



**HIGH COURT OF TRIPURA
A G A R T A L A**

WP(C) No.702 of 2024

1. **Bandan Datta,**
S/O Late Radheshyam Datta, Village Giridhari Ashram Para, P.O. & P.S. Belonia, District South Tripura, Age 46 years.
2. **Mridul Kanti Das,**
S/O Sri Makhanlal Das, resident of North Badharghat, Subhash Palli, P.O. & P.S. A.D. Nagar, Agartala, West Tripura-799003, Age 50 years.
..... **Petitioner(s)**

- V e r s u s -

1. **The State of Tripura,**
To be represented by the Principal Secretary, Department of Health, Govt. of Tripura, Agartala, New Secretariat Building, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, PIN 799010.
2. **The Secretary,**
Health & Family Welfare Department, Govt. of Tripura, Agartala, New Secretariat Building, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, PIN 799010.
3. **The Deputy Secretary,**
Health & Family Welfare Department, Govt. of Tripura, Agartala, New Secretariat Building, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, PIN 799010.
4. **The Director, Directorate of Health Services,**
Govt. of Tripura, O/o the DHS, PN Complex, Gurkhabasti, Agartala, West Tripura, PIN 799006.
5. **The Director,**
Directorate of Family Welfare & Preventive Medicine, Govt. of Tripura, O/o the DFWPM, PN Complex, Gurkhabasti, Agartala, West Tripura, PIN 799006.
6. **Sri Nirmalendu Majumder,**
S/o Niharendu Majumder, Ramnagar Road No. 7, P.O. Ramnagar, P.S. West Agartala, Agartala, West Tripura.
7. **Sri Sanjoy Shil,**
S/o Niranjan Shil, Village Lolanga, Udaipur, Palatana, P.S. Kakraban-799116.
8. **Sri Chandan Das,**
S/o Sunil Ch. Das, Shyamaprasad Para, P.O. Anandanagar, P.S. Srinagar, West Tripura, PIN 799004.

.....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. Samarjit Bhattacharjee, Advocate.				
For the Respondent(s)	:	Mr. Kohinoor N. Bhattacharya, G.A. Mr. T.D. Majumder, Senior Advocate. Ms. R. Debbarma, Advocate.				
Date of hearing	:	10th March, 2026.				
Date of delivery of Judgment & Order	:	15th May, 2026.				
Whether fit for reporting :		<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
√						

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

The petitioners joined in the post of LDC on 11.01.2011 under the Directorate of Health Services, Government of Tripura and since then they are working in the said post. Their next promotional post as per the Recruitment Rules (for short-RR) is Upper Division Clerk (*for short*, UDC) and the relevant RR contains the process of filling up that post of UDC in the following manner:

5.	Method of recruitment whether by direct recruitment or by promotion or transfer on deputation and percentage of the vacancies to be filled by various method	:	i) 100% by Promotion failing which by transfer on deputation and failing both by Direct Recruitment. ii) (a) For direct recruitment selection will be through competitive examinations (Written and Interview followed by Type Test on Computer) to be conducted by the recruitment board constituted by the Health & Family Welfare Department, Government of Tripura. (b) Interview / Viva voce shall be not exceeding 15% of the Total Marks. (c) Syllabus – Enclosed at Annexure – II (and as revised by the Government from time to time)
----	--	---	--

[2] As per the said RR as issued vide notification dated 12.01.2023 (Annexure-R/3), there are a total of 266 sanctioned posts of UDC of common cadre existing in the said department. There is also a separate post namely, UDC (Law) in said Department, wherein the private respondents were working. Regarding filling up the post of UDC (Law), learned G.A. could not produce the relevant RR of UDC (Law) but he has produced the Rules governing the method

of recruitment and qualifications necessary for appointment to the post of 'Law Clerk' under the Health and Family Welfare Department. Unlike the method of filling up the post of common cadre of UDC by way of promotion, said Rules provides for appointment of law clerk by way of direct recruitment.

[3] On 05.10.2023, the Deputy Secretary to the Govt. of Tripura in Health and Family Welfare Department issued a notification (Annexure 5) by absorbing the private respondents who are UDC (Law) against the vacant posts of regular UDC. Being aggrieved by the said notification, the present writ petition has been filed by the petitioners seeking the following reliefs:

"i. Issue Rule calling upon the official Respondents Nos.1 to 5 herein to show cause as to why writ in the nature of mandamus and/or any other Order/orders shall not be issued whereby quashing and cancelling the Notification, dated, 05.10.2023, issued by the Deputy Secretary, Health & Family Welfare Department, Govt. of Tripura, so far absorption of the private Respondents Nos 6 to 8 herein against the vacancy for the post of UDC.

ii. Issue Rule calling upon the Respondents to show cause as to why writ in the nature of mandamus and/or any other Order shall not be issued whereby directing the official Respondents Nos 1 to 5 herein to consider the Petitioners for promotion to the post of UDC.

iii. Make the rule absolute,

iv. Call for records,

v. Pass any further order/orders as this Hon'ble High Court considered fit and proper."

[4] Mr. Samarjit Bhattacharjee, learned counsel led by Mr. P. Roy Barman, learned senior counsel addresses strongly that said 3(three) private respondents belong to a foreign cadre, though they may be in the same Department but absorbing them in the common cadre of UDC, the promotional avenues of the LDCs, including the present petitioners, have been reduced. Learned counsel also submits that the relevant Recruitment Rules for filling up the regular post of UDC under common cadre does not permit such absorption, in as much as, according to the provisions of the RR, said post can only be filled up by way of promotion from LDC; failing which, by transfer on deputation; and again, on failure to fill up the same through deputation, by direct recruitment. Therefore, according to the learned counsel there was/is no scope for absorption of the private respondents in the regular cadre of UDC by way of absorption of some persons from a different cadre. According to learned counsel, such absorption is therefore illegal and ultra vires. Learned counsel

also challenges the validity of the decision of the Council of Ministers regarding such absorption of the private respondents. According to him, such decision is violative of Article 14, for, while taking such decision the RR meant for UDC was not considered by the Council of Ministers.

[5] Mr. Bhattacharjee, learned counsel finally relies on a recent decision of the Division Bench of this Court rendered in ***Zonunfela Rawihte and others vs. the State of Tripura and others (WA No.74 of 2025 decided on 08.01.2026 along with WA No.75 of 2025)***, wherein it is observed that the Apex Court time and again held that if policies framed by the Government are arbitrary or unreasonable or violative of any fundamental right, same can be challenged in the Constitutional Courts and relief can also be granted to such petitioners. It is also further observed therein that there is no absolute immunity to an administrative decision merely because it is a policy decision approved by the State Cabinet.

[6] Mr. Kohinoor N. Bhattacharyya, learned G.A. for the State-respondents submits that the UDC (Law) has actually become a dying post as the functions which are discharged by the persons occupying that post are no longer required, and therefore, in a conscious way, the Government decided to abolish the post of UDC (Law) and to utilize the service of those 3(three) private respondents in the regular cadre of UDC. Therefore, necessary proposal was initiated by the administrative department and the Cabinet also approved such proposal for absorption of the said private respondents in the regular cadre of UDC and, finally said impugned notification dated 05.10.2023 was issued. Learned G.A. also submits that it was a conscious policy decision of the State Government, and therefore, normally Court should not interfere in the matter. Learned G.A. also submits that in the counter-affidavit there is specific mention that in the RR, there is clear provision giving power to the State Government for relaxation of any provision of the RR.

[7] Mr. T.D. Majumdar, learned senior counsel representing the private respondents referring to the RR of common cadre of UDC, submits that as per Rule 6 of said RR there is a power lying with the State Government to relax any condition regarding filling up of said post of UDC and though not in a specific words it was mentioned in the said proposal initiated by the concerned

Department for absorption and also in the Cabinet decision that said relaxation clause was invoked by the State but practically, when the post of UDC (Law) became redundant, State decided to absorb the persons occupying said posts in the regular cadre of UDC, keeping in mind said power of relaxation enjoyable by the State under Rule 6. According to learned senior Counsel, it is the prerogative of the State to decide as to how the posts are to be created, abolished and filled up in its departments. Therefore, the petitioners have no locus to challenge such policy decision of the State and to claim any sort of promotion as of their right.

[8] Mr. Dutta Majumder, learned senior counsel also relies on a decision of the Hon'ble Supreme Court in case of ***Allem Longkumer vs. Medokerhe Terhuja and others; 1999 SCC (L&S) 627***. In said case, the appellant was initially appointed as Compiler under the District Gazetteer unit in the year 1975. The said Gazetteer unit was originally attached to the Education Department which was later on detached therefrom and was attached to the Department of Art & Culture in the year 1974 i.e. prior to the selection of the appellant. The appellant was sent on deputation to the post of District Cultural Officer in the Department of Art & Culture (i.e., in the same Department) w.e.f. 01.11.1978. A proposal was thereafter made by the Director of Art & Culture for absorption of the appellant in the post of District Cultural Officer. The proposal set out that prior to his appointment as District Cultural Officer, the appellant had worked as a Compiler on a higher scale than that of an Investigator, which was the normal feeder post from which promotions were to be made to the post of District Cultural Officer. The Department was at that time in need of a District Cultural Officer for which there was no departmental candidates available for promotion, and in view of the quality of service of the appellant, it was recommended that he should be absorbed and regularized with effect from the date of his appointment as District Cultural Officer. The State Government thereafter regularized him in said post by order dated 19.10.1982. Later on, basing on another decision of the Cabinet, another notification was issued on 13.07.1984 by giving effect of said absorption of the appellant as District Cultural Officer from 01.11.1978 i.e. the date of his deputation to the post of District Cultural Officer, and a notification was issued on 13.07.1984 by the State Government in this regard. The respondents who were appointed subsequent to

the said date i.e. 01.11.1978 challenged the notification dated 13.07.1984 in the year 1991 in the High Court but did not challenge the original absorption order. High Court upheld the challenge on the ground that under a notification dated 12.08.1975, when a person is on deputation from one department to another, if he is absorbed in the department where he is on deputation, his seniority will count from the date of his absorption. There is an earlier office memorandum of 27.01.1967 relating to absorption from one post, cadre or service to another being governed by a similar provision. Such absorption is subject to Cabinet approval. In the case, however, of the appellant, there was an express Cabinet decision taken, looking to the special circumstances in which the appellant had been appointed as District Cultural Officer on 01.11.1978, absorbing him with effect from 01.11.1978. This decision had been notified and published in the Government Gazette as far back as in July 1984. In that context, Hon'ble Supreme Court observed that the writ petition was filed after 7(seven) years from said notification by challenging it. The Apex Court also observed that looking into the special circumstances in a given case, the Cabinet had taken a decision to absorb the appellant w.e.f. 01.11.1978, and that decision was backed by appropriate recommendation from the department concerned setting out all the circumstances in which the proposal was made, and therefore, the decision could not be said to be arbitrary or unreasonable. It was also further observed that the Court did not see why a challenge to the regularization of the appellant with effect from 01.11.1978 should have been entertained after a lapse of 7 years from the date of the notification. Moreover, there was also another office memorandum dated 27.01.1967 of the State Government relating to absorption from one post, cadre or service to another subject to cabinet approval and in that case Cabinet approval was also there. Thus, it appears that the said decision was based on different factual contexts and issue involved in the present case and issues involved in that case are different.

[9] Mr. Majumder, learned senior counsel further contends that on earlier occasion also the predecessor of the private respondents were promoted to the post of regular cadre of Head Clerk, and therefore, it was not for the first time that some persons from another cadre of same Department were brought to the common cadre.

[10] Court has appreciated the submission of both sides and has also considered the rival contention.

[11] As indicated earlier, as per the Recruitment Rules in respect of the post of Upper Division Clerk, same are required to be filled up firstly by promotion failing which by transfer on deputation and failing both by direct recruitment. Against serial number 11 of the Annexure-I of said RR, in case of promotion from the LDC grade, five years experience in the feeder post is required and the following posts are incorporated in the list to be treated as LDC grade i.e. the feeder post:

LDC/LDC (Store)/LDC (Certificate)/LDC (Compilation)/LDC-cum-Cashier/LDC (Record keeping)/LDC (Registrar)/LDC (Accounts)/LDC (Library)/LDC (Typist)/LDC (Stock Ledger keeping)/LDC (Tally)/LDC (Typist-cum-Clerk/Typist (Bengali)/Typist/Cashier.

[12] In said list, there is no mention that UDC post can be filled up by absorbing a person holding the post of UDC (Law) but as per notification dated 05.10.2023 (Annexure 5), the private respondent Nos.6,7 and 8 have been absorbed for filling up the vacancy of UDC, Group-C from the post of UDC (Law) by contradicting with the RR. It is not such a special case that there is no person eligible for promotion to the post of UDC.

[13] The apprehension of the petitioners that due to absorption of 3 (three) numbers of UDC (Law) into the common cadre of UDC has reduced their scope of promotion so long these 3 (three) persons will be occupying the post of UDC, is not without any basis. As per the said RR also there is no mention of any post like LDC (Law) or Law Clerk to be the feeder post for filling up the post of common cadre of UDC.

[14] According to the State respondents, UDC (Law) was a dying cadre and therefore, the State Government decided that no further appointment would be made in UDC (Law) in future. For that reason, these 3 (three) private respondents have been absorbed in the common cadre of UDC by closing down the cadre of UDC (Law).

[15] It appears that the GA (P&T) Department issued one order dated 07.11.2020 (Annexure 2) in terms of new recruitment policy framed vide

No.20(1)-GA(P&T)/18 dated 05.06.2018 by the State that written test should be the primary means to test suitability of candidates for Government employment. It was also stated therein that Governor of Tripura was pleased to order that henceforth Departments having similar common RRs of the respective departments for the posts LDC grade, UDC grade, Head Clerk grade (framed based on Similar Recruitment Rules vide G.O. No. 5 dated 28th September, 2000) shall amend their existing Common RRs (for the common posts mentioned under Annexure-A) following the provisions of that Common RRs for said three categories of common posts. But as it appears, as per said guideline issued by the State Government, the Recruitment Rules of common cadre of UDC in Health and Family Welfare Department was not changed.

[16] From the memorandum for Council of Ministers dated 19.09.2023 (Annexure R/1), it further appears that the Directorate of Health Services first constituted a committee to finalize the RR for the post of UDC (Law) in terms of the said order of GA (P&T) Department and the said committee also submitted a draft memo for amendment of RR for the post of UDC (Law) to the GA (P&T) Department and Finance Department, but thereafter, the Administrative Department in consultation with the GA (P&T) Department finally decided that the post of UDC (Law) may be absorbed to the post of UDC and seniority of the existing 03(three) UDC (Law) may be included in the common seniority list of UDC, duly concurred by the GA (P&T) Department and the placement of 03(three) UDC (Law) i.e. the present private respondents after absorption, will be placed after the last name in the exiting seniority list of UDC cadre. This way, by such absorption they proposed for filling up two vacant posts of UDC and another UDC by creating 1(one) supernumerary post for 1(one) SC employee. Matter was then placed before the Council of Ministers and in the meeting of the Council of Ministers dated 20.09.2023 such proposal of absorption of 3(three) nos. of UDC (Law) was approved.

[17] As the Recruitment Rules for filling up the post of common cadre of UDC does not permit filling up of those vacant posts by way of such absorption, the absorption of these private respondents in the common cadre of UDC appears to be contrary to the provision of the relevant Recruitment Rules and is therefore, liable to be quashed. The relevant RR has been framed by the State under Art.309 of the Constitution which has the force of

law and therefore, same cannot be violated by any administrative decision. Hon'ble Supreme Court in **A.K. Bhatnagar vs. Union of India, (1991) 1 SCC 544** held as follows:

“13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs.”

Earlier, in **B.N. Nagarajan vs. State of Karnataka, (1979) 4 SCC 507** also, it has been observed by the Apex Court that an act done in the exercise of the executive power of the Government, cannot override rules framed under Article 309 of the Constitution.

[18] Though it is argued from the side of the respondents that the Government applied the relaxation clause no.6 of the RR was invoked by the State for such absorption but there is no mention of application of relaxation clause by the State in the memorandum of Council of Minister or in the record of decision of the Cabinet. Therefore, such plea appears to be after thought.

[19] No doubt, it is prerogative of the employer-State to decide as to where it's employees are to be placed, so that the State can receive the best service from its employees but such placement should be within the four corners of law. Even without filling up the vacant post of common cadre of UDC by way of such absorption, the State could also examine the feasibility of merging those post of UDC (Law) in the common cadre of UDC by increasing the sanctioned strength of said cadre without affecting the existing vacancy which are required to be filled up from the post of LDC. Simultaneously, it is also true that a right to be considered for promotion is treated by the Courts not just as statutory right but also as a fundamental right, but at the same time, there is no fundamental right in favour of any employee to get promotion itself. **(Ref- Bihar State Electricity Board and others vs. Dharamdeo Das, Civil Appeal No. 6977 of 2015** decided by the Hon'ble Supreme Court on

23.07.2024). It is also fact that by way of filling up the vacant post of common cadre of UDC by absorbing those UDC (Law), the promotional avenue of the petitioners and the similarly situated person(s) has been narrowed down for the time being. Therefore, before taking all the steps by the Administrative Department as well as by the GA (P&T) Department, these factors were also required to be examined by them and then to place the matter before the Council of Ministers. There is nothing in the record that all these factors were considered by those departments and were also placed before the Council of Ministers.

[20] In view of above, the writ petition is allowed. The notification dated 05.10.2023 issued by the Health and Family Welfare Department, Government of Tripura (Annexure 5) is hereby quashed. However, this judgment will not stand as a bar for the State respondents to re-examine and re-decide the issue afresh regarding closing down the cadre of UDC (Law) and bringing of the private respondents in any other suitable cadre in accordance with law and also keeping in mind the discussions made herein above.

With such observations and decision, the writ petition is disposed of.

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

JUDGE