

THE HIGH COURT OF TRIPURA AGARTALA

WP(C) NO.165 OF 2010

1. Sri Rajesh Bhattacharjee,
Son of Sri Santi Ranjan Bhattacharjee,
Resident of Bhati Abhoynagar(East),
P.S. West Agartala,
District-West Tripura.

2. Sri Dhirendra Debbarma,
Son of Late Bhagirath Debbarma,
Banamalipur, P.S. East Agartala,
District-West Tripura.

... **Petitioners**

- **Vs** -

1. The State of Tripura,
(To be represented by the Principal Secretary,
Higher Education Department, Government of
Tripura, Agartala), District-West Tripura.

2. The Principal Secretary, Finance Department,
Government of Tripura, Agartala,
District-West Tripura.

3. The Director of Higher Education Department,
Government of Tripura, Agartala.

4. Tripura Public Service Commission,
Akhaura Road, P.O. Agartala, P.S. West Agartala,
District-West Tripura,
(to be represented by its Secretary),

....**Respondents**

BEFORE **THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioners	: Mr. P. Roy Barman, Advocate.
For the respondents	: Mr. T. D. Majumder, G.A. Mr. P. Dutta, Advocate.
Date of hearing	: 31.08.2015
Date of delivery of Judgment & order	: 21.09.2015.

Whether Fit for reporting : **YES**

JUDGMENT & ORDER

Pursuant to an advertisement No.2(A) dated 15.03.2005, made by the Tripura Public Service Commission for filling up of two posts of Deputy Director (Higher Education) under the Education(Higher) Department, the petitioners having felt eligible for the posts applied and they were accordingly selected and by notification dated 11.11.2005, they were appointed to the post of Deputy Director(Higher Education), Education (Higher) Department of the Govt. of Tripura.

2. The grievance of the petitioner is that they were given the pay scale of Rs.7,800-15,100/- whereas in respect of the Deputy Directors of the Education (School) Department; Education (Social Welfare and Social Education) Department; Education (Youth Affairs and Sports) Department and some other identical departments, the pay scale of Rs.10,000-15,100/- was given. The petitioners became the victims of hostile discrimination and therefore they made representations to the Director of School Education but their representations were turned down and therefore they filed the writ petition seeking direction to the respondent Nos. 1 to 3 to give them the pay scale of Rs.10,000-15,100/- (pre-revised) from the date of their appointment.

By filing rejoinder affidavit, the petitioners also brought a fact that one Ambalika Dutta who was appointed as Deputy Director (Science Promotion) under the School Education

Department was also given the pay scale of Rs. 7,800-15,100/- but subsequently she was given the pay scale of Rs.10,000-15,100/- w.e.f. her date of joining and the petitioners are similarly situated and so they also should be given the same pay scale.

3. Respondent Nos. 1, 2 and 3 filed a joint counter affidavit and respondent No.4 also filed a separate counter affidavit. Respondents contended that the petitioners knowing fully well about the service rule of the Deputy Director, Higher Education under the Education (Higher) Department applied for the post pursuant to the advertisement wherein the pay scale has been clearly mentioned and while they consciously applied and got the job they cannot claim a different pay scale which has been given to some other posts of Deputy Director in other Departments.

4. Learned counsel Mr. Roy Barman appearing for the petitioners submitted that the petitioners are victims of hostile discriminations since they have been given a lower pay scale of Rs.7,800-15,100/- whereas the Deputy Directors of other Departments have been given the pay scale of Rs.10,000-15,100/- at the recruitment stage. He has also contended that Education Department was a single Department earlier before it was trifurcated to Education (Higher) Department; Education (School) Department; Education (Youth Affairs and Sports) Department. Subsequently another Department i.e Education (Social Welfare and Social Education) was created and in all those Departments there were posts of Deputy Directors having similar qualification

and similar experience for direct recruitment but the pay scales have been made different and in case of the petitioners i.e. the Deputy Director (Higher) Education, the pay scale has been made Rs.7,800-15,100/- whereas for the Deputy Directors of other Departments and similar other Departments of the Govt. like that of Deputy Directors of Prosecution, Labour and Employment Officer etc. has been given the pay scale of Rs.10,000-15,100/-. According to Mr. Roy Barman the petitioners are entitled to get the pay scale of Rs.10,000-15,100/- like that of the Deputy Directors in the other Departments and he has also submitted that one Ambalika Dutta, Deputy Director (Science Promotion) under the Education Department was also given the pay scale of Rs.7,800-15,100/- at the time of initial appointment but subsequently she was given the pay scale of Rs.10,000-15,100/- and similar treatment may be rendered to the petitioners.

5. Learned G.A., Mr. Dutta Majumder has submitted that the petitioners are guided by their own service rule. The service rule as made by the State Govt. has not been challenged. Advertisement was made according to the service rule prescribing the particular pay scale and the petitioners knowing fully well about the pay scale applied for the post and after their appointment they cannot challenge the pay scale and claimed higher pay scale given to the Deputy Directors of some other Departments who are recruited pursuant to separate service rules. He has also submitted that Ambalika Dutta has been recruited as a Deputy Director (Science Promotion) under the Education

Department and service rule is completely different and the case of Ambalika Dutta cannot be an instance for the case of the petitioners.

6. It is a settled proposition of law that recruitment, promotion, emoluments and other service conditions in the public employment shall be guided by the service rules. The petitioners pursuant to advertisement dated 15.03.2005 (Annexure-1 to the writ petition) made application for the post of Deputy Director (Higher Education) under the Education (Higher) Department, Govt. of Tripura. The particular advertisement reads as follows:-

“Item No.02:- 2(two) tmp. (1 reserved for ST) posts of Deputy Director (Higher Education), Group-A Gazetted under the Education (Higher) Department. Pay Rs.7,800-275-10,000-300-15,100/- (revised State Government pay scale,1996) plus admissible allowances. QUALIFICATION: Essential:- (i) Master’s Degree from a recognized University, (ii) 5(five) years administrative experience in a responsible position in a Government Office or other Organisation/Institution. DESIRABLE:- (i) Knowledge of Bengali or Kokborok. AGE:- Upto 37 years as on 01-03-2005. Upper age is relaxable by 5(five) years in case of ST/SC/PH candidates and Government Servants.”

The advertisement clearly indicates the pay scale prescribed for the post and the essential qualification of the candidate. Knowing fully well about the pay scale, the petitioners applied for the post, got selection and accordingly they were appointed.

7. A copy of the service rule meant for the Deputy Director (Higher Education) under Education (Higher) Department has been annexed as Annexure-6 to the writ petition and that rule is called “the Deputy Director (Higher Education) under Education

Department, Recruitment Rules, 2002". The schedule to the rule prescribes the number of posts, the pay scale and essential qualification, etc. which reads as follows:-

"SCHEDULE"

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|----|---|---|--|
| 1. | Name of the post(s) | : | DEPUTY DIRECTOR (HIGHER EDUCATION) under Education Department. |
| 2. | Number of post(s) | : | 2(two) plus additional posts as and when created |
| 3. | Classification | : | GROUP-'A' GAZETTED |
| 4. | Scale of pay | : | Rs.7,800-275-10,000-300-15,100/-(Revised State Govt. pay scale 1996) subject to revision by the Govt. from time to time. |
| 5. | Method of recruitments whether by direct recruits or by promotion or by deputation/ transfer and percentage of the vacancies to be filled by various methods. | : | By direct recruitment, failing which by transfer on deputation. |
| 6. | Age limit for direct recruitment | : | 18 to 37 years. Relaxable by 5(five) years in case of SC/ST/PH Candidates and Govt. Servants. |
| 7. | Educational and other qualification required for direct recruitment | : | <u>Essential Qualifications</u>
i) Master's Degree from a recognized University.
ii) 5(five) years administrative experience in a responsible position in a Govt. office or other organization/Institution. |

DESIRABLE

- | | | | |
|-----|---|---|---|
| 8. | Whether age and educational qualification prescribed for the direct recruitment will apply in case of promotes. | : | i) Knowledge in Bengali or Kokbarak.
Not applicable. |
| 9. | Whether selection post or Non-selection post | : | Selection post. |
| 10. | Period of probation, if any | : | 2(two) years. |
| 11. | In case of recruitment by promotion/deputation/transfer grade from which promotion/transfer/ deputation is to be made | : | Deputation from analogous posts having requisite qualifications and experience prescribed for direct recruitment. |
| 12. | If a D.P.C. exists, what is its composition. Public | : | Not applicable. |
| 13. | Circumstances in which TPSC is to be consulted in making Recruitment. | : | As required under Tripura Public Service Commission (exemption from consultation) Regulation, 1973. |

Sd/-
(H.Bhowmik)
Under Secretary to the
Government of Tripura."

8. State Govt. at its wisdom framed the above service rules. The petitioners are bound to be guided by the above rules. The petitioners did not challenge the validity of the rule but simply claimed the higher pay scale of Rs.10,000-15,100/- citing the examples of the pay scales of Deputy Directors in the other departments and to some other similar posts. The case of Ambalika Dutta is to be guided by the recruitment rules for the Deputy Director (Science Promotion) and a copy of that rule has been placed by learned G.A. at the time of hearing which shows that the rule was framed in the year 1984. The rejoinder affidavit clearly reveals that Ambalika Dutta was first appointed with the pay scale of Rs.7,800-15,100/- but subsequently she was given the pay scale of Rs.10,000-15,100/- instead of Rs.7,800-15,100/- from the date of her joining i.e. on 13.01.2006. The service rule of Ambalika Dutta is different one, her case cannot be an instance for the petitioners to give them similar pay scales. The petitioners consciously applied for the post pursuant to advertisement wherein the pay scale has been prescribed and they are supposed to be guided by the service rule meant for the Deputy Director (Higher Education) of the Education (Higher) Department, Govt. of Tripura and so after their joining they cannot claim a different pay scale given to some other Deputy Directors, may be similarly situated. Since service rules are different, the similar treatment in respect of pay scale, the petitioners cannot claim specially where petitioners did not challenge the service rule.

9. In my considered opinion, the writ petition has no merit at all and hence, the writ petition stands dismissed.

10. Parties to bear their own costs.

JUDGE