

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 79 of 2022

1. Smt. Purnima Saha,

Daughter of Sri Kalipada Saha, resident of Near AOC, Amarpur Town, P.O. Amarpur, Dist. Gomati Tripura, Pin 799001.

2. Smt. Debjani Saha,

Daughter of Sri Rabindra Chandra Saha, wife of Sri Prabir Saha, resident of Vill. Naraura, Near Satsang, P.O. Bishalgarh, Dist. Sepahijala Tripura, presently residing at C/o Asit Baran Saha, Town Bardowali, P.O. A.D. Nagar, P.S. West Agartala, Dist. West Tripura, Pin 799003.

3. Smt. Sipra Biswas,

Wife of Sri Pradip Sen, resident of Vill. North Jolaibari, P.O. Jolaibari, P.S. Baikhora, Sub-Division Santirbazar, Dist. South Tripura, Pin 799141.

4. Smt. Likha Debnath,

C/o late Nishi Kanta Debnath, resident of Vill & P.O. Amarpur (Fishery Road), Dist. Gomati Tripura, Pin 799101.

5. Sri Biswajit Pal,

C/o late Jadab Chandra Pal, resident of Vill & P.O. Jolaibari, Belonia, Dist. South Tripura, Pin 799141.

6. Smt. Purnima Debnath,

Daughter of Sri Gopal Debnath, resident of Vill. & P.O. Abhoynagar, Agartala, Dist. West Tripura, Pin 799005.

7. Sri Prabir Karmakar,

Son of late Manindra Kr. Karmakar, resident of Vill. Subhash Colony, P.O. Santirbazar, Dist. South Tripura, Pin 799144.

8. Sri Gobinda Pal,

Son of late Rohini Kumar Pal, resident of Vill. & P.O. Debbaru, Sub-Division Belonia, Dist. South Tripura, Pin 799155.

9. Smt. Usha Bedagna

C/o Sri Upendra Bedagna, P.O. Charipara, Chowrangeepara, A.D. Nagar, Agartala, Dist. West Tripura, Pin 799003.

10. Sri Laxman Saha,

C/o late Surendra Ch. Saha, P.O. College Tilla, Agartala, Dist. West Tripura, Pin 799004.

----- Appellant(s)

Versus

1. The State of Tripura,

Represented by the Chief Secretary, Government of Tripura, Secretariat Building, New Capital Complex, P.O. Kunjaban, Agartala, Dist. West Tripura, Pin 799006.

2. The Secretary,

Education Department, Government of Tripura, Secretariat Building, New Capital Complex, P.O. Kunjaban, Agartala, Dist. West Tripura, Pin 799006.

3. The Director of School Education,

Government of Tripura, Office Lane, Shiksha Bhavan, Agartala, P.O. Agartala, Dist. West Tripura, Pin 799001.

-----Respondent(s)

For Appellant(s)	:	Ms. S. Deb (Gupta), Adv.
For Respondent(s)	:	Mr. K. De, Addl. G.A.
Date of Hearing & Judgment	:	30th August, 2022.
Whether fit for reporting	:	YES

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**HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

JUDGMENT & ORDER (ORAL)

[Per S.G. Chattopadhyay], J

This writ appeal has been filed against the judgment and order dated 23.07.2021 passed by the learned Single Judge in WP(C) No.476 of 2021.

[2] The factual context of the case is as under:

The appellants were the original petitioners in WP(C) No.251 of 2012. They had challenged the selection and appointments of the private respondents 3 to 7 therein to the post of Assistant Teacher, inter alia, on the ground that the said respondents did not have minimum qualification for the post in question. The said writ petition was disposed of by the learned Single Judge by an order dated 09.06.2017 in the following manner:

"02. By means of this writ petition, the petitioners had urged this court to quash the selection and appointment of the private respondents, the respondents No.3-7, in the post of Assistant Teacher (Science). At the very outset, Mr. Somik Deb, learned counsel appearing for the petitioners has submitted on instruction that the petitioners No.4 and 6 are not eligible for the post of Assistant Teacher (Science) as they do not have the minimum requisite qualification for the said post. The petitioner No.4 has failed to secure the bachelor degree in Science. She got 'compartmental' and there is no proof that she cleared the said examination. The petitioner No.6 has a bachelor degree in Arts (BA). Hence, she cannot be considered for appointment as the Assistant Teacher (Science).

03. Mr. Deb, learned counsel appearing for the petitioners has further acceded to the information provided by Ms. A.S. Lodh, learned Addl. G.A. and Ms. B. Chakraborty, learned counsel that the petitioner No.10 has got an appointment in the post of Tehshilder and thus she would not pursue any relief as claimed in the writ petition. By the order passed today in IA No.578 of 2017 arising out from this petition, the petitioner No.1 has been struck off as she got an appointment as the Lower Division Clerk (LDC). This writ petition therefore survives for consideration for the writ petitioners No.2, 3, 5, 7, 8, 9, 11, 12, 13 and 14.

04. Mr. Deb, learned counsel appearing for the petitioners has made a clear statement before this court that the remaining petitioners will not pursue the ground of challenges as laid in the writ petition. Those petitioners, as urged by Mr. Deb, learned counsel for the petitioners, may favourably considered for their appointment in any government department commensurate to their qualification.

05. In response to the said statement, Mr. B. C. Das, learned Advocate General appearing for the respondents No.1 and 2 has unambiguously submitted that their cases would be positively considered by the Government. Even their cases may be considered in any other Department if they are not found suitable for job under the Education Department.

06. To this proposition, Mr. S.M. Chakraborty, learned senior counsel and Mr. P.K. Pal, learned counsel appearing for the respondents No. 4, 6 and 7 did not project any opposition whatsoever and they do not have any reason to oppose such proposition inasmuch as the statement that has been made by Mr. Somik Deb, learned counsel for the petitioners is nothing short of withdrawal of challenge against their appointments.

07. In view of the emerged situation, this writ petition is disposed of. In terms of the undertaking of the learned Advocate General, the respondents No.1 and 2 shall consider the cases of the writ petitioners No. 2, 3, 5, 7, 8, 9, 11, 12, 13 and 14 for their appointment. This court under the emerged circumstances would not lay any time frame, however learned Advocate General has assured that within a period of 6(six) months the process of consideration shall be completed and in the event, any writ petitioner has crossed the maximum age-limit the state would take initiative to relax the age-limit on consideration that they were litigating since 2012.

The petitioners may file the appropriate application to the competent authorities including the Chief Secretary of the state with the copy of this order."

[3] In WP(C) No. 251 of 2012, it was submitted by the appointed counsel of petitioners No.4 and 6 that they were not eligible for the post of Assistant Teacher (Science) as they did not have the minimum requisite qualification for the said post. The learned Single Judge recorded the submission of

the counsel of the said petitioners in Paragraph 2 of the judgment and no relief was granted to them as they abandoned their claim.

[4] Subsequently, petitioners No.4 and 6 filed REV. PET. No.28 of 2017 contending that submission made on their behalf in WP(C) No.251 of 2012 was not made on their substantive instructions, inasmuch as, both the petitioners had the basic qualification of Bachelor of Science (B.Sc.) and they were very much eligible for consideration for appointment to the post of Assistant Teacher (Science).

[5] In view of their contention, the Review Petition was allowed and the judgment and order dated 09.06.2017 passed in WP(C) No.251 of 2012 was modified declaring that petitioners No.4 and 6 did have the basic qualification for appointment to the post of Assistant Teacher (Science) and the State respondents were directed also to consider their case along with all other petitioners in terms of the judgment rendered in WP(C)No.251 of 2012.

[6] According to the appellants, the State Government did not act in terms of the undertaking made by the State counsel before the learned Single Judge in WP(C)No.251 of 2012. The appellants, therefore, filed CONT. CAS(C) No.32 of 2018 before the learned Single Judge for non compliance of the judgment and order passed in WP(C)No.251 of 2012. Said contempt petition was disposed of by judgment and order dated 22.01.2019 in which the learned Single Judge was of the view that the State authorities had not committed any willful breach of undertaking given to the Court. The following observations of the learned Single Judge from the judgment rendered in the contempt case may be noted:

"13. Having appreciated the submissions made by the learned counsel for the parties, this court is of the view that it is not a case of deliberate violation or refusal to implement the undertaking as reflected in the order of the court. But it is true that the undertaking as made by the learned Advocate General has not been complied with inasmuch as even an ordinary man can understand the true meaning of

the said undertaking. The undertaking was made to consider the petitioners as a separate class against the vacancies and that to consider them positively. That undertaking implies that the petitioners would be appointed if not, for any reason they are not eligible to such appointment. Even the undertaking has encompassed the relaxation of age if it is found the petitioners have crossed the maximum age limit for the Government employment. However, that part of the undertaking has been complied with. But the petitioners were not considered in terms of the undertaking.

Thus, the respondents are further directed to consider the cases of the petitioners within a period of 3(three) months from the date when a copy of this order be placed to the respondents of the writ petition being W.P.(C) No.251 of 2012 in terms of the said undertaking and by treating them as a separate class. The notice as issued for drawing up of the contempt proceeding is discharged subject to the above direction. The proceeding is closed."

[7] However, the State authorities filed CONT. APPEAL No.1 of 2019 challenging the order dated 22.01.2019 passed in CONT. CAS(C) No.32 of 2018 and prayed for the following reliefs:

"The appellant has prayed for the following reliefs:

"Be pleased to set aside judgment and order dated 22.01.2019 passed in Cont.CAS(C) No.32 of 2018 passed by the Hon'ble Single Judge to the extent of direction upon Appellant and Respondent No.13 for considering the case of the writ petitioners for appointment within 3 months treating them as a separate class, and to pass such other order/orders as to your Lordships may seem fit;

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Pending disposal of the appeal to pass an order staying the effect and operation of the fresh direction upon appellant and Respondent No.13 for considering the case of the writ petitioners for appointment within 3 months treating them as a separate class contained in Judgment and order dated 22.01.2019 passed in Cont. CAS(C) No.32 of 2018 passed by the Hon'ble Single Judge till disposal of the Appeal."

[8] The said contempt appeal was withdrawn by the State appellants reserving liberty to initiate appropriate proceeding in accordance with law. Order dated 28.05.2019 whereby the contempt appeal was disposed of reads as under:

"Learned counsel for the appellant seeks permission to withdraw the present appeal reserving liberty to initiate appropriate proceeding in accordance with law.

Liberty as prayed for is granted."

[9] The State authorities then filed WA No.127 of 2019 challenging the order dated 22.01.2019 passed in CONT. CAS(C) No.32 of 2018. The said writ appeal was disposed of by an order dated 10.12.2019 in which it was held that in the judgment of the contempt case which was under challenge in WA No.127 of 2019, the learned Single Judge, in fact, concluded that there was no deliberate violation or refusal to implement the undertaking given before the Court. That being the position, further directions for considering the case of the petitioners as a separate class was impermissible to be issued. The judgment of the learned Single Judge in CONT. CAS(C) No.32 of 2018 was thus reversed in WA No.127 of 2019 without foreclosing the rights of the petitioners, if any, under law. The judgment passed in WA No.127 of 2019 reads as under:

".....Having heard learned counsel for the parties, in our opinion the direction issued by the learned Single Judge in the said contempt order the relevant portion of which is reproduced above, was beyond the purview of contempt jurisdiction. It is well settled that in a contempt petition the Court is primarily concerned with the compliance of the directions of the Court or of a statement or undertaking made by the parties on the basis of which the proceedings may have been disposed of. In a contempt petition the correctness of the decision of the authority would not be open to consideration. We are conscious that the Courts have taken a view that in a contempt proceeding in order to ensure that the directions are fully complied with, the Court may even strike down an order which is found to be contemptuous. However, in order to do so, the Court first must come to the conclusion that the order in question is passed in disregard of a statement of a party or directions of the Court and therefore on the face of it is in defiance of the order or the statement.

In the present case these are not the conclusions of the learned Single Judge in fact the conclusion is that this is not a case of deliberate violation or refusal to implement the undertaking given to the Court. That being the position, further directions for considering the case of the petitioners as a separate class was impermissible to be issued.

Under the circumstances, impugned order is reversed. This would not foreclose. The rights of the petitioners if any, under law....."

[10] After the judgment was passed in WA No.127 of 2019, the appellants served a demand notice on the State respondents on 06.02.2020 seeking

appointment in terms of the judgment and order dated 09.06.2017 passed by the learned Single Judge in WP(C) No.251 of 2012. In response, State respondent No.2 made the following communication dated 05.03.2020 (Annexure-11) to the appellants:

"No.F.1(1-8)-SE/E (NG)/2017 (L-2)/36

Government of Tripura

Directorate of Secondary Education

Estt. (N.G) Section

Dated, Agartala, the, 05/03/2020.

**To
Mr. Koushik Roy,
Ld. Advocate
Advisor Chowmuhani
Krishnanagar, Agartala.**

Reference:- Your Demand Notice dated 6th February, 2020 issued on behalf of Smt. Purnima Saha and 11 others;

Dear Sir,

Your Demand Notice cited above was duly received in this Office on 6th February, 2020. In this connection, I would like to inform you that by a letter dated 27.09.2018 each of your clients was informed through the court proceeding that out of them, age barred petitioners, were duly allowed relaxation of age for government appointment on the basis of decision taken by the Council of Ministers and that Government contemplated to consider their appointment to the post of Agri. Assistant on the basis of judgment dated 9th June, 2017 passed in WP(C) No.251 of 2012 but inspite of request made by the undersigned for taking part in the selection process along with other candidates in response to notification inviting applications dated 26th September, 2018, none of your clients participated in the selection process. Instead, your clients filed a contempt proceeding against the undersigned and others but the Hon'ble Single Judge held that there was no contempt. The direction to consider the case of the petitioners for selection as separate class directed by the learned Single Judge in the contempt proceeding was set aside by the Hon'ble Division Bench of the High Court and the matter has eventually been closed.

Admittedly, none of your clients were entitled to be considered for appointment as teacher as they do not have the requisite qualification as per Recruitment Rules of teacher and appeared interview for the post. Besides this, they also failed to appear in the selection process for the post of Agricultural Assistant and as such they have no right to claim any further consideration for selection and appointment on the basis of the judgment passed in WP(C) 251 of 2012.

**Yours faithfully
Director, Secondary Education
Government of Tripura"**

[11] After the said communication (Annexure-11) was made to them, the appellants approached this Court by filing WP(C) No.476 of 2021 seeking execution of the judgment and order dated 09.06.2017 passed in WP(C) No.251 of 2012 and quashing of the decision of the State authorities communicated vide order dated 05.03.2020 (Annexure-11 to the writ petition). The learned Single Judge by judgment and order dated 23.07.2021 dismissed the said WP(C) No.476 of 2021 with the following observations:

"8. From a reading of the observation made in the judgment dated 06.09.2017 it would be apparent with unambiguity that the writ petition was disposed of on recording abandonment of reliefs on assurance of consideration. There had been an assurance of consideration for the appointment. On the basis of the said assurance, the petitioners had withdrawn all their challenges. According to this Court, the consideration has been taken, even if consideration may not fit in the expectation of the petitioners, but the petitioners have also not uttered a single word in the entire writ petition whether they were eligible for appointment as Assistant Teacher [Science] or not. That apart, they did not appear for consideration in any other department. It appears thus, that the petitioners did not participate in the selection process on the ground that they should be treated as a separate class. But the division bench by their above referred judgment has reversed the finding of the single judge to that effect. The petitioners did not carry forward further challenge on that decision.

Thus, this Court does not find any merit in this petition and accordingly, it is dismissed."

[12] The present writ appeal has been filed challenging the said judgment and order dated 23.07.2021 passed by the learned Single Judge in WP(C) No.476 of 2021 mainly on the following grounds:

(i) The learned Single Judge did not consider the fact that WP(C) No.251 of 2012 was decided on the assurance of the State counsel made before the Court and the State respondents failed to comply with the judgment passed on the basis of such assurance.

(ii) The learned Single Judge did not appreciate the fact that the State respondents did not assign any reason for rejecting the claim of the appellants for their appointment as Assistant Teacher.

(iii) The learned Single Judge did not consider the fact that the State respondents did not carry out the direction issued in the judgment and order dated 09.06.2017 passed in WP(C) No.251 of 2012.

[13] Heard Ms. S. Deb (Gupta), learned counsel appearing for the appellants as well as Mr. K. De, learned Addl. G.A. representing the State respondents.

[14] Ms. Deb (Gupta), learned counsel representing the appellants contends that the appellants are entitled to appointment as Assistant Teacher in terms of the judgment and order dated 09.06.2017 passed in WP(C) No.251 of 2012. Counsel contends that the statements made in communication dated 05.03.2020 (Annexure-11) of respondent No.2 are not correct for which the same is liable to be quashed.

[15] Mr. De, learned Addl. G.A. vehemently opposes the contention made on behalf of the appellants and submits that the appeal is devoid of merit and as such it is liable to be rejected.

[16] We have appreciated the facts and circumstances of the case and considered the submissions made on behalf of the parties.

[17] It would appear from the judgment passed in WP(C) No.251 of 2012 that the learned Advocate General made an assurance before the Court that the case of the appellants would be positively considered by the Government for appointment as Assistant Teacher and in case they were not found suitable for job under the Education Department, their cases would be considered for appointment

in any other department. The Court was also assured by the learned Advocate General that the process of consideration would be completed within 6 (six) months and if any of the petitioner was found to have crossed the age limit, State would take initiative to relax the age limit in their cases since they were litigating from 2012.

[18] In the judgment dated 22.01.2019 in CONT. CAS(C) No.32 of 2018, the State respondents were further directed to consider the case of the appellants within a further period of 3 (three) months treating them as a separate class. The said finding of the learned Single Judge was reversed by the Division Bench by judgment and order dated 10.12.2019 in WA No.127 of 2019 which was not challenged by the appellants.

[19] By the impugned communication dated 05.03.2020 (Annexure-11), State respondent No.2 informed the appellants that they were not treated as a separate class since the findings of the learned Single Judge passed in CONT. CAS(C) No.32 of 2018 was reversed by the Division Bench in WA No.127 of 2019. However, their case was still considered by the State authorities and it was stated in the said communication (Annexure-11) that they did not have requisite qualification for recruitment as teachers and moreover they did not appear for interview for appointment in the said post. They did not even take part in the selection process for the post of Agricultural Assistant. In the backdrop of these facts and circumstances, learned Single Judge dismissed their petition by the impugned judgment dated 23.07.2021 passed in WP(C)No.476 of 2021.

[20] We find no reason to interfere with the said decision of the learned Single Judge. Resultantly, the writ appeal stands dismissed.

[21] In terms of the above, the appeal stands disposed of. Pending application(s), if any, shall also stand disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ

