

THE HIGH COURT OF TRIPURA AGARTALA

WP(C) NO.194 OF 2017

Sri Badal Biswas,
son of late Murari Biswas,
c/o Sri Kamal Bhattacharjee
North Badharghat,
P.O. & P.S. A.D. Nagar,
Agartala, West Tripura, Pin-799 003

..... *Petitioner*

- Vs -

1. Tripura University
(A Central University)
P.O. Suryamaninagar, Pin-799 022
Tripura, India

2. The Executive Council of Tripura University
(A Central University)
P.O. Suryamaninagar, Pin-799 022,
Tripura, India

3. The Vice Chancellor, Tripura University
(A Central University)
P.O. Suryamaninagar, Pin-799 022,
Tripura, India

4. The Registrar, Tripura University
(A Central University)
P.O. Suryamaninagar, Pin-799 022,
Tripura, India

5. Prof. Anjan Kumar Ghosh,
Vice Chancellor, Tripura University
(A Central University)
P.O. Suryamaninagar, Pin-799 022,
Tripura, India

6. Sri Omkar Sadhan Adhikari
Registrar, Tripura University
(A Central University)
P.O. Suryamaninagar, Pin-799 022,
Tripura, India

7. Prof. Amitabha De
Director of Rajiv Gandhi Indian
Institute of Management
Mayurbhanj Complex, Nongthymmai,

Shillong, Pin-799 014
East Khasi Hills District
Meghalaya, India

8. Sri Joydeep Sil,
Registrar, Indian Institute of Science Education
and Research
Kolkata, West Bengal

9. Prof. Satyadeo Podder
Dean, Faculty of Arts and Science
Tripura University(A Central University)
Suryamaninagar, Pin-799 022
Tripura, India

10. Sri Letthumatu Darlong
Former Controller of Examinations(In Charge),
presently Joint Controller of Examination
Tripura University(A Central University)
Suryamaninagar, Pin-799 022
Tripura, India

11. Smt. Sobha Debarma
Director, College Development Council
Tripura University(A Central University)
Suryamaninagar, Pin-799 022
Tripura, India

..... *Respondents*

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. B.N. Majumder, Advocate				
For the respondents	:	Mr. P. Dutta, Advocate				
Date of hearing	:	18.09.2017				
Date of delivery of judgment and order	:	31.10.2017				
Whether Fit for Reporting	:	<table border="1"><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>✓</td></tr></table>	Yes	No		✓
Yes	No					
	✓					

JUDGMENT & ORDER

Heard Mr. B.N. Majumder, learned counsel appearing
for the petitioner and Mr. P. Dutta, learned counsel appearing for
the respondents.

2. By means of this writ petition, the petitioner has fundamentally challenged the notification dated 09.12.2016 issued by the Registrar, Tripura University(*Annexure-P/9* to this writ petition) whereby it was declared that none of the candidates interviewed was found suitable for appointment to the post of Assistant Registrar(Examination), Group-A Non-teaching post, for which, by the Advertisement No.TU/01/2016 dated 01.02.2016 the applications were invited from the eligible candidates.

3. There is no dispute that the petitioner does belong to Scheduled Caste community and he was shortlisted for appearing in the written examination for the post of Assistant Registrar(Examination) reserved for S.C. on 13.08.2016, as would be evident from the notification dated 29.07.2016(*Annexure-P/4* to this writ petition). Thereafter, the petitioner was shortlisted for appearing before the selection committee for an interview(for the final selection) to the post of Assistant Registrar(Examination), Tripura University by way of direct recruitment on 16.09.2016 as is evident from the communication dated 30.08.2016(*Annexure-P/8* to this writ petition). On 09.12.2016 the list of candidates selected for the various Group-A Non-teaching posts was published and the petitioner had found that none had been selected for the post of Assistant Registrar(Examination) reserved for the S.C. candidates. He therefore wanted disclosure of the reason why none was found eligible for appointment in the said post.

4. All the relevant information, as asked for including the formation of the selection committee was disclosed to the petitioner. From the notification dated 28.12.2011, it transpires that the Tripura University Cadre Recruitment Rules(Non-Teaching Employees), 2011 was approved by the Executive Council in its 16th meeting held on 26.11.2011 in accordance with the provisions laid down in Statutes 24(2) and 41(1)(ii) of the Statutes of the Tripura University Act, 2006. That notification was made available in the University website for information.

5. The Tripura University Recruitment Rules for the post of Assistant Registrar has laid down the age limit for direct recruitment and the educational and other qualifications required for the direct recruitment. It has been provided that at least, 50% of total post(8 nos.) is to be filled up by direct recruitment. Since in this regard there is no dispute, this Court would avoid referring the provisions of the Recruitment Rules in details.

6. The University-respondent has placed the proceeding-minutes of the 26th meeting of the Executive Council held on 20.11.2016 in the Council Hall of the University where the council had approved the recommendation of the selection committee in respect of the various posts including the post of the Assistant Registrar(Examination). It appears from the said proceeding-minutes dated 26.11.2016 that the selection committee did not recommend anyone as suitable for the post of Assistant Registrar(Examination) reserved for the S.C. candidate. The

University-respondent by the communication dated 03.02.2017 has disclosed that the petitioner got 4.43 in the interview out of 20 marks and it has been asserted without being disputed that the result of the written examination was available in the website. The petitioner has not asked for assessment of comparative merit of the candidates for obvious reason as none was found suitable for the appointment. However, the petitioner has referred to Tripura University Cadre Recruitment Rules(Non-Teaching Employees), 2011 to show that there is no cut off marks for recruitment to the post of Assistant Registrar(Examination) under the Tripura University Cadre Recruitment Rules(Non-Teaching Employees), 2011.

7. According to the petitioner, despite he was suitable for the said post of Assistant Registrar(Examination) in every respect he was not selected arbitrarily by giving him an average mark in the interview.

8. In respect of the allegations made in the writ petition, the University-respondent has filed their reply and clearly stated that by the written examination, 10(ten) candidates were shortlisted to be called for interview. It was decided that the marks obtained by the shortlisted candidates in the written examination will also be taken into account for preparing the final merit list. The marks distributed for the written examination and the interview were 80 and 20 respectively. The marks allotted for interview *i.e.* 20 was further segmented in the following manner:

- (i) for personality : 5 marks
- (ii) for communication skills : 5 marks and
- (iii) for subject knowledge : 10 marks.

Thereafter, the University-respondent has succinctly submitted that the University has fixed the score of 50 percent and above as the criteria for appointing a candidate. As none, out of 9(nine) candidates who appeared in the interview, fulfilled the said criteria of 50 percent and above in the written examination and interview having taken together, none was assessed suitable by the selection committee. Further, the University-respondent has asserted that "*The petitioner of the instant writ petition secured in total 49.43 marks out of 100, which is below 50%.*" Hence, he was not recommended by the selection committee. According to them, they had constituted the selection committee as per the Tripura University Cadre Recruitment Rules(Non-Teaching Employees), 2011.

9. It is apparent from the appendix-I of the said Rules, 2011 that the selection committee for the post of Group-A(other than the statutory posts) shall be constituted of the Vice Chancellor/Pro-Vice Chancellor(in absence of the Vice Chancellor), one member of the Executive Council, to be nominated by the Vice Chancellor, two experts not in service of the University, to be nominated by the Vice Chancellor for their special knowledge, a member representing SC/ST/OBC/Minority/Women/Differently abled categories, to be nominated by the Vice Chancellor or Acting Vice Chancellor, if any of the candidates belonging to these

categories is the applicant and if any of the above members of the selection committee do not belong to that category, Head of the Department and the Registrar.

10. In reply to the counter affidavit filed by the University-respondent the petitioner has filed the rejoinder and has contended that to fix the minimum 50 percent of the marks for recommendation for selection is not supported by any document or records. Even the University-respondent did not clarify whether that 50 percent cut off marks is applicable for the reserved category candidates.

11. Taking leave from this Court, the University-respondent has produced a note dated 14.07.2014. It appears from the records, that the subsequent to and in continuation of the said note, the Vice Chancellor had put up the note dated 28.07.2014 which reads as follows:

"Approved. Let us fix a score of 50% and above as the criterion for final selection of candidates in direct recruitment of officers just like the rule of UGC in case of promotion & recruitment of faculty members."

The said note was marked as the note No.2 and from the document it does not appear whether the said note setting up the minimum marks was approved by the Executive Council of the University-respondent which is indisputably the competent body to set up such cut-off marks. But it appears from the notice dated

12.09.2016 that by the following persons the selection committee was constituted:-

- | | | |
|---|---|-------------------------------------|
| 1. Prof. A.K. Ghosh, Vice Chancellor, Tripura University | : | Chairman |
| 2. Prof. S. Poddar, Dean, Faculty of Arts & Commerce, TU | : | Member |
| 3. Dr. Sanjib Bhattacharjee, Registrar, Assam University,
Silchar, Assam | : | Member |
| 4. Mr. L. Cajee, Controller of Examination, NEHU
Umashling Mawkyroh, Shillong, Meghalaya | : | Expert Member |
| 5. Smt. S. Debbarma, Director, College Development
Council, TU | : | SC/ST/
Women's
representative |
| 6. Sri O.S. Adhikari, Registrar, Tripura University | : | Member
Secretary |

Another additional affidavit was filed as per the order dated 14.09.2017 wherein it has been averred by the University-respondent that the proceedings of IQAC(Internal Quality Assurance Cell) dated 22.03.2016 was placed in the 18th meeting of the Academic Council of the Tripura University held on 12.05.2016 as an agenda item 05/18/2016 and that was approved by the said Academic Council. Thereafter, the proceeding of the 18th meeting of the Academic Council held on 12.05.2016 was placed in the 25th meeting of the Executive Council held on 14.05.2016 as agenda item 14/15/2016 and the Executive Council approved the same. From the minutes of the meeting of the IQAC it appears that the table for minimum score for APIs for direct recruitment of teachers in the University Departments/Colleges, Librarian/Physical education cadres in Universities/Colleges, and weightages of the selection committee was to be considered along with other specified

eligibility qualifications stipulated in the Regulation(UGC Regulations dated 30.06.2010).

Though there is no specific mention of 50% cut off marks but the said resolution, vide the agenda 5/18/2016 was approved by the Academic Council in their meeting held on 12.05.2016. The said resolution was also approved by the Executive Council in their meeting dated 12.05.2016.

12. Mr. B.N. Majumder, learned counsel appearing for the petitioner has raised two questions *viz.*

- (i) Whether the competent authority in the University has adopted that the minimum cut off marks(50% of the marks obtained by a candidate in aggregate)? and
- (ii) Whether the selection committee was properly formed as there was no member from the Scheduled Caste community according to the appendix-I to the Tripura University Cadre Recruitment Rules(Non-Teaching Employees), 2011?

13. It is observed that Rule 6(v) provides as under:

"(v) For appointment to various Group B & C posts against direct recruitment/open selection the composition of the Selection Committees for different categories of posts will be as given in Appendix-I. Every appointment through direct recruitment/open selection shall invariably be made only after making an open advertisement in leading news papers and Employment News."

14. As such, this Court is persuaded to observe that according to Tripura University Cadre Recruitment Rules(Non-Teaching employees), 2011, there is no mandate to follow the appendix-I in respect of Group-A posts. However, when we read the appendix-I which has also included the selection committee for the post of Group-A(other than the statutory posts), the following provision is found available:

A member representing SC/ST/OBC/Minority/Women/Differently abled categories to be nominated by the Vice Chancellor or Acting Vice Chancellor, if any of the candidates representing these categories is the applicant and if any of the above members of the selection committee do not belong to that category.

From the constitution of the selection committee, it is apparent that no member from the S.C. community was a member of the said selection committee. However, Smt. S. Debbarma, the Director, College Development Council, Tripura University has been shown to represent SC, ST and Women, etc. but in the reply filed by the University-respondent, nowhere it has been averred that Smt. S. Debbarma belongs to S.C. community.

15. From a bare reading of the provision as quoted above which is a part of the appendix-I(A), this Court is of the view that the said provision mandates the University-respondent to constitute the committee with a member from that particular category whenever a candidate is being interviewed from that special category, if any of the candidates representing these categories was

the applicant and if any of the members of the selection committee does not belong to the said category. Therefore, usually the strength of the selection committee would be five, but whenever there is requirement of a member representing SC/ST/OBC/ Minority/Women/Differently abled categories, the Vice Chancellor or the Acting Vice Chancellor, if finds that none of the members of the selection committee belongs to the said category, he shall appoint a member from such category. In the case in hand, the Vice Chancellor has failed to appoint any member from the S.C. community when the post was to be filled from the S.C. community.

16. That apart, from the record that has been produced by the University-respondent, this Court does not find any resolution by which the Executive Council has adopted the 50% cut off marks. The petitioner secured 49.43% mark and thus his mark is marginally below the cut off marks set up by the Vice Chancellor. There is no express adoption of the said 50% marks by the Executive Council for quality assurance following the standard of the UGC in respect of the selection of the faculties for the University.

17. Mr. P. Dutta, learned counsel appearing for the University-respondent has laboured hard to convince this Court that the said standard is followed in the University. Moreover, after scrutinizing the records, the Executive Council approved the recommendation of the selection committee including the rejection

on the basis of the finding that none was found suitable for the post of Assistant Registrar(Examination) reserved for the S.C. candidate. He has referred to the resolution of the Executive Council held on 20.11.2016 for this purpose. True it is that the Executive Council has approved the recommendation of the selection committee as stated above. However, this Court is not satisfied about the adoption of 50% of the aggregate marks as the cut-off marks for the Group-A officers in the Tripura University by the Executive Council of the University-respondent.

18. From the observations made above on the basis of the scrutiny of records, the following questions fall for consideration of this Court:

- (i) Whether the constitution of the selection committee was proper or such constitution had prejudicially affected the interest of the petitioner?
- (ii) Whether the petitioner can urge for a writ of mandamus for directing the University-respondent to appoint him as the Assistant Registrar(Examination) reserved for S.C. for his securing 49.43%, highest among the candidates who were shortlisted for interview?

19. The Vice Chancellor should have been more cautious while constituting the selection committee. The purpose of the provision as provided in the appendix-I is very clear that a member in the committee shall be there for representing the special

category when a candidate appears from that category. In this case, the very post was reserved for the S.C. category candidates but it is apparent from the face of the record that there was no S.C. category member in the selection committee, even not Smt. S. Debbarma, the Director, College Development Council, Tripura University. Hence, this Court is of the view that by her appointment as the member of the selection committee, the requirement as stated above has not been met and therefore the very constitution was highly irregular. Moreover, the purpose to keep a member from the special category is to assure that the selection committee does not behave prejudicially against the candidates from those categories. Even if, there may not be any prejudice manifest in the procedure but this Court is of the opinion that the fairness is not just to be done but it has to be demonstrated to have been done. Absence of a member in the selection committee from that special category(SC) has turned the selection process highly irregular.

20. So far the question concerning the minimum cut-off marks is concerned, even if there was no such policy, that standard can be adopted by the selection committee at their discretion to determine whether any person is competent to hold the post or not. In the course of the final selection, the opinion of the selection committee has to be given due regard by the competent authority, herein the Executive Council. But for purpose of transparency of the policy and for guidance of the selection committee, the Executive Council ought to have taken an express resolution in regard to the minimum cut-off marks for purpose of quality assurance. Not a

piece of paper could be shown by the University-respondent in this regard. However, they have tried to make out a case of implication. The policy should not be gathered by implication, it should be expressly provided by the competent authority *i.e.* the Executive Council of the Tripura University.

21. Having held so, the University-respondents are directed to:

(i) to decide whether 50% shall be the minimum cut-off marks in respect of selection of the Group-A officers or not. The said decision shall invariably be taken by the Executive Council of the Tripura University by an express resolution and thereafter the Vice Chancellor shall constitute the selection committee afresh with one of the member representing the S.C. community. On such constitution 10(ten) shortlisted candidates shall again be interviewed and the recommendation shall be made by the selection to the Executive Council for their consideration. The entire exercise shall be completed within a period of six months from the day when the petitioner shall place a copy of this order to the Registrar, Tripura University. There shall be no extension of time under any circumstances.

Consequently, the earlier decision of the selection committee not recommending anyone for recruitment to the post of Assistant Registrar(Examination) reserved for S.C. category stands quashed. However, other recommendations shall remain unaffected.

22. In terms of the above, the writ petition stands allowed.

Records as produced be returned to Mr. P. Dutta,
learned counsel.

There shall be no order as to cost.

JUDGE