

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) NO.896 OF 2016

Shri Keshab Das,
son of Sri Haridhan Das,
resident of Village-Hapania,
P.O. & P.S. - Amtali, Sub-Division-Agartala,
District- West Tripura

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Commissioner & Secretary to the
Department of Health & Family Welfare,
Government of Tripura
having his office at New Secretariate Complex, Gurkhabasti,
Agartala, P.O. Kunjaban, P.S. West Agartala,
Sub-Division-Agartala, District-West Tripura
- 2. Tripura Medical College & Dr. BRAM Teaching Hospital,**
a Society, registered under the Societies Registration Act,
1860, situated at Hapania, P.O. & P.S. - Amtali,
Sub-Division - Agartala, District - West Tripura, Agartala
represented by its Chairman, having his official address at
Hapania, P.O. & P.S. - Amtali, Sub-Division - Agartala,
District - West Tripura, PIN - 799 014
- 3. The Chairman,**
having his office address at Hapania,
P.O. & P.S. - Amtali, Sub-Division - Agartala,
District - West Tripura, PIN - 799 014
- 4. The Chief Executive Officer,**
Tripura Medical College & Dr. BRAM Teaching Hospital,
having its office situated at Hapania,
P.O. & P.S. - Amtali, Sub-Division - Agartala,
District - West Tripura, PIN - 799 014

.....**Respondents**

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

For the petitioner	:	Mr. Somik Deb, Advocate
For the respondents	:	Mr. P. Datta, Advocate Mr. B. Debbarma, Advocate
Date of hearing	:	09.11.2017
Date of delivery of Judgment & Order	:	28.02.2018
Whether fit for reporting:		NO

JUDGMENT & ORDER

The petitioner was engaged as the attendant in the Tripura Medical College & Dr. BRAM Teaching Hospital on 24.11.2008. Since the petitioner and the other similarly situated persons were not absorbed in the post of Senior Office Assistant, they had approached this court by filing a writ petition being W.P.(C) No.114 of 2015 for directing the respondents to absorb them in the said post. The said writ petition was disposed of by the judgment and order dated 31.03.2016 on observing and directing the respondents as under:

"14. The rationale that has been provided cannot be held to be unreasonable, harsh, completely unaware of the reality. On the face of the recruitment rules, the petitioners cannot be absorbed in the post of Senior Office Attendant or Office Attendant, not only for being borne in the group C category but the posts of Senior Office Attendants are to be filled 100% by promotion, failing which by transfer/deputation and failing both by direct recruitment. Promotion has to be made from the post of Office Assistants with at least five years experience in the said grade, whereas for the post of Office Assistants, the petitioners apparently do not have the essential qualification such as knowledge of operation of computer and knowledge of typing with minimum speed of thirty words per minute with certificate from the recognised institute concerned. As per the norms, the petitioners cannot be absorbed unless the recruitment rules are relaxed by the competent authority. But this court is really at pains on locating that the respondents did not take any cognizance of the qualification of the petitioners while absorbing them. Even in the report of the committee it has been clearly recommended that if the authority desires, employees those who have fulfilled required qualification as per the recruitment rules they may be promoted to the next higher post against the vacant promotion post.

15. It appears from the records and from the affidavits that this aspect of the matter was not at all considered by the governing body of the society else the petitioners would have been absorbed at least in the post of senior attendant either by way of promotion as per the recommendation of the committee or by way of absorption against the direct

recruit quota. In that event, the petitioners would be in the same category i.e. group D and in the same pay scale of Rs.4,530-13,000/- (PB-1) but they would have received a little bit higher grade pay i.e. Rs.1,400/-

16. Having alive of the jurisdictional limit, the respondents are directed to consider the absorption of the petitioner in the post of Senior Attendant by way of promotion in the mode as recommended by the three member committee or by way of recruitment within a period of three months from today."

02. In terms thereof, the respondent No.4, the Chief Executive Officer, Society for Tripura Medical College and Dr. BRAM Teaching Hospital has issued the memorandum No.F.1.1/HR/Law Cell-265/SFTMC/2015/5463-65 dated 29.06.2016, Annexure-1 to the present writ petition, further observing that:

"As per Recruitment Rules (RR) of Senior Attendant 50% post will be filled-up by promotion from the post of Attendant having service experience of 10 years and remaining 50% will be filled-up through direct recruitment process. But the petitioners have not completed 10 years of service in the post till date and hence not eligible to be promoted to the post of Senior Attendant."

03. Being aggrieved by the said memorandum dated 29.06.2016, the petitioner has approached this court for directing the respondents to consider the promotion to the post of Office Assistant from the date of creation of the said post.

04. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that since 24.11.2008, the petitioner has been discharging the duties as laboratory attendant by virtue of the letter of engagement dated 24.11.2008, Annexure-P/2 to the writ petition. The management of the said medical college and teaching hospital is controlled and run by the said society and the same is reflected in the memorandum dated 12.08.2009, Annexure-P/3 to

the writ petition. It is relevant to note that the petitioner filed the writ petition being W. P.(C) No.114 of 2015 along with two other similarly situated persons urging this court for directing the respondents to absorb him in the post of Senior Office Assistant. It is to be noted further that by the memorandum dated 05.06.2014, the petitioner was absorbed as the attendant and that has impacted grievance in the petitioner leading to filing of the said writ petition. As stated, the said writ petition was disposed of with the above direction.

05. According to Mr. Deb, learned counsel appearing for the petitioner, the petitioner was discharging the duties of laboratory assistant which post is in the category of the post of the office assistant and he was getting a consolidated pay of Rs.1850/-. But at the time of absorption, he was absorbed in the post of assistant. In the hierarchy, the said post is below the post of the senior attendant. Mr. Deb, learned counsel has emphatically stated that while carrying out the reconsideration in terms of the judgment of this court, the society has miserably failed to appreciate the observation made by this court particularly of that part where this court has observed that this court was really at pains on locating that the respondents did not take any cognizance of the qualification of the petitioners while absorbing them. Even in the report of the committee, it had been clearly recommended that if the authority desired, employees those who had fulfilled required qualification as per the recruitment rules, they might be promoted to the next higher post against the vacant promotion post. According to Mr. Deb, learned counsel the petitioner ought to have

been absorbed at least in the post of senior attendant either by way of promotion in view of the said view or absorbed directly in the post of the senior attendant. In that event, the petitioner would have been in the same category i.e. Group-D but he would have received a little bit higher grade pay of Rs.1400/- in the said pay scale when the petitioner is now receiving i.e. Rs.4500-13,000/- (PB-1).

06. Mr. Deb, learned counsel for the petitioner has further submitted that the petitioner was not in the know that the recruitment rules have been framed for the post of office assistant by the governing body of the said medical college. For appointment to the post of the office assistant, the recruitment rules as framed, provides that 80% has to be filled up by direct recruitment and 20% by promotion, failing which by direct recruitment. The educational qualification as prescribed by the said recruitment rules is as follows:

"Passed Madhyamik or equivalent from a recognized Board & having knowledge of operating computer & knowledge of typing with minimum speed of 30 words per minutes with certificates from the recognized Institute concerned."

The said qualification has been prescribed for the direct recruitment as well as for promotion. The feeder posts as declared by the said recruitment rules are for all categories of the Group-D employees having prescribed qualification.

07. According to Mr. Deb, learned counsel the petitioner has all the qualifications to be considered for promotion and as such non-consideration itself is arbitrary and contrary to the

recruitment rules as well as to the direction of this court by the said judgment dated 31.03.2016 and as such it has been urged that the petitioner be promoted to the post of the office assistant in the scale of pay of Rs.5310-24000/- (PB-2) with Grade Pay of Rs.1,800/-. Mr. Deb, learned counsel has finally submitted that the petitioner is the senior-most in the Group-D category and as such even against a single vacancy, earmarked for the promotion, the petitioner may be considered for promotion without any hindrance.

08. The respondents, however, have averred that:

"Promotion process is initiated as per RR when vacancy is available or occurred. The Society never declined to promote its staff against vacant posts. But the petitioner is so hurry to get promotion that, he submitted writ seeking order for promotion to the post of Office Assistant without reasonable basis. Whenever promotion process of Attendant to the post of Office Assistant will be undertaken his case may be considered along with other eligible employees in terms of provision of RR."

09. Further, the petitioner by filing the rejoinder has reiterated what the petitioner has averred in the writ petition. In the rejoinder, the petitioner has produced one document namely salary certificate for the month of September 2012 and August 2013, Annexure 11 to the writ petition, wherefrom it can be gathered that the petitioner has been shown as the office assistant in the central laboratory of the said medical college. On the basis of that, Mr. Deb, learned counsel has submitted that in the records the petitioner has been shown as the office assistant but he has been denied the pay scale for the said post which according to the petitioner is grossly arbitrary and the said action cannot be sustained.

10. The respondents while repelling the said contention of the petitioner has stated that the petitioner was absorbed in the post of the attendant and he was never promoted to the post of the senior attendant or to the post of the office assistant. Further, it has been stated by Mr. P. Datta, learned counsel appearing for the said society which runs the said medical college that the salary bills as produced (Annexure-11 to the writ petition) was not issued by the authorised signatory and hence no reliance can be placed on such document.

11. Having appreciated the submission made by the learned counsel for the parties and scrutinised the records as produced by the Tripura Medical College and Dr. BRAM Teaching Hospital-respondents, it has transpired that by the memorandum dated 05.06.2014, the petitioner was absorbed to the post of attendant nor as the office assistant or Senior office assistant. According to the petitioner, the petitioner has suffered serious detriment for the said action of the respondents. Mr. Datta, learned counsel for the respondents-society has stated that in the gradation list of the attendant working under the TMC & Dr. BRAM Teaching Hospital, Hapania, the petitioner occupies the position at Sl. No.51 and as such to consider the promotion of the petitioner to the post of the office assistant against the vacancies, the petitioner has to be selected by the selection process, else he cannot be appointed as the office assistant either by promotion or by the direct recruitment.

12. This court has searched for the available vacancies from the pleadings, but the vacancies were not available. From the

memorandum dated 06.02.2014, it appears that there are 50 sanctioned posts of the office assistant. 20% of that post has to be filled up by promotion in terms of the recruitment rules. Neither in the writ petition, nor in the rejoinder, the petitioner has asserted about vacancies in the said post of office assistant. Even in the memorandum dated 29.06.2016, the respondents have also not disclosed the number of vacancies available at present in the post of office assistant or in the senior attendant. The petitioner is, no doubt, holding the feeder post by virtue of his absorption in the post of the attendant in the Group-D category. Unless the vacancies are determined by the competent authority and there is necessity of filling up of the post of the office assistant by way of promotion, this court cannot direct the respondents to consider the appointment of the petitioner to the post of the office assistant. That apart, since all the categories of Group-D posts are made the feeder post, the respondents are bound to create the zone of consideration with the eligible candidates on the basis of the gradation list and thereafter to consider the promotion of all those persons for appointment to the post of office assistant by promotion. This court, in absence of all these relevant materials, cannot command the respondents to act in a particular way.

13. Having observed thus, the writ petition is disposed of with the following direction:

- (i) The respondents shall determine the vacancies in the post of the office assistant and thereafter create the zone of consideration vis-a-vis the recruitment rules and the gradation list of the feeder post if it is found

that filling up of the vacancies is an immediate necessity. In terms of the recruitment rules, the post of office assistant is a selection post. The persons who are in the zone of consideration shall be assessed and those will be found suitable may be appointed on promotion to the post of office assistant.

- (ii) The respondent shall take up the exercise to find out the vacancies in the post of the office assistant and shall further take a decision whether to fill up the required percentage of the vacancies by way of promotion. In the event of taking such decision, the exercise shall be completed within a period of four months from the day when the petitioner shall submit a copy of this order to the respondents through the respondent No.4.

Hence the writ petition is disposed of. There shall be no order as to costs.

JUDGE