

HIGH COURT OF TRIPURA

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WP(C) No.95 of 2021

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1. Sri Santanu Bhattacharjee, S/o Sudhir Chandra Bhattacharjee, resident of West Joynagar, Road No.7, Dashamighat, Agartala, P.O. Agartala, P.S. West Agartala, Sub-Division Sadar, District- West Tripura, Pin-799001.

2. Sri Pranab Deb, S/o. Pranesh Chandra Deb, resident of Katlamara, P.O. Simna, P.S. Sidhai, Sub-Division – Mohanpur, District- West Tripura, Pin-799212.

.....Petitioner(s)

V E R S U S

1. The State of Tripura to be represented by the Chief Secretary, Government of Tripura, having his office at New Secretariat Complex, Khejurbagan, P.O. Secretariat, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura, Pin-799010.

2. The Secretary, Department of Education, Government of Tripura, having his office at New Secretariat Complex, Khejurbagan, P.O. Secretariat, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura, Pin-799010.

3. The Director of Secondary Education, Government of Tripura, having his office at Education Directorate, Office Lane, Agartala, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin-799001.

.....Respondent(s)

(B) WP(C) No.96 of 2021

1. Smt. Durba Chakraborty, C/o. Sanjoy Kr. Ram, resident of Radhanagar, behind Ashish Petroleum, P.O. Agartala, P.S. West Agartala, Sub-Division Sadar, District- West Tripura, Pin-799001.

2. Smt. Nandita Bhattacharya, W/o. Sri Narayan Acharjee, resident of Potunagar, P.O. Durjoynagar, P.S. NCC, Sub-Division- Sadar, District- West Tripura, Pin-799009.

.....Petitioner(s)

V E R S U S

1. The State of Tripura to be represented by the Chief Secretary, Government of Tripura, having his office at New Secretariat Complex, Khejurbagan, P.O. Secretariat, P.S. New Capital Complex, Sub-Division-Sadar, District- West Tripura, Pin-799010.

2. The Secretary, Department of Education, Government of Tripura, having his office at New Secretariat Complex, Khejurbagan, P.O. Secretariat, P.S. New Capital Complex, Sub-Division- Sadar, District- West Tripura, Pin-799010.

3. The Director of Secondary Education, Government of Tripura, having his office at Education Directorate, Office Lane, Agartala, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin-799001.

.....Respondent(s)

For Petitioner(s) : Mr. Anukul Raj, Advocate,
Mr. Koomar Chakraborty, Advocate.

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

Date of Judgment : **26th February, 2021.**
& Order

Whether fit for reporting : NO.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

JUDGMENT & ORDER (ORAL)

These petitions are connected. They have been heard together and would be disposed of by this common judgment. Petitioners are Graduate and Postgraduate Government teachers appointed sometime in the year 2010. Their services were terminated by the Government by orders passed in December 2017 pursuant to the decision of the Division Bench of this Court in case of *Tanmoy Nath and others versus State of Tripura and others* reported in (2014) 2 TLR 731 as confirmed by the Supreme Court.

They have challenged these terminations on the ground that their cases are not covered by the judgment in case of *Tanmoy Nath* (*supra*).

[2] Before recording the contentions of the counsel for the petitioners, a brief background leading to the decision in case of Tanmoy Nath may be given. In the State of Tripura the State Government had issued successive public advertisements for appointment of large number of graduate, undergraduate and postgraduate teachers in the years 2002 and 2006, however, the selection process could not be completed. Yet another advertisement was issued on 23.09.2009 inviting fresh applications, however, providing that those who had already applied earlier, need not apply afresh and their applications would be considered by giving one-time age relaxation. After these selections were made large number of petitions were filed challenging the appointments on various grounds. Bunch of these petitions were disposed of by a Single Judge of the Agartala Bench of Gauhati High Court by common judgment dated 16.11.2011. The learned Single Judge did not go into the merits of the allegations made by the petitioners but remanded the matters back to the Government for thorough scrutiny and examination by constituting a committee. This judgment was challenged by private individuals as well as by the State Government. The issue was thus placed before the Division Bench. The Division Bench of this court in case of Tanmoy Nath held that the new employment policy

formulated by the State Government in the year 2003 on the basis of which all the selections and appointments were made, was defective on numerous counts. Entire selection was set aside. While doing so, the Court was conscious that terminating such large number of teachers at one-shot would create a vacuum of teaching staff in Government schools which would be detrimental to the education of young children. The Court, therefore, issued certain directions for continuing these teachers till fresh selections and appointments can be made within a specified time. The judgment of Tanmoy Nath was carried in appeal by the State Government. The Supreme Court initially stayed the judgment. All the selected teachers who were under threat of termination by virtue of the judgment of the High Court continued in the same capacity. However, subsequently the said appeal was dismissed. The judgment of the High Court in Tanmoy Nath was confirmed. Only modification made was in the timelines for completing the fresh selections with a further direction that the existing teachers would get the benefit of age relaxation. These timelines were also extended and revised from time to time and eventually even this extension was not granted further. Many teachers in the State thus faced terminations.

[3] The petitioners' services have been terminated as part of the above process. They have filed these petitions challenging their terminations on the grounds that they were never a party in Tanmoy Nath

case and their selections were not under challenge. Learned counsel for the petitioners argued that the High Court in Tanmoy Nath had specifically provided that the judgment would be prospective and would apply only to those selections which were in challenge before the High Court. In his opinion, since the selection of the petitioners was not in challenge, the judgment in case of Tanmoy Nath would not cover their cases and consequently the State Government committed a serious error in terminating their services relying on the decision in case of Tanmoy Nath.

[4] In this context, counsel has placed heavy reliance on following observations of the judgment.

“122. Though we have set aside the selections, we are concerned with the education of the small children who are innocent and have no concern with the illegalities of the selection. We, therefore, direct that the teachers whose selections have been set aside shall continue to function in their present place of postings till 31.12.2014, i.e., the end of the academic session of this year.

127. Since we have set aside the revised employment policy which applies to a large category of posts and not merely to teachers, we would like to make it clear that our judgment shall be prospective in nature and shall not affect the appointments already made unless the said appointments are already under challenge before the court on the ground that the employment policy is illegal..”

[5] On the other hand learned Government Advocate Shri Debalay Bhattacharjee opposed the petitions contending that all these issues are

settled through series of orders and judgments of this Court. The decision in case of Tanmoy Nath is clear and struck down the entire selection process. Later on some petitioners approached the High Court in WP(C) No.83 of 2019 and connected petitions contending that since they were not made parties in the case of Tanmoy Nath, their services could not have been terminated by the Government since the decision in case of Tanmoy Nath would not be a binding decision to them. These petitions were dismissed by the Division Bench of this Court by a judgment dated 03.10.2019.

[6] I have noted in brief the background leading to the decision in case of Tanmoy Nath. Since the petitioners have argued that their cases are not covered by the said decision, it would be appropriate to take note of the facts in case of Tanmoy Nath and the conclusions of the Court in the said decision. This would be with special focus on the argument of the petitioners that their selections were not in challenge before the High Court.

[7] The Division Bench in case of Tanmoy Nath noticed the background under which large number of undergraduate, graduate and postgraduate teachers were selected and appointed by the State Government. As noted, previous two attempts for filling up such posts by

inviting applications through advertisements issued in the years 2002 and 2006 did not result into selections and appointments. In the year 2009 when the State Government issued a fresh advertisement, two special clauses were added. Firstly, those who had already applied earlier need not apply again and in their cases one-time age relaxation would be granted. The High Court in case of Tanmoy Nath has recorded that thousands of applications were made for 1102 posts of postgraduate teachers, 4617 of graduate teachers and 4600 posts of undergraduate teachers. The State machinery carried out selections which were based on the new recruitment policy framed in the year 2003. The Court went deep into the various clauses contained in the recruitment policy and found that many of the provisions were invalid and would violate Articles 14 and 16 of the Constitution. Based on such considerations, the Court in paragraph 106 observed as under :

*“106. As we have already held above that in this case the petitioners cannot challenge the selection on the ground that they were based on the ground of interview. **Since, we are quashing the entire selections on various grounds, we are also considering the question whether in the future selections should be made only on the basis of interviews or not.** Whether the method of oral interview is an appropriate method to be followed for selecting candidates for jobs has been the subject-matter of number of decisions by the Apex Court.*

[8] Thus the Court had observed that the entire selections were being quashed on various grounds. After further discussion the Court gave

further directions for formulation of future policy of employment. In paragraph 121 the Court held and observed as under :

*“121. It has been urged that even if we set aside the selections, our judgment should be prospective in nature. It has also been urged by Mr. Sankar Deb, learned senior counsel for the petitioners, that those portions of the policy which are bad may be severed and those portions which can be upheld may be retained, but the appointments already made need not be disturbed. Reliance has been placed on the judgments of the Apex Court in A.P. Public Service Commission v. K. Sudharshan Reddy and Others (2006) 5 SCC 505, AIR 1957 SC 628, (2000) 7 SCC 719. These judgments have no applicability to the cases in hand and we are not all in agreement with this submission. The selections have been totally unfair. The selections have not been made in a transparent manner. The citizens of this country have not been treated equally. Most of the clauses of the policy are illegal and unconstitutional. **The entire policy is bad because it gives no guidelines and, therefore, the entire selection will have to be, must be and is accordingly set aside.**”*

While doing so, the Court granted time to the Government to fill up the resultant vacancies by 31.12.1014 and till such time, the existing teachers would continue to function on their present postings.

[9] The decision of this Court in case of Tanmoy Nath thus was clear on its sweep and implications. Entire selections made by the State Government pursuant to the advertisement issued on 23rd September, 2009 were set aside. This has been so stated by the Court on various occasions as I have noted earlier. Very foundation of the selection being a new recruitment policy which was declared unconstitutional, the Court was persuaded to set aside all selections. It did not refer to specific selections

and appointments under challenge as is sought to be canvassed before me by the counsel for the petitioners. It is undisputed that the petitioners had also applied in response to the said advertisement and were selected and appointed under the same exercise which was scrutinized by the High Court and declared as illegal. The observations of the Court in paragraph 127 of the judgment noted earlier therefore must be viewed from this background. This paragraph cannot be read in isolation as to limit the effect of the judgment in case of Tanmoy Nath to only those specific selections which the original petitioners might have challenged before the High Court. What in paragraph 127 of the judgment the Division Bench had provided was that the effect of the judgment would be limited to the selection of teachers pursuant to the advertisement dated 23.09.2009 and not to any other selections. This was necessary because the new recruitment policy of the Government framed in the year 2003 may have been a source of appointment of number of other Government posts. If the decision of the Tanmoy Nath was utilized to reopen such appointments, far reaching and widespread implications would be felt in administration leading to chaotic situation. It was in this background that the Court made its clarifications in paragraph 127 of the judgment.

[10] The fact that the petitioners were not parties in Tanmoy Nath judgment and therefore the decision would not bind them, was perhaps not

even the argument of the counsel for the petitioners. However, such contention was raised before the Division Bench in case of ***Partha Debnath and others versus State of Tripura and others*** in WP(C) No.1219 of 2019 and other connected petitions in which while rejecting such contention the Division Bench had made following observations.

“16. The core issue which arises for consideration is as to whether the instant writ petitioner(s) can be allowed to reopen the issues decided by this Court in Tanmay Nath (supra), as affirmed by the Apex Court vide order dated 29.03.2017 on the ground that; (a) this termination is illegal on account of violation of principles of natural justice, inasmuch as no notice stood issued to them, nor were they impleaded as parties to such proceedings; (b) the services of the petitioners stand protected by and in terms of the directions contained in para-127 of the very judgment; (c) whether the impugned memorandum extending the period of services on ad-hoc basis and rejecting the representations should be quashed or not.

17. In WP(C) No.51 of 2014, titled as Tanmoy Nath (supra), the Court vide order dated 06.02.2014 had directed issuance of a public notice since large number of parties (4000) were likely to be affected. Pursuant thereto, notices dated 21.02.2014 were issued in two newspapers namely, Dainik Sambad and Daily Desher Katha respectively. During the pendency of the hearing, we had called for the record of WP(C) No.208 of 2010, titled as Shri Sudhan Majumder & others vs. The State of Tripura & others, also disposed of with Tanmoy Nath (supra), and noticed that public notice dated 08.12.2010 was issued in the daily newspaper namely “Syandan Patrika” informing the general public of the pendency of the petitions and the Court dealing with the matters with regard to the appointment of graduate teachers. Also there is an order dated 24.11.2010 in C.M. Appl. No.223/2010 in c/w WP(C) No.208 of 2010 to such an effect.

18. As such, at this stage, instant writ petitioners cannot be allowed to reopen the entire issue, purely on the ground of their non-impleadment as parties or non-issuance of notice to them. Who are the petitioners? Are they illiterate rustic villagers,

hailing from the most deprived strata of the society having no access to justice, also not knowing its procedures? Most certainly not. They are educated Government employees posted at several places within the State. Can it be said that they were not aware of the proceedings laying challenge to the appointments made with regard to more than 10,000 posts of different categories of teachers appointed by the Government, pursuant to the advertisement issued in the year 2002, 2006 and 2009? The answer obviously lies in the negative and the reason is two-fold. The pendency of the original writ petitions was widely circulated, as we are informed, throughout the State, both in the print and electronic media. So also was its outcome made known. It sent ripples throughout the State. Not only that, prior to rendering of the judgment in Tanmay Nath (supra), this Court had directed issuance of notice to be published in the newspaper, which was also done. To contend that such directions or notice were confined only with respect to certain category of teachers and as such, cannot be construed to be a notice qua other categories is not acceptable. Teachers in Tripura are a close-knit fraternity. They also have a union who has been pursuing the matter at different levels. It is true that in a service matter, principles laid down under Order I Rule 8 of CPC may not apply, but then this Court was dealing with a case where as it stood observed, that the action of the Government was “a cruel joke on the people of Tripura”. The entire selection process was held to be absolutely arbitrary, capricious and whimsical. It smacked of nothing less than nepotism and favourism. Prudently, the writ Court thought it fit to issue a general notice and not implead all of the 10,323 selected candidates as party respondents, some of whom, in any case, were before this Court. In a representative capacity, the petitions were considered, argued and decided.

19. Significantly, none of the instant petitioners laid any challenge to the judgment rendered by this Court in Tanmay Nath (supra). Neither did they seek review, nor did they file any appeal. Why so? remains a shrouded secret. With the dismissal of the Special Leave Petition on 29.03.2017, and their appointment conclusively found to be illegal, they ought to have returned home, but for the extensions granted by the Apex Court vide orders dated 14.12.2017 and 01.11.2018 (reproduced supra) [paras-9 & 10]. Even at that point in time, they did not express their concern or raise any protest of violation of

principles of natural justice; the issue of their non-impleadment or of the order passed behind their back. It is not that they were sitting in a penance or meditating in the Himalayas, totally cut off from the worldly affairs. Obviously they were waiting in the wings and only when they fell out favour of a lady fortune, inasmuch as time extended by the Apex Court is expiring, and otherwise not having qualified, they took steps, speculative in nature, of having the entire issue reopened by challenging the judgment of this Court in Tanmay Nath (supra). We find their such act and conduct to be absolutely despicable. By raising one false plea after the other, somehow they are just trying to cling to the post, to which they were illegally appointed and thereby scuttle the due process of fresh selection and appointment wrongfully depriving the eligible candidates.

23. Even on the second point, we find the plea to be absolutely fallacious, if not dishonest. Petitioner's contention that the judgment was to apply prospectively and not affect the appointments already made is absolutely misplaced and misconceived. In para-121 reproduced supra, this Court had specifically set aside the entire selection process and appointments made pursuant to the policy framed by the State. Only to protect and safeguard the interest of the children, so as not to adversely affect their studies, the selected candidates were allowed to function till the end of the academic session, i.e. 31.12.2014."

[11] In the result, petitions are dismissed. Pending application(s), if any also stands disposed of.

(AKIL KURESHI), CJ