

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.157 OF 2023**

Dr. Indrajit Das.

..... **Appellant(s)**

Versus

The State of Tripura and ors.

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

For the Appellant(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.
Mr. D. Paul, Advocate.
Ms. S. Debbarman, Advocate.

For the Respondent(s) : Mr. Kohinoor N. Bhattacharjee, G.A.
Mr. D. Sharma, Addl. G.A.
Mr. Ratan Datta, Advocate.

Date of hearing and delivery of
Judgment & Order : 23.04.2025.

Whether fit for reporting : NO.

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

(T. AMARNATH GOUD,J)

This present writ appeal has been filed against the Judgment and Order dated 19.10.2023 passed by the learned Single Judge in WP(C) No.509 of 2023.

2. The brief facts of the case are that in response to the advertisement dated 11.02.2022 for filling up the post of

Basic Teacher in AGMC & GBP Hospital in the Anesthesiology Department, the petitioner submitted his candidature. After considering his documents, the provisional merit list was published vide Notification dated 11.01.2023. However, the said list contained some mistakes, and accordingly, a final merit list was published vide Notification dated 25.04.2023. After the publication of the final merit list, the respondents did not issue any appointment letter, and subsequently, vide the impugned Notification dated 05.08.2023, the respondent No.2 published a revised final merit list, in which the name of the petitioner appeared below that of the private respondents. In the revised final merit list, no marks were awarded to the petitioner under the head of difficult/remote area service, even though he had served in Khedacherra PHC for three and a half years, on the ground that he served in Khedacherra prior to the issuance of the notification dated 07.07.2018. Hence, he filed the writ petition, which was dismissed by the learned Single Judge vide Judgment dated 19.10.2023. The appellant-petitioner has, therefore, filed this instant writ appeal seeking to set aside the impugned Judgment and Order dated 19.10.2023 passed by the learned Single Judge in WP(C) No.509 of 2023.

3. Heard Mr. P. Roy Barman, learned Senior Counsel, assisted by Mr. D. Paul, learned counsel appearing for the

appellant-petitioner, as well as Mr. Kohinoor N. Bhattacharjee, learned G.A., along with Mr. D. Sharma, learned Addl. G.A. appearing for the State-respondents, and Mr. R. Datta, learned counsel appearing for respondent No.3.

4. Learned Counsel Mr. Roy Barman, appearing for the appellant, submits that the appellant served at Khedacherra PHC, which has been officially classified as a rural area in the Government Notification dated 07.07.2018. A confirmation to this effect has also been issued by the concerned Director. The learned Sr. counsel submits that the respondents in the writ petition argue that since the relevant rule providing weightage for rural service came into effect only in 2018, the appellant's prior service in Khedacherra PHC from August 2007 to February 2011 should not be considered for such weightage. The learned Single Judge accepted this argument, holding that the benefit cannot be applied retrospectively. Mr. Roy Barman, learned Senior Counsel, contends that this reasoning is flawed. He submits that the hardship and rural nature of Khedacherra PHC existed during the appellant's tenure, and these conditions did not change merely because a formal notification came later. The character and difficulty level of the posting remained the same both before and after the rule's enactment. Therefore, denying the appellant the 30% weightage

solely because his rural service occurred before 2018 is unjustified. His tenure in the rural and difficult PHC spanned 3 years and 6 months, and he should rightfully be entitled to the weightage benefit.

5. Mr. R. Datta, learned counsel appearing for respondent No.3, submits that the Notification dated 07.07.2018 of the Department of Health & Family Welfare, Government of Tripura, cannot have retrospective effect as there is no express provision to make its effect retrospective.

To support his case, learned counsel placed on record **paras 42 and 51** of the judgment of the Hon'ble Supreme Court reported in **[2024] 10 SCR 126** titled **V. Vincent Velankanni vs. The Union of India and ors.** The same is produced here:–

"42. It is trite law that an Office Memorandum/Government Order cannot have a retrospective effect unless and until there is an express provision to make its effect retrospective or that the operation thereof is retrospective by necessary implication. In this regard, we are benefitted by the observations of this Court in Sonia v. Oriental Insurance Co. Ltd. and Others³⁴, wherein it was held that:

"11. In any view of the matter, law is well settled that an Office Memorandum cannot have a retrospective effect unless and until intention of the authorities to make it as such is revealed expressly or by necessary implication in the Office Memorandum."

"51. Keeping in mind the afore-stated principles, we are of the view that applicability of the Government Order dated 4th August, 2015 cannot enure to the benefit of the appellant as its operation is clearly prospective."

6. Mr. D. Sharma, learned Addl. G.A., appearing for the State-respondent, submits that since the circular for determining the service duration in a difficult/remote area was published on 07.07.2018 by the Department of Health & Family Welfare, Government of Tripura (Annexure-4), the petitioner, in any case, would not benefit under this criterion as he served as a Medical Officer in Khedacherra in North Tripura District between August 2007 to February 2011. Therefore, under any interpretation of the relevant rules read with the Notification dated 07.07.2018, the petitioner is not eligible to get any marks for serving in a difficult/remote area. It is further submitted that prior to 07.07.2018, there was no notification which prescribed the identification of difficult/remote areas, as the earlier notification of 2001 only determined urban and rural areas.

7. Upon careful consideration of the arguments advanced by learned counsel for both parties, and on perusal of the records, this Court is not inclined to interfere with the judgment passed by the learned Single Judge in WP(C) No.509 of 2023, dated 19.10.2023. It is not disputed that the appellant served at Khedacherra PHC from August 2007 to February 2011 a period preceding the issuance of the Government Notification dated 07.07.2018, which formally identified and classified remote and

difficult areas for the purpose of service based weightage. Though the appellant contends that the difficult conditions of Khedacherra existed both before and after 2018, and therefore his tenure should be recognized for weightage, the law in this regard remains settled. As rightly pointed out by learned counsel appearing for respondent No.3, supported by the Supreme Court's judgment in **V. Vincent Velankanni vs. Union of India and ors (supra)**, any Office Memorandum or Government Notification does not carry retrospective effect unless it is either expressly stated or necessarily implied. In this case, no such express provision exists in the Notification dated 07.07.2018, nor can a retrospective application be inferred from its language or context. Moreover, the State-respondents have clarified that prior to 2018, there existed no valid classification or criteria identifying difficult/remote postings in the manner now prescribed. Therefore, applying the 2018 criteria to service rendered prior to its issuance would go beyond the scope and intention of the policy/notification itself. This Court is of the opinion that the appellant's service in the rural area cannot have retrospective effect in the absence of a lawful basis.

8. Accordingly, this Court finds no infirmity or error in the findings of the learned Single Judge. The appeal is devoid of merit and hence stands dismissed.

9. As a sequel, the stay, if any, stands vacated.

Pending application(s), if any, also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

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