted decision of the learned Single Judge, the present appeals have been preferred by the appellants-High Court seeking the same reliefs read as under:

i. Admit this Appeal;

ii. Call for the records,

ii. Issue Notice upon the Respondents,

iv After hearing be pleased to quash/set aside the impugned common Judgment and Order dated 15.12.2023 passed in W.P.(C) 177/2022 and W.P(C) 335/2021 by allowing the appeal;

AND

v. In the interim be pleased to stay the impugned Judgment and Order dated 15/12/2023 till disposal of the appeal;"

[9] Mr. B.N. Majumder, learned senior counsel assisted by Mr. DJ. Saha, learned counsel appearing on behalf of the appellants in both the appeals, contends that the writ petitions ought to have been dismissed by the learned Single Judge on the grounds of delay, as the petitioners approached the court 5 (five) years after the Chief Justice's decision, which established the seniority list. The writ petitioners were placed at serial No. 8 and 9, respectively, among Sr. Administrative Assistants and by the time of adjudication, further promotions had occurred based on the established seniority list, solidifying the seniority positions in higher grades. He further contends that implementing of the judgment would require a reshuffling of not only the 2016 seniority list but also subsequent higher-grade positions, disrupting the established order and potentially infringing on the vested rights of those who were promoted based on the earlier seniority list.

[10] It is also contended on behalf of the appellants that the learned Single Judge did not consider the fact that the decisions taken by the competent authority granting the promotions were on the basis of some Rules, but, the same were not specifically challenged in the writ petitions.

[11] Mr. Majumder, learned senior counsel also submits that the learned Single Judge has failed to consider that the criteria for promotion to the post of Head Clerk, which change the seniority position, was governed by the principle of 'seniority cum merit' whereas, the subsequent promotions to the post of Superintendent, is totally governed by the principle of 'merit cum seniority' and as such if the direction is to be implemented, the entire structure of the cadres has to be re-shuffled which is absolutely impracticable and impossible. Furthermore, the implementation of the direction of the Writ Court, after vested rights have accrued in favor of non-parties to the writ petition, cannot be addressed on the administrative side. To support his contention, learned senior counsel placed reliance on the following judgments of the Hon'ble Apex Court:

1. Haryana State Warehousing Corporation & Anr. v. Jagat Ram & Anr. With **Ram Kumar v. Jagat Ram & Ors.** reported in **2011 AIR SCW 1444.**

2. Shiba Shankar Mohapatra and Ors. v. State of Orissa and ors. reported in **2010 AIR SCW 348**.

[12] On the contrary, Mr. Somik Deb, learned senior counsel assisted by Mr. PL Debbarma, learned counsel appearing on behalf of respondent No.1 in WA 119 of 2024 opposes the submissions made on behalf of the appellants. He submits that the plea of the appellants with regard to delay and laches on the part of the respondent No.1 should not be entertained. Vide notification dated 18.02.2016 nine persons including the respondent No.1 and the aforesaid private respondents were promoted to the post of Head Clerk Grade. The respondent No.1 was placed at Serial No.8 in the seniority list i.e. at the bottom of the list and according to him he had been superseded by the private respondents. Being aggrieved by the aforesaid seniority position, the respondent No.1 had submitted his representation for correction of his seniority position, but, the same was rejected vide communication dated 28.04.2016 only on the ground that he had poor recordings in their Annual Confidential Reports (ACRs, for short) than that of the private respondents. Having dissatisfied with the said reply dated 28.04.2016, respondent No.1, Sri Abhijit Das had submitted another representation to the High Court on 30.12.2020 ventilating his grievances, but, that representation was too not considered. Thereafter, another Notification dated 23.03.2021 was issued by the High Court of Tripura whereunder one of the private respondents,

namely, Sri Arindam Das was again promoted to the post of Superintendent (Group-B Gazetted). To support his contention, Mr. Deb, learned senior counsel has placed reliance of the judgment of the Hon'ble Apex Court in ***P.B. Roy v. Union of India*** reported in **(1972) 3 SCC 432**.

[13] Mr. Deb, learned senior counsel further contends that the post of Head Clerk/Accountant is to be filled up by promotion, from the feeder post of Senior Administrative Assistant, on the basis of seniority-cum-merit. He submits that promotion by applying the principle of seniority-cum-merit would mean that there cannot be any relative assessment of inter se merit, and once, a government servant meets the requisite benchmark, promotion has to be made on the basis of inter se seniority. In the instant cases, the respondent No.1 completely superseded by the private respondents merely on the basis of poor ACR rating. He also contends that in all grades of the High Court, promotions have been made only on the basis of seniority, and therefore, adoption of such unique process of marks allocated against the ACR gradings for 5(five) years for promotion to the post of Head Clerk Grade has resulted in gross injustice to the respondent No.1. He, therefore, urges this Court to dismiss the present appeals. To support his contention, learned senior counsel has placed reliance on the judgment of the Hon'ble Apex Court in ***Rama Negi Vrs. Union of India & Ors.*** reported in **(2022) 5 SCC 150**.

[14] While adopting the argument made by Mr. Somik Deb, learned senior counsel, Mr. A. Acharjee, learned counsel appearing for the respondent No.1 in WA 120 of 2024 submits that his client was appointed to the post of Lower Division Assistant/Typist in the Agartala Bench of the then Gauhati High Court (The High Court of Assam, Meghalaya, Nagaland, Manipur, Tripura, Mizoram & Arunachal Pradesh) and by a order dated 18.04.2000, the joining report submitted by him was duly accepted. Thereafter, on 16.04.2012, the respondent No.1 was promoted to the post of Bench Assistant in the Agartala Bench of the then Gauhati High Court. Subsequently, he was promoted to the post of Senior Administrative Assistant on 06.08.2013 and thereafter, nine persons were promoted to the post of Head Clerk vide Notification dated 18.02.2016 wherein according to the learned counsel, the name of the respondent No.1 was reflected at the bottom most illegally. The respondent No.1 filed representation on 15.03.2016 before the concerned authority but the same was rejected by the communication dated 28.04.2016. It is submitted by the learned counsel that, the drawal of seniority position, by the Notification dated 18.02.2016 is unsustainable in the eye of law. Mr. Acharjee, learned counsel has also brought to the notice of this Court that vide notification dated 7th February, 2025, the said respondent no.1, Hiralal Hrishidas, Head Clerk, High Court of Tripura was promoted

to the post of Superintendent (Group-B Gazetted), High Court of Tripura.

[15] Heard the submissions made at the Bar. Perused the record.

[16] For the purpose of examining the cases in hand, it is necessary to extract the following Rules of the High Court of Tripura Services (Appointment, Conditions of Service and Conduct) Rules, 2014 (*for short* 'Rules') and the same are extracted as under:

Rule 14

"14. Promotion —

Promotion to the higher post/grade in all the cadres of the service shall be made on the basis of merit, merit-cum-seniority, seniority-cum-merit or seniority subject to rejection of unfit as specified in the schedules.

Provided that suitability test for promotion to certain posts may be taken as may be prescribed by the Chief Justice."

Rule 15

"15. Seniority —

(1) The members of the service appointed or promoted in accordance with these rules, on regular basis shall be senior to persons appointed on *ad hoc* or temporary basis.

(2) The *inter se* seniority of the members of the service appointed on the basis of the result of the competitive examination shall be determined according to the merit list and where two or more members are placed at the same position in the merit list, the person senior in age shall be senior to the other(s).

(3) The *inter se* seniority of the members of the service appointed by direct recruitment or promotion in the same/grade in any English calendar year shall be determined from the date of their appointment/promotion, as the case may be.

(4) Where more than one member is promoted in any cadre of the service by the same order, the *inter se* seniority of persons, so promoted, shall be determined by their *inter se* seniority in the lower grade of the respective cadre, unless directed otherwise."

Rule 26

"26. Residuary power —

(1) Nothing in these rules shall be deemed to affect the power of the Chief Justice to make such order from time to time as he may deem fit in regard to all matters, incidental or ancillary to these rules not specifically provided for herein or in regard to the matters as have not been sufficiently provided for.

Provided, that if any such order relates to salary, allowances, leave or pension of the member of the service, the same shall be made with the approval of the Governor.

(2) The Chief Justice shall have power to relax age or qualification and experience for appointment to the service in appropriate case according to his discretion.

Provided that no person shall get the benefit of relaxation more than once in his service life."

[17] It is seen from record that Hon'ble the then Chief Justice by the note dated 14.07.2014, on perusal of the note of the learned Registrar General, opined that the post of Superintendent has to be filled in on the basis of merit-cum-seniority and thereby, prepared a formula. The relevant contents of the said note is quoted hereunder:

"I have perused detailed note of the Registrar General. As far as the post of Superintendent is concerned, the same has to be filled in on the basis of merit-cum-seniority. The system which I have followed is that the employee has been given 1(one) mark for each completed year of service in the grade excluding the minimum service in the lower grade which is necessary for being considered for the higher post upto a maximum of 10 marks. Therefore, where three years service is required in the lower grade, in case of an employee who has five years of service in the lower grade he will get 2 marks for his seniority and the employees having 13 or more years of service will get 10 marks for seniority. With regard to merit 40 marks have been allotted in the following fashion:-

ACRs of each of the employees shall be considered for the last 5(five) years. An employee getting overall grading 'outstanding' has been awarded 8 marks, for 'very good' it is 6 marks, for 'good' it is 4 marks, for 'fair' it is 2 marks and for 'poor' 0 marks.

As far as the posts which are to be filled in on the basis of seniority-cum-merit are concerned, I feel that it would be proper to allot 25 marks for seniority and 25 marks for merit. The criteria in this regard will be as follows:-

As far as merit is concerned, ACRs of each employee for the last five years have been considered. An employee getting overall grading 'outstanding' will get 5 marks, 4 for 'very good', 3 for 'good', 2 for 'fair' and for 'poor' 0 marks.

In case of merit-cum-seniority, an employee must have 3 'good' in the last five years to be considered for promotion and in case of seniority-cum-merit, an employee must have at least 2 'good' in the last five years to be considered for promotion.

Where seniority is the only criterion for promotion, the employee senior most in service will be selected subject to the condition that he should have at least one 'good' and not more than 2 'poor' in the last five years. If an employee does not have one 'good' or has more than 2 'poor' in the last five years shall not be considered fit for promotion.

Registrar General is directed to prepare a chart on the basis of above formula. As far as relaxation is concerned, I shall pass necessary order after preparation of the chart."

[18] It is also seen from record that by the note dated 17.02.2016, Hon'ble the then Chief Justice considered the proposal of the Registrar General dated 17.02.2016 for filling up the existing 09 vacant posts in the grade of Head Clerk belonging to Group-C non-gazetted. The relevant contents from the said note dated 17.02.2016 is reproduced herein-below:

"I have considered the proposal of the Registrar General dated 17.02.2016 for filling up the existing 09 vacant posts in the grade of Head Clerk belonging to Group-C non-gazetted. These posts have to be filled up on the basis of seniority-cum-merit. None of the employees who are under consideration fulfill the requisite essential qualification of having completed three years of service in the feeder post of Senior Administrative Assistant. However, it is necessary to fill up these posts because work of the High Court is suffering.

While making promotions merit cannot be ignored because I find that there is a lot of disparity in the overall grading of the employees. To give an example, there is one employee who has five 'Outstanding' grading in the last five years' ACRs whereas another employee has four 'Good' and one 'Very Good' grading. As such they cannot be equated. I am of the view that relaxation may be granted and all the nine vacant posts in the grade of Head Clerk be filled up but the seniority of the employees on promotion will be as per the merit drawn up by the Registrar General on the basis of the formula evolved as per my Order dated 14.7.2014.

After the nine vacant post of Head Clerk grade are filled up, nine posts of Senior Administrative Assistant shall fall vacant. Two Bench Assistants have more than three years service as Junior Administrative Assistant and they may be promoted as Senior Administrative Assistants in the order of their present seniority. Out of the remaining seven posts of Senior Administrative Assistant only three may be filled in at present

maintaining the present seniority since only three Junior Administrative Assistants namely, Smti Madhumita Debbarma, Smti Soma Rani Deb (Nag) and Shri Sudip Pal have the requisite essential qualification of three years service in the feeder post.”

[19] Subsequently, the appellants-High Court issued the Notification dated 18th February, 2016 with regard to the promotion to the post of Head Clerk from the feeder post of Sr. Administrative Assistant. In that notification the petitioners’ name had been shown at the bottom of the list whereas the private respondents had been shown ahead of them. The said Notification dated 18.02.2016 is extracted as under:

“.....NOTIFICATION

With kind approval of Hon“ble the Chief, the following employees in the Grade of Senior Administrative Assistant, High Court of Tripura have been promoted to the post of Head Clerk Grade, High Court of Tripura temporarily in the following order of preference, which represents their inter se seniority in the Pay Band-2 of ₹5700-24000/- with Grade Pay of ₹4200/- plus other allowances as admissible under the rules with effect from the date of their joining with relaxation relating to experience as per Rule 26 of the High Court of Tripura Services (Appointment, Conditions of Service and Conduct) Rules, 2014 (as amended):

Sl.No.	Name of the Employees
1.	Shri Arindam Das, Senior Administrative Assistant
2.	Shri Indu Bhusan Sarkar, Senior Administrative Assistant
3.	Shri Anil Majumder, Senior Administrative Assistant
4.	Shri Krishnadhan Debnath, Senior Administrative Assistant
5.	Shri Biswajit Mallik, Senior Administrative Assistant
6.	Shri Chinmoy Debbarma, Senior Administrative Assistant
7.	Shri Daya Sankar Chakma, Senior Administrative Assistant
8.	Shri Abhijit Das, Senior Administrative Assistant
9.	Shri Hiralal Hrishidas, Senior Administrative Assistant

They will perform their present duties until further order(s).

They will remain on officiating basis for a period of 2(two) years as per Rule 12 of the High Court of Tripura Services (Appointment, Conditions of Service and Conduct) Rules, 2014 (as amended).....”

[20] It is contended that the private respondents were recruited in the year 2002 i.e. subsequent to the recruitment of the petitioners in the year 2000. Being aggrieved by the aforesaid seniority position, the petitioners had submitted their representations for correction of their seniority position, but, those were rejected vide communication dated 28.04.2016 on the ground that they had poor recordings in their Annual Confidential Reports (ACRs, for short) than that of the private respondents. The contents of the said communication dated 28.04.2016 is also reproduced hereunder:

“High Court of Tripura
Agartala

No.F.4(22)-HC/2016/7654-55

From: S. Bhattacharjee
Registrar (Admn., P & M)

To

- 1) Shri Abhijit Das,
Head Clerk
High Court of Tripura.
- 2) Shri Hiralal Hrishidas,
Head Clerk
High Court of Tripura.

Dated, Agartala, the 28th April, 2016

Subject: Representation for reconsidering seniority position in the inter-se seniority position among the newly promoted Head Clerks.

Sir,

I am directed to inform you that your representation dated 14.03.2016 for reconsidering seniority position in the inter-se seniority position among the newly promoted Head Clerks was placed before the Hon'ble Chief Justice and His Lordship has been pleased in order as follows:-

“I have considered the representations of Shri Hiralal Hrishidas, Head Clerk, dated 15.03.2016 and Shri Abhijit Das, Head Clerk, dated 14.03.2016 who

were promoted as Head Clerks vide Notification dated 18.02.2016 granting relaxation in experience.

The grievance of these two officials is that in the feeder category of Senior Administrative Assistants, they were at Sl.No. 1 and 2 respectively but now they have gone to Sl. Nos..9 and 8 respectively in the merit of Head Clerks.

While making the promotions I had clearly mentioned that merit cannot be ignored. There was a lot of disparity in the grading of the various employees. Shri Hiralal Hrishidas was graded 'good' for the years 2011, 2012, 2013 and 2014 and 'very good' for the year 2015. Shri Abhijit Das was graded 'good' for the years 2011, 2012, and 2013 and 'very good' for the years 2014 and 2015. On the other hand, Shri Arindam Das who has been placed above them was graded 'outstanding' for all the five years and Shri Indu Bhusan Sarkar was graded 'good' for the year 2011 and 'outstanding' for the remaining four years. The seniority positions in the promotional post have been fixed as per the merit and, therefore, in my opinion, there is no force in the representations made by the representationists, which are accordingly rejected."

This is for favour of your information.

Yours faithfully,
Sd/-
(S. Bhattacharjee)
Registrar (Admn., P & M)"

[21] It was argued on behalf of the appellants that Hon'ble the Chief Justice had exercised his power as envisaged under proviso to Rule 14 because none of the candidates completed three years' of service as required for promotion to the post of Head Clerk from Senior Administrative Assistant. It is seen from the Schedule-I serial no.7 of the High Court of Tripura Services (Appointment, Conditions of Service and Conduct) Rules that for the post of Head Clerk (Group-C Non-Gazetted), 3 years of experience as Senior Administrative Assistant would be required qualification for promoting to the said post. It is reflected in the note dated 17.02.2016 that the then Hon'ble Chief Justice opined that 09 vacant posts in the grade of Head Clerk belonging to Group-C non-gazetted had to be filled up on the basis of seniority-cum-merit. Since none of the employees who were under consideration fulfilled

the requisite essential qualification of having completed three years of service in the feeder post of Senior Administrative Assistant, decision was taken to fill up those posts because work of the High Court was suffering and it was further opined that while making promotions merit cannot be ignored. We find force in the argument made by Mr. BN Majumder, learned senior counsel for the appellants. Hence, we are of the opinion that since, none of the candidates were qualified having completed three years of service in the feeder post of Senior Administrative Assistant and the work of the High Court was also suffering, Hon'ble the Chief Justice could exercise his power envisaged under the proviso of Rule 14 and Rule 26 of the Rules giving preference to the merit of the candidates rather than the seniority.

[22] For the purpose of reference, why merit of the candidates should not be ignored in the present cases since none of the persons promoted to the post of Head Clerk did not have 3 years of experience as Senior Administrative Assistant which is the required qualification for promoting to the said post, the relevant contents from the judgment of the Hon'ble Apex Court as relied upon by the appellants are quoted as under:

Haryana State Warehousing Corporation & Anr. v. Jagat Ram & Anr. With ***Ram Kumar v. Jagat Ram & Ors.*** reported in **2011 AIR SCW 1444:**

".....37. Thus it is the settled position that the criterion of seniority-cum-merit is different from the criterion of merit and also the criterion of merit-cum-seniority. Where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. Seniority-cum-merit means that, given the minimum necessary merit required for efficiency of administration, the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of a further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employees. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be considered for promotion on the basis of seniority-cum-merit. The concept of "seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and, subject to fulfilling the said requirement, promotion is based on seniority. There is no further assessment of the comparative merits of those who fulfil such requirement of minimum merit or satisfy the benchmark previously fixed. On the other hand, the principle of "merit-cum-seniority" puts greater emphasis on merit and ability and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal among the candidates considered for promotion...."

Shiba Shankar Mohapatra and Ors. v. State of Orissa and ors.

reported in **2010 AIR SCW 348:**

".....14. One must not lose sight that seniority and eligibility for promotion are two different concepts altogether. Explaining the difference between the two, this Court in *R. Prabha Devi & Ors. v. Government of India & Ors.*, AIR 1988 SC 902 held as under:-

"15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority..... When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post.

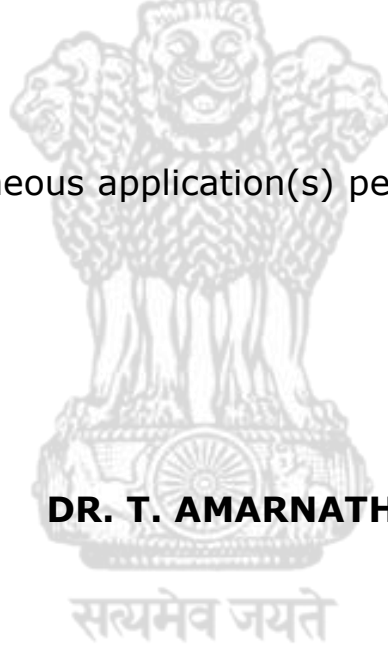
When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."....."

In view of the above discussions, we are of the opinion that the order passed by the learned Single Judge on 15.12.2023 passed analogously in W.P.(C) No.335 of 2021 & W.P.(C) 177 of 2022 is liable to be set aside and accordingly, the same is set aside. The judgments referred by the learned counsel for the respondent No.1 in WA 119 of 2024 are not relevant to the fact and circumstances of the present case. Resultantly, the present writ appeals filed by the appellants stand allowed and the same are disposed of.

As a sequel, miscellaneous application(s) pending, if any, shall also stand closed.

B. PALIT, J

DR. T. AMARNATH GOUD, J



Sabyasachi G.

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