

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.192 of 2009

Smt. Chaitali Sarkar,
daughter of Sri Chanchal Sarkar,
resident of Jail Road,
Dharmanagar, North Tripura, P.S.
Dharmanagar, District- North
Tripura

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary,
Director of School Education,
Govt. of Tripura, Agartala.
- 2. The Managing Committee of Golden
Valley H.S. (+2 Stage) School,**
Rajbari, Dharmanagar, Tripura,
represented by its Secretary, Sri
Bivas Roy.
- 3. Sri Bivas Roy,**
Secretary of the Managing
Committee and the Selection
Board of Golden Valley H.S.
(+2 Stage) School, Rajbari,
Dharmanagar, North Tripura.
- 4. Sri Barun Das,**
Deputy Director, School
Education, Kailashahar, District-
North Tripura.
- 5. Sri Srimanta Roy,**
Assistant Professor in Bengali
Department, Dharmanagar Govt.
Degree College, District- North
Tripura.
- 6. Sri Sankar Sarkar, TCS Gr.II,**
now Sub Divisional Magistrate,
Dhalai, Ambassa, District- Dhalai.

7. Sri Tapan Kanti Das,
son of late Nripendra Kumar Das
of Rajbari, Dharmanagar, District-
North Tripura.

At present working as the Post
Graduate Teacher in Golden
Valley H.S. (+2 Stage) School,
Rajbari, Dharmanagar, North
Tripura.

..... Respondents

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. P. Datta, Advocate.

For the respondents : Mr. S. Chakraborty, Addl. G.A.
Ms. A. S. Lodh, Addl. G.A.
Mr. J. Majumder, Advocate

Date of hearing : **27.04.2015**

Date of delivery
of Judgment & Order : **08.05.2015**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER

By means of this writ petition, the petitioner has challenged the selection of the respondent No.7, Sri Tapan Kanti Das in the post of the Post Graduate Teacher, Bengali in the Golden Valley H.S.(+2 Stage) School, Rajbari, Dharmanagar, a Government aided school in pursuance to the Advertisement under No.F.1(APPT)/GVHS/07/329 dated 28.11.2007.

[2] The petitioner's grievance in short is that, the selection has been carried out in complete disregard to the memorandum under No.F.10.(2-41)-DSE/2000 dated 02.01.2001, Annexure-3 to

the writ petition, whereby the guidelines for recruitment in the Government aided school has been made mandatory w.e.f. 02.01.2001. According to the petitioner, Para-3 & 4 of the said memorandum dated 02.01.2003 had to be followed for ascertaining the comparative merit vis-a-vis the seniority in selection of a suitable person for filling up of any post in the Government aided school. For purpose of reference, the said paragraphs are extracted hereunder:

3. DETAILS OF 70 MARKS TO BE ALLOTTED IN RESPECT OF ACADEMIC QUALIFICATION BASED ON PUBLIC EXAMINATION.

	<u>Marks to be allotted</u>
a) 1 st Division/1 st Class (above 65% marks)	70 Marks
b) 1 ST Division/1 st Class (below 65% marks)	65 Marks
c) 2 nd Division/2 nd Class	55 Marks
d) 3 rd Division/Pass	45 Marks
e) Compartmental/Risk Level	35 Marks
f) H.S.(Old course plucked)	25 Marks

N.B.

(i) For recruitment of teacher in H.S. (+2 stage) school and Secondary/Middle stage schools average of mark allotted for each Public Examination may be taken into account.

(ii) For recruitment of teachers in H.S.(+2 Stage) Schools 2(two) marks may be given in respect of candidates possessing qualification of Master Degree with Honours subject to the condition that total marks allotted to academic performance should not exceed 70.

4. DETAILS OF 15 MARKS TO BE ALLOTTED IN RESPECT OF SENIORITY SHALL BE AS FOLLOWS :

For selecting candidates for appointment to the post of Primary teachers.

Length of time for which waiting for employment with reference to the year of passing of the examination which is laid down as the essential qualification for the particular post.

Marks to be allotted

- | | |
|--------------------------------|-----------|
| (a) 15 years and above | 15 Marks. |
| (b) 10 years to below 15 years | 10 Marks. |
| (c) 5 years to below 10 years | 05 Marks. |
| (d) Below 5 years | 03 Marks. |

For selecting candidates for appointment to the post of H.S.(+2 Stage) secondary/Middle Stage School teachers.

Marks to be allotted

- | | |
|-------------------------------|-----------|
| (a) 10 years and above | 15 Marks. |
| (b) 5 years to below 10 years | 10 Marks. |
| (c) Below 5 years | 05 Marks. |

5. Total marks in interview in respect of Need will be 100 with the following break-up.

- | | |
|---|-----------|
| (a) Need based on family income | 70 Marks. |
| (b) Academic performance in public examination. | 15 Marks. |
| (c) Performance in interview | 15 Marks. |

6. Details of 70 marks to be allotted in respect of need based on family income.

- | | |
|---|-----------|
| (a) Family income upto Rs. 6000/- p.a. | 70 Marks |
| (b) Family income from Rs. 6001/- upto Rs. 10,000/- p.a. | 60 Marks |
| (c) Family income from Rs. 10,001/- upto just below the poverty line p.a. | 50 Marks. |

N.B.

Family income certificate is not be obtained from the Revenue Officer concerned.

Details of 15 marks to be allotted in respect of Academic qualification based on Public Examination.

		Marks to be allotted
a)	1st Division/1st Class (above 65% marks)	15 Marks
b)	1st Division/1st Class (below 65% marks)	13 Marks
c)	2nd Division/2nd Class	11 Marks
d)	3rd Division/Pass	09 Marks
e)	Compartmental/Risk Level	07 Marks
f)	H.S.(Old course plucked)	05 Marks

N.B.

(i) For recruitment of teachers in H.S.(+2 stage) school and Secondary/Middle stage schools average of marks allotted for each Public Examination may be taken into account.

For recruitment of teachers in H.S. (+2 stage) Schools 2 (two) marks may be given in respect of candidates possessing qualification of Master Degree with Honours subject to the condition that total marks allotted for academic performance should not exceed 15.

[3] While selecting the respondent No.7, the selection committee has completely disregarded the method as prescribed by the said memorandum dated 02.01.2003. Had the procedure as prescribed been followed, the petitioner would have been in the top of the list, but for arbitrary action of the respondents No.1 to 6, the petitioner has suffered serious detriment in the public employment. It is not in dispute that by the advertisement dated 28.11.2007, Annexure-1 to the writ petition, the Golden Valley H.S.(+2 stage)

School invited applications from the eligible Indian citizens for filling up of a few posts of Post Graduate Teachers and Under Graduate Teachers including a post of Post Graduate teacher for Bengali, reserved for Scheduled Caste candidate. It is also not in dispute that the petitioner was found eligible and she was called to appear before the selection committee by the call letter dated 13.12.2007, Annexure-7 to the writ petition. After the interview was over when the petitioner learnt that she had not been selected, she gathered the information. From the communication dated 27.01.2009 made by the by the respondent No.2, Annexure-2 to the writ petition, it appears that the respondent No.2 has disclosed that '*all the selections of PGT posts(SC/ST) takes place as per seniority cum merit (higher qualification)/need.*' The petitioner has also collected the tabulation sheet wherefrom it appears as under:

Sl. No	Name & address of the candidate	Date of birth	Name of Exam passed	Board/ University	Division	% of marks	SC/ ST	Academic performance	Seniority	Interview	Total marks obtained
9	Sri Tapan Kanti Das, S/O- Lt. Nripendra Kr. Das, P.O. Rajbari, Dharmanagar, District - North Tripura (Respondent No.7)	08.04. 1976	M.A. in Bengali	Tripura University	II	48%	SC	57	10	04	71
10	Smt. Chaitali Sarkar, D/O- Sri Chanchal Sarkar, Jail Road, Dharmanagar, District - (N) Tripura (Petitioner)	23.11. 1985	B.S. (Hons) in Bengali	Tripura University	II	46%	SC	55	05	10	70

[4] The petitioner’s challenge lies in assessing the comparative merit. According to her, the results of the other

examinations have not at all been taken into consideration. Only the examination relating to the basic qualification had been taken for this purpose. According to the petitioner, she got total marks (70) correctly by the method prescribed by the memorandum dated 02.01.2001 but so far the respondent No.7 is concerned, he had been allotted more marks by violating the said method prescribed by the memorandum dated 02.01.2001. In terms of the said method, the respondent No.7 would have secured total marks of 68. The calculation in terms of the method is illustrated hereunder:

a)

i)	Madhyamik	For 2 nd Division	55 marks
ii)	H.S.	For 3 rd Division	45 marks
iii)	B.A. (Hons)	For 2 nd Class Hons.	55 marks
iv)	M.A.	For 2 nd Class	55 marks

Total 210 marks.

- * As per N.B. (I) average marks of his academic performance will be 52.2 rounded at

52 marks
- * As per N.B. (II) marks to be added For having the post graduate degree

02 marks
54 marks
- b) For seniority

10 marks
- c) For interview

04 marks
Total 68 marks

[5] As the petitioner secured 70 and the respondent No.7 secured 68 on observing the mandatory guidelines under no circumstances, the respondent No.7 could be appointed. The respondent No.1 without making any scrutiny of the process

approved such selection by their communication dated 25.11.2008, Annexure-R/1 to the counter affidavit filed by the respondent No.1. The respondent No.1 has contended in their counter affidavit as under:

12. That in regard to the statement made in paragraph 5 of the writ petition it is strongly denied that the appointment of Sri Tapan Kanti Das is illegally, dated of birth of Tapan Kanti Das is 08.04.1976 date of birth of Chaitali Sarkar is 23.11.1985. So, Tapan Kanti Das secured 10 marks out of 15 and the petitioner secured 5 marks in seniority position Sri Tapan Kanti Das in M.A. passed candidate so he secured 57 marks out of 70 for academic performance. The petitioner Smti Chaitali Sarkar, is B.A. passed with Honors. So, the interview board gives her 55 marks for academic performance out of 70 marks. So, there is no disputes found in selection of highly qualified Shri Tapan Kanti Das.

[6] According to them, there is no illegality. By filing a separate joint counter affidavit, the respondents No.2 to 6 have contended in defence of their action as under:

"But, it is clarified herein that the Government MEMO No. F.10 (2-41) DSE/2000 dated 02-01-2001 is not the Recruitment Rule rather is only the general administrative guidelines for recruitment of the staffs in Government Aided Schools having no statutory force of law. The aforesaid MEMO being the general administrative guidelines only the Members of the Selection Committee and/or Members of the Interview Board were at liberty to adopt its own procedure and/or to follow fully/partly the Government MEMO No. F.10 (2-41) DSE/2000 dated 02-01-2001 to select the best available Post Graduate Teacher for the Golden Valley H.S. (+2 Stage) School, Rajbari, Dharmanagar, North Tripura; who applied for it."

[7] The respondent No.7 has also filed the counter affidavit separately denying the allegations made by the petitioner but the respondent No.7 has contended that the memorandum dated 02.01.2001 is not the recruitment rules rather is only the general

administrative guidelines for recruitment in the Government aided school having no statutory force of law. It has been further contended as under:

"The aforesaid MEMO being the general administrative guidelines only the Members of the Selection Committee and/or Members of the Interview Board were at liberty to adopt its own procedure and/or to follow fully/partly the Government MEMO No. F.10(2-41)DSE/2000 dated 02-01-2001 to select the best available Post Graduate Teacher for the Golden Valley H.S.(+2 Stage) School, Rajbari, Dharmanagar, North Tripura."

[8] Mr. P. Dutta, learned counsel appearing for the petitioner has submitted that when there are guidelines prescribed by the competent authority to be followed, the selection committee cannot have the authority to devise the own procedure in relegation of those guidelines. If there were no guidelines, the selection committee would have devised their own procedure but on the face of extant guidelines they could devise their own procedure. Thus, it is apparent on the face of the records as produced that the procedure has been conveniently mended to accommodate the respondent No.7 with *mala fide* purpose. Hence, interference of this Court is required for justice.

[9] Mr. S. Chakraborty, learned Addl. G.A appearing for the respondent No.1 has contended that the respondent No.7 has got higher qualification inasmuch as he is the Master of Arts (MA) in Bengali whereas the petitioner is the Honours Graduate in Bengali. He has further submitted that the guidelines are not enforceable

and as such, the petitioner does not have the *locus standi* to challenge the fair procedure adopted by the selection committee.

[10] Ms. A. Lodh, learned Addl. G.A. appearing for the respondents No.2 to 6 has raised two pronged objections against the writ petition namely; (i) the memorandum dated 02.01.2001 is not mandatory, but optional and (ii) a fair procedure has been followed by the selection committee uniformly that the performance in the public examination has been restricted to the candidates' last public examination. She has further raised one jurisprudential objection that whether the petitioner after appearing before the selection committee can challenge the outcome of the said selection for the reason that she had acceded to the said process and now cannot be turn around.

[11] Mr. J. Majumder, learned counsel appearing for the respondent No.7 has echoed the objections raised by the counsel for the respondent No.1 and the respondents No.2 to 6. He has further contended that someone having the degree of Master of Arts is entitled to be considered more suitable than one who has only the Honours Graduate. He has emphatically submitted that the selection does not suffer from any procedural impropriety and illegality. Hence, the writ petition be dismissed.

[12] Having regard to the submissions made by the learned counsel for the parties, this Court has scrutinized the records as

produced by Mr. S. Chakraborty, learned Addl. G.A as regards the questioned selection. It appears from the records that pursuant to the approval, accorded by the respondent No.1, the respondent No.2 has appointed the respondent No.7 as the fixed pay Post Graduate Teacher and the respondent No.7 joined in the said post. From the said records, it further appears that for selection to the post of Post Graduate Teacher, Bengali (SC) the last public examination has only been considered and on the basis of the percentage, they received in that examination, the marks have been awarded and thus, the respondent No.7 has got 71 and the petitioner has got 70 and another candidate who appeared before the selection committee, namely Sri Subir Das got 69. For selection in the other posts, the selection committee followed the same procedure.

[13] Thus, the question that finally emerges for consideration is whether the selection committee by not following the prescribed guidelines has offended fairness in the selection in any manner?

[14] The memorandum dated 02.01.2001 begins with the following lines:

"It has been decided that henceforth the following guidelines should be followed for recruiting the staff in Govt. Aided Schools. This will take effect from the date of issue of this memo."

It appears that in the form of the guidelines, a method has been prescribed to be followed. Whether the guidelines are mandatory or directory in nature?

[15] Ms. A.S. Lodh, learned Addl. G.A. has emphatically contended that this is directory and does not create any mandatory obligation. But Mr. P. Dutta, learned counsel has urged this Court to read the guidelines in entirety. According to him, on such reading there would be no ambiguity that the selection committee is bound by the said guidelines. This is a policy decision of the Government and no departure therefrom has been provided in the said guidelines and hence, the stand taken by the respondents No.1 to 6 that the method the selection committee has followed is uniform and fair cannot be accepted. If the government policy prescribes certain acts to be done in a certain manner that act cannot be done in any other manner without prior leave of the Government. It is not the case of the respondents No.1 to 6 that they obtained such leave for departing from the prescribed method.

[16] The guidelines operate in the realm of the public policy for transparency and to curb subjectivity, arbitrariness and colourable exercise of power. When such public policy occupies the field, the selection committee departing therefrom has not only breached the propriety but also embarked on their own method. It is apparent that had the prescribed method been followed, the petitioner would occupy the top position in the selection of the post

graduate teacher (SC) in Bengali. Hence, the grievance of the petitioner is justified and cannot be brushed aside casually. Even in the method prescribed by the said memorandum dated 02.01.2001 weightage has been given for obtaining the Master Degree with honours in the note (ii) at the fag end of the guidelines. Hence, it cannot be stated that the policy makers had failed to notice that aspect of the matter that someone having the Master Degree be given more weightage. The question is, therefore, is whether an espoused guideline can be departed by the selection committee in the manner as has been done in this case. The answer is no. Thus, this Court is of the view that a new selection committee would be formed by the respondents No.1 to 2 in the prescribed manner for assessing the comparative merit and seniority in terms of the guidelines provided in the memorandum dated 02.01.2001. Till then, the respondent No.7 would continue in the post, but if it is found that the petitioner has the better position following the said method then the respondents No.1 and 2 shall cancel the selection and appointment of the respondent No.7 forthwith and the petitioner be appointed in his place. In that event, the petitioner would be appointed from the date when the respondent No.7 was appointed but her pay would be fixed notionally till the date of appointment. The respondents No.1 and 2 are given liberty to consider any jeopardy and adopt the means appropriate to the emerging circumstances, but not in conflict with the fundamental direction given hereunder.

[17] The respondents No.1 and 2 shall constitute the selection committee to comply this direction within a period of 3(three) months from the day of receipt of this order.

As regards the objection raised by Ms. A.S. Lodh, learned Addl. G.A. that the petitioner has been estopped to raise objection against the outcome of the selection process cannot be accepted by this Court in view of the blatant breach of the guidelines as prescribed by the competent authority for selection.

[18] Since the other appointments have not been questioned before this Court, this Court is not inclined to extend the direction to the selection for the other posts under the same advertisement. This direction is specific to the appointment of the respondent No.7.

[19] Having held so, the writ petition stands allowed.
There shall be no order as to costs.

JUDGE

Sujay