HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.1251 of 2018

Uttam Kumar Debnath

…… Petitioner (s)

Versus

The State of Tripura & Ors.

…… Respondent (s)

W.P.(C) No.1113 of 2019

Jambuban Hrishi Das

…… Petitioner (s)

Versus

The State of Tripura & Ors.

…… Respondent (s)

W.P.(C) No.1114 of 2019

Bimalendu Nath

…… Petitioner (s)

Versus

The State of Tripura & Ors.

…… Respondent (s)

For Petitioner (s) : Mr. S. Deb, Adv.
Mr. D. Datta, Adv.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

Date of hearing & delivery of judgment and order : **06.02.2020**

Whether fit for reporting :

Yes	No
√	

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMETN & ORDER [ORAL]

Heard Mr. Somik Deb, learned counsel appearing on instruction along with Mr. D Datta, learned counsel for the petitioners as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

[2] All these writ petitions being W.P.(C) No.1251 of 2018 [Uttam Kumar Debnath vs. the State of Tripura & Ors.], W.P.(C) No.1113 of 2019 [Jambuban Hrishi Das vs. the State of

Tripura & Ors.] and W.P.(C) No.1114 of 2019 [Bimalendu Nath vs. the State of Tripura & Ors.] are combined for disposal by a common judgment inasmuch as a common question of law wades through in these writ petitions. The petitioners have questioned the promotion of their juniors who had been promoted by the order under No.F.2(62)-MS/Estt/2009 dated 23.07.2012 issued by the Director of Health Services, Government of Tripura to the post of Driver [Grade-III] in the Pay Band-2 with Grade Pay of Rs.1800/- with other admissible allowance. As it surfaces that there is a little variation in the facts, the pertinent facts are being laid against each of the individual writ petition.

W.P.(C) No.1251 of 2018

[3] The petitioner was appointed as the Group-D employee [GDA] under the Directorate of Health Services on 09.03.1981. After his appointment, his services has been utilized in most of the times for driving the vehicles. Since the petitioner has the driving licence he came to be eligible to be considered for promotion in terms of Rule 10(b) of the Tripura Government Vehicles Drivers Services Rules, 1979 as amended from time to time. Rule 10(b) of the said rules provides that 70% of the total vacancies arising in a year shall be filled up by direct recruitment while the rest 30% shall be filled up by promotion from the regular Group-D employees having valid license for driving vehicles. Rule 10(c) of the said rules provides that in case of promotion of Group-D employees as Drivers, the

Transport Department shall take practical test and interview to assess the suitability of the employee concerned to drive a Government vehicle and recommend name to the Departments for filling up the promotional posts of Drivers. All Departments mentioned in the Schedule are required to maintain a roster to indicate the number of vacancies meant for direct recruits and promotees. In case, no qualified Group-D employee is found for promotion, as Driver the post may be filled up by direct recruits. Further, there is no dispute that in terms of the Rule 10(d) of the said rules, the petitioner is qualified to be appointed as the driver [Grade-III]. The petitioner's name was empanelled for attending the practical test and interview for purpose of assessing the suitability to be appointed as the driver [Grade-3] by the memorandum under No.F.2(62)-MS/Estt/2009 dated 27.11.2012. Accordingly, the petitioner appeared in the practical test and interview and he was found suitable and his name has been recommended by the memorandum under No.1(8)-Trans/2008 dated 20.06.2013 issued by the Addl. Secretary, Government of Tripura, Transport Department. The petitioner's name is figured at Sl. No.48 of the list appended to the said memorandum dated 20.06.2013. There is no dispute in this regard, but the petitioner was not appointed even though his juniors namely, Sri Sushanta Bhattacharjee who joined the service on 25.10.1999, Sri Apurba Kr. Deb Roy who joined the service on 16.04.1999, Sri Dipendra Debnath who joined the service on 06.06.1997 and Sri Bimal Majumder who joined the

service on 09.02.2001, have been promoted under the promotion quota. It is not disputed that the seniors to those persons had not been promoted and left out. According to the petitioner, the Transport Department suggested the Health Department to give the promotion to the Group-D employees who had successfully completed practical test and interview conducted by the Transport Department in order of merit after verification of the academic record and other eligibility etc. despite there is no deficiency in the petitioner, it is apparent that the petitioner has been left out. Hence, the petitioner has challenged the said order of promotion dated 23.07.2013 and urged this court to promote him to the post of Driver [Grade-III] with financial benefit w.e.f. 07.11.2011.

[4] The respondents by filing their reply have raised serious objection by stating that 15 Group-D employees have been promoted on the basis of merit and their performance. The petitioner could not be accommodated for non-availability of the post of Driver and in this regard, the order of merit as determined by the Transport Department has been scrupulously followed.

W.P.(C) No.1113 of 2019

[5] The nature of challenge in this writ petition is on the same premises. The petitioner in this writ petition was appointed as the Group-D employee on regular scale w.e.f. 09.04.2008. His name was also sent for attending the practical test and interview for promotion to the post of Driver by the

memorandum dated 27.11.2012. The petitioner had successfully completed the said practical test and interview but by the said order of promotion dated 23.07.2013 he was also not given the promotion. But according to him, his juniors have been promoted to the said post. In the rejoinder [see Para-6] the petitioner has named his juniors as referred being Sri Samir Kr. Das who was appointed on 15.07.1998, Sri Sanjit Das who was appointed on 25.10.1999, Sri Nripendra Das who was appointed on 25.10.1999. The petitioner has considered his date of appointment on 09.04.1998 when he was appointed as the DRW, but strangely he has not considered his date of appointment on 09.04.2008 when he was regularized in the Group-D post [GDA]. According to the petitioner while making the promotion the merit is immaterial. The Group-D employees who can complete the practical test and interview with success are to be considered only on the basis of their seniority. The similar relief as has been prayed by the petitioner is W.P.(C) No.1251 of 2018 has been pressed on the resembling grounds.

The respondents by filing the reply have taken the similar stand as has been taken in W.P.(C) No.1251 of 2018.

W.P.(C) No.1114 of 2019

[6] The petitioner in this writ petition was appointed on 28.09.1989 as the Group-D employee and he has been driving the departmental vehicle. Since the petitioner fulfils the requirement of Rule 10(b) of the said rules, his name was sent by the memorandum dated 27.11.2012 and the petitioner was

asked to attend the practical test and interview for the post of Driver [Grade-III]. The petitioner participated in the practical test and interview and his name has been recommended by the Transport Department for promotion. In this regard, there is no dispute. But the grievance of the petitioner is that while his juniors were appointed to the post of Driver [Grade-II] on promotion he has been superseded. By filing the rejoinder, the petitioner has spelt out the name of the juniors, who have superseded by virtue of the order dated 23.07.2013. Those juniors are Sri Bimalendu Nath who was appointed on 28.09.1989, Sri Dipendra Debnath who was appointed on 06.06.1997, Sri Apurba Kr. Deb Roy who was appointed on 16.04.1999, Sri Sushanta Bhattacharjee who was appointed on 25.10.1999 and Sri Bimal Majumder who was appointed on 09.02.2001. Since the petitioner was appointed on 28.09.1989 he is apparently senior to the persons who were appointed as the Driver [Grade-II] by the said order dated 23.07.2013. It is apparent on the face of records that the juniors have been accommodated by way of promotion to the post of Driver [Grade-III] in order of the merit which has been determined on the basis of performance in the practical test and interview. The petitioner has prayed the similar relief to be granted to him i.e. the promotion to the post of Driver [Grade-III] with all benefit retrospectively.

The respondents, by filing the reply, have taken the similar stand as has been taken in W.P.(C) No.1251 of 2018.

[7] Mr. Somik Deb, learned counsel appearing for the petitioners has submitted that while interpreting the Rule 10(b) of the Tripura Government Vehicles Drivers Services Rules, 1979 this court has categorically settled the law by stating that it is not the order of merit that has to be considered but it is order of seniority that has to be considered while making the promotion to the post of Driver [Grade-III] by operation of the said Rule 10(b) read with Rule 10(c) of the said Rules. In **Tapan Chandra Lodh vs. the State of Tripura & Ors.,** reported in **(2015) 2 TLR 637,** this court had categorically observed as under:

> **"9. We have referred to the Rules hereinabove and according to us, sub-rule(c) which we have quoted hereinbefore does not contemplate the preparation of a merit list. The test to be conducted by the Transport Department is in the nature of a screening or suitability test only to assess whether the Group-D employee concerned can drive a Government Vehicle. If he is found suitable to drive a Govt. vehicle then he is to be promoted. We must also take into consideration of the fact that we are dealing with people who are at the lowermost rung of the ladder. The minimum educational qualifications are only Class-VIII pass. These employees have virtually no avenues of promotion and one of the few avenues of promotion is to be appointed as drivers. As indicated by us above, sub-rule(c) does not in any manner lay down that the appointments have to be made on the basis of merit. No doubt, as urged by Mr. Sinha, the rule is not absolutely clear but we are of the view that if we read sub-rule(c) in contradiction to subrule(b) it is more than amply obvious that the intention of the State was that the test to be held in regard to sub-rule(c) was only a test to assess the suitability of the candidate and once a candidate is found suitable then there is no question of a merit list being prepared because they are due to be promoted in the order of the seniority enjoyed in the lower grade. Therefore, we find no merit in this appeal which is accordingly rejected. We also uphold the direction of the learned Single Judge that the select list of Group-D employees found suitable shall remain valid till it is totally exhausted. Only thereafter fresh recruitment of driver by promotion from Group-D employees shall be started. It is, however, made clear that since we have given this interpretation to the Rules, the State shall follow this interpretation in all the departments and will not follow any other system in any other case."**
>
> **[Emphasis added]**

[8] By following the said interpretation, another decision of this court is governing the field which has been placed by the

petitioners along with the writ petition. In **Gopal Debnath vs. State of Tripura & Ors.** [the judgment and order dated 02.06.207 delivered in W.P.(C) No.233 of 2013 & etc.], this court had occasion to restate the law as follows:

> **"11. Having regard to the decision in Tapan Chandra Lodh (supra), this court is of the considered view that the petitioners were recommended for appointment on promotion as Driver under the Tripura Government Vehicles Drivers Services Rules. But on the pretext of the comparative merit they were not appointed on promotion as Driver under the Directorate of Health Services. In view of the law laid down in Tapan Chandra Lodh (supra), the respondents were supposed to consider their seniority in filling up of the vacancies available under 30% quota and they were not supposed to prepare any merit list. As corollary to this observation, the respondents are directed to appoint the petitioners in the post of the Driver as recommended by the Transport Department and place them above the persons who were junior to the petitioners in the Group-D cadre. It is needless to say that the said exercise shall be carried out with strict adherence to the order of seniority in the feeder grade. From the date of promotion as contemplated, the petitioners shall be paid all financial benefits within 3(three) months. The entire exercise for consideration of appointment on promotion of the petitioners in the post of the Driver, in view of the above observation, shall be completed within 3(three) months from the day when the petitioners shall submit a copy of this order."**

Mr. Deb, learned counsel has, therefore, submitted that the petitioners are entitled to get the similar benefit.

[9] Mr. Sharma, learned Addl. G.A. appearing for the respondents has raised serious objection against the writ petitions. According to Mr. Sharma, learned Addl. G.A. the writ petitions are badly hit by the doctrine of non-impleadment as none of the junior employees have been made party. The relief as prayed before this court if granted that will invariably affect the interest of those juniors. Mr. Sharma, learned Addl. G.A. has further submitted that the order of promotion dated 23.07.2013 has been challenged in the year 2018 and 2019 and as such, the cause of the petitioners has become stale. This court should not grant any relief in favour of the petitioners. However, Mr.

Sharma, learned Addl. G.A. has not made any submission in respect of the decision of this court to follow the seniority position in giving the promotion to the post of Driver [Grade-II] under Rule 10(b) of the said rules. Mr. Sharma, learned Addl. G.A. has nourished his contentions relying on a series of decisions of the apex court on the aspect of the limitation in challenging the order of promotion. Reference has been made to **P.S. Sadasivaswamy vs. State of Tamil Nadu,** reported in **AIR 1974 SC 2271,** where the apex court has curtly settled the law by stating that the person aggrieved by an order promoting a junior on his supercession, should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled position.

[10] The reference has also been made to **B.S. Bajwa and another vs. State of Punjab and others,** reported in **AIR 1999 SC 1510** where the apex court has criticized the decision of the High Court by stating that *'it is well settled that*

in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable.'

[11] Mr. Sharma, learned Addl. G.A. in order to buttress his contention has relied on a decision of the apex court in **Government of W.B. vs. Tarun K. Roy and others,** reported in **(2004) 1 SCC 347,** where it has been enunciated as under:

> **"34. The respondents furthermore even are not entitled to any relief on the ground of gross delay and latches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided. But one way or the other, even the matter had been considered by this Court in Debdas Kumar (supra). The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."**

[12] Mr. Sharma, learned Addl. G.A. has taken this court to highlight the development of law. However, in the same line he has referred to **Jiten Kumar Sahoo and others vs. Chief General Manager, Mahanadi Coalfields Limited and others,** reported in **(2011) 11 SCC 520,** where the apex court has observed that after 10 years from the day when the cause arose the persons were impleaded as the respondents. After their impleadment, the service of notice was caused and the proceeding advanced further, but the High Court did not notice the delay and laches. Consequently, the apex court has

observed that if the order of the High Court is allowed to stand, it would not only affect the persons who have been impleaded during continuation of their service and changed their position in the meanwhile. They would also seriously be affected even those persons who were not impleaded before the High Court and for the first time impleaded before the apex court.

[13] Mr. Sharma, learned Addl. G.A. has finally placed his reliance on the apex court decisions in **Ghulam Rasool Lone vs. State of Jammu and Kashmir and another,** reported in **(2009) 15 SCC 321,** where the apex court having considered the precedent distinguished **Maharaj Krishan Bhatt vs. State of Jammu and Kashmir,** reported in **(2008) 9 SCC 24** and held that it is also well-settled principle of law that 'delay defeats equity' where the writ petitioner approaches the High Court after a long delay, reliefs prayed for, may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates or they had a preferential right but it may not be possible for the court to issue any direction to the state in such belated stage.

[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.

With this observation, these writ petitions are disposed of.

No order as to costs.

JUDGE

Sujay