

THE HIGH COURT OF TRIPURA AGARTALA

WP (C) 445 of 2014

1. Dr. Surjya Kanta Paul

S/o Lt. Birendra Ch. Paul,
Resident of Gangail Road, Agartala,
P.S. West Agartala, P.O. Agartala,
District- West Tripura,
Pin-799001.

2. Dr. Dulal Debnath,

S/o Lt. Nabadip Ch. Debnath,
Resident of Dalura, Khayerpur,
P.S. Ranirbazar,
District- West Tripura-799008.

---Petitioners

- Vs -

1. The State of Tripura,

Represented by the
Secretary/Commissioner Education (YAS) Department,
Government of Tripura,
Capital Complex, Agartala-799006.

2. The Director of Youth Affairs & Sports,

Govt. of Tripura,
Dasarath Deb States Sports Complex,
Badharghat, P.S. West Agartala,
Pin-799003.

3. The Principal In-Charge,

Regional College of Physical Education,
Panisagar, District-North Tripura-799260.

4. Tripura Public Service Commission,

Represented by its Secretary, Agartala,
West Tripura-799001.

---Respondents

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioners	:	Mr. K.N. Bhattacharji, Sr. Adv. Mr. S. Acharji, Adv.
For the State-respondents	:	Mrs. A.S. Lodh, Addl. G.A.
For the respondent No.4	:	None.

Date of hearing &
delivery of Judgment & Order : **04.07.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

On the submissions of learned counsel of both side, the writ petition is taken up for disposal at the admission stage itself.

2. Heard learned Sr. counsel Mr. K. N. Bhattacharji assisted by learned counsel Mr. Sapta Acharji for the petitioners and learned Addl. G.A., Mrs. A. S. Lodh for the State-respondents. No representation on behalf of respondent No.4.

3. Both the writ petitioners were appointed as Physical Instructor (for short, P.I.) under the Directorate of Youth Affairs and Sports, Govt. of Tripura (respondent No.2). Petitioner No.1 was appointed on 11.06.1983 as a P.I. in Grade-II and petitioner No.2 was appointed as a P.I. in Grade-I on 12.08.1983. They served as such in different Institutions under the respondent No.2. Ultimately, petitioner No.1 was transferred to Regional College of Physical Education (for short, RCPE), Panisagar on 19.12.2008 and he has been working in that Institution till now. Petitioner No.2 was also transferred to the said RCPE, Panisagar on 29.10.2011 and he has been working in that Institution till now. It is the case of the petitioners that they are having with all requisite qualification for appointment to the post of Asstt. Professor of RCPE but in spite of having all such requisite qualification, the

respondents did not absorb them to the post of Asstt. Professor, whereas, made advertisement through TPSC for filling up of six posts of Asstt. Professor in the RCPE and having no other alternative they approached this Court since all their representations made for their absorption in the post of Asstt. Professor have been turned down. It is contended by the petitioners that they are all through performing the job of Asstt. Professor in RCPE and since they have got all requisite qualification, they should be absorbed in the un-reserved post of Asstt. Professor of RCPE.

4. Respondents contended that the petitioners were appointed as P.I. and were posted in the School under the Education Department. Ultimately they were transferred to RCPE as P.I. and mere performance of duties sometimes in the absence of an Asstt. Professor does not confer any right on the petitioners to be absorbed in the post of Asstt. Professor without following due procedure prescribed under the recruitment rules.

5. A copy of the recruitment rules has been annexed as Annexure-14 to the writ petition. Item 7 of the schedule to the recruitment rules prescribes educational and other qualification required for direct recruitment which reads as follows:-

"7. Educational and other qualifications required for direct recruitment:

(A) Essential Qualifications:-

(i). A Master's Degree in Physical Education with at least 55% of marks or an equivalent grade in a point scale wherever grading system is followed) from UGC recognized University or an

equivalent Degree from an accredited Foreign University.

(ii). Beside fulfilling the above qualification, the candidates should have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

Provided however, that candidates, who are or have been awarded a Ph. D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor in Universities/Colleges/Institutions."

6. Item 6 of the recruitment rules prescribes the age limit for un-reserved category maximum 40 years.

7. Learned Sr. counsel Mr. Bhattacharji appearing for the petitioners submitted that the petitioners since discharging the duties of Asstt. Professor and since they have all requisite qualification they are entitled to be absorbed in the post of Asstt. Professor.

In support of his contention he has referred a Division Bench decision of the then Gauhati High Court in **Civil Rule Nos. 50, 51 and 52 of 1981** and Civil Rule No. **301 of 1980**; a common judgment dated **24.09.1988** and referring to that judgment, he has submitted that the petitioners should be absorbed in the post of Asstt. Professor since they are discharging the duties of Asstt. Professor since long.

8. On the other hand, Mrs. A. S. Lodh, learned Addl. G.A. referring to the decision of the then Gauhati High Court in **WP(C) No.177 of 2002** and **Writ Appeal No.16 of 2004**, judgment dated **18.08.2010** respectively, has submitted that the petitioners acquired no right to be absorbed simply because they work as Asstt. Professor for some time. She has also submitted that the petitioners are P.I. and as P.I. they have been transferred to the RCPE and they are in the same post and not at all eligible for the absorption as an Asstt. Professor. She has also referred to a decision of this Court in **WP(C) No.172 of 2002**, judgment dated **19.08.2013**.

9. It is settled law that appointment and services in the public service shall be made according to the service rules. The Supreme Court in the case **of Secretary, State of Karnataka and Ors. V. Uma Devi (3) & Ors.**, reported in **(2006) 4 SCC 1** has made the law absolutely clear that appointment to public posts and services shall be made in a transparent manner according to the provisions prescribed in the rules. There cannot be absorption or regularization on the basis of continuance of an employee in a particular job. The decision referred by learned Sr. counsel, Mr. Bhattacharji is of the year 1988 long before the law laid down by the Apex Court in **Uma Devi (supra)**. The ratio of that judgment, therefore, cannot be applied in the case of the petitioners. In my considered opinion, the petitioners acquired no right to be absorbed because of their working as an Asstt. Professor for some time or otherwise in RCPE. They must come through a requisite selection process.

On the requisition of the department, TPSC made advertisement for selection of candidates for recruitment to the post of Asstt. Professor. There is nothing wrong in making such advertisement. The petitioners cannot claim that they should be absorbed before any other candidate selected by TPSC.

10. It is submitted by learned Sr. counsel, Mr. Bhattacharji that the petitioners are having with all qualification but they have become over aged by now and therefore, as per the advertisement they will not be in a position to appear as a candidate for the post of Asstt. Professor. He has further submitted that recruitment rules prescribes provision for relaxation of the rules and since the petitioners are already working as an Asstt. Professor in their case rule may be relaxed in respect of their age so that they may apply for the post of Asstt. Professor as per advertisement made by TPSC. On perusal of the advertisement, I find that the last date of submitting application already over on 16.03.2015.

11. The petitioners approached this Court on 12.11.2014 along with a separate application for an interim direction. An interim order was passed on 30.03.2015 to keep two posts vacant if, in the meantime, selection process is taken up. Since the last date of submission of application expired on 16.03.2015 as per the advertisement, no direction can be issued now to consider any representation of the petitioners for their age relaxation. If in future any selection process is taken up and the petitioners make any application for relaxation of their age for appearing in the

selection process, the State Govt. may consider their prayer according to rules.

12. With this observation, the writ petition stands disposed of.

13. No order as to costs.

JUDGE