

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.674 of 2019

Dipankar Majumder

-----Petitioner (s)

Versus

The State of Tripura & Ors.

----Respondent(s)

For Petitioner (s) : Mr. R. Datta, Adv.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

31.05.2019

Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

Mr. Sharma, learned Addl.G.A. has taken the instruction from the respondents in terms of the order dated 30.05.2019.

The petitioner's grievance falls within a short compass. The petitioner was deprived of promotion to the post of Upper Division Clerk [UDC] and superseded by his juniors while making the promotion to the post of UDC by the order dated 26.03.2015, followed by the order dated 30.03.2015, Annexures-3 & 4 to the writ petition being W.P.(C) No.713 of 2018 which was filed by the petitioner under the mitigating circumstances seeking interference of this court. The said writ petition was disposed of by the order dated 23.07.2018 by observing and directing the respondents as follows:

"5. Since at this stage, there is no reason forthcoming which could be a basis in withholding the petitioner's suitability for promotion to the post of UDC, it may be appropriate for this court to dispose of the writ petition with a direction to the DPC Chairman (District Magistrate & Collector), West Tripura District, Agartala to decide the representation which has been forwarded by the District Magistrate & Collector, Dhalai District, Jawaharnagar dt.25.03.2017 (Annexure-7) and decide by a speaking order and the decision be communicated to the petitioner and if the petitioner feels aggrieved by the decision

communicated to him, he will be at liberty to avail remedy permissible under the law. Necessary orders be passed by the DPC Chairman (District Magistrate & Collector), West Tripura District, Agartala within two months of certified copy of the order being served to his office."

The petitioner filed a copy of the said order dated 23.07.2018, as delivered in W.P.(C) No.713 of 2018 to the District Magistrate & Collector, Dhalai District, Jawaharnagar for taking appropriate action thereof. But no action whatsoever was taken within the time stipulated. Moreover, by the communication dated 14.12.2018, Annexure-11 to the writ petition, the Special Secretary, Government of Tripura, Rural Development informed the District Magistrate & Collector, West Tripura, Agartala that all promotions are held up as per decision of the State Government and vide communication No.F.2(24)GA-(P&T)/05 (Vol-II) dated 01.04.2017 till disposal of 2[two] petitions pending in the Supreme Court. However, the proposal was referred also to GA(P&T) Department for views. The response, as received from the GA(P&T) Department is reproduced for reference hereunder:

"The Hon'ble High Court has only directed to consider the petition and decide by speaking order. It cannot be presumed that promotion is to be granted. The Chairman, DPC may consider the representation as per direction of the Hon'ble High Court."

The petitioner felt seriously aggrieved by the said observation. It is not an outcome of misreading of the order dated 23.07.2018. That apart, it seeks to brush aside the legitimate grievance of the petitioner in a most unceremonious manner. The petitioner was earlier superseded and the DPC has considered him favourably. The proceeding minutes of the DPC dated 28.09.2010, Annexure-10 to the writ petition, has been relied on. The DPC has categorically observed that it is apparent from the vacancy position in the Rural Development Department that there is a clear vacancy where the petitioner can

rightfully be accommodated. The DPC has, therefore, recommended promotion of Dipankar Majumder [the petitioner], LDC to the post of UDC (Group-C) against SC vacancy of RD Department, Tripura with retrospective effect. Hence, the word 'retrospective' should mean from the date when the petitioner's juniors were promoted to the said post of UDC. It has been clearly observed by the DPC attended by all the District Magistrates & Collectors that there is a clear vacancy for the SC category candidate. The said observation made by the GA(P&T) Department is interfered with and set aside. It will have no bearing for any action in promoting the petitioner to the post of UDC. It is directed that if the order of *status quo* as passed by the apex court in respect of the appointments where the issue of reservation is concerned is in still force, then the petitioner shall be promoted retrospectively with effect from the date when his juniors were appointed but all the financial benefits in the given circumstances shall be released to the petitioner from 27.05.2019 when this writ petition is filed. However, if such order of *status quo* is not there, the petitioner shall immediately be promoted to the post of UDC with retrospective effecting the manner as stated before. In that event only the financial benefit shall be entitled to the petitioner from the date of filing of this petition i.e. 27.05.2019.

With these observations and direction, this writ petition stands allowed.

There shall be no order as to costs.

The file as produced by Mr. Sharma, learned Addl. G.A. is returned.

JUDGE

Sujay