

THE HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) NO.292 of 2014, WP(C) NO.293 of 2014 and
WP(C) NO.316 of 2014.

A) WP(C) NO.292 of 2014

1. **Shri Uday Sankar Debbarma,**
S/o Sri Joy Bebbarma,
Serving as Junior Engineer,
PWD Sub-Division, Takarjala,
P.O + P.S : Takarjala.
2. **Shri Kabir Debbarma,**
S/o Sri Himangshu Debbarma,
Serving as Junior Engineer,
Rig Sub-Division, Badharghat,
P.O : A D Nagar, P.S. Amtali.
3. **Shri Pritam Debbarma,**
S/o Lt. Bimal Debbarma,
Serving as Junior Engineer,
PWD Sub-Division, Khumlwng,
P.O + P.S. Jirania.
4. **Shri Govardhan Kalai,**
S/o Sri Biswamani Kalai,
Serving as Assistant Engineer (CDC),
WR Sub-Dvision, Dharmanagar,
P.O + P.S : Dharmanagar.
5. **Shri Sukumar Debbarma,**
S/o Sri Ramani Debbarma,
Serving as Junior Engineer,
DWS Sub-Division, Gandacherra,
P.O + P.S : Gandacherra.
6. **Shri Sunil Debbarma,**
S/o Lt. Aswani Debbarma,
Serving as Junior Engineer,
PWD Sub-Division, Satchand,
P.O + P.S : Sabroom.

7. **Sri Taranjoy Reang,**
S/o Sri Palmani Reang serving as
Junior Engineer, PWD Sub-Division,
Mungiakami, P.O + P.S : Mungiakami.
8. **Shri Anjan Debbarma,**
S/o Lt. Anil Debbarma serving as
Assistant Engineer (CDC),
WR Circle - III, Udaipur,
P.O + P.S. Udaipur.
9. **Shri Braja Gopal Debbarma,**
S/o Lt. Mohan Kumar Debbarma serving as
Junior Engineer, DWS Sub-Division, Hezamara,
P.O + P.S. Sidai Mohanpur.
10. **Shri Joysing Reang,**
S/o Sri Parajoy Reang serving as Junior Engineer,
DWS Sub-Division, Teliamura,
P.O + P.S : Sonamura.
11. **Shri Pranay Jamatia,**
S/o Shri Sonapada Jamatia serving as
Assistant Engineer (CDC) PWD Division, Sonamura,
P.O + P.S : Sonamura.
12. **Shri Ranjit Debbarma,**
S/o Sri Mangal Debbarma serving as
Junior Engineer Sub-Division, Ambassa, P.O + P.S. Ambassa.
13. **Shri Braja Sadhan Jamatia,**
S/o Shri Bishnu Bhakta Jamatia
serving as Junior Engineer,
WR Sub-Division Manughat,
P.O + P.S : Manughat, Dhalai.

..... *Petitioners.*

- Vs -

1. **The State of Tripura,**
Represented by the Secretary,
Public Works Department, Government of Tripura, Agartala,
New Capital Complex, Civil Secretariat, P.O. Kunjaban,
P.S. East Agartala, District - West Tripura.
2. **The Secretary, Public Works Department,**
Government of Tripura, Agartala,

New Capital Complex, Civil Secretariat,
P.O : Kunjaban, P.S. East Agartala,
District - West Tripura.

..... *Respondents.*

B) WP(C) NO.293 of 2014

1. **Shri Nilkanti Chakma,**
S/o Sri Jatindra Chakma,
Serving as Executive Engineer(CDC) PWD Division,
Longtharai Valley, P.O + P.S : Manu Ghat, Dhalai.
2. **Shri Manoranjan Debbarma,**
S/o Lt. Bahadur Debbarma,
Serving as Executive Engineer(CDC), D. M. Office,
Khowai P.O + P.S : Khowai.
3. **Shri Biswajit Debbarma,**
S/O Sri Jagat Mohan Debbarma,
Serving as Executive Engineer(CDC), PWD Division,
Bishramganj, P.O +P.S : Bishramganj, Sepahijala.
4. **Shri Sudhan Debbarma,**
S/o Sri Sushil Debbarma,
Serving as Executive Engineer(CDC), O/O the CE, WR, Kunjaban.
P.O. Kunjaban P.S. East Agartala.
5. **Shri Sambhu Debbarma,**
S/o Shri Mukunda Debbarma,
Serving as Executive Engineer (CDC), DWS Circle,
Kumarghat, P.O + P.S. Kumarghat.
6. **Shri Ajit Kumar Debbarma,**
S/o Shri Girendra Debbarma,
Serving as Serving as Executive Engineer(CDC), PWD Division,
Kanchanpur, P.O + P.S Kanchanpur.
7. **Shri Paramanik Jamatia,**
S/o Lt. Nilkantha Jamatia,
Serving as Executive Engineer(CDC) PWD Division, Sabroom
P.O + P.S Sabtoom.
8. **Shri Jayanta Debbarma,**
S/o Shri Jotish Chandra Debbarma,
Serving as Executive Engineer (CDC), WR Division,
Kamalpur, P.O + P.S. Kamalpur.

9. **Shri Srijan Chakma,**
S/o Shri Akan Chandra Chakma,
Serving as Executive Engineer (CDC),
WR Division, Kailashahar, P.O + P.S Kailashahar.
10. **Shri Swadesh Debbarma,**
S/o Shri Jagadish Debbarma,
Serving as Executive Engineer (CDC), DWS Division,
Kamalpur, P.O + P.S Kamalpur.
11. **Shri Mongsi Mog,**
S/o Shri Achai Mog, serving as Assistant Engineer,
WR Sub-Division No.II, Udaipur, P.O + P.S Udaipur.
12. **Shri Tapas Marak,**
S/o Lt. Tinesh Marak, serving as Assistant Engineer
PWD Sub-Divison, Baikhora, P.O + P.S Baikhora.
13. **Shri Pijush Debbarma,**
S/o Shri Upendra Debbarma,
Serving as Assistant Engineer DWS Sub-Division No.IV,
Jogendranagar, P.O. Jogendranagar, P.S : East Agartala.
14. **Shri Samir Debbarma,**
S/o Lt. Kartik Debbarma, serving as Assistant Engineer
PWD Sub-Division No.II, Amarpur, P.O + P.S Amarpur.
15. **Shri Hironmoy Chakma,**
S/o Lt. Kshetra Mohan Chakma,
Serving as Assistant Engineer DWS Sub-Division, Ambassa,
P.O + P.S Ambassa.
16. **Shri Ritan Khisa,**
S/o Shri Bibha Basu Khisa,
Serving as Assistant Engineer WR Sub-Division, Jirania,
P.O + P.S Jirania.
17. **Shri Bhabani Chandra Jamatia,**
S/o Shri Satish Chandra Jamatia,
Serving as Assistant Engineer DWS Sub-Divisoin, Ampi,
P.O + P.S : Ampi.

..... *Petitioners.*

- Vs -

1. **The State of Tripura,**
represented by the Secretary,
Public Works Department, Government of Tripura, Agartala,
New Capital Complex, Civil Secretariat, P.O. Kunjaban,
P.S. East Agartala, District - West Tripura.

2. **The Secretary, Public Works Department,**
Government of Tripura, Agartala,
New Capital Complex, Civil Secretariat,
P.O : Kunjaban, P.S. East Agartala,
District - West Tripura.

..... *Respondents.*

C) WP(C) NO.316 of 2014

1. **Shri Surjya Kumar Debbarma,**
S/o Lt. Sashi Mohan Debbarma at present serving as Assistant Engineer with current duty charge as Executive Engineer, PWD Division, Ambassa, P.O + P.S. Ambassa
2. **Shri Jiban Debbarma,**
S/o Sri Balaram Debbarma, at present serving as Assistant Engineer DWS Sub-Division, Mandwi, P.O + P.S. Khowai.
3. **Shri Suranhari Jamatia,**
S/o Lt. Rakta Bijoy Jamatia, at present serving as Assistant Engineer, PWD Sub-Division No.II, Udaipur, P.O + P.S. Udaipur.
4. **Shri Goutam Reang,**
S/o Shri Benoy Debbarma at present serving as an Assistant Engineer, PWD Sub-division No.II, Udaipur, P.O + P.S. Udaipur.

- Vs -

1. **The State of Tripura,**
represented by the Secretary,
Public Works Department, Government of Tripura, Agartala,
New Capital Complex, Civil Secretariat, P.O. Kunjaban,
P.S. East Agartala, District - West Tripura.
2. **The Secretary, Public Works Department,**
Government of Tripura, Agartala,
New Capital Complex, Civil Secretariat,
P.O : Kunjaban, P.S. East Agartala,
District - West Tripura.
3. **Tripura Public Service Commission,**
Represented by the Secretary,
P.O. Agartala, P.S. West Agartala, District - West Tripura.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE JUSTICE MR. S C DAS

For the petitioners : Mr. A K Bhowmik, Sr. Advocate,
Ms. A Banik, Advocate,
Ms. M Choudhury, Advocate.

For the respondents : Mr. S Chakraborty, Addl. Govt. Advocate,
Mr. P Datta, Advocate,
Ms. N Guha, Advocate,
Mr. B Banerjee, Advocate.

Date of hearing : 23.3.2015.

Date of judgment : 05.5.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER

(*Deepak Gupta, CJ*)

All these petitions are being disposed of by one judgment since similar questions of fact and law are involved in these cases.

2. WP(C) 292 of 2014 :

The 13 petitioners in this case are all diploma holder engineers belonging to Scheduled Tribes engaged as Junior Engineers in Tripura Engineering Service(TES) Grade V(A). They are working in the Public Works Department and all of them joined the post of 'Junior Engineer' on or before 01.02.2010. All the petitioners have completed 3 years regular service as Junior Engineer and have also passed the required departmental examination as per the existing rules and were eligible for being promoted to the post of Assistant Engineer prior to 02.02.2013.

3. WP(C) 293 of 2014 :

In this case the 17 petitioners are all members of the Scheduled Tribes, who are degree holder engineers and joined the post of Assistant Engineer on or before 15.7.2006. Each of the petitioners has completed 7 years regular service as Assistant Engineer and are working in Grade IV of the Tripura Engineering Service. They have also passed the requisite departmental examination and were eligible for promotion to the post of Executive Engineer in Grade-III prior to 16.7.2013.

4. WP(C)316 of 214 :

The petitioners in this case are also members of the Scheduled Tribes who are degree holder engineers and joined the post of Assistant Engineer on or before 15.7.2006. Each of the petitioners has completed 7 years regular service as Assistant Engineer and are working in Grade IV of the Tripura Engineering Service. They were eligible for promotion to the post of Executive Engineer in Grade-III prior to 16.7.2013 but had not cleared the departmental examination on that date.

5. The services of both sets of petitioners are governed by the Tripura Engineering Service Rules, 1987 as amended from time to time. Under the said TES Rules, 1987 prior to their amendment on 23.5.2014 a Grade V(A) Junior Engineer having 3 years regular service in the grade was eligible to be promoted as Assistant Engineer subject

to the condition that he would pass the departmental examination under the *Tripura Engineering Officers Training and Departmental Examination(Amendment) Rules, 2008*. With regard to the Assistant Engineers, the rule was that Assistant Engineers having 7 years regular service in the grade would be eligible for promotion to the post of Executive Engineer subject to passing the departmental examination under the *Tripura Engineering Officers Training and Departmental Examination(Amendment) Rules, 2008*. On 23.5.2014 the State of Tripura amended the TES Rules and in respect of Junior Engineers, the syllabus of the departmental examination was changed and by this amendment, the Junior Engineers were required to pass Accounts Paper and Simple Rules Paper for the purpose of becoming eligible for promotion to TES Gr.IV. With regard to Assistant Engineers who are to be considered for promotion to the post of Executive Engineer the rules were also amended and now the departmental examination is also to consist of a paper in Law and Arbitration which paper was required to be cleared by these Assistant Engineers for being eligible for promotion to the post of Executive Engineer i.e. TES Gr.III.

6. The main grievance of the petitioners is that the amended rules cannot be enforced with retrospective effect and the posts which were lying vacant prior to the amendment of the rules on 23.5.2014 should be filled in on the basis of the un-amended rules. On behalf of the State it is contended that right from the year 2012 the State was contemplating the amendment of the rules and, therefore,

a conscious decision was taken not to fill up the posts because the employer felt that the officers at the level of Assistant Engineer must have some knowledge of '*Accounts and Simple Rules*' and the employees of the level Executive Engineer must have some knowledge of '*Law of Contract and Arbitration*'.

7. There can be no quarrel with the proposition that it is for the State to lay down the conditions which a candidate must fulfill. The sole issue is, whether the candidates who were duly qualified prior to the amendment of the rules and were eligible for promotion and there were vacant posts available prior to the amendment of the rules can be denied their right to be considered for promotion? Will the amended rules apply to those posts or not? In our considered view, though the right for promotion is not a fundamental right, the right to be considered for promotion is a fundamental right. It is by now well settled law that the rules cannot be amended retrospectively with a view to take away the rights of the parties.

8. In *Arjun Singh Rathore and Others vs. B.N. Chaturvedi and Others*, (2007) 11 SCC 605, the Apex Court held as follows :

"5. Mr. Calla, the learned senior counsel for the appellants has argued that the matter was fully covered by the judgment of this Court in State of Rajasthan v. R.Dayal [1997(10)SCC 419] wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred.

Relying on and referring to an earlier judgment in Y.V.Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284] it was opined as under:

‘8.This Court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.’

6. The above legal position has not been seriously disputed by the learned counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly.”

9. Similar view was expressed by the Apex Court in *A. Manohran and Others vs. Union Of India and Others*, (2008) 3 SCC 641 wherein the Court held as follows :

“25. Furthermore, the Regulations have been amended only with effect from 11.08.2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing

prior thereto. [State of Rajasthan v. R Dayal, (1997) 10 SCC 419, SCC para 8].”

10. The law laid down by the Apex Court is clear that wherever the rules or regulations are amended they will have prospective effect unless the framers of the law have specifically made the rules retrospective in operation. Ms. N Guha may be right that the amendment of the rules was under contemplation for 2 years and the record produced by the State does support the view. However, when the rules were amended, the State did not make them retrospectively applicable from the year 2012. It is true that the State did not conduct any departmental examination during this period but that does not mean that the rules are retrospective. While making the amendment the State could have made the rules retrospective from 2012 and could have justified the retrospective operation on the ground that from that day onward no promotion was made because amendment of the rules was under the contemplation of the State. However, as pointed out above, the rules which were finally framed do not in any manner indicate that they have been made retrospective in operation.

11. The amended notification dated 23rd May, 2014 reads as follows :

**“No.F.6(14)-PWD(E)/93
GOVERNMENT OF TRIPURA
PUBLIC WORKS DEPARTMENT**

Dated, Agartala, the 23rd May, 2014.

NOTIFICATION

In exercise of the powers conferred by the provision article 309 of the Constitution of India and all other powers enabling him in this behalf, the Governor, in consultation with the public Service Commission, is pleased to make the following rules namely, __

1. Short title & Commencement

- i) These rules may be called the 'Tripura Engineering Service (TES)(6th Amendment, 214) Rules 1987.*
- ii) They all come into force from the date of their publication in the Official Gazette.*

The following are added in Rule – 21

d) i) Diploma holders GrV(B) and above have to pass Accounts and Simple Rule Papers to get promotion to Gr-V and above.

ii) Degree Engineers Gr-V(A) have to pass Accounts and Simple Rules papers to get promotion to Gr-IV and shall have to pass Law & Arbitration Papers to get promotion to Gr-III and above.

e) Degree Engineers who are appointed directly in Gr-IV also have to pass the Departmental Examination as specified for Grade-V(A) Degree holder to get promotion to the next higher grade, if not yet passed.

f) To get promotion to the next higher grade the existing Engineering officer of TES Gr-V, Gr-IV & Gr-III have to pass their specified papers/subject viz. accounts, Simple Rules and Law & Arbitration, if they had not passed earlier in any grade.

g) Engineering officers who have attained the age of 55 years and above are exempted from appearing and passing departmental examinations to get promotion to next higher grades.

By order of the Governor,

(S K Nandi)

Deputy Secretary, PWD"

The State has taken a conscious decision that the rules shall come into force from the date of publication in the official gazette. As such the rules cannot be applied retrospectively.

12. The petitioners in both the writ petitions fulfilled all the eligible qualifications as per the unamended rules and therefore, if there are posts of Assistant Engineer or Executive Engineer respectively vacant prior to 23rd May, 2014 they will have to be filled in as per the rules and the petitioners shall be considered for such posts without insisting that they should clear the fresh departmental examination. However, if the petitioners in WP(C) 292 of 2014 and WP(C) 293 of 2014 have to be considered for posts which fell vacant after 23rd May, 2014 then they will only be considered if they are eligible under the amended rules. As far as WP(C)316 of 2014 is concerned, we find no merit in the same. The petitioners in the said case are also Scheduled Tribe candidates working as Assistant Engineers. They have completed 7 years service in the cadre and were eligible for being promoted as Assistant Engineers. However, they had not qualified the departmental examination even under the unamended rules. Their only grievance is that no examination was conducted after 2012 and if such examination had been conducted they would have qualified.

13. We cannot accept a hypothetical argument. The petitioners were in service right from 2006 or 2007 onwards. Various

departmental examinations were held up to May, 2012. The petitioners either did not appear or did not qualify. Merely because departmental examinations were not held thereafter is no ground to come to the conclusion that they were eligible. It cannot be said with certainty that they would have definitely qualified the departmental examination. Some of the petitioners have qualified the departmental examination under the amended rules and they would now be eligible for promotion. They, however, cannot be considered for promotion by treating them to be eligible prior to the date of passing of the examination.

14. In view of the aforesaid discussion, the first two writ petitions[WP(C) 292 of 2014 and WP(C) 293 of 2014] are allowed and as far as the third petition[WP(C) 316 of 2014] is concerned that is dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE