

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.415 of 2012

Dr. Sajal Kumar Gupta,
son of late Dhirendra Kumar
Gupta, resident of Old Kalibari
Lane, Krishnanagar, Agartala,
P.O. Agartala, P.S. West Agartala,
Sub-Division-Sadar, District –
West Tripura

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Commissioner
& Secretary to the Government of
Tripura, Department of Health,
having his office at Capital
Complex, Gurkhabasti, P.O.
Kunjaban, P.S. New Capital
Complex, Sub-Division- Sadar,
District- West Tripura
- 2. The Director of Health Services,**
Government of Tripura, having
his office at Capital Complex,
Gurkhabasti, P.O. Kunjaban, P.S.
New Capital Complex, Sub-
Division – Sadar, District – West
Tripura
- 3. The Director of Medical Education,**
Government of Tripura, AGMC & GBP
Hospital, P.O. Kunjaban, P.S. New
Capital Complex, Sub-Division –
Sadar, District – West Tripura

..... **Respondents**

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

For the petitioner : Mr. P. Dutta, Advocate.
For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of delivery : **24.09.2015**
of Judgment & Order

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Dutta, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents.

[2] The grievance of the petitioner as enumerated in the writ petition is that he had been serving as the Registrar in the Agartala Government Medical College and GBP Hospital, hereinafter referred to as the AGMC in short, since 02.05.2007. It is not in dispute that the petitioner is substantively appointed as the Medical Officer, borne in the GR-IV of the Tripura Health Services w.e.f. 31.08.1997. It is also not in dispute that the petitioner holds the degree of MBBS and MD in Psychiatry and for such qualification, he is eligible for appointment to the post of Assistant Professor as per the recruitment rules published for the post of Assistant Professors in AGMC & GBP Hospital under Health and Family Welfare Department by the Notification under No.F.4(7-7)-AGMC/Academic/Faculty/2006, Annexure P/3 to the writ petition.

[3] Mr. P. Dutta, learned counsel appearing for the petitioner referring to Rule 5 of the said recruitment rules which deal with the method of recruitment has submitted that 80% of the post of Assistant Professors are to be filled up by way of promotion from the post of Basic Teachers viz. Tutor, Registrar of the AGMC or by absorption of Medical Officers from Tripura Health

Services, failing which by direct recruitment. In Rule 11 of the said recruitment rules it has been provided as under:

"Promotion to be made from the post of Tutor/Registrar/(Basic Teacher) having 3(three) year experience in the grade with requisite qualification as prescribed by the MCI."

[4] Mr. Dutta, learned counsel has emphatically submitted that the petitioner at the relevant point of time when the advertisement under No.F.1(01)-MS/ESTT/AGMC & GBPH/Appointment/2010 dated 25.06.2012, Annexure-P/4 to the writ petition, was published, had 5(five) years experience as the Registrar of the said medical college and hospital. That apart, he had all the requisite qualifications to be appointed as the Assistant Professor in terms of the MCI guidelines. The petitioner had duly applied but his prayer was not at all considered and none has been appointed as the Assistant Professor in the department of Psychiatry in terms of the advertisement dated 25.06.2012. The petitioner was not even called for interview when the candidates for the other disciplines were called for their personal interview to ascertain their eligibility. Mr. Dutta, learned counsel has further submitted that the exclusion of the petitioner from the consideration having all such qualifications as required for consideration despite for appointment to the post of Assistant Professor, Psychiatry is an arbitrary and illegal action by the respondents. Hence, the respondents are required to be mandated to appoint the petitioner as the Assistant Professor,

Psychiatry in terms of the advertisement dated 25.06.2012, Annexure-P/4 to the writ petition.

[5] From the other side, Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents has advanced two pronged submissions. Mr. Chakraborty, learned Addl. G.A. has submitted that the petitioner was never substantively appointed as the Registrar of the AGMC and as such, he could not come for consideration within the 80% category in terms of Rule 5 of the said recruitment rules. When Mr. Chakraborty, learned Addl. G.A. was queried, he has raised another basis. Even the petitioner could not be considered under the direct recruit category of 20% block for the reason that he had crossed the maximum age limit on the day of publication of the said advertisement. Mr. Chakraborty, learned Addl. G.A. has further submitted that the petitioner has been transferred to a different hospital as he was the Medical Officer borne in the Tripura Health Services and he was never substantively appointed in any post of Basic Teacher in the AGMC and GBP hospital. Mr. Chakraborty, learned Addl. G.A. has in support of his contention referred the part of Para-13 of the counter affidavit, where it has been asserted by the respondents as under:

The service of the petitioner was not transferred to the establishment of AGMC nor he is appointed/absorbed in the post in which he is working at present in the AGMC. The petitioner being a member of THS just performing his duties in the AGMC in the designation of Registrar as per MCI norms and acquiring his experience in the post. The petitioner was

asked to work as Senior Resident by Order dated 08.05.2007. Since there was no post of Senior Resident in the AGMC and Registrar post was created, the petitioner was performing duties in the post of Registrar."

[6] In the course of his submission, Mr. Chakraborty, learned Addl. G.A. has tried to distinguish the phrases appearing in Rule 5 of the said recruitment rules that 80% of the posts of Assistant Professor is required to be filled up by way of promotion from the post of Basic Teacher viz. Tutor, Registrar of the AGMC or by absorption of Medical Officer from Tripura Health Services, failing which by direct recruitment. He has underlined that one medical officer who had been posted for serving as the Registrar in terms of the order passed by the controlling authority of the cadre cannot be equated with the Registrar which shall mean the person who has been substantively appointed. According to Mr. Chakraborty, learned Addl. G.A. for consideration under the 80% block as the Basic Teacher, the person must be substantively appointed in that category otherwise he cannot come under the 80% block for consideration.

[7] Having regard to the submissions made by the learned counsel appearing for the parties, this Court finds that the respondents has not committed any wrong by not considering the petitioner under 80% block for appointment to the post of Assistant Professor by promotion. In the service jurisprudence when someone is required to be in the feeder post for purpose of

promotion to the higher post that person must be substantively appointed in that feeder post, otherwise he cannot be considered for promotion to the higher or superior post by way of promotion. But in Rule 5 of the said recruitment rules there is an additional clause which provides that even by way of absorption the Medical Officer of Tripura Health Services can be appointed as the Assistant Professor. In the entire counter affidavit filed by the respondents, this Court does not find any response whether the petitioner was considered for absorption or not. As stated, when Mr. Chakraborty, Addl. G.A. was queried that why the petitioner was not considered even under the 20% block, Mr. Chakraborty, learned Addl. G.A. had submitted that he had by that time crossed the maximum age limit and there was no provision for relaxation in the rule. It is not in dispute that the petitioner has been now taken out from the AGMC and he has been serving as the Medical Officer in a government hospital.

[8] In the considered opinion of this Court, the respondents have done no wrong by not considering the petitioner as the Basic Teacher for his posting as the Registrar. If still there is vacancy in the post of Assistant Professor, Psychiatry and if the petitioner is interested in his appointment as the Assistant Professor, Psychiatry on his representation, the appointing authority may consider his case. Absorption, no doubt is a derivative of appointment. But it relates to certain circumstances, such as rendering of service in the post not being

substantively appointed or on deputation etc. It carries lee way. However, its application is discretionary having strict regard to the public policy. Such consideration shall be made within a period of 3(three) months from the day when the petitioner shall make the representation expressing his interest with the copy of this order to the competent authority, the Principal Secretary, Department of Health & Family Welfare, Government of Tripura.

Accordingly, this petition stands dismissed subject to the observation and direction as made above.

However, there shall be no order as to costs.

JUDGE

Sujay