HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.1097 of 2018

Sri Pratik Saha & Ors.

-----Petitioner

Versus

The State of Tripura & Ors.

----Respondents

For Petitioner(s)	:	Ms. S. Deb Gupta, Adv.
For Respondent(s)	:	Mr. D. Bhattacharjee, G.A. Mr. R.Datta, Adv.
Date of hearing and delivery of Judgment & Order	:	**02.03.2020**
Whether fit for reporting	:	Yes: ; No: √

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER [ORAL]

Heard Ms. S. Deb Gupta, learned counsel appearing for the petitioners as well as Mr. D. Bhattacharjee, learned G.A. appearing for the respondent No.1 and Mr. R. Datta, learned counsel appearing for the respondents No.2 & 3.

[2] This writ petition has its chequered history. One of the writ petitioners, namely Sri Jayanta Choudhury, the petitioner No.2 herein, had earlier approached this court and succeeded to obtain a specific direction vide the judgment and order dated 29.06.2018 delivered in W.P.(C) No.1404 of 2017 [Sri Jayanta Choudhury vs. State of Tripura & Ors.]. This court had elaborately examined therein the process of personality test and

the change made during the process and finally, had observed as follows:

> **"In view of what has been observed and what has been found from the records produced is that the TPSC-respondents followed the procedure as engrafted in clause-2 of the said memorandum dated 30.03.2017. They shall, as consequence of the observation above, revisit their recommendation by cancelling what they have made up and thereafter shall make the necessary recommendation by following the notification dated 29.11.2007 for the post of Lecturer, Diploma Level in the Technical Institutions in Tripura."**

[3] Without implementing the said judgment, the respondent No.1 directed the respondents No.2 & 3 to cancel the proceeding including the recruitment to the post of Lecturer, Diploma Level in the Technical Institutions in Tripura which was initiated by the Advertisement No.05 of 2016 issued by the Tripura Public Service Commission [Annexure-1 to the writ petition]. Now the petitioner of the earlier writ petition has joined with 8[eight] more writ petitioners and they have challenged the notification dated 13.11.2018 issued by the respondent No.2 by cancelling the Advertisement No.05 of 2016 [so far the item No.2 is concerned] dated 30.05.2016 and the notifications dated 03.05.2017, 12.10.2017 and 22.11.2017 in pursuance to the letter No.F.1(689)-DHE/Estt(G)/14/1806 dated 12.10.2018. The petitioners have further urged this court to the respondents to make the necessary recommendation on the basis of the direction given in the writ petition being W.P.(C) No.1404 of 2017. The crux of challenge, therefore, is that whether the cancellation of recruitment process on the face of the mandamus of this court is sustainable or not.

[4] Ms. S. Deb Gupta, learned counsel appearing for the petitioners has submitted that the blanket cancellation of the recruitment processes have been interfered by this court in the judgment dated 14.05.2019 delivered in W.P.(C) No.831 of 2018 [Sri Samudra Debbarma vs. State of Tripura & Ors.]. By that judgment, it was directed that when a recruitment process is taken up by Tripura Public Service Commissioner, TPSC in short, in pursuance to the recruitment rules, by an executive fiat, the state government shall not intervene unless compelling reasons are shown. The said judgment however was challenged by the state-respondents by filing a writ appeal being W.A.142 of 2019. The said writ appeal has been decided by a Division Bench of this court by the judgment and order dated 03.12.2019 with some modifications in the judgment of the single judge, however, keeping the entire mandamus intact. For purpose of reference, the observation of the Division Bench is germane and for this reason, is being reproduced hereunder:

> **"[32] For such reasons, we do not find any error in the view of the learned Single Judge in allowing the writ petition of the original writ petitioner. However, before closing couple of clarifications would be needed. Firstly, the learned Single Judge has struck down even the notification dated 5th June, 2018. This was neither under challenge nor shown to be in any manner unlawful, except to the extent the provisions made in the said notification conflict with the existing Rules and Regulations. Subject to these observations, the decision of the learned Single Judge to set aside the notification dated 5th June, 2018 must be reversed. Secondly, the learned Single Judge quashed the memorandum dated 20th August, 2018 insofar as it relates to TCS Grade-II and TPS Grade II. The petitioner had not challenged cancellation of examination of TPS Grade-II. Such cancellation, therefore, could not have been set aside. We are conscious that the considerations and parameters in both sets of recruitments may be similar. However there was no challenge before the**

> **learned Single Judge to the cancellation of the TPS Grade - II examination held by the State Government. The petitioner was not even aggrieved by it. Without a formal challenge, without full material being brought on record and arguments advanced by both sides it would not be proper to extend the relief to the recruitment of TPS Grade – II services also which as noted, the petitioner had never challenged. Such later directions for setting aside Government decision to cancel TPS Grade II examination of the learned Single Judge are also, therefore, reversed.**
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> **[33] The appeal of the Government is allowed to the above extent. However, so far as the petitioner's main challenge to the cancellation of selection process for the post of TCS Grade – II by virtue of impugned memorandum dated 20th August, 2018 is concerned, the decision of the learned Single Judge is confirmed."**

It has been further directed that the selection process shall be completed within a period of 3[three] months from the day of the judgment.

[5] It appears that in pursuance to the said notification whereby the government has claimed to have changed their employment policy, the recruitments in the post of Lecturer, Diploma Level in the Technical Institutions in Tripura have been cancelled without showing any reason whatsoever. Even the respondents No.2 & 3 did not initially give any reason in the notification dated 13.11.2018 [Annexure-7 to the writ petition] which is under challenge in this writ petition.

[6] By filing the reply, the respondents No.2 & 3 have stated that during pendency of the writ petition being W.P.(C) No.1404 of 2017 in the Hon'ble High Court of Tripura, Government of Tripura in the General Administration [Personnel & Training] Department had issued a memorandum vide No.F.20(1)-

GA(P&T)/18 dated 14.03.2018 through which, it has been communicated that the State Government has decided that the recruitment processes of the Government shall be reviewed and pending such review all the ongoing recruitment/selection process in the Departments/Autonomous Bodies etc. under the Government shall be kept in abeyance. It has been made public by the subsequent memorandum dated 20.08.2018 [Annexure-B to the reply filed by the respondents No.2 & 3] that all existing recruitment processes initiated by the various departments or the TPSC were declared cancelled except the recruitment of Tripura Judicial Service [Grade-III]. The said memorandum was examined in **Samudra Debbarma** *(supra)* and held that in such a manner a continuing recruitment process initiated by a constitutional body cannot be cancelled by the State Government. An interesting revelation has been made in the reply filed by the respondents No.2 & 3. Being perplexed by the said direction as contained in the memorandum dated 20.08.2018, the Secretary, TPSC on 05.09.2018 wrote a letter to the Principal Secretary, Government of Tripura, Education [Higher Education] Department, Agartala under No.F.11(36-40)-Rectt./TPSC/2014 [Annexure-C to the reply filed by the respondents No.2 & 3] for seeking clarification in respect of effect of the judgment and order dated 29.06.2018 as passed in W.P.(C) No.1404 of 2017. For purpose of reference, the material text of the said communication dated 05.09.2018 is reproduced hereunder:

> **"I am directed to refer to the subject cited above and to inform that the Advt. for recruitment to the post of Lecturer, Diploma Level Technical Institution in Tripura under the Education [Higher] Department, Govt. of Tripura was notified on 30.05.2016. The Commission conducted interview after screening test on & from 03.11.2017 to 24.11.2017 & 12.12.2017.**
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> **2. The Hon'ble High court delivered a Judgment & Order on 29.06.2018 in connection with W.P.(C) No.1404 of 2017 [Sri Jayanta Choudhury vs. the State of Tripura & Ors.] of which operative part is reported below:**
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> > **……on revisit their recommendation by cancelling what they have made up and thereafter shall make the necessary recommendation by following the notification dated 29.11.2007 for the post of Lecturer, Diploma Level in the Technical Institutions in Tripura."**

[7] The Secretary, TPSC has brought the said development to the notice of the Principal Secretary, Government of Tripura, Education [Higher Education] Department, Agartala and urged to review the impact thereof on the recruitment process of Lecturers, DLTI under his department. In response to the said letter, one of the Deputy Secretaries, Government of Tripura, Education [Higher Education] Department by the letter dated 12.10.2018 [Annexure-D to the reply filed by the respondents No.2 & 3] has without any refletion, recorded that the Department has initiated a proposal to the State Government for fresh recruitment process for filling up the vacant posts of Lecturer, Diploma Level Technical institutions in Tripura under Education [Higher Education] Department. Accordingly, the TPSC was asked to take action. According to the respondents No.2 & 3, their action is reflected in the notification dated 13.11.2018 [Annexure-7 to the writ petition] which has been challenged by the petitioners.

[8] The state-respondent, however, did not make any averment but filed a very short reply containing five paragraphs and there is no material to gather what required the state government to take a decision to cancel the recruitment process which had reached to its final phase. They have only referred to the letter dated 12.10.2018 as written to the Secretary, TPSC whereby the TPSC was informed that all recruitment processes have been cancelled, save and except the recruitment process of Tripura Judicial Service [Grade-III].

[9] A personal affidavit as asked by this court has been filed by Ms. Soumya Gupta, Secretary, Education [Higher Education] Department, Government of Tripura where she has stated that before the judgment dated 29.06.2018, TPSC had amended the procedure of the direct recruitment of various posts vide No.F.9(40)/CON/Exam/TPSC/2018 dated 15.06.2017 whereby the marks for interview had been reduced from 50 to 30. A relevant part of the said judgment has been reproduced in the said affidavit to state that the new recruitment policy for the establishments under the administrative control of the Government of Tripura has been published and on that ground only, the recruitment processes were cancelled. By the new recruitment policy, the marks for interview should not exceed 10% of total marks for all categories of posts including Groups-A, B & C. Accordingly, the process were cancelled. In the personal affidavit, the Secretary, Education [Higher Education]

Department has stated that since the recruitment process of Lecturer, Diploma Level in the Technical Institutions in Tripura is also covered by the said memorandum. The said recruitment process stood cancelled by operation of the memorandum dated 20.08.2018.

The entire approach of the respondent No.1 appears to be completely contumacious in nature. However, this court is not taking any stern action in this regard having regard to certain general changes, even though not having specific reference to the process under consideration, as made. Even though the court is refraining from taking any action as required at law, the personal affidavit filed by the Secretary, Education [Higher Education] Department has failed to appreciate the emerged situation vis-à-vis the earlier judgment.

[10] By referring to Note No.33 of the Director, Higher Education it has been stated that the cancellation has only generated by virtue of the said memorandum dated 20.08.2018 which has been substantively interfered with [see **Samudra Debbarma** *(supra)*]. The Secretary, Department of Education, has given the catalogue of all the persons who had nodded the said file. Even a note of the Law Department which is completely inconsequential has been reproduced in the said affidavit. The said note reads as under:

> **"The state has an authority to take policy decision. However, if any action of the state violates the fundamental rights of any citizen, he can approach the court for remedy. The policy decision may be conveyed. The process as stopped will apply to TPSC."**

[11] Mr. D. Bhattacharjee, learned G.A. has appeared for the respondent No.1 and supported the view expressed by this court in **Samudra Debbarma** *(supra).*

Ms. S. Deb Gupta, learned counsel appearing for the petitioners has insisted that the said selection process to be taken its logical end in terms of the judgment and order dated 29.06.2018.

[12] Mr. R. Datta, learned counsel appearing for the respondents No.2 & 3, has without any reservation stated that the respondents No.2 & 3 have just complied the direction issued by the respondent No.1. In **Samudra Debbarma** *(supra)* a decision of three Judges' Bench of the apex court in **Tamil Nadu Computer Science Graduate Teachers Welfare Society(1) Vs. Higher Secondary School computer Teachers Association and Ors., reported in (2009) 14 SCC 517** has been referred where it has been observed that the Government has even if changed the rules of recruitment midway after the selection process was initiated such decision may not have impact on the on-going process. The decision, contrary thereto, was set aside in that case by observing as under:

> **"20. It is thus established, that the State Government reduced the minimum qualifying marks for the post of Computer Instructors to 35% which is contrary to an earlier decision taken in a meeting held on 10.10.2006 that the minimum qualifying marks for filling up the posts of Computer Instructors would be 50% i.e. 75 marks out of total 150 marks. It is thus established that the Government changed the rules of recruitment**

> **and terms and conditions of appointment in the mid-way after the selection process was initiated. The said decision was taken on a Sunday i.e. on 12.10.2008, after the candidates had taken their exams.**
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> **21. It also transpires from the record that out of 1686 candidates only 894 candidates had in fact secured 50% marks i.e. 75 marks out of 150 marks whereas 792 candidates secured marks between 35% and 50% i.e. less than 75 marks out of 150 marks. It is also indicated from the said result published that out of 1714 candidates, who had taken the special recruitment test it is 1686 candidates who were found to have secured more than 35% marks, and they were provisionally selected for certificate verification.**
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> **22. The appellants have challenged before us the aforesaid alleged arbitrary decision of the Government in conducting a special recruitment test against the Rules and Guidelines issued for the recruitment of Computer Instructors and also by altering the minimum qualifying marks from 50% to 35% so as to absorb a larger number of candidates of its choice and thereby violating its own norms and guidelines."**

[13] Some other decisions have also been relied on in respect of the change of rules in the mid of the recruitment process but in this case what is noticeable primarily is that without bringing any change in the recruitment rules based on which the TPSC initiated the selection process, the rules of the recruitment have been suddenly changed by way of so called policy. Even in the policy it has been stated that those polices would be prospective in nature, but it appears that the operation has been given retrospectively. This aspect of the matter has elaborately been discussed in the judgment dated 14.05.2019 in W.P(C) No.831 of 2018 [Sri Samundra Debbarma vs. State of Tripura & Ors.] and that part of the finding and observation has been affirmed by the judgment dated 03.12.2019 delivered in W.A. No.142 of 2019. Thus, there cannot be any different approach by this court. Under the same parameters, the recruitment process

which has been initiated by the advertisement No.05 of 2016 has to be protected by this court by setting aside the notification dated 13.11.2018 [Annexure-7 to the writ petition]. Accordingly, the said notification is set aside. The respondents No.2 & 3 are directed to complete the entire process of selection in terms of the judgment and order dated 29.06.2018 delivered in W.P.(C) No.1404 of 2017 [Sri Jayanta Choudhury vs. State of Tripura & Ors.] and thereafter, make the appropriate recommendation for appointment. It is made absolutely clear that this direction is only confined to the 65 [sixty five] posts of Lecturer, Diploma Level in the Technical Institutions in Tripura as reflected in the Advertisement No.05 of 2016.

Having observed thus, this writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Sujay