HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.631/2020

Sri Uttam Kumar Debnath & others

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

10/12/2020

Petitioners have prayed for the following reliefs:

"In the premises whereof, it is most humbly and respectfully submitted that Your Lordships would be graciously pleased to:-

(i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for directing the respondents, to transmit the records, appertaining to this writ petition, lying with them, for rendering substantive and conscionable justice to the petitioners;

(ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing the respondents, to forthwith issue Orders of Promotion, in favour of the petitioners, to the post

of Driver, Group-C, in the Health & Family Welfare Department, Government of Tripura;

(iii) Call for the records appertaining to this petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (ii) above;

(v) Costs of and incidental to this proceeding;

(vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;"

2. The petitioners have previously approached this Court and sought their promotions on the post of drivers in the parent department of the Government of Tripura where they are working. The petition being ***WP(C) No.1251 of 2018*** and connected petitions were also heard together and disposed of by a common judgment dated 06.02.2020. The learned Single Judge gave following directions:

"[14] Having appreciated the submissions made by the learned counsel appearing for the parties, it appears that two pertinent questions fall for consideration viz. (i) whether the non-impleadment of the juniors is fatal for the petitioners and (ii) whether the long delay in approaching this court would deter the court from granting any relief or not?

This Court does not have any hesitation to hold that in view of the statement of law made in **Tapan Chandra Lodh** (*supra*), there cannot be any amount of equivocality to hold that it is not the order of merit, but it is the seniority on the basis of which, the promotion to the post of Driver [Grade-III] in terms of Rule 10(b) of the said rules be made. Therefore, in

the writ petitions being W.P.(C) No.1251 of 2018 and W.P.(C) No.1114 of 2019, the petitioners, namely Sri Uttam Kr. Debnath and Sri Bimalendu Nath are entitled to get promotion before those junior employees as referred above but by following an erroneous method dehors the rule those two petitioners have been denied their promotion but that cannot be said about the other writ petitioner in W.P.(C) No.1113 of 2019, namely Sri Jambuban Hrishi Das as none of the employees whom he illustrated to be his juniors is really his junior and as such, there is no merit in the writ petition being W.P.(C) No.1113 of 2019 on the ground of supersession. This court is in total agreement with the submission made by Mr. Sharma, learned Addl. G.A. that this court cannot grant any relief in favour of the writ petitioners inasmuch as at present there is no vacancy in the post of Driver [Grade-III] and since the junior employees have not been impleaded no order affecting their right adversely can be passed by this court. Thus, the respondents' contention as to delay and laches is material in the present cases that the petitioners ought to have approached this court much early but they have not done so. Be that as it may, for either of the reasons in these writ petitions no relief can be granted but the law as has been held in **Tapan Chandra Lodh** (*supra*) the petitioners are entitled to get the promotion on the basis of the recommendation made by the Transport Department after the practical test and interview where all the petitioners have come out successfully and proved their suitability. In **Tapan Chandra Lodh** (*supra*) it has been categorically stated that the test is to assess the suitability of the Group-D employees

> who can drive and do possess the driving license. In **Tapan Chandra Lodh** (*supra*) it has been succinctly held that the select list of the Group-D employees who are found suitable shall remain in force till it is totally exhausted. As such, whenever the vacancy would arise, this select panel as sent by the Transport Department vide the memorandum dated 27.11.2012 shall be acted upon till all the successful candidates are promoted to the post of Driver [Grade-III]. Whenever the vacancy would arise such vacancy shall be filled up by the Director of Health Services, Government of Tripura in accordance with the seniority of the persons whose names are in the list of recommendation."

3. Three things emerge from these directions namely, (i) as per the judgment of the High Court in case of ***Tapan Chandra Lodh vs. the State of Tripura & others*** reported in ***(2015) 2 TLR 637*** the promotions would be based on seniority and not on order of merit; (ii) no directions were issued for immediate promotions of the petitioners since at the relevant time it was found that there were no vacancies and the Court refused to upset the promotions already granted on account of delay, laches and non-joinder of promotees, and (iii) the Court directed that whenever in future vacancies arise the select panel containing the names of successful candidates would be operated and promotions will be granted which would be based on seniority.

4. I understand from the counsel for the petitioners that their grievance is that on the date of the judgment of this Court in the said case vacancies in the cadre of drivers were existing, contrary to what was conveyed to the Court by the department. This averment they base on their queries raised under Right to Information Act and the replies received by them in response to such queries.

5. If that be the case, a fresh writ petition would not be of proper remedy. The petitioners would have to seek review and recall of the earlier judgment. On the other hand, if the case of the petitioners is that certain vacancies have arisen after the judgment despite which the promotion orders are not being issued it would be a case of non-implementation of the directions of the Court. In other case, a fresh petition for above noted prayers cannot be entertained.

6. In the result, leaving the petitioners to pursue appropriate remedy, this petition is disposed of.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak