IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P.(C) No.1329 of 2017

Sri Palas Das,
son of Sri Niranjan Das, resident of village- Dhaleswar Road No.1, P.O. Dhaleswar, P.S. East Agartala, District- West Tripura

…… Petitioner

– V e r s u s –

1. **The State of Tripura,**
represented by the Commissioner & Secretary, Education [Higher Department], Government of Tripura, having his office at Capital Complex, P.O. Secretariat Complex, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura

2. **The Under Secretary,**
Education [Higher Department], Government of Tripura, having his office at Capital Complex, P.O. Secretariat Complex, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura

3. **The Director,**
Education [Higher] Department, Government of Tripura, having his office at P.N. Complex, Sub-Division- Sadar, District- West Tripura

4. **Tripura Public Service Commission,**
represented by its Secretary, having his office at Agartala, near Old Secretariat Building, P.O. Agartala, P.S. West Agartala, Sub-Division- Agartala, District- West Tripura

5. **Sri Sanjoy Banik,**
son of late Prafulla Chandra Banik, resident of village & P.O. West Noabadi, P.S. Khayerpur, Sub-Division- Sadar, District- West Tripura

…… Respondents

HIGH COURT OF TRIPURA

For the Petitioner (s)	**:**	Mr. Somik Deb, Adv
For the Respondent (s)	**:**	Mr. M. Debbarma, Addl. GA Mr. R. Datta, Adv. Mr. A. Bhowmik, Adv.
Date of hearing	**:**	29.09.2020
Date of delivery of Judgment & order	**:**	**01.12.2020**
Whether fit for reporting	**:**	**YES** ✓ / **NO**

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

By means of this writ petition, the petitioner has challenged the notification No.F.1(602)-DHE/ESTT(G)/2013 dated 12.02.2015 [Annexure-10 to the writ petition] whereby the respondent No.5 has been promoted to the post of Senior Instructor, Diploma Level Technical Institution, Tripura [Group-B, Gazetted] under the Higher Education Department, Government of Tripura. In addition thereto, the petitioner has urged this court to direct the respondents No.1 to 3 to promote him to the post of Senior Instructor, Diploma Level Technical Institution, Tripura [Group-B, Gazetted] under the Higher Education Department from the same date when the respondent No.5 was promoted with all consequential benefits including the financial benefits.

[2] There is no dispute that the petitioner was appointed initially in the post of Junior Mechanic, re-designated as Inspector,

under the Polytechnic Institute Narsingarh [now Tripura Institute of Technology, TIT in short] after he had passed out Diploma in Automobile Engineering from the Hindustan Institute of Engineering Technology. The petitioner was appointed against the vacancy available for the Schedule Caste candidate by the memorandum under No.F.7(1-4)/DHE/95 dated 17.01.2000 [Annexure-3 to the writ petition]. By the memorandum under reference No.F.7(198)/DHE/NG/96 dated 06.09.2003 [Annexure-5 to the writ petition], the petitioner was promoted to the post of Senior Instructor in the scale of pay of Rs.5000-10300/- along with three other Inspectors. The said memorandum dated 06.09.2003 was cancelled within a month by the memorandum under No.7(198)/DHE/96 dated 23.10.2003 [Annexure-6 to the writ petition]. The said memorandum dated 23.10.2003 was revoked by a further memorandum under No.F.7(198)/DHE/NG/96/938(7) dated 06.07.2005 [Annexure-7 to the writ petition] and consequently, the petitioner and three others were promoted to the post of Senior Instructor [non-gazetted]. Thereafter, the petitioner came to know from the information disclosed under the Right to Information Act, 2005 to one Shankar Nama that (i) the post of Senior Instructor, Diploma Level Technical Institution (Group-B, gazetted) is not filled up branch wise and (ii) at the relevant time,

there were 4 vacancies of Senior Instructors, Diploma Level Technical Institution in Tripura (Group-B, gazetted). Out of those vacancies, two vacancies were for UR category, one for SC category and the other for ST category. Again in the year 2013, 4 posts of Senior Instructors, Diploma Level Technical Institution (Group-B, gazetted] fell vacant. Against the vacancies available for UR category, one Sri Tapan Kr. Choudhury and Ashok Bandopadhyay were found eligible to be promoted in the post of Senior Instructor, Diploma Level Technical Institution [Group-B, gazetted] and the petitioner was also found eligible to be promoted in the post of Senior Instructor, Diploma Level Technical Institution [Group-B, gazetted] earmarked for the SC category.

[3] It may be noted that a draft seniority list was published by the memorandum under No.F.12(221)-DHE/CNF/13/666914 dated 12.12.2013 for the post of Instructor under Education Department, Government of Tripura. Objections were invited from the persons concerned. In the said seniority list, the petitioner was placed at Sl. No.3 whereas the private respondent No.5 was placed at Sl. No.4. The said seniority list was finalised by the Director of Higher Education, Government of Tripura. By the memorandum under No.12(221)-DHE/CONF/13/7091(3) dated 27.01.2014, [Annexure-9 to the writ petition], the final seniority list of the

instructors, TIT under the Education [Higher] Department, Government of Tripura was issued. Inter se seniority position was shown as on 31.12.2012. By the notification dated 12.12.2010 [Annexure-10 to the writ petition] the following persons were promoted to the post of Senior Instructor, Diploma Level Technical Institutions in Tripura [Group-B, Gazetted] in the pay scale of Rs.9570-30000/- [Pay Band-3] with Grade Pay Rs.3100/-:

1. Sri Tapan Kr. Choudhury,
2. Sri Ashok Bandopadhyay
3. Sri Sanjoy Banik [the respondent No.5 in this petition] and
4. Sri Dilip Debbarma,

According to the petitioner, his exclusion was without any rhyme or reason. Such exclusion is grossly arbitrary. The petitioner has expressed his grievance only against the respondent No.5 but not against the other three who got promoted to the said post of Senior Instructor. To ventilate his grievance, the petitioner had submitted numerous representations dated 18.01.2016, 09.06.2016, 30.08.2016 and 22.08.2017 [Annexure-11 collectively to the writ petition] but no positive result did yield and hence, the petitioner has approached this court in order to challenge the notification dated 12.02.2015 [Annexure-10 to the writ petition] and urged for mandamus for appointing him as the Senior

Instructor, Diploma Level Technical Institutions in Tripura, [Group-B, Gazetted].

[4] The ground as projected based on the seniority position, is that the petitioner was entitled to get the promotions to the post of Senior Instructor, Diploma Level Technical Institutions in Tripura, [Group-B, Gazetted] before the respondent No.5. From the information that has been disclosed, it is further apparent that one of the four vacancies was earmarked for SC category but the respondent No.5 is not an SC category candidate and as such, supersession of the petitioner is grossly illegal, arbitrary and unsustainable inasmuch as apart everything, the petitioner belongs to SC category for one vacancy was earmarked. The petitioner has also urged for applying *next below rule* to push down the respondent No.5 if he is entitled and required to be adjusted against the vacancy as was available.

[5] Mr. Somik Deb, learned counsel appearing for the petitioner has drawn our attention to the reasons given by the respondents for denying the promotion to petitioner. According to the official respondents No.1,2 & 3, the class-II DPC in the meeting held on 15.09.2014 for consideration of promotion to the post of Senior Instructor, Diploma Level Technical Institutions in Tripura,

[Group-B, Gazetted] has observed, as recorded in the minutes, [Annexure-A to the reply filed by the officials respondents] as under:

> **"3. There are 11 [eleven] sanctioned posts of Senior Instructor, Diploma Level Technical Institutions in Tripura in the Pay Band-3 Rs.9570-30000/- with Grade Pay Rs.3100/- P.M. Mechanical-2, Civil-3, Electrical-3, Electronics & Tele. Com-2, Computer-1 under the Department out of which 10(ten) posts are lying vacancy. 02(two) posts are meant for SC, 03 (three) posts for ST & 05(five) posts meant for UR candidates as per latest 100 point roster verified from the ST & SC Welfare Department.**
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> **4. As per final seniority list of the Senior Instructor, Diploma Level Technical Institutions in Tripura under the Department, it appears that the following candidates come under zone of consideration for promotion to the posts of Senior Instructor, Diploma Level Technical Institutions in Tripura under the Education [Higher] Department, according to the provisions of the Recruitment Rules for the post:**

Sl. No.	Name of the Instructor	Category	Branch/ Subject	Sl. No. of final seniority list
1	2	3	4	5
1	Sri Tapan Kr. Choudhury	UR	Mechanical	01
2	Sri Ashok Bandyopadhyay	UR	Electrical	02
3	Sri Palash Das	SC	Automobile	03
4	Sri Sanjoy Banik	UR	Electrical	04
5	Sri Manilal Chakraborty	UR	Mechanical	06
6	Sri Sankar Kr. Nama	SC	Automobile	09
7	Sri Dilip Debbarma	ST	Electronics & Tele. Com.	12

> **5. The branch wise available vacancies are Mechanical-1, Civil-3, Electrical-3, Electronics & Tele. Com-2, Computer-1. So out of those candidates in the zone of consideration, Sri Tapan Kr. Choudhury, Instructor in Mechanical (UR, Sl. No.1 of the seniority list), Sri Ashok Bandyopadhyay, Instructor in Electrical (UR, Sl. No2 of the seniority list), Sri Sanjoy Banik, Instructor in Electrical (UR, Sl. No.4 of the seniority list) & Sri Dilip Debbarma, Instructor in Electronics & Tele. Com (ST, Sl. No.12 of the seniority list) can be recommended for promotion against available vacancy (branch wise).**
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> **Sri Palash Das, Instructor in Automobile (SC, Sl. No.3 of the seniority list), Sri Manilal Chakraborty, Instructor in Mechanical (UR, Sl. No.6 of the seniority list) and Sri Sankar Kr. Nama, Instructor in Automobile (SC, Sl. No.9 of the seniority list) cannot be recommended owing to non-availability of vacancy in the relevant discipline/branch."**

[6] According to Mr. Deb, learned counsel appearing for the petitioner, on the day on which the DPC sat to consider the

promotion i.e. 15.09.2014, there was no notification or communication in respect of branch-wise distribution of the posts of Senior Instructor, Diploma Level Training Institutions in Tripura under Education [Higher] Department. Moreover, the State Public Information Officer [SPIO] for the Directorate of Higher Education has disclosed to one Sankar Nama by the communication under No.F.16(153)-DHE/RTI/2013 dated 12.04.2013 [Annexure-8 to the writ petition] that 'the posts of Senior Instructor are not created branch-wise. Hence, providing of such list does not arise.' Based on the said disclosure, the petitioner has contended that denial of promotion to the post of Senior Instructor, Diploma Level Training Institutions in Tripura is grossly arbitrary and unreasonable. On such premises, the distribution of vacancies as made by the respondents No.1,2 & 3 and as reflected in the DPC minutes are liable to be interfered with. As consequence of such interference, promotion of the respondent No.5 be quashed and vice the resultant vacancy, the petitioner be promoted to the said post of Senior Instructor.

[7] Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents No.1,2 & 3 has submitted that the writ petition is speculative as the petitioner does not have any indefeasible right to be promoted to the post of Diploma Level Training Institutions in

Tripura. The respondents have admitted that by the RTI disclosure it was made known that the post of Senior Instructor, Diploma Level Training Institutions in Tripura [Group-B, Gazetted] is not filled up branch wise. They have averred that the reply under RTI is justified as the posts of Senior Instructor are not created Branch-wise and hence, providing of such list did not arise. However, they have made a feeble attempt to salvage their position in the following manner:

> **"It is pertinent to mention here that the petitioner diluted the reply stating that the post of Senior Instructor in Diploma Level Training Institutions in Tripura [Group-B, Gazetted] is not filled up branch-wise. But the RTI reply was that the Senior Instructor post are not created branch-wise wherein the petitioner stated that the Senior Instructor [Group-B, Gazetted] post is not filled up branch-wise. The creation of posts and filling up of the post is different one and therefore, such dilution on the part of the petitioner is not desirable."**

[8] The respondents No.1,2 & 3 have further asserted that on 12.04.2013 there were four vacancies of Senior Instructor, Diploma Level Training Institutions in Tripura [Group-B, Gazetted] in Tripura. Out of which 2 posts were for the UR category and *'the petitioner was entitled to be promoted to the said post against the vacancy of SC quota but the proposal for promotion to the post of Senior Instructor, Diploma Level Training Institutions in Tripura [Group-B, Gazetted] has [been] initiated in the year 2014. Based on the latest verification of 100 point roster reservation on 20.08.2014*

wherein the vacancy position is for SC-02, ST-03 and UR-05 in total 11 posts.'

[9] The respondents No.1 to 3 did not dispute the seniority position of the petitioner being above the respondent No.5 in the grade of Instructors. The following posts were created in the grade of Senior Instructor [Group-B, Gazetted] for the Diploma Level Polytechnic Institutions in Tripura on the day of making proposal for promotion. The branch-wise distribution is also shown in the table as inserted below:

Sl. No.	**Name of the Institution**	**Total sanct-ioned posts**	**No. of Posts**				
			Mechanical	**Civil**	**Electrical**	**Electronics & Tele. Com**	**Computer Science**
1	TIT, Diploma	2	1	Nil	1	Nil	Nil
2	Dhalai District Polytechnic	3	Nil	1	1	1	Nil
3	Gomati District Polytechnic	3	Nil	1	1	Nil	1
4	North District Polytechnic	3	1	1	Nil	1	Nil

As is evident, there is no post of Senior Instructor, Automobile Engineering [Group-B, Gazetted] in the entire state of Tripura. As a result, on the recommendation of the Class-II DPC, the respondent No.5 was appointed in the vacant post of Senior Instructor, Group-B Gazetted in Electrical Engineering. As the petitioner was having the Diploma in Automobile Engineering and as there was no post of Senior Instructor [Group-B, Gazetted] in

Automobile Engineering, the petitioner could not be accommodated.

[10] Mr. Debbarma, learned Addl. G.A has further submitted that the Class-II DPC had also observed that there was no vacancy available for the post of Senior Instructor [Group-B, Gazetted] for Automobile Engineering and thus, the recommendation made by the DPC was concurred by the TPSC, the respondent No.4 herein, and the respondents No.1,2 & 3 appointed the recommended candidates to the post of Senior Instructor [Group-B, Gazetted]. In the said process, the respondent No.5 was also appointed.

[11] The respondent No.4, TPSC has filed their reply separately which was subsequently supplemented by one additional affidavit, filed on 07.09.2020. In the additional affidavit, having referred to the order of this court, passed on 10.07.2020, in respect of branch-wise breakup of the sanctioned posts of Senior Instructor [Group-B, Gazetted], the respondent No.4 has submitted that there were 11 sanctioned posts. According to the said additional reply, the DPC sat on 15.09.2014 and since there was no post of Senior Instructor, Automobile Engineering, the petitioner was not recommended by the said DPC. But the respondent No.4 did not meet the query made by this court by its order dated

10.07.2020. For purpose of reference, the relevant part of the order dated 10.07.2020 is reproduced hereunder:

> **"The petitioner seeks promotion to the post of Senior Instructor. According to the Department, there was no sanctioned post of Senior Instructor in the branch of Automobile Engineering to which the petitioner belongs. The Tripura Public Service Commission(TPSC) in its reply has given branch wise break up of sanctioned posts in promotional cadre. However, it is not stated under which rule or decision of the Government such promotional posts were created or sanctioned. Let the Government as well as TPSC place on record documents and information in this respect."**

[12] The respondent No.4, being represented by Mr. R. Datta, learned counsel, has in the main reply filed on 03.04.2018, stated that they had received the letter dated 09.10.2014, seeking their concurrence for promotion to the post of Senior Instructor [Group-B, Gazetted] along with the minutes of the DPC held on 15.09.2014. As certain corrections were required in the DPC proceeding, the matter was rebutted to the government. Thus, the review DPC was convened on suggestion of the respondent No.4. The review DPC which was held on 16.12.2004 corrected those defects in the proceeding. The proposal was for filling up of 10 vacancies out of 11 sanctioned posts of the Senior Instructor [Group-B, Gazetted]. According to the roster verification report, 02 posts were lying vacant for SC category, 02 for ST category and 05 for general category. They have further stated that as per the recruitment rules only 07 candidates including the petitioner came within the zone of consideration. One fact as asserted by the

respondent No.4 has startled this court. The relevant part of the reply is, therefore, reproduced hereunder:

> **"X. However, in view of the instant writ petition, the TPSC also asked the Education [Higher] Department, Government of Tripura vide letter F. No.8(1-4)-LEG/HC-144/TPSC/2017-1344 dated 16.01.2018 to furnish/submit documents regarding branch wise distribution of posts for promotion from the post of Instructor to Senior Instructor, Diploma Level Technical Institutions in Tripura, Government of Tripura to find out reason for which DPC could not recommend the name of the petitioner of the instant writ petition, though he was eligible and come under the zone of consideration for promotion. In response, the Directorate of Higher Education, Government of Tripura vide letter F.1(602)-DHE/Esst.(G)/17 dated 31.01.2018 furnished the same.**
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> **Copy of the letter F. No.8(1-4)-LEG/HC-144/TPSC/2017-1344 dated 16.01.2018 of TPSC is annexed herewith and marked as Annexure-E.**
>
> **Copy of the letter F.1(602)-DHE/Esst.(G)/17 dated 31.01.2018 of the Directorate of Higher Education, Government of Tripura is annexed herewith and marked as Annexure-E.**
>
> **xi. After tallying the relevant documents with the response of Directorate of Higher Education, Government of Tripura dated 31.01.2018 mentioned above, the TPSC found that the petitioner, Sri Palas Das holding the post of Instructor in Automobile Engineering, though he was eligible for promotion and came under the zone of consideration for promotion to the post of Senior Instructor, in absence of vacancy of the Senior Instructor post of in Automobile Engineering Branch, the DPC could not recommend his name for promotion."**

[13] Strangely enough, by the letter dated 16.01.2018 [Annexure-E to the reply filed by the respondent No.4], the respondent No.4 had asked the respondent No.1 & 2 to submit documents regarding branch-wise distribution of the posts for promotion from the post of Instructor to Senior Instructor, Diploma Level Training Institutions in Tripura [Group-B, Gazetted].

[14] In response to the said letter dated 16.01.2018, the respondent No.4 was apprised by the letter dated 31.01.2018

[Annexure-F to the reply filed by the respondent No.4] about branch-wise distribution of the posts of Senior Instructor, Diploma Level Training Institutions in Tripura [Group-B] as under:

"To
The Secretary
Tripura Public Service Commission,
Agartala, West Tripura

Sub- Information in regard to Branch-wise distribution for the post of Senior Instructor, Diploma Level Training Institutions in Tripura under Education [Higher] Department.

Sir,

In inviting a reference to your letter No. No.8(1-4)-LEG/HC-144/TPSC/2017-1395 dated 30.01.2018 on the subject cited above, I am to say that there are 2(two) posts of Senior Instructor (Group-B Gazetted) in erstwhile Polytechnic Institute, Narsingarh, 1(one) in the branch of Mechanical Engineering and another in Electrical Engineering, which were filled up by direct recruitment on recommendation of the TPSC dated 28.08.2003 (Copy enclosed). The post of Mechanical Engineering physically occupied by Sri Sukumar Paul and post of Electrical Engineering occupied by one Smt. Kaberi Majumder at that time.

Thereafter, the Department set up 3 [three] Polytechnics namely (1) Dhalai District Polytechnic, Ambassa with the branch of Civil, Electrical & Electronics & Telecommunication (2) Gomati District Polytechnic, Udaipur with the branch of Civil, Electrical & Computer Science and (3) North Tripura District Polytechnic, Bagbasa with the branch of Mechanical, Civil & Electronics & Telecommunication. Hence, 3(three) posts of Senior Instructor in these Polytechnics were created vide Memo dated 18.05.2010, 13.05.2010 and 13.03.2014 respectively. (copy enclosed). As such, the post of Senior Instructor (Group-B Gazetted) have been earmarked in the course teaching available in those Institutions. Thus, institutions wise Senior Instructor (Group-B Gazetted) posts in the branches as on the date of initiating proposal for DPC/promotion are:

Sl. No.	**Name of the Institution**	**Total sanct-ioned posts**	**No of post in Mecha-nical**	**No of post in Civil**	**No of post in Electrical**	**No of post in Electronics & Tele. Com**	**No of post in Computer Science**
1	TIT, Diploma	2	1	Nil	1	Nil	Nil
2	Dhalai District Polytechnic	3	Nil	1	1	1	Nil
3	Gomati District Polytechnic	3	Nil	1	1	Nil	1
4	North District Polytechnic	3	1	1	Nil	1	Nil

Accordingly, the Class-II review DPC held on 06.12.2014 and the committee recommended the name of Sri Tapan Choudhury (UR) against vacancy in Mechanical Branch, Sri Ashok Bandopadhyay (UR) against vacancy in Electrical Branch and Sri Sanjoy Banik (UR) against vacancy in Electrical Branch and another candidate Sri Dilip Debbarma (ST) against vacancy in Electronics & Telecommunication Branch and they were rightly promoted by way of taking approval of the TPSC vide notification Annexure-10 of the writ petition.

The position of the writ petitioner in the Seniority list at Sl. No.3 and he is originally holding the post of Instructor in Automobile Engineering. He is eligible for promotion to the post of Senior Instructor, Diploma Level Institution (Group-B Gazetted) in the branch of Automobile Engineering and the vacancy in the Automobile branch is not available and hence the DPC was not in a position to recommend his name due to non-availability of the vacancy in the branch of Automobile Engineering.

Enclo: As stated above.

Yours faithfully

Sd/
Illegible
[U. Debbarma]
Under Secretary to the
Government of Tripura"

With the reply however the memoranda dated 18.05.2010, 13.05.2012 and 13.03.2014 have not been enclosed. Thus, we may at best assume that the posts of Senior Instructor [Group-B Gazetted] as were created on 18.05.2010, 13.05.2012 and 13.03.2014 are for Civil Engineering, Electrical and Electronics and Telecommunication Engineering. But the posts which were available since 2000 cannot be treated at par with the newly created post. That apart, what this court has noticed is that none has reproduced the provisions of recruitment rules for the said post in their replies. But it can be gathered from the nature of the reply that the recruitment rules do not make any specific provision in

respect of branch-wise distribution of the posts. That is the reason why the information as disclosed under RTI reveals that the posts were not created against any particular branch of Engineering before 2013. From the recruitment rules, as filed by the respondent No.4 with the additional affidavit, it is apparent that the recruitment rules were published by the notification No.F.1(602)-DHE/Estt(G)/2010 dated 11.04.2011. The said rules are called 'Recruitment Rules, 2011 for the post of Senior Instructor, Diploma Level Institutions in Tripura under Education Department'. Those rules inter alia provide that the Senior Instructors be ordinarily appointed by promotion, failing which by direct recruitment. The essential and other qualifications required for promotion is as under:

> **'Promotion for the post of Senior Instructor, Diploma Level Institutions in Tripura in the relevant branch of vacancy having diploma/2 years certificate course in the appropriate branch from the recognized institution/board with 5 years service in the grade.'**

Thus, it is clear that if the posts are created for a particular branch, the said qualification would be relevant for purpose of consideration [Rule 11]. It has been admitted by the respondents that 4 posts which were existing before the recruitment rules were not created against particular branch. Even once the petitioner was appointed in the said post which was later on recalled and modified. Out of those 4 posts, admittedly one

post was for SC candidate and the petitioner belonging to the SC community was eligible for the said post. Even the reply filed by the respondent No.4 has acknowledged that fact.

[15] The respondent No.5 being represented by Mr. A. Bhowmik, learned counsel, has also filed a reply and expectedly laid the fact in the line of the respondents No.1,2 and 3. According to the respondent No.5, the petitioner was not even in the zone of consideration inasmuch as the petitioner did belong to the branch of Automobile Engineering. According to the respondent No.5, there was no vacancy for the SC category candidate which assertion however stands contrary to the records produced by the respondents No.1,2 & 3. The respondent No.5 with the reply has also produced the minutes of the DPC but the respondent No.5 did not file any reply after the respondent No.4 has stated that except the letter dated 31.01.2018 [Annexure-F to the reply] no other document were available to them to understand the distribution of posts of Senior Instructor [Group-B Gazetted].

[16] Mr. Deb, learned counsel has emphatically submitted that if the analogy of the respondents are accepted, then the petitioner will never get a chance of promotion to the post of Senior Instructor [Group-B Gazetted]. This is unacceptable as the

legitimate expectation cannot be relegated in this fashion. In this regard, he has referred a decision of this court in **Soma Paul vs. State of Tripura and others,** reported in **(2016) 2 TLR 90** where this court had occasion to observe inter alia as under:

> **"The apex court has unambiguously observed in Food Corporation of India vs. Parashotam Das Bansal that if there is no channel of promotion in respect of a particular group of officer resulting a stagnation over the year, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in the different department and the officers of the Government that the jurisdiction to issue direction to make a scheme cannot be denied by a superior court of the country."**

[17] Mr. Debbarma, learned Addl. G.A. has submitted a status report in the form of Note No.19 dated 17.09.2020. It has been clearly observed in the said status report [Note No.19] as follows:

> **"As per report there is no legal framework for allocating a definite number of posts Instructor/Senior Instructor to the different branches. The Department creates the post of Senior Instructor as per requirement/demand of the branches as per requisition of the Institutional authorities. In this regard, the department observe that the demand of Automobile Engineering is less to other engineering branches which could be effortlessly supervised by an one Instructor as such the post of Senior Instructor of Automobile Engineering in TIT was not created by the Department and as a result no promotion could be given to the Instructor of Automobile Engineering branch to Senior Instructor."**

[18] Thus, it can be safely stated that 4 posts those were available in 2013 were not created for any branch. Can Rule 11 of the recruitment rules or the executed instruction as communicated to the Public Service Commission vide the letter dated 31.01.2018 [Annexure-F to the reply filed by the respondent No.4] save the

action of the respondents No.1 to 4 by denying promotion to the petitioner? It has been disclosed under RTI Act that one post of the Senior Instructor [Group-B Gazetted] was available for the SC category candidate. That apart, those 4 posts of Senior Instructors [Group-B Gazetted] were not created for any particular branch. [see the communication dated 12.04.2013, Annexure-8 to the writ petition, made by the SPIO]. The relevant part of the said disclosure has been reproduced hereinbefore while recording the submission of the petitioner. Thus, the embargo that had been brought subsequently by the executive instruction on the need-analysis cannot take away the right of consideration for promotion from the petitioner. In this regard, Class-II DPC and later on, the respondent No.4 [TPSC] have committed grave error. But this court is also not inclined to disturb the promotion of the respondent No.5 to the post of Senior Instructor [Group-B Gazetted] considering the need of the newly created Polytechnic Institutes as asserted by the respondents No.1 & 2. For that reason, the respondents No.1 to 3 are directed to consider the promotion of the petitioner in the post of Senior Instructor, Diploma Level Technical Institution in Tripura [Group-B, Gazetted] under the Higher Education Department, Government of Tripura in the scale of pay of Rs.9570-30000/- [Pay Band-3] with Grade Pay of Rs.3100/- or as revised with other

admissible allowances with effect from the date when the respondent No.5 has been appointed in the post of Senior Instructor, Diploma Level Technical Institution in Tripura [Group-B, Gazetted]. For purpose of accommodating the petitioner, a supernumerary post be created by the respondents No.1 to 3 to avert the consequences which may otherwise visit. This court does allow the respondents to make that supernumerary post personal to the petitioner, meaning with his retirement or relinquishment for other reasons would cause effect of abolition of the said post. It is further clarified that the post of Instructor, in which post, the petitioner is presently serving will not also exist for the time being for creation of the supernumerary post, but after the petitioner retires from the said post or relinquishes for any other reason, the post of the Instructor, Automobile Engineering shall automatically survive. It is further clarified that the pay of the petitioner shall be fixed notionally till the formal appointment of promotion to the post of Senior Instructor [Group-B, Gazetted] is made. Thus, all the financial benefits shall be enjoyed by the petitioner from the date of promotion. As the petitioner was not considered along with the others, who were promoted by the notification dated 12.02.2015 [Annexure-10 to the writ petition] even the post of Senior Instructor [Group-B, Gazetted], is a selection post, his seniority in

the grade of Instructor vis-à-vis the respondent No.5 shall be maintained in the grade of Senior Instructor [Group-B, Gazetted], if for any reason, the seniority positions are published by a combined seniority list. The respondents shall consider the promotion in terms of the above direction within a month from the date when the petitioner shall supply a copy of this order without fail.

[19] Having observed thus, the writ petition is allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Sujay

HIGH COURT OF TRIPURA