

THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(C) No.468 of 2011

Sri Ashis Chakarborty,
son of late Simanta Chakarborty,
37, Akhaura Road,
P.O. Agartala, P.S. West Agartala,
West Tripura District

.....**Petitioner**

- Vs -

01. The State of Tripura,
represented by the Secretary,
Education Department, Government of Tripura,
New Secretariat Complex, PO-Kunjaban,
PS-East Agartala, West Tripura District
02. The Director of Higher Education,
Government of Tripura,
PO-Agartala,
PS-West Agartala, West Tripura District
03. The Principal-in-Charge,
Government Music College, Lichu Bagan,
PO-Kunjaban, PS-West Agartala,
West Tripura District
04. The State Public Information Officer and Joint Director,
Department of Higher Education,
PO-Agartala, PS-West Agartala,
West Tripura District
05. Smt. Kalpana Dey, PGT,
care of Principal-in-Charge,
S. D. Memorial Govt. Music College, Lichubagan,
PO-Kunjaban, PS-East Agartala,
West Tripura District
06. Sri Chinmoy Das, Instructor,
care of Principal-in-Charge,
S. D. Memorial Govt. Music College, Lichubagan,
PO-Kunjaban, PS-East Agartala,
West Tripura District
07. Smt. Sanaghita Ghosh, Instructor,
care of Principal-in-Charge,
S. D. Memorial Govt. Music College, Lichubagan,
PO-Kunjaban, PS-East Agartala,
West Tripura District
08. Sri Sushanta Kr. Lodh, Instructor,
care of Principal-in-Charge,
S. D. Memorial Govt. Music College, Lichubagan,
PO-Kunjaban, PS-East Agartala,
West Tripura District
09. Smt. Sukla Bhattacharjee, PGT,
care of Principal-in-Charge,
S. D. Memorial Govt. Music College, Lichubagan,

PO-Kunjaban, PS-East Agartala,
West Tripura District

10. Smt. Seema Ghosh (Deb), PGT,
care of Principal-in-Charge,
S. D. Memorial Govt. Music College, Lichubagan,
PO-Kunjaban, PS-East Agartala,
West Tripura District

.....**Respondents**

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

For the petitioner	: Mr. C. S. Sinha, Advocate
For the respondent Nos.1 to 4	: Mr. J. Majumder, Advocate
For the respondent Nos.5, 7 to 10	: Mr. P. K. Pal, Advocate
For the respondent No.6	: Mr. P. Dutta, Advocate
Date of hearing and Delivery Judgment and order	: 09.07.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. C. S. Sinha, learned counsel appearing for the petitioner as well as Mr. J. Majumder, learned counsel appearing for the respondents No.1, 2, 3 & 4, Mr. P. K. Pal, learned counsel appearing for the respondents No.5, 7, 8, 9 and 10 and Mr. P. Dutta, learned counsel appearing for the respondent No. 6.

02. By means of this writ petition, the petitioner has prayed for declaring the appointments of the respondent Nos.5, 6, 7, 8, 9 and 10 as illegal, arbitrary, unjustified and fraud on power and for appointing the petitioner as the Instructor, commensurate to his qualification from the day when the respondent Nos.5, 6, 7, 8, 9 and 10 were appointed on regular basis and further for quashing the letter dated 31.12.2010 as issued by the respondent No.4. In addition thereof, the petitioner has made a prayer for an inquiry by the Central Bureau of Investigation (CBI, in short) into the appointments made to the respondent Nos.5, 6, 7, 8, 9 and 10.

03. The challenge basically relates back to the advertisement dated 20.06.1997. By that advertisement, applications were invited from the eligible candidates having Masters Degree in Music for B-Music Course for the Government Music College. It is also undisputed that the petitioner was denied to appear in the selection process as he was not having the requisite qualification as stipulated by the said advertisement dated 20.06.1997. It is further not in dispute that the petitioner had challenged that action of the respondent Nos.1, 2 and 3 by filing a writ petition being W. P.(C) No.428 of 1997. The said writ petition was decided by the order dated 06.02.2007. For purpose of reference the entire order is extracted hereunder:

"Heard Mr. S. M. Chakraborty, the learned senior counsel for the petitioner. Also heard Mr. R. B. Sinha, the learned counsel appearing for the respondents.

The challenge in the instant writ petition is against an advertisement dated 20.6.1997 (Annexure-C), whereby application for engagement of part time teachers, inter alia in the subject of Music was invited by the Director of Higher Education, Tripura. It was prescribed in the said advertisement that in case of part time teacher in Music the essential qualification required is a Master Degree in Music for B Music Course.

The petitioner, who has a Bisharad Degree from Bhatkhand Sangeet Vidyapith, Lucknow equivalent to a Graduate Degree in Music was disqualified from applying in response to the said advertisement and it is submitted by Mr Chakraborty the learned senior counsel that the requirement of qualification prescribed in the advertisement is contrary to the Rules (Annexure-A). Attention of this Court is drawn to the Recruitment Rules for the post of Lecturer in Govt. Music College, where in clause (7) the educational qualification prescribed is a Bisharad from Bhatkhand Sangeet Vidyapith, Lucknow, which qualification the writ petitioner possesses. Accordingly, it is submitted that the advertisement being contrary to the Rules, the said advertisement is liable to be interfered with and the petitioner may be held to be qualified for applying in response to the advertisement.

Mr. RB Sinha, the learned counsel appearing for the respondents has submitted that the advertisement was not for recruitment of lecturers for which Recruitment Rules have been framed and was only for part time teachers and accordingly, the Rules relied upon by the writ petitioner has no application. It is further submitted that although the petitioner might have the technical qualification but he has read only upto Class-IX and accordingly, cannot be considered to be eligible for being engaged as a part time teacher. It is also submitted that application of Recruitment Rules would be necessary only in case of regular appointment and that too for post of lecturers and in case of engagement of part time teachers, the Department should have the liberty to form its own norms and accordingly, the department has prescribed the qualification in the advertisement.

I have considered the submissions made by the learned counsels for the parties. The qualification that the petitioner has does not enable him to apply in response to the advertisement for engagement of part time teachers. However, it can further be seen that the Recruitment Rule relied upon the petitioner is in respect of recruitment of regular lecturers and not for recruitment of part time teachers as in the instant case. Therefore, this Court is of the view that the said Rules do not apply and the claim raised in the instant petition on the basis of the Recruitment Rules for lecturers cannot be entertained by this Court.

Since the engagement is of part time teachers and the authorities have prescribed the qualification as per their requirement, it would not be appropriate for this Court to interfere with the said qualification prescribed by the potential employer.

It must also be noted that the advertisement was issued as far back as on 20.6.1997 for engagement of part time teachers where payment is to be made @Rs.60/- per lecture and by now more than 9 years have gone by and interference at this stage with the advertisement would hardly be justified.

In view of above, no merit is found in the instant writ petition and accordingly the same is rejected. No cost."

04. It is pertinent to mention that the petitioner had unsuccessfully tried to file an appeal against the said order dated 06.02.2007. Thereafter, the petitioner filed a writ petition being W.P.(C) No.72 of 2011 on the same subject matter. However, the petitioner sought to withdraw that petition with liberty to file a

fresh one. By the order dated 15.02.2011 the said writ petition being W. P.(C) No.72 of 2011 was allowed to be withdrawn with liberty to approach the court or any other legal forum if a cause of action in law so permits.

05. Mr. Sinha, learned counsel for the petitioner has strenuously argued that after disposal of the writ petition being W.P.(C) No.428 of 1997, the petitioner discovered that the respondent Nos.5, 6, 7, 8, 9 and 10 were engaged as the part time teacher pursuant to the said advertisement dated 20.06.1997, even without any application. Even though he applied for that said post, he was not appointed but those persons who did not apply, they are appointed as the part time teacher in the Government Music College. In the course of time, according to Mr. Sinha, learned counsel for the petitioner, those persons who were appointed as the part time teachers have been regularised in the various posts including the post of instructor.

06. To buttress his submission, Mr. Sinha, learned counsel has referred some averments made in the writ petition. In the para 12 of the writ petition, the petitioner has asserted that the petitioner sought disclosure under Section 6 of the Right to Information Act by an application dated 04.12.2010 and according to him the State Public Information Officer in the Directorate of Higher Education has deliberately attempted *"to hush up material facts as well as evidences, inasmuch as, on 26/06/97, the petitioner made his prayer and that was received by the receipt section of Higher Education Department by putting seal thereon here, it is pertinent to mention that the last date of receipt of*

applications as per advertisement 20-06-97 was 27-06-97. Out of 7(seven) persons only Smt. Balaka Sen made application and pursuant to advertisement dated 20-6-1997 the Respondent No.5, 6, 7, 8, 9 and 10 did not make applications for part time Teachers. This apart, the petitioner further is confident that in order to bypass that, the S.P.I.O and the Joint Director have taken this unreasonable and unjustified plea that for 2 (two) days of 26/06/97 and 27/06/97 no entries were made in the receipt register. As such, the letter dated 31/12/2010 deserves to be declared unjustified, unreasonable and an attempt to hush up true facts by the respondents authority so far as his rely to question no.1 is concerned." If the petitioner had any grievance against the disclosure made by the order dated 31.12.2010, he had statutory remedy to file the appeal before the designated appellate authority as prescribed under Section 19 of the Right to Information Act. Even, he had further opportunity to file the second appeal, if he was aggrieved by the order of the first appeal, in the State Information Commission. But without taking recourse to the statutory remedy, the petitioner has straightaway challenged that letter dated 31.12.2010. This court would definitely not entertain such challenge under Article 226 of the Constitution of India for obvious reasons that no reason has been ascribed why the petitioner has not pursued the substantive and effective remedy made available by the statute. Moreover, from the disclosure as made, it cannot be deduced that the respondents No.5, 6, 7, 8, 9 and 10 did not file applications in pursuance to the advertisement dated 20.06.1997.

07. Mr. J. Majumder, learned counsel appearing for the respondents No.1, 2 and 3 has emphatically submitted that when the petitioner has been declared as not eligible for engagement as the part time teacher, he cannot even question the engagement of the other persons. To enter in the province for having the remedy under Article 226 of the Constitution of India, the threshold that he has to cross is that he must show that he was eligible to get engagement/appointment, which he intends to challenge in the writ petition. Unless the person shows his eligibility, he cannot derive locus standi to challenge the engagement of the other persons whose eligibility he has not challenged. That apart, Mr. Majumder, learned counsel showing the averments made in the counter-affidavit has denied the allegation that the respondents No.5 to 10 did not make applications for engagement or there was no selection process for selecting them as part-time teachers in the Government Music College in terms of the advertisement dated 20.06.1997. Mr. Majumder, learned counsel has also pointed out that since the writ petition has been filed after 12 years, the relevant records had been destroyed and as such the respondents are not in a position to produce those records. Apart that, the respondents No.2 and 3 have raised the objection as to the maintainability of the writ petition on the ground of laches.

08. Mr. P. K. Pal, learned counsel appearing for the respondents No.5, 7, 8, 9 and 10 has submitted that by filing the counter affidavit, those respondents have categorically stated that they were eligible for engagement in terms of the advertisement dated 20.06.1997 and they applied for the assignments and they

got selected and engaged as the part time teacher in the Government Music College. They have denied the allegations made against their suitability.

09. However, the petitioner by filing a rejoinder to the counter affidavit filed by the respondents No.1, 2 and 3 has reiterated that since the respondents No.1, 2 and 3 could not produce the records, thus it has to be assumed that the respondents No.5, 6, 7, 8, 9 and 10 did not file any applications and an adverse inference has to be drawn against them.

10. Mr. P. Dutta, learned counsel appearing for the respondent No.6 has replicated the submissions made by Mr. P. K. Pal, learned counsel and contended that he applied for the part time teacher in response to the advertisement dated 20.06.1997 and got selected and thereafter he had been appointed as the regular instructor in the Government Music College. Apart that, the respondent No.6 is a classical dancer and therefore there cannot be any comparative evaluation of their talents. From Annexure-R/1, which is a communication dated 03.02.1995, it appears that the respondent No.5 was appointed in the year 1995. Hence, the respondent No.5 has been impleaded unnecessarily in this proceeding.

11. It is no denying fact that the petitioner is Bisharad in Indian Classical Music (Vocal) from Bhatkhand Sangeet Vidyapith and according to him, that qualification is equivalent to that of graduate degree in music. From a keen reading of the order dated 06.02.2007 passed in W.P.(C) No.428 of 1997, it would be apparent that the High Court has categorically held that since in

terms of the advertisement dated 20.06.1997, the petitioner did not have the required Masters Degree in Music, he was not eligible for engagement in the process as initiated by the advertisement dated 20.06.1997. Without leaving any space for confusion, by the said order dated 06.02.2007, it has been declared that since the engagement was of part time teachers and the authorities had prescribed the qualification for such engagement, it would not be appropriate for the court to interfere with the qualification prescribed by the potential employer. The said order has reached its finality by efflux of time and the challenge sought to be carried out by the petitioner was curtailed by the writ appellate court.

12. Is this writ petition maintainable? In the writ proceeding, the principles of *res judicata* apply for scuttling the repetitive and vexatious litigations. In Section 11 of the Code of Civil Procedure (CPC) by Explanation II, it has been provided that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. In view of that explanation, the bar as provided by Section 11 of the CPC shall apply in respect of this writ petition. Thus this court is prohibited to try any of the issues or the issue that would have been projected in the previous writ petition. Apart that, the disclosure made by the RTI does not in any way help the petitioner as nowhere in the disclosure made by the letter dated 31.12.2010, it has been provided that without applications the respondents No.5, 6, 7, 8, 9 and 10 were engaged as the part-time teachers. After 12 years it is also not expected that the records of such category would be

maintained by the Government. Leaving apart the issue of laches in filing the writ petition, the court cannot draw any adverse inference in view of the stand taken by the respondents No.1, 2 and 3 as regards the maintenance of the records.

13. Since the petitioner was not eligible to be engaged as the part time teacher, he does not have the standing to challenge the engagements of the respondents No.5, 6, 7, 8, 9 and 10 and as such this writ petition being devoid of merit is liable to be dismissed. Accordingly, it is dismissed.

14. Before parting with the records, so far the prayer for an investigation by the Central Bureau of Investigation (CBI) is concerned, according to the court, is entirely farfetched in the circumstances of the case and the petitioner was not at all serious to lay basic materials for holding that there were serious irregularities or corrupt practices in engaging the private respondents. Hence, the said prayer stands rejected and it is held that the writ petition is entirely vexatious. However, on considering the financial status of the petitioner, there shall be no order as to costs.

JUDGE