

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.335 OF 2012

Smti. Purnima Barua,

wife of Shri Tapan Bikash Barua,
Now posted at Oricherra S.N. S.B. School,
P.O. and P.S. Kanchanpur, North Tripura

..... Petitioner

- Vs -

1. Tripura Tribal Areas Autonomous District Council,

represented by the Chief Executive Officer,
Tripura Tribal Areas Autonomous District Council,
P.O. Khumlwng (Radhapur), P.S. Jirania,
West Tripura District

2. The Principal Officer (Education),

Tripura Tribal Areas Autonomous District Council,
P.O. Khumlwng (Radhapur), P.S. Jirania
West Tripura District

3. The Deputy Chief Executive Officer,

Tripura Tribal Areas Autonomous District Council,
P.O. Khumlwng (Radhapur), P.S. Jirania,
West Tripura District

4. The Inspector of School,

Tripura Tribal Areas Autonomous District Council,
P.O. & P.S. Kanchanpur, North Tripura District

..... Respondents

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

For the petitioner : Mr. A. Lodh, Advocate

For the respondents : Mr. T.D. Majumder, Advocate
Mr. B. Dutta, Advocate

Date of hearing & order : 24.09.2015

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Lodh, learned counsel appearing for the petitioner as well as Mr. T.D. Majumder and Mr. B. Dutta, learned counsel appearing for the respondents.

2. The grievance as enumerated in this writ petition is plain and short in nature. The petitioner was initially appointed as a School Mother in group-D category on 24.08.1995 on fixed pay basis. Thereafter, on 26.06.1998, she was regularised in the said post in the scale of pay of Rs.775-1130/-. There is no dispute that the petitioner acquired the qualification of Madhyamik examination in the year 1989, as it would be evident from the marksheet as enclosed with the writ petition as Annexure-2. The petitioner stated that she has been working as the Lower Division Clerk by virtue of the order dated 20.04.2010 and she had been discharging all her duties and responsibilities as the Lower Division Clerk to the entire satisfaction of the authority. The petitioner claimed for absorption in the said post as she was otherwise eligible for appointment as the Lower Division Clerk in consideration of her qualification. As the respondents did not alleviate her grievance, she had approached this court earlier by filing a writ petition, being WP(C) No.108 of 2012. The said writ petition was disposed of by the judgment and order dated 24.04.2012 directing the respondent No.2 i.e. the Principal Officer (Education), Tripura Tribal Areas Autonomous District Council to consider the representation that was filed by the petitioner, which is available as Annexure-5 to the writ petition,

and to pass a reasoned order within a time frame of two months from the receipt of the order. The respondent No.2 was also directed to give a proper hearing to the petitioner. Be that as it may, the respondent No.2 in terms of the said direction, passed the order dated 23.06.2012, Annexure-11 to this writ petition, where it has been observed that:

“Smt. Barua did never worked as a Group-C employee. Despite she claimed a host of representations made to the authorities for pay scale of LDC but no such representation was received in the office of the TTAADC through proper channel. However, on a conspectus study of the materials available, it has been found that the petitioner was never entrusted the work of LDC. Her service has been utilized in the Bill Section as Group-D employee. No one can claim pay and allowances to a post for which he/she was not appointed. An employee would get scale of pay attached to the post. Hence, paying her the scale of School Mother is in order.”

The premises as demonstrated in the order dated 23.06.2012, the petitioner's representation for absorption in the post of Lower Division Clerk has been rejected. Being aggrieved by the said order, this petition has been filed by the petitioner.

3. The observation as reproduced above, as passed by the respondent No.2, does not suffer from any infirmity. However, Mr. Lodh, learned counsel appearing for the petitioner, having referred to the provisions of the Recruitment Rules, Annexure-7 to the writ petition, has submitted that all the posts of Lower Division Clerk are to be filled up by promotion from the Group-D employees having the qualification of school final passed or equivalent with

the typing speed of thirty(30) words per minute and knowledge of ‘Kakborok’ language. Rule 10 of the said Recruitment Rules provides as under :

10.	Method of recruitment whether by direct recruitment or by promotion	:	By promotion from amongst Group-D employees who possesses qualification stated in col.7 above, failing which by direct recruitment from amongst contingent/DRW who possesses qualifications stated col.7 above, failing which by direct recruitment from open market.
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4. Mr. Lodh, learned counsel appearing for the petitioner has categorically submitted that the petitioner has got all the qualifications as provided by Rule 7 of the said Recruitment Rules, which was published by the notification dated 16.03.2000. It is abundantly clear from Rule 10 of the Recruitment Rules for the post of Lower Division Clerk under the Tripura Tribal Areas Autonomous District Council that the posts are to be primarily filled up by promotion from the Group-D employees and thereafter from the Contingent/DRWs who have the required qualification, as prescribed, under Rule 7 of the Recruitment Rules. If that process fails, the post can be filled up by direct recruitment. According to Mr. Lodh, learned counsel, the petitioner is eligible to be appointed as the Lower Division Clerk as she has already completed three(3) years service in terms of the Rule 11 of the said Recruitment Rules.

5. Mr. T.D. Majumder, learned counsel appearing for the respondents has stated that the petitioner has never worked as the

Lower Division Clerk. She was only attached for assisting the Bill Section for preparing the bill. He has further submitted that by a reasoned order the representation of the petitioner was disposed of in terms of the judgment and order as passed in WP(C) No.108 of 2012. Mr. T.D. Majumder, learned counsel has categorically submitted that if the petitioner is eligible for consideration of promotion in terms of the Recruitment Rules, she would definitely be considered for her promotion.

6. Having situated thus and appreciated the submission made by the learned counsel for the parties, this writ petition is disposed of with the following direction:

The respondents are directed to consider the promotion of the petitioner to the post of the Lower Division Clerk, if she is found eligible under the Recruitment Rules for appointment to the post of the Lower Division Clerk. For purpose of ascertaining her suitability, the respondents shall constitute the Class-III DPC/Selection Committee for consideration of her promotion subject to seniority within a period of three months from today.

7. Accordingly, this writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Moumita