HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.89/2019

Sri Prabhash Malakar

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

Connected with

WP(C) No.90/2019

Sri Nanda Kishore Das

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.91/2019

Jhunu Mia

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.92/2019

Sri Manna Roy

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.93/2019

Sri Sanjib Deb

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate,
Mr. A.T. Paul, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, G.A.
Mr. P. Roy Barman, Advocate,
Ms. Nibedita Ghosh, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

29/01/2020

These writ petitions arise in common background. They have been heard together and will be disposed of by this common

order. Learned advocate for the petitioners submitted that these petitions are covered by the judgment of the learned Single Judge dated 10.01.2019 in case of ***Shri Khagendra Reang vrs. The State of Tripura and others*** in ***WP(C) No.689 of 2018*** and connected petitions. Respondents do not seriously dispute this proposition. The relevant portion of the said judgment of the learned Single Judge may be noted:

> [20] This observation is relevant in respect of the operation of the New Recruitment Policy. To be precise, such legal fiction has not been created by the New Recruitment Policy, rather it has clearly espoused that it would come into effect prospectively. Therefore, the petitioner have correctly urged this court that the cancellation as made on the basis of the New Recruitment Policy is unsustainable. Thus, the stand taken by the state respondent that by the memorandum dated 20.08.2018 issued by the General Administration (Personnel & Training) Department, Govt. of Tripura, all the existing recruitment processes initiated by the respective department as cancelled, cannot sustain the scrutiny of law. The New Recruitment Policy cannot have any effect on the recommendation already made to the various departments. Even though the recruitment processes cannot be stated technically completed but even the respondents have not denied the recommendations made for the said recruitment.
>
> [21] The private respondents were appointed from the same panel. As such, that process cannot simply be stated as the recruitment process. Even the petitioner cannot as a matter of right, claim their relief against the discrimination made during the appointment of the private respondents no. 7 to 25. Having heard the learned counsel for the petitioners as well as for the respondents, this court is of the view that the respondents were under obligation to make the recommendation according to the merit position and according to the reservation policy in terms of the verified rosters of various departments. In the same category, there

cannot be any discrimination in respect of the appointment. Even though several departments are involved or engaged in the process, this court is quite well aware that the official-respondents are obligated to maintain such balance of merit. For that, the respondent No. 4 has to shoulder an arduous duty and for that purpose effective coordination with 19 departments who had requisitions for the candidates to appoint to the post of driver to know how many of the vacancies are going to be fulfilled at that point of time. Thus, no petitioner having higher position in the merit list would be jeopardised.

[22] It is only thereafter, the recommendation would have been made to the various departments. It seems that this has not been done, but, there is no definite information in the court except the allegations as made in the writ petitions. The Revenue Department has taken a unique stand. They do not have the vehicle and as such they will not fill up the vacancy. True it is that mere recommendation does not create any right in favour of any person. Even after recommendation, the employer may refuse to appoint any one but such refusal shall be in such a manner that does not offend Article 14 of the Constitution of India whereby the equal treatment in law has been ensured.

[23] Having observed thus, this court would direct the official respondents to take up the exercise whether the petitioners having occupied the higher merit position in the same category have been deprived of the appointment in the post of drivers. In other words, whether the respondents No. 7 to 25 having occupied lower position in the combined merit list has been appointed because of unreasonable approach or mode adopted by the respondent No.4, meaning, without creating effective mechanism or coordination in respect of the vacancies to be filled up by the various departments. If it is found that the petitioner or few of them, thus have been deprived of the appointment, such discrimination shall be remedied by making their appointment where the vacancies are required to be filled. Even if, there is no vacancy to

obviate this discrimination, the official respondents will be at liberty to discontinue the service of the private respondents in consideration of the merit position.

[24] It is made absolutely clear that merit has to be compared in the various categories such as UR, SC, ST following the reservation policy as prevalent in the state. It is made further clear that the panel will not die for crossing the one year life, inasmuch as the violation of Article 14 of the Constitution of India compels the official respondents to undo the injustice. Therefore, that plea would not be available to the respondents. The above exercise shall be completed within a period of three months from the date when the petitioners shall furnish the copy of this order to the official respondents.

In terms of the above, these writ petitions are allowed, to the extent as indicated above.

There shall be no order as to costs."

These petitions are also, therefore, disposed of in the same terms. It is provided that the directions contained in the said judgment would apply *mutatis mutandis* to the present petitioners also. All petitions disposed of accordingly.

(AKIL KURESHI), CJ

Pulak