

**THE HIGH COURT OF TRIPURA
AGARTALA**

WA NO.12 OF 2015

Dr. Md. Mijan Hossain,
S/O Md. Mamtaj Uddin Ahamad,
Resident of West Bank of Jagannath Dighi,
P.O. Radhakishorepur, Udaipur,
Gomati District.

..... *Appellant*

- *Vs* -

1. The State of Tripura,
Represented by the
Principal Secretary to the
Government of Tripura,
Department of Agriculture,
New Civil Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala,
District-West Tripura.

2. The Director of Agriculture,
Government of Tripura,
Krishi Bhawan,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

3. Dr. V.K. Bahuguna,
Principal Secretary to the
Government of Tripura,
Department of Agriculture,
New Civil Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala,
District-West Tripura(as Chairman of the
Selection Committee).

4. Professor Rabindra Kumar Sinha,
Representative of the Vice Chancellor,
Tripura University,
P.O. Surjyamaninagar, P.S. Amtali,
West Tripura(as member of the
Selection Committee).

5. Dr. Abdul Haque,
Director of Agriculture,
Government of Tripura,
Krishi Bhawan,

P.O. Agartala, P.S. West Agartala,
District-West Tripura(as Member of the
Selection Committee).

6. Dr. D. Alice,
Professor & Head,
Department of Plant Pathology,
Tamilnadu Agriculture Universities,
Coimbatore,
P.O. Coimbatore, Tamil Nadu(as
Expert member of the Selection Committee).

7. Dr. R.K. Samanta,
Ex. Vice Chancellor,
Bidhan Chandra Krishi Viswa Vidyalaya,
P.O. Mohanpur, Nadia, West Bengal,
at present residing at Ashirbad,
House No.1-11-12, Bhavani Colony,
Premavatipet, Rajendranagar,
Hyderabad-500030(as Expert Member of the
Selection Committee).

8. Dr. Janmejay Parni,
Assistant Professor,
College of Fisheries,
Central Agricultural University,
P.O. Lembuchera, P.S. Sidhai,
District-West Tripura(as member of the
Scrutiny Committee).

9. Dr. R.K. Saha,
In-charge Dean,
College of Fisheries,
Central Agricultural University, Tripura,
P.O. Lembucherra, P.S. Sidhai,
District-West Tripura(as member of the
Scrutiny Committee).

10. Dr. Durga Prasad Awasthi,
S/O Late Shiv Kumar Awasthi,
C/O Sri Sankar Narayan Awasthi of
79 Hariganga Basak road, Melarmath,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

11. Shri Niren Majumder,
S/O Shri Rati Ranjan Majumder,
Resident of Udaipur, Madhyapara,
P.O. & P.S. R.K. Pur, District-Gomati.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. T. VAIPHEI
HON'BLE MR. JUSTICE S. C. DAS

For the appellant : Mr. A.K. Bhowmik, Sr. Advocate
Ms. A. Banik, Advocate

For respondent Nos.1 and 2 : Mr. T. Dutta Majumder, G.A.

For respondent No.10 : Mr. D.R. Choudhury, Advocate

For respondent No.11 : Mr. D.K. Daschoudhury, Advocate

Date of hearing : **20.01.2017**

Date of delivery of judgment & order : **31.01.2017.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER

(S.C. Das, J.)

This *intra-court* appeal under *Article 226* of the Constitution of India is directed against the judgment and order dated 27.02.2015 passed by a Single Bench of this Court in WP(C) No.224 of 2014, whereunder a writ petition, filed by the appellant herein, as petitioner(hereinafter mentioned as petitioner) has been dismissed.

2. We have heard learned senior counsel, Mr. A.K. Bhowmik, assisted by learned counsel, Ms. A. Banik for the appellant, learned G.A., Mr. T. Dutta Majumder for respondent Nos.1 and 2, learned counsel, Mr. D.R. Choudhury for respondent No.10 and learned counsel, Mr. D.K. Daschoudhury for respondent No.11.

3. By filing the writ petition the petitioner prayed for the following relief:-

“It is, therefore, humbly prayed that the Honourable Court would graciously be pleased to issue Rule upon the Respondents to show cause as to why the Respondents should not transmit all records relating to the case of the Petitioners;

AND

As to why a Writ in the nature of certiorari should not be issued quashing the selection of Private Respondents 10 and 11 for appointment to the post of Assistant Professor in plant pathology in the college of Agriculture, Lembucherra, Tripura vide decision of the meeting of the council of Ministers held on 27th February, 2014 and their offer of appointment issued in the first week of June, 2014 in pursuance to the advertisement for recruitment issued by the Government of Tripura, Department of Agriculture vide No.F.19(18)-Agri/SARS/CAT/2011-12/255 dated 29th April, 2013;

AND

As to why a Writ in the nature of Mandamus should not be issued directing the State Respondents to cancel the selection and offer of appointment in respect of the Private Respondents 10 and 11 and to fill up one of the posts of Assistant Professor, Plant Pathology by the petitioner;”

4. Director of Agriculture(respondent No.2) under the Department of Agriculture, Government of Tripura vide Memo. No.F.19(18)-Agri/SARS/CAT/2011-12/255 dated 29th April, 2013 invited applications from the eligible candidates for filling up of 64

posts of Professor, Associate professor, Assistant Professor, etc. in the College of Agriculture, Lembucherra, Tripura, which included two posts of Assistant Professor in Plant Pathology.

5. The petitioner as well as the respondent Nos.10 and 11 applied for the post of Assistant Professor, in Plant Pathology branch, having all requisite qualifications.

The State Government constituted interview Board consisting of respondent Nos.3 to 9 and that Board conducted the interview both subjective and objective. Objective assessment was of 60 marks and the subjective interview was of 40 marks. The interview Board recommended the names of respondent Nos.10 and 11 for two posts of Assistant Professor in Plant Pathology and the Department issued offer to them.

The petitioner returned unsuccessful and he challenged the advertisement as well as the selection process on different grounds by filing a writ petition before this Court.

Learned Single Judge dismissed the writ petition and hence this appeal was filed.

6. In an *intra-court* appeal, we are not required to re-examine and re-appreciate the pleadings and evidence adduced by the parties before the writ Court so meticulously as is required by a regular appellate authority. In an *an-intra* court appeal, the appellate Forum is to consider as to whether the writ Court has

failed to exercise its power/jurisdiction as conferred under *Article 226* of the Constitution and as to whether any finding of the writ Court was suffered from perversity or that any statutory provision or settled position of law has been ignored by the writ Court. The decision of the writ Court is not required to be interfered by this appellate Forum simply on the ground that another equally possible view may be taken and thereby to substitute the view taken by the writ Court. If the decision of the writ Court is supported by some material and logic acceptable by law, the appellate Forum is not required to interfere with the decision of the writ Court.

7. The first argument advanced by learned senior counsel, Mr. Bhowmik was that the petitioner was having with a brilliant academic career in comparison to respondent Nos.10 and 11 but the interview Board failed to properly assess the academic performances of the petitioner and the respondent Nos.10 and 11. The objective assessment what was made did not correctly reflect the performances of the petitioner and the respondent Nos.10 and 11, and as a result the petitioner was deprived and respondent Nos.10 and 11 were wrongly selected.

Countering the submission learned G.A., Mr. Dutta Majumder submitted that interview Board consists of experts in the subject and they made both objective and subjective assessments and the petitioner did not raise any objection before he appeared in the interview and when he became unsuccessful he filed the writ

petition raising various unfounded allegations that the assessment was not correctly made, which was not tenable in law. Once the petitioner participated in the selection process he cannot challenge the assessment made by the interview Board and this Court in exercise of the power under *Article 226* cannot sit as an appellate authority of the departmental experts, who were members of the interview Board.

8. It was not in dispute that the interview Board was constituted consisting of respondent Nos.3 to 9. There was no personal allegation of bias against those members of the interview Board. There were representatives from Tripura University *i.e.* respondent No.4, who was of the rank of Professor of Tripura University. Respondent No.6 was an expert of Plant Pathology and he was Professor & Head of the Department of Plant Pathology, Tamil Nadu Agricultural University. Respondent No.7 was an Ex-Vice Chancellor of Bidhan Chandra Krishi Viswa Vidyalaya and both respondent Nos.6 and 7, as it appears were expert members.

It is to be presumed that those expert members made objective assessment of the qualifications and other extra-curricular activities of the petitioner and other candidates and this Court has no expertise to sit over their assessments. In the objective assessment, it is an admitted position that the petitioner secured 40 marks out of 60, respondent No.10 secured 38.50 marks and respondent No.11 secured 20.90 marks.

Learned senior counsel, Mr. Bhowmik while arguing the case of the petitioner has drawn our attention to several academic performance of the petitioner which shows his excellence in the subject, but how that excellence is to be assessed and counted is the matter of the experts on the subject, who were inducted in the interview Board and the Court cannot ordinarily sit as super-expert on the decision of the experts.

9. A three-Judges Bench of the Apex Court in the case of ***Dalpat Abasaheb Solunke & Ors. v. Dr. B.S. Mahajan & Ors.*** reported in ***(1990) 1 SCC 305*** was constrained to observe that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not, has to be decided by the duly constituted selection Committee, which has the expertise on the subject. We may gainfully refer here para 12 of the judgment which reads as follows:

"12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not

has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

10. Though it was strenuously argued by learned senior counsel, Mr. Bhowmik that proper assessment of merit was not made by the selection Committee in their objective assessment, we are not inclined to interfere in the judgment passed by the writ Court since neither the writ Court nor this appellate Forum have got any expertise to assess the performance of the candidates.

11. The next argument advanced by learned senior counsel, Mr. Bhowmik was that the advertisement itself was vague since there was no mention in the advertisement as to what should be the selection procedure and which rule should be followed. He has also submitted that the College of Agriculture, Tripura was affiliated

to Tripura University, a Central University and so it was supposed to follow the UGC norms while conducting interview of the candidates. According to Mr. Bhowmik, the UGC norm has not been followed. The norm of Central Agricultural University, Imphal has been followed but that was also not correctly followed. The procedure what was followed, as has been stated by the respondents was contrary to what the petitioner has annexed. Since the advertisement was silent about the procedure to be followed, the petitioner was deprived of the legitimate information about the selection procedure and hence the total interview process was vitiated.

On the contrary learned G.A., Mr. Dutta Majumder submitted that the State respondents consistently following the procedure followed by the Central Agricultural University, Imphal since long. Petitioner in the year 2011 also appeared in the interview which was also conducted following the same procedure. It was also submitted by learned G.A., Mr. Dutta Majumder that the College of Agriculture, Tripura is affiliated to Tripura University, a Central University but is not receiving any grant from UGC and therefore is not bound to follow the UGC norms. According to learned G.A., once the petitioner participated in the selection process and did not raise any question about the procedure to be followed at the time of interview, he cannot now question it by filing writ petition.

Learned counsel, Mr. Choudhury also made an emphatic submission on the point that the petitioner now cannot turn around the selection process on the ground that he did not know about the procedure to be followed.

12. Respondent Nos.1 and 2 in their counter affidavit submitted the scorecard guidelines of Central Agricultural University, Imphal marked as *Annexure-R1*. The petitioner in his reply affidavit annexed a copy of letter dated 26.12.2009 issued by the Deputy Registrar of Central Agricultural University, Imphal which is annexed as *Annexure-11*.

Para 4 of *Annexure-11* reads thus—

"4. The interview will consist of two parts.

Part—I : You will have to make a Power Point presentation on any topic of your choice in the area of your subject/discipline for a period of 10 minutes. This presentation will be open to the Faculty and Students. The audio visual aids required for the purpose will be made available.

Part—II will consist of personal interview."

The scorecard guideline submitted by the respondents consists of the details procedure of both objective assessment of performance and also interview. The API score consists of 60 marks and interview consists of 40 marks, total 100 marks as specified in *Annexure-R1* which the respondents alleged to have followed. *Annexure-11* to the writ petition shows that some presentations

were supposed to be made by the candidates and according to the petitioner that has not been done.

If the petitioner had any confusion about the manner in which the interview will be conducted he would have seek clarification from the College about the manner of the interview. The procedure which was followed was uniformly applied for selection of candidates of all branches as per advertisement and it was not isolatedly applied for the petitioner to say that the petitioner was put in a disadvantageous position. There was no allegation that *Annexure-R1* was vague or that there was no existence of any such scorecard guidelines. Learned Single Judge considered the issue assigning reason and we find nothing on the issue that proper selection procedure was not followed.

13. If the petitioner had any confusion or any doubt in mind about the interview process to be followed by the interview Board he would seek clarification from the College. He did not seek any clarification. He applied according to the advertisement and was definitely expecting a selection but as soon as he did not get the selection he challenged the selection process by filing the writ petition.

14. The Supreme Court in the case of ***Dr. G. Sarana v. University of Lucknow & Ors.*** reported in ***(1976) 3 SCC 585*** in para 15 of the judgment observed—

"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

In the case of **Madan Lal & Ors. v. State of J. & K & Ors.** reported in **(1995) 3 SCC 486** the Supreme Court observed—

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be

called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285 it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

In the case of **Manish Kumar Shahi v. State of Bihar** reported in **(2010) 12 SCC 576** the Supreme Court in para 16 of the judgment observed—

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not

entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

In the case of **Ramesh Chandra Shah & Ors. v. Anil Joshi & Ors.** reported in **(2013) 11 SCC 309** the Supreme Court relying on its earlier decisions in para 18 and 24 of the judgment observed—

"18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

.....
24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

15. The petitioner was not a fresher. He was working as Assistant Professor in another university. Earlier in the year 2011 also he applied for the post in the College of Agriculture, Tripura. So being an experienced person if the petitioner had any confusion about the procedure to be followed by the interview Board or the College he would gather information from the College well before appearing in the interview. He also did not doubt about the integrity of the members of the interview Board. Had he enquired about the procedure and that was not furnished to him, definitely he would have a genuine and reasonable case, but while he did not make any such inquiry and voluntarily opted to participate in the selection process and also did not raise any objection about the integrity or quality and efficiency of the experts in the interview Board, he cannot now turn around the selection process which was made obviously following a certain procedure uniformly applied to all the candidates in all branches of the subjects of the Agriculture College. So, on this point we find nothing to interfere in the judgment passed by the writ Court.

16. The next point argued by learned senior counsel, Mr. Bhowmik was that the reservation was not mentioned subject-wise, and as a result the petitioner was put to surprise when respondent No.11 was selected for one of the posts in Plant Pathology.

Learned G.A. submitted that in the advertisement it was mentioned that the reservation law shall apply but it was true that

subject-wise reservation was not mentioned. He also submitted that the writ Court considered the point taking into account all materials and that finding of the writ Court may not be disturbed.

17. Law has now been well settled that the reservation shall be subject-wise. In the present case, admittedly, the reservation was not made subject-wise and therefore it was clear that the law laid down by the Apex Court in the case of ***State of U.P. & Ors. v. M.C. Chattopadhyaya & Ors.*** reported in ***(2004) 12 SCC 333*** was not followed. This contention has been elaborately dealt with by the writ Court. In para 31 and 32 of the judgment the issue has been decided by the writ Court and the observation of the writ Court reads as follows:

"31. This court has observed that all the posts of Assistant Professors in the College of Agriculture has been clubbed together and the incidence of clubbing together would emerge from the roster inspection report without any equivocality and, as such, the formula that has been followed cannot be sustained. Moreover, such reservation ought to have made known to the petitioner. But, for that reason this court will not make a topsy turvy of the recruitment process, inasmuch as the petitioner has preferred not to implead the other candidates who participated in the selection process by dint of the said employment notification. Hence, the challenge has to be examined within a very narrow confine so far the petitioner and the respondent Nos. 10 and 14 are concerned. This court having carefully studied the enunciation is of the view that it might bring

about or generate a new praxis if the law as decided by the apex court in State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors. is implemented. It appears that there are three posts of Plant Pathology. According to State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors., all the three posts would form a cadre for purpose of Reservation Act and Rules and thus according to 100 point roster as followed in view of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992, two posts are supposed to go to the UR candidates and one post is supposed to go to the ST candidate. It is an admitted fact that no Scheduled Tribe candidate had applied, only one SC candidate, the respondent No.11 applied and he was recommended by the selection committee for appointment. The petitioner cannot have any claim on the post at point No.2, reserved for the ST candidates under any circumstances. As such, even if the reservation policy would have been applied in terms of State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors., only one post was supposed to be earmarked for the UR category candidate.

32. Since the entire cadre has not been filled up as yet, there is no scope of applying the R.K. Sabharwal v. State of Punjab principle. Therefore, this court even though has observed that the respondent Nos. 1 and 2 have acted without complying with the principles of State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors., but in the instant case no prejudice in any manner for pursuing a grossly wrong procedure has been caused to the petitioner. Even though, the procedure as followed is unacceptable but for the impact as deduced in the

context, no interference is at all warranted but the State-respondents are simultaneously directed to follow the law as prescribed in State of U.P. & Ors. Vs. M.C. Chattopadhyaya & Ors. in all future recruitments, meaning that in the employment notice or advertisement they shall notify the vacancy earmarked for various categories such as UR, SC and ST, and the teaching post of various discipline shall not be clubbed together for purpose of applying the reservation policy. The teaching posts of the particular discipline shall form one cadre for the purpose of applying the reservation policy. Any deviation therefrom shall invite the contempt proceeding against the person who would indulge in or be responsible for such breach.”

18. We are in full agreement with the above observation of the writ Court. The petitioner did not make all the selected candidates as parties in the writ petition and therefore the issue cannot be decided in absence of all the candidates. An advertisement was made for 31 posts of Assistant Professor and those were clubbed together for the purpose of applying the reservation which was contrary to law laid down by the Apex Court. However, the petitioner has failed to show that respondent No.11 was wrongly appointed as a reserved category candidate in one of the posts. The writ Court discussed the issue in details and we find no reason to interfere in it, especially on the ground that the petitioner did not implead the other candidates, who were selected in the same interview process.

19. In view of the discussions made above, the writ appeal is found to be devoid of any merit and hence stands dismissed.

JUDGE

CHIEF JUSTICE