

**THE HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) NO. 303 of 2012**

**Smti. Momtaz Begum,**  
daughter of Md. Abdul Mazid,  
wife of Md. Shamim Mohammad Zakariah,  
resident of village: Noapara,  
P.S. & P.O. Bishalgarh, District : Sepahijala

..... Petitioner

**- Vs -**

- 1. The State of Tripura,**  
notice to be served upon the Commissioner/Principal Secretary  
to the Government of Tripura, Department of School Education,  
New Secretariat Complex, P.O. Kunjaban, Agartala-799 006
- 2. The Director of School Education,**  
Government of Tripura,  
P.O. Agartala-799006, P.S. West Agartala, West Tripura
- 3. Md. Manik Miah,**  
son of Md. Sahid Miah,  
resident of Naransardar Para,  
P.O. Amarendranagar, P.S. Bishramganj,  
Bishalgarh, District : Sepahijala
- 4. Md. Nazrul Islam,**  
son of late Fazle Miah,  
P.O. & village: Kamalasagar,  
P.S. Bishalgarh, District : Sepahijala

..... Respondents

**B E F O R E  
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	: Mr. Kohinoor N. Bhattachrji, Advocate
For the respondents	: Mr. B.C. Das, Advocate General Ms. A.S. Lodh, Addl. G.A.
Date of hearing and delivery of judgment and order	: 30.06.2016
Whether fit for reporting	: NO

**Judgment and Order (Oral)**

Heard Mr. Kohinoor N. Bhattacharji, learned counsel appearing for the petitioner as well as Mr. B.C. Das., learned Advocate General assisted by Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents.

**02.** By means of this writ petition, the petitioner has urged for directing the respondents No.1 and 2 to appoint her as a Science Teacher from the date when the respondents No.3 and 4 were appointed in the said post. Ancillary to such prayer, the petitioner has urged that the appointments of the respondents No.3 and 4 be quashed by this court.

**03.** In a nutshell, the case as projected by the petitioner in this petition is that, the petitioner applied for the post of Assistant Teacher (Science Graduate) complying all the requirements and she was called for interview along with the respondents No.3 and 4. The petitioner passed the Madhyamik Examination in the year 1995 securing 72.56%, passed the Higher Secondary Examination in the year 1997 securing 52.60% and passed B.Sc Examination with Bio Science in the year 2000 securing 62.26% of marks, whereas the respondent No.3 passed the Madhyamik Examination in the year 1997 securing 3<sup>rd</sup> Division, Higher Secondary Examination in the year 1999 securing less marks than the petitioner and later on he passed the B.Sc.(Bio) in the year 2002, also securing less marks than the petitioner. The marks secured by the respondents No. 3 and 4 have not been specifically mentioned.

**04.** According to the petitioner, the selection is an outcome of favouritism. But it is found that the members of the Selection

Committee are not arraigned as the parties in this petition. In such a situation, this court cannot entertain the allegation of *mala fide* as projected by the petitioner. However, so far the comparative merit is concerned, the respondents No.3 and 4 did not file their counter-affidavit to controvert the allegations made by the petitioner. But the respondents No.1 and 2, by filing a common counter-affidavit has asserted in the para-7 as under:

**“With reference to paragraph no.7 the answering respondents state that, is it also submitted that the Proforma Respondent No.3 and 4 selected by the Interview Board for appointment to the post of Assistant Teacher observing all formalities as well as keeping Revised Employment Policy of the State Government into account and thereafter she has been given offers of appointment to the post of Assistant Teacher vide Memo. No.F.(1-48)-SE/E(NG)/2010 dated 29<sup>th</sup> March, 2012. The selection of the candidates by the Interview Boards on the basis of the interview is legal in the eye of law and the Petitioner has no right to challenge it. It is empathetically denied that the appointment of Respondent No.3 and 4 to the post of Assistant Teacher were made in violation of the Constitutional right of the petitioner under Article 14 and 16 of the Constitution. The Interview Boards awarded Grade to the candidates interviewed after examining records, asking many question. Similarly, the economic conditions were ascertained by the Interview Boards from the records available to them and/or by asking question to the candidates. Thereafter, each Interview Board selected the candidates and submitted list of selected candidates to the Respondent No.2 one based on "Seniority-cum-Merit" and other based on "Need" criteria. Since the vacant posts are less than the total number of candidates, it was hardly possible to appoint all the candidates who applied for and as such nobody can expect that all of them are to be appointed in the post of Assistant Teacher.**

**[Emphasis added]**

**Save and except what are matters of records I deny and dispute anything contrary to or inconsistent with the statements made by me herein above.”**

**05.** Mr. Kohinoor N. Bhattacharji, learned counsel appearing for the petitioner has submitted that the reply of the respondents

No.1 and 2 is evasive and a shield to conceal the sheer arbitrariness in the selection. They have not revealed how the candidates were assessed in the selection or, in other words, the method of assessing the comparative merit and aptitude of candidates appearing before the Selection committee/board, has not been placed before this court. Mr. Bhattacharji, learned counsel thereafter has submitted that the respondents No.1 and 2 espoused a policy, as it is reflected in the memorandum dated 30.08.2003 (Annexure-2 to the writ petition). In Clause-7, it has been provided as under:

**“(7) MINORITIES:**

**Adequate representation of persons belonging to linguistic and religious minorities shall be taken into account at the time of selection. In case of direct recruitment, one column should be incorporated in the application form to indicate the community to which the applicant concerned belongs and also his/her mother tongue.”**

**06.** Mr. B.C. Das, learned Advocate General appearing for the respondents has submitted that the writ petitioner does not have any indefeasible right to get the appointment. She had been duly assessed by the Selection Committee. But the Selection Committee did not recommend her, instead recommended the respondents No.3 and 4. On due consideration taken into various levels, the respondents No.3 and 4, who are also from the minority community, have been appointed. Therefore, the petition may not be entertained by this court.

**07.** Having regard to the averments and records placed before this court by the petitioner and the respondents, it appears without any opacity that the petitioner secured better marks in the

concerned examination in comparison to the respondents No.3 and 4. For purpose of being selected for a post, no doubt, the marks may be one of the substantive parameters, but not all. For that reason, the candidates are interviewed to test their aptitude and capacity for the post for which the selection process is launched.

**08.** Mr. B.C. Das, learned Advocate General has rightly submitted that no candidate does have indefeasible right to get appointment. Right to which the candidate is entitled to, is to get fair consideration.

**09.** As already observed that, even though arbitrariness, bias or in the words of the petitioner, favouritism has been alleged against the members of the Selection Committee, but as the members of the Selection Committee have not been arraigned as parties, this court can not take any cognizance of such allegations. However, the respondents No. 1 and 2 are directed to reconsider the petitioner for her appointment in the post of Assistant Teacher (Science) against the available vacancies, if any. Such exercise be taken within a period of 3(three) months from the date when the petitioner shall furnish a copy of this order to the Director of School Education, Government of Tripura. The Director of School Education, if he thinks it proper, may form a committee to reassess the merit of the petitioner having due regard to the extant policy of the Government.

**10.** With this direction, this petition stands disposed of, subject to what has been observed above.

There shall be no order as to costs.

**JUDGE**

Moumita