

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.72 of 2012

Ms. Sarmistha Sen,
daughter of late Shyamal Kanti Sen,
care of Sri Bijan Kumar Acharjee,
resident of Ujan Abhoynagar (Opposite to New Star Club),
P.S. East Agartala, District – West Tripura

.....**Petitioner**

- Vs -

1. The State of Tripura,
represented by the Principal Secretary to the
Government of Tripura, Social Welfare & Social Education,
Civil Secretariat, Agartala – 799 006
2. The Director,
Social Welfare & Social Education, Government of Tripura,
PO – Ujan Abhoynagar, PS – East Agartala,
District – West Tripura
3. The Chief Superintendent,
Protective Home, Principal-in-Charge,
Institute for Speech Rehabilitation,
PO – Ujan Abhoynagar, PS – East Agartala,
District – West Tripura
4. Smti. Trika Acharjee,
The Chief Superintendent,
Protective Home, Principal-in-Charge,
Institute for Speech Rehabilitation,
PO – Ujan Abhoynagar, PS – East Agartala,
District – West Tripura
5. Tripura Public Service Commission,
represented by its Secretary,
P.O. Agartala, District – West Tripura

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	: Mr. S. M. Chakraborty, Sr. Advocate Ms. B. Chakraborty, Advocate
For the respondents No.1, 2, 3 & 4	: Ms. A. S. Lodh, Addl. GA
For the respondent No.5	: Mr. P. Dutta, Advocate
Date of hearing and delivery of Judgment and order	: 10.08.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. B. Chakraborty, learned counsel appearing vice Ms. D. Das, learned counsel who is the advocate on record for the petitioner as well as Ms. A. S. Lodh, learned Addl. GA appearing for the respondents No.1, 2, 3 & 4 and Mr. P. Dutta, learned counsel appearing for the respondent No.5, Tripura Public Service Commission.

02. By means of this writ petition, the petitioner has challenged her grading recorded in the ACRs for the period from 2005-06 to 2009-10 as she has been awarded uniformly 'good' which is below the bench mark, 'very good', for her consideration to the post of Principal, Institute for Speech Rehabilitation for deaf and hard of hearing children.

03. There is no dispute that the petitioner has been holding the post of Speech Educator and she has required qualifying service of 5 years in the grade of Speech Educator to be considered for promotion to the said post of the Principal, Institute for Speech Rehabilitation. The post of Principal, Institute for Speech Rehabilitation is to be filled up by promotion on the recommendation of a Group-B Departmental Promotion Committee (DPC). It is not disputed by the respondents that the petitioner's case was considered by the DPC and she was found unfit as she could not achieve the minimum bench mark, 'very good'. From the minutes of the DPC communicated under No.F.6(253)-SM/TPSC/2011 dated 01.09.2011, Annexure-A to the counter affidavit filed

by the respondent No.5, Tripura Public Service Commission, it appears that in all the years from 2005-06 to 2009-10, the petitioner was awarded 'good' only. It is undisputed that unless 'very good' is achieved which is the minimum bench mark for the said gazetted post, no one can be promoted to such post.

04. Mr. S. M. Chakraborty, learned senior counsel appearing for the petitioner has submitted that no communication was made to the petitioner enabling her to make necessary representation against such grading recorded in the said ACRs. Learned counsel for the petitioner has further submitted that, it is now the law of the land, in view of the ***Dev Dutt Vs. Union of India and Ors.*** reported in ***(2008)8 SCC 725***, that the ACRs be supplied to the officers whether she was given a lower grade or given the best grade. Mr. Chakraborty, learned senior counsel on the basis of that judgment has submitted that a valuable right of the petitioner to make her representation about the grading so awarded in the ACRs have thus been denied. Apart that, Mr. Chakraborty, learned senior counsel has submitted that the grading in the ACRs has been reported by respondent No.4 who is the In-charge Principal for the Institute of Speech Rehabilitation, Agartala. She has definite interest in recording the lower grade or in down-grading the petitioner.

05. Ms. A. S. Lodh, learned Addl. GA appearing for the respondent No.4, who is impleaded in person, has submitted that the In-charge Principal has the authority to report the grading to the competent authority. Mr. P. Dutta, learned counsel appearing

for the respondent No.5, TPSC has submitted that after constitution of the DPC under the Chairman of the TPSC, the ACRs were duly examined by the DPC and thereafter the exercise for recommendation was taken up but no one was found suitable for the post of Principal, Institute for Speech Rehabilitation at Abhoynagar. The petitioner was awarded 'good' in the ACRs of the relevant years. As such, there is no imperfection in the consideration of the DPC.

06. Having regard to the contentions projected by the learned counsel for the parties and also to the principles as laid down by ***Dev Dutt Vs. Union of India and Ors.*** and subsequently followed and elaborated in ***Abhijit Ghosh Dastidar Vs. Union of India and Ors.*** reported in ***(2009)16 SCC 146***, this Court is of the view that the petitioner should have been communicated the grading which are below the bench mark for promotion to the post of Principal, Institute for Speech Rehabilitation at Agartala as she has been prejudicially affected for awarding such grading in the said manner. Apart that, in ***Dev Dutt Vs. Union of India & Ors.*** it has been laid down that whether officers get 'average' 'good' or 'outstanding', irrespective of their grading ACRs be communicated to the officers so that they are in a position to file their response if they so desire, so that their interest or their objection if any to such grading can be raised in time to be determined by the appropriate authority. Hence, it is directed that the petitioner be allowed to file representations against the grading awarded in the ACRs from the year 2005-06 to 2009-10 to the Director, Social Welfare and Social Education within a period of 6 (six) weeks from

today. After filing of such representations, the Director, Social Welfare and Social Education shall consider those representation and pass the necessary orders in respect of the grading as awarded in the ACRs for the year 2005-06 to 2009-10. If it is found that the gradings as given to the petitioner are liable to be enhanced to 'very good' which is the minimum bench mark for consideration of promotion to the post of Principal of Institute of Speech Rehabilitation, then the Director, Social Welfare and Social Education being the competent authority shall again process the petitioner's case for promotion to the post of Principal of Institute of Speech Rehabilitation at Agartala and the competent DPC shall consider her case on the basis of reviewed grading as would be awarded by the Director, Social Welfare and Social Education. It is further directed that the Director, Social Welfare and Social Education shall complete his assessment within three months from the date of filing such representations by the petitioner.

With this observation and direction, this writ petition stands allowed to the extent as indicated above and disposed of. No order as to costs.

JUDGE