

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 214 of 2018

Smti. Susmita Bhattacharjee @ Susmita Bhattacharya
D/o Late Jagadindra Bhattacharjee,
W/o Shri Sanjib Bhattacharjee,
Resident of Krishnanagar, Pragati Road, PO Agartala,
PS West Agartala, District: West Tripura, PIN-799001.

.....Petitioner

Vs

1. The State of Tripura,
(to be represented by the Secretary,
Department of School Education,
Government of Tripura, New Civil Secretariat Complex,
P.O. Kunjaban, Agartala, West Tripura, PIN-799006
2. The Secretary to the Government of Tripura,
School Education Department,
Civil Secretariat Complex,
P.O. Kunjaban, Agartala,
District-West Tripura, PIN-799006
3. The Secretary to the Government of Tripura
Department of Elementary Education
Civil Secretariat Complex,
P.O. Kunjaban, Agartala,
District-West Tripura, PIN-799006
4. Director of School Education,
Government of Tripura,
Old Secretariat Building,
Akhaura Road, Agartala,
PIN-799001
5. Director of Elementary Education,
Government of Tripura, Old Secretariat Building,
Akhaura Road, Agartala, PIN-799001.
6. Addl. Secretary,
Government of Tripura,
Office of the Director of School Education,
Secretariat Complex, P.O. Kunjaban,
Agartala, District-West Tripura, PIN-799006
7. The Principal-in-Charge, DIET,
Abhoynagar, Agartala,
P.O. Abhoynagar,
District-West Tripura, PIN-799005
8. Smt. Paramita Majumdar,
C/o Sri Karunamay Pal,
20B, Office Lane, Agartala,

P.S West Agartala, P.O. Agartala,
District-West Tripura, PIN-799001

9. Smt. Manidipa Sutradhar,
W/o Rajkumar Sutradhar, P.O. Barjala
(via Ramnagar)
P.S. West Agartala, Agartala,
PIN-799002
10. Smt. Soma Chakraborty,
C/o Dr. Richi Prasad Sharma,
W/o Sri Swapan Sarkar (Jashoda Bhavan),
Vill-Dhaleswar Raod No.1, P.O. Dhaleswar,
Agartala, PIN-799007
11. Smt. Manika Deb
W/o Prabuddha Sundar Kar,
C/o Sudhar Sutradhar,
Jagatpur, (Kalibari Road)
P.O. Abhoynagar, Agartala,
PIN-799005
12. Smt. Falguni De (Ray)
C/o Ashutosh Dey
Vill-Kaulikura, P.O. Sonamukhi,
District-Unakoti, PIN-799280
13. Smti. Barnali Purkayastha (Tarat)
C/o Mr. JK Purkayastha, Flat No. 1017,
Shyamalima Apartment, New Capital Complex,
Kunjaban, Agartala, PIN-799006
14. Smt.Mitali Dhar
Harerkhola (Ward No.11)
P.O. & P.S. Kamalpur, Dhalai,
Tripura, PIN-799285

..... Respondents

For the petitioner	: Mr. Raju Dutta, Advocate
For the respondents	: Mr. N Choudhury, GA Mr. DK Biswas, Adv.

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

27.02.2019

The petitioner has prayed for the following reliefs:

"It is therefore, humbly prayed that this Hon'ble Court would be graciously pleased to Issue Rule upon the Respondents to show cause as to why all records relating to

the case of the petitioner should not be transmitted to this Hon'ble Court.

AND

As to why a writ in the nature of Certiorari should not be issued quashing and cancelling the Order No. F.2(10-25)-SE-E(G)/09 dated 03-05-2012 issued by the Under Secretary to the Government of Tripura (Annexure-12).

AND

As to why a writ in the nature of Mandamus should not be issued directing the State Respondents to consider the petitioner for the post of Lecturer District Institute of Education and Training (DIET) with effect from the date on which the petitioner's service was placed at the disposal of the Principal, DIET, Agartala, vide memo No. F.3(1-9)DSE/2000 dated 17.07.2003 issued by the Director of School Education, Agartala and also directing the State Respondents to absorb the petitioner in the post of Lecturer, DIET w.e.f. the date on which the petitioner's service was placed at the disposal of the Principal, DIET, Agartala in terms of Memo No. F.3(1-9)DSE/2000 dated 17.07.2003 issued by the Director of School Education, Agartala.

AND

Be pleased to pass such other order or orders so as to give full relief to your petitioner and, upon causes shown, to make the RULE ABSOLUTE.

....."

2. At the very outset, Mr. Raju Datta, learned counsel appearing for the petitioner submits that the instant writ petition is squarely covered by a earlier decision of this Court in **WP(C) 06/2014** titled as **Smt. Nandini Bhattacharjee Vs. State of Tripura & Ors.**, which was decided vide judgment dated 12.01.2018.

3. Learned counsel for the petitioner submits that this Court while disposing of WP(C)06/2014 has passed a direction at

Para 22 to consider the case of all other similarly situated persons for absorption, in the following manner as reproduced herein below:

"22. Having observed thus, the State respondents are directed to consider the case of the petitioner or the other similarly circumstanced persons for absorption and such consideration shall be completed within four months from the day when the petitioner shall furnish a copy of this order. Till such consideration, the petitioner shall not be repatriated to his parent department."

4. Mr. Datta, learned counsel appearing for the petitioner has strenuously submitted that the petitioner has averred in the writ petition that the entire process of the appointment of the respondents N0.8 to 14 as the Lecturer is enveloped in a shady process, for not following the transparent procedure of selection. The petitioner, despite being eligible for consideration for the post of Lecturer, DIET had been deprived from such consideration in violation of his Constitutional rights guaranteed under Article 14 and 16.

5. Mr. Datta has taken this Court to the details of the relevant facts emanating from the records along with the writ petition. He has further contended that the petitioner has been serving for a longer period than the private respondents, but there has been no consideration for his absorption in the post of Lecturer, DIET notwithstanding that she conforms to all the essential qualifications as required by the recruitment rules for Lecturer in DIET.

6. Mr. N Choudhury, learned GA appearing for the State respondents submits that there is no question of following any intransparent procedure as all the appointees have been

appointed on basis of the recommendation of the Tripura Public Service Commission (TPSC). Mr. Choudhury, learned GA further submits that for dearth of the requisite number of Lecturers in the DIET, School Education Department faced serious difficulty and as a stop gap arrangement, the Post Graduate teachers from the government schools were brought on deputation to discharge the duties of Lecturer in the DIETs. Even the deputation of some of the PG teachers to the DIETs has been withdrawn in a phased manner on considering the necessities. It has also been asserted that the deputation to the DIET does not confer any right to any deputed PG teacher for regularization of his/her service as a Lecturer of DIET as the posts of Lecturers created by the competent authority of the government are selected by the TPSC based on the guidelines of National Council for Teacher Education (NCTE). According to Mr. Choudhury, the petitioner does not have any right to even insist for absorption in the post of Lecturer in the DIET.

7. Having heard the learned counsel for the parties and after going through the records as also after perusing the judgment in the case of **Smt. Nandini Bhattacharjee** (supra), this Court is of the view that the said decision squarely covers the instant case. In the said decision, this Court after elaborate discussion of all the relevant aspects, in para 17, 18 and 19 has observed as follows:

“17. Having appreciated the records as produced by the petitioner and the respondents, as well as the averments and top of all, the submissions made by the

learned counsel for the parties, this Court is of the considered opinion that the regular process of the direct recruitment was definitely not followed while appointing the private respondents but the government having due regard to the exigency in the DIETs has adopted a policy that if the Public Service Commission having considered the educational qualifications, performance report, etc. found that the private respondents can be appointed as Lecturer, DIET, then they would be so appointed. There cannot be any amount of dispute that during that process there was no public employment notice for participation of those who were not borne in the catalogue of the Lecturers on contract service.

18. The question, therefore, falls for consideration is whether the government has the competence to regularize the service of the private respondents in the manner as has been done. The government is definitely within its competence as it appears that they were satisfied with the performance of the private respondents and they made a reference to the Public Service Commission to oversee the entire exercise and the Public Service Commission, which is the recommending authority for appointment to the post of Lecturer, DIET was satisfied and they had recommended to the government for recruitment of the private respondents and as such they were recruited. For this process, no right of the petitioner has been violated as has been rightly pointed out that the petitioner belongs to a different class which class is constituted of the persons deputed from the different government schools.

19. What the core question is that the petitioner has been serving since 2003 as a Lecturer, DIET on deputation and long back he has crossed the maximum period of deputation. The petitioner had not been repatriated and the respondents are continuously realizing the service from the petitioner. As such, this Court finds a basis to observe that if the respondents were satisfied with the performance of the petitioner and then, the satisfaction itself is

the basis for the petitioner's claim for absorption in the post."

8. At the time of passing of the said judgment, indisputably the petitioner was in service under the DIET but till today she has not been considered for absorption, which tantamount to violation of the judgment and order dated 12.01.2018. It is further submitted that no appeal has been preferred against the said judgment dated 12.01.2018. Situated thus, the petitioner is also entitled to get the similar treatment as has been provided to the private respondents.

9. Accordingly, the State respondents are directed to consider the case of the petitioner for absorption. While making such consideration, the State respondents shall have due regard to the observations made by this Court in **Smt. Nandini Bhattacharjee** (supra). The entire exercise shall be completed within three months from the date of receipt of the copy of this order. Until then, the petitioner shall not be repatriated to her parent department.

10. In terms of the above, this writ petition stands disposed of.

No order as to costs.

JUDGE