

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No. 422 OF 2014

Sri Sankar Sen,
son of late Khagendra Chandra Sen
resident of Kunjaban Township, Quarter No. T/II/114,
P.O. Kunjaban, P.S. East Agartala, District- West Tripura.
... **Petitioner.**

- **Versus** -

1. **Tripura Legislative Assembly**
represented by the Secretary,
to the Tripura Legislative Assembly, Government of Tripura,
having his office at Secretariat Complex, P.O. Kunjaban
P.S. West Agartala, Sub Division- Agartala,
District - West Tripura.
2. **The Secretary**
to the Tripura Legislative Assembly, Government of Tripura,
having his office at Secretariat Complex, P.O. Kunjaban
P.S. West Agartala, Sub Division- Agartala,
District - West Tripura.
3. **The Commissioner & Secretary**
Government of Tripura, Finance Department,
Government of Tripura,
having his office at Secretariat Complex, P.O. Kunjaban
P.S. West Agartala, Sub Division- Agartala,
District - West Tripura.

... **Respondents.**

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the petitioner : Mr. Somik Deb, Advocate
For respondent no.1 & 2 : Mr. N. Majumder, Advocate
For respondent no.3 : Mr. B. Dutta, State Counsel
Date of hearing & delivery
of Order : **01.12.2015**
Whether fit for reporting : YES / NO

JUDGMENT & ORDER(ORAL)

As agreed to by the learned counsel appearing for the parties, the instant writ petition is taken up for disposal, at this admission stage itself.

2. Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Mr. N.Majumder, learned counsel appearing for the Tripura Legislative Assembly and for the Secretary to the Tripura Legislative Assembly. Also heard Mr. B.Dutta, learned State Counsel appearing for the respondent, Commissioner and Secretary, Finance Department.

3. The simple case of the petitioner is that he was appointed in the post of Lower Division Assistant (for short hereinafter referred to as LDA) on 08.03.1996 in the pay scale of Rs.3300-7100 in the Tripura Legislative Assembly under the respondent No.1 and 2. He is a graduate and he has also the qualification of Diploma in Bengali and English stenography and having certificate in Software operation. Since he was found qualified and efficient for working as Personal Assistant (for short hereinafter referred to as PA), he worked as PA to the Government Chief Whip in the Tripura Legislative Assembly for rendering services and since long he has been doing the job with all sincerity, devotion and to the satisfaction of the Government Chief Whip. Since he had/have been performing the duties of PA, he made a representation to the Secretary, Tripura Legislative Assembly for considering his promotion to the post of PA which is indisputably a higher post with higher pay scale and higher responsibility than that of an LDA. The representation was turned down by Memo dated 18.12.2007. He issued a demand notice through his learned counsel but his grievance was not redressed. Thereafter, he filed a writ petition being WP(C) 85 of 2010. The writ petition was heard by a Coordinate Bench of this Court and held that simply because the

Government Chief Whip certified that the petitioner has been working as a PA to the Government Chief Whip, he is not entitled to be promoted to the post of PA. It was also noted in the judgment of the writ petition that promotion must follow the Service Rules and it is an admitted position that the post of PA is a promotional post to the post of stenographer and the stenographers are appointed by direct recruitment. The petitioner was appointed in the post of LDA which is a different stream. So, the petitioner, as of right, cannot claim his promotion to the post of PA from the post of LDA. Finally, the writ petition was dismissed. However, liberty was granted to the petitioner to approach the authority to consider his case, if permitted by law.

4. The petitioner did not approach the authority to consider his case, as permitted by the Coordinate Bench of this court in the writ petition but filed the present writ petition with a prayer for directing the respondents to pay off the arrears of salary and allowances to him in the pay scale for the post of PA to the Government Chief Whip to the Tripura Legislative Assembly w.e.f. 19.08.1996 till date.

5. The respondents simply by way of filing counter affidavit specifically stated that as per salary Allowances and Pensions of Members of Tripura Legislative Assembly (Tripura) (facilities to the Hon'ble Government Chief Whip) Rules, 1989, it has been provided that Secretarial Assistant is to be provided to the Hon'ble Government Chief Whip. As per provisions of the said Rules, the Hon'ble Government Chief Whip is entitled to get one Confidential Assistant and the Confidential Assistant was already provided to him by the Secretariat. Since, the petitioner was appointed to the post of

LDA through direct recruitment, he was promoted to the post of UD Assistant. Accordingly, he accepted the promotion given to him and joined as UD Assistant on 16.08.2014. So, the contention made by the petitioner in the writ petition is strongly denied by the respondent-Tripura Legislative Assembly. It is also stated by the respondent-Assembly that the petitioner had submitted a writ petition before the High Court which was dismissed finding no merit. It is further case of the respondent, Assembly that simply because the Government Chief Whip certified that the petitioner was working as a PA to the Government Chief Whip, the petitioner is not entitled to be promoted to the post of PA as the promotion is given to the eligible candidates following the existing Service Rules. It is also stated that the petitioner was never appointed by the respondent, Legislative Assembly as PA to the Government Chief Whip and admittedly the petitioner discharged his duties as LDA and UD Assistant.

6. The State respondents filed counter affidavit denying the contentions of the petitioner that soon after his appointment to the post of LDA on 08.03.1996 taking into consideration his efficiency, the petitioner was attached to the Chief Whip in the Tripura Legislative Assembly as PA. Rather the Recruitment Rules of LDA and PA are separate and distinct. As per Recruitment rules the PAs are appointed on promotion from the post of stenographers who are recruited directly.

7. Mr. Deb, learned counsel appearing for the petitioner submits that according to the Recruitment Rules, the post of PA in the

Tripura Legislative Assembly is a selection post and mode of recruitment is promotion from stenographer of Assembly Secretariat having atleast 5(five) years service in the grade on the basis of Seniority-cum-merit and admittedly the petitioner did not discharge his duty as stenographer. His case is that the petitioner worked as a PA at the request of Government Chief Whip and the Government Chief Whip also issued a certificate to that extent in his favour. He further submits that the Government Chief Whip is entitled to PA as per the Salaries, Allowances, Pensions and other benefits of the (Minister, Speaker, Deputy Speaker, Leader of Opposition, Government Chief Whip and the Members of the Legislative Assembly) Tripura, Bill, 2008.

8. On the other hand, Mr. Majumder submits that admittedly the petitioner was working as LDA and UDA and he never discharged his duties as PA appointed by the Legislative Assembly and unless a person is appointed to the post of PA, he cannot claim for salary for that post even if he discharged his duty as PA at the request of Government Chief Whip. He further submits that a government employee is guided by his own Service Rules and in the instant case the petitioner was provided all the benefits which he is entitled to as LDA and UDA. He finally contended that even if certificate is issued by the Government Chief Whip in favour of the petitioner then also the same cannot be accepted as the petitioner was never appointed as PA by the Tripura Legislative Assembly following the Recruitment Rules for the post of PA and Service Rules provide that a person who is working as a stenographer having 5(five) years service is

entitled to be promoted to the post of PA. Admittedly, the petitioner never discharged his duty as stenographer.

9. This court has gone through the averments made by the parties in their respective pleadings and also perused the Recruitment Rules for the post of PA in the Legislative Assembly from which it appears that the post of PA is a selection post and the same can be filled up only by way of promotion from the post of stenographer and admittedly the petitioner was never appointed as a PA. Even if he discharged the duty of PA, as alleged by him, on the basis of the request of the Government Chief Whip then that was done by him at his own risk. More so, in the instant case, the Government Chief Whip is not made a party. It appears from the record that even after the decision of the Coordinate Bench of this court passed in WP(C) 85 of 2010, the petitioner accepted the promotion to the post of UD Assistant. Thus, according to this Court he has no right to get the pay of PA for which he allegedly discharged his duty for the period. For an example, if a person was appointed as LDC and on request of the Superior Officer sometime he discharged the duty of UDC, that does not mean that he is an UDC and unless a person is appointed for a post, in accordance with the Rules, he cannot claim the pay scale for the said post even if he discharged his duty on request.

10. The petitioner was appointed by the respondent, Legislative Assembly for the post of LDA as well as UDA but at no point of time he was appointed as PA of Government Chief Whip. Even if the Government Chief Whip is entitled to the service of PA, then in that

case the Chief Whip can take up the matter with the Legislative Assembly for providing him PA but he cannot himself engage a person as PA. The contention of Mr. Deb, learned counsel for the petitioner is that there is a contract between the Legislative Assembly and the petitioner, so far his service as PA is concerned. This Court is unable to accept such contention, as at no point of time the petitioner was engaged by the Tripura Legislative Assembly as PA.

11. In view of the above, the instant writ petition is devoid of merit. Accordingly, the same is dismissed. No order as to costs.

JUDGE

Saikat