

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)No.518 of 2018

Sri Abdul Haque,
son of late Abdul Gani,
resident of Aralia,
P.O. Sonamura,
District : Sepahijala, Tripura

----Petitioner(s)

Versus

1. The State of Tripura,
represented by the Secretary to the
Government of Tripura, Minority Welfare
Department, New Secretariat,
P.O. New Capital Complex,
Agartala, West Tripura

2. The Director,
Minority Welfare Department,
Government of Tripura,
Old Secretariat Complex,
P.O. Agartala, PIN : 799001,
West Tripura

3. The Chief Executive Officer,
Tripura Board of Wakfs,
Old Secretariat Complex,
P.O. Agartala, PIN : 799001,
West Tripura

---- Respondent(s)

For Petitioner(s)	:	Mr. D.K. Biswas, Adv.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of delivery of Judgment & Order	:	20.12.2019
Whether fit for reporting	:	NO

**BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA**

Judgment & Order(Oral)

Heard Mr. D.K. Biswas, learned counsel appearing for the petitioner as well as Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

2. By means of this petition, the petitioner has urged this court for directing the respondents to recall the petitioner in order to absorb him in the post of Accountant in the Directorate of Minority Welfare, Government of Tripura, consistent with the judgment dated 11.08.2017 delivered in WP(C)No.861 of 2017. The facts which are relevant in the controversy are that the petitioner entered in the service as LDC(DRW) in the year 1990 under Tripura Board of Wakfs. The petitioner was however regularized in the month of September, 2001 [see para-3]. In 2006, the petitioner was sent on deputation in the Directorate of Minority Welfare as LDC with effect from 03.10.2006. According to the petitioner he was given assurance that he would be absorbed in the said Directorate. The petitioner was promoted to the post of UDC in May, 2010 in the parent department *pro forma*. When the petitioner was about to be absorbed in the Board of Wakfs and he was further assured that he would be absorbed against the post of Accountant. The consent of Tripura Board of Wakfs is reflected in the communication No.F.2(11)-TBW/2001/716-19 dated 27.11.2012 issued by the Chief Executive Officer, Tripura Board of Wakfs [Annexure-2 to the writ petition].

3. The petitioner has further averred that in terms of the recruitment rules, to fill a post of Accountant on promotion, the person holding the post of UDC must have five years experience and completed the Accounts Training. It is evident from the communication under No.F.1(475)/MWD/Estt/2006/207 dated 06.05.2013 issued by the Director, Minorities Welfare [Annexure-3 to the writ petition] the petitioner was nominated to join the Tripura Accounts cum Administrative Training, 2013 [21st Session]. In the due course, the petitioner has completed the said training successfully. But there was no initiative taken for his absorption thereafter.

4. The respondent No.2, being annoyed at the conduct of the petitioner for having approached this court by filing a writ petition being WP(C)No.861 of 2017, discontinued the deputation of the petitioner by the memorandum under No.F.1(107)/MW/Estt/Pt-II/2017/SH/5983-89 dated 18.09.2017 [Annexure-4 to the writ petition].

5. It would be pertinent to mention that the earlier writ petition as filed by the petitioner being WP(C)816 of 2017 was disposed of by the judgment dated 11.08.2017 [Annexure-1 to the writ petition] with the direction as under :

"4. Having heard Mr. Sinha, learned counsel as well as Mr. Chakraborty, learned Additional Government Advocate, this court is of the view that it is in the fitness of things the respondents no. 1, 2 and 3 shall be directed to take decision in respect of absorption of the petitioner within 6(six) weeks from the day when the petitioner shall submit a copy of this order and communicate the decision to the petitioner at the earliest. Accordingly, it is directed. If the petitioner is aggrieved by any decision of those respondents in this regard, the petitioner shall be at liberty to approach this court again."

This writ petition has been filed on the same subject matter in exercise of the said leave afforded by the said judgment dated 11.08.2017.

6. The respondents have filed a composite reply and has stated that in terms of the judgment dated 11.08.2017 [Annexure-1 to the writ petition] the case of the petitioner was examined and the decision has been taken to repatriate the petitioner to his parent organization i.e. Tripura Board of Wakfs. There exists no policy decision to absorb the employees of PSUs and the Boards in the Administrative Department. Even there is no scope to absorb the petitioner in the post of UDC as that was to be filled up by promotion from the feeder grade of LDC. However, the respondents have admitted that Tripura Board of Wakfs promoted the petitioner to the post of UDC with notional effect from 01.10.2006. They have categorically stated that the respondents did not extend any assurance to the petitioner in respect of his

absorption. The respondents have further admitted that no objection was issued by the Tripura Board of Wakfs to spare the petitioner. They have also admitted that the petitioner was sponsored for Tripura Accounts cum Administrative Training, 2013 [21st Session]. Nowhere, it has been mentioned that after training, the petitioner would be appointed as Accountant in the Minority Welfare Department. From the communication under No.F.2(1)-FIN(G)/AT/2013 dated 18.02.2014 [Annexure-5 to the reply] it would be apparent that the petitioner has successfully completed the said training. The petitioner was however repatriated to his parent Board with effect from 18.10.2017 in terms of the memorandum No.F.1(107)MW/Estt/PT/II/2017/SH/5983-89 dated 18.10.2017 [Annexure-R/6 to the reply]. In the reply, the respondents have stated, inter alia, as under :

"Further, it is worth to mention here that at present there is no vacant post under Minorities Welfare Department after the Finance Department regretted the proposal of continuance of vacant posts of the Minorities Welfare Deptt vide U.O.No.150/Fin(Estt-III)/18, dated 16.04.2018. Copy of the Note No.4 & 5 is annexed herewith which is marked as Annexure-R/11.

The Minorities Welfare Directorate never provided any assurance to the writ petitioner for absorption in this Department, so that any legitimate expectation could be formed in his mind. It will be not out of place to mention here that the Minority Welfare Department is functioning with deputed staff/retired employees engaged on contract basis only.

Moreover, there is no provision in the Recruitment Rules (RR) of the UDC in the M.W. Deptt for absorption of staff from any Board. Copy of the said RR is annexed herewith which marked as Annexure-R/12."

7. Mr. D.K. Biswas, learned counsel appearing for the petitioner has submitted that the action, and assurance of the respondent No.2 in particular, has formed the legitimate expectation. The respondents were supposed to act to fulfill that expectation. Even on the face of the direction issued by this court by the judgment dated 11.08.2017, they have mechanically and without taking relevant considerations repatriated the petitioner to his parent department. Thus, the respondents be directed to absorb the petitioner in the post of

UDC and to consider his promotion to the post of Accountant as the petitioner is eligible for such consideration.

8. Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has submitted that the petitioner does not have any right to claim for absorption inasmuch as, the absorption can only be made in terms of the extant rules and on the basis of policy. There is no rule. Mr. Debbarma, learned Addl. G.A. has admitted that it is true that the petitioner was nominated for Accounts and Administrative Training by the respondent No.2 and the petitioner has successfully completed that training. But the completion of that training, by itself does not confer any right to the petitioner to be appointed as Accountant in the Minority Welfare Department. The recruitment rules provide that from UDC of the Department, who have completed the Accounts and Administrative Training and who put five years service, promotion may be considered to the post of Accountant. The petitioner was never absorbed in the post of UDC nor was he brought on deputation in that post. During his deputation in the post of UDC, Tripura Board of Wakf promoted him to the post of UDC *pro forma*. The petitioner continued in the deputation till he was repatriated by the memorandum dated 18.10.2017 [Annexure-6 to the reply]. Now the petitioner is an employee of Tripura Board of Wakf.

9. Having appreciated the submissions of the counsel for the parties and scrutinized the records as placed before this court, the solitary question that falls for consideration is whether this court can issue mandamus directing the respondents to absorb the petitioner.

This court is partly in agreement with the submission made by Mr. Biswas, learned counsel appearing for the petitioner so far as it relates to extending the expectation, inasmuch as the petitioner was nominated for Tripura Accounts cum Administrative Training, 2013 [21st

Session] unless the respondent No.2 had in mind that the Minority Welfare Department would absorb or appoint the petitioner in the post of Accountant why the petitioner was sent for the said training. But equally it is true that for nominating the petitioner for the said training, the petitioner cannot claim any right for his absorption but there may emerge legitimate expectation. But legitimate expectation is not right but it stokes an ethical responsibility on the respondents. Now, the petitioner has been repatriated to his parent Board. But according to this court, this cannot create any embargo in consideration of the petitioners case if the respondents is inclined to relax the requirement for appointment to the post of Accountant considering that the petitioner has all qualifications and experience to be appointed as Accountant.

10. In such circumstances, this writ petition stands disposed of with direction on the respondents that they shall consider whether they can liberalize the requirement of the recruitment rules for appointing the petitioner in the post of Accountant in order to consider the petitioner for the said post, whenever the exercise for promotion for appointment will be taken up.

No order as to costs.

JUDGE