

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.101 of 2022

Sri Pradip Bhaumik, S/o Sri Jitendra Chandra Bhaumik, Vill-250 Colony, Narsinghar, P.O. Bimangarh, P.S. Airport, District-West Tripura.

..... Petitioner(s).

Versus

1. The State of Tripura, represented by the Principal Secretary, Department of Health & Family Welfare, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala.
2. The Commissioner, Department of Health & Family Welfare, Government of Tripura, New Secretariat Building, Kunjaban, Agartala.
3. The Director, Department of Health & Family Welfare, Government of Tripura, Gorkhabasti, Agartala, West Tripura.
4. The Under Secretary, Department of Health & Family Welfare, Government of Tripura, New Secretariat Building, Kunjaban, Agartala, West Tripura.

..... Respondent(s).

For Petitioner(s)	: Mr. D.C. Roy, Advocate, Mr. A.K. Pal, Advocate, Mr. T. K. Bhattacharyya, Advocate.
For Respondent(s)	: Mr. D. Bhattacharya, GA, Mr. M. Debbarma, Addl. GA, Mr. Soumyadeep Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and Judgment : 31st May, 2023.

JUDGMENT & ORDER(ORAL)

31/05/2023

Heard Mr. D.C. Roy, learned counsel for the petitioner and
Mr. D. Bhattacharya, learned Government Advocate for the
respondents.

[2] Case of the writ petitioner and respondents is summarized in the order dated 3rd May, 2023 which reads as under:

“Petitioner is primarily aggrieved as his case has not been considered for promotion in the last promotional exercise under which he complains that promotion has been granted to his juniors vide notification dated 31.12.2021. For the period of absence from 01.09.1990 to 15.08.1994 apparently after the directions passed by this Court in WP(C) No.159 of 2019 dated 06.03.2014 a departmental proceeding was conducted for the period of his absence in which a minor punishment of censure and withholding of one increment for one year without cumulative effect was imposed on 03.04.2019.

Respondents may be justified in not considering his case for promotion during subsistence of the departmental proceedings. However, the writ petitioner has contended that the effect of the minor punishments imposed on 03.04.2019 ceased to have effect after one year, still his case was not considered for promotion in the last promotional exercise vide notification dated 31.12.2021.

Though the petitioner bore an impression that the period of his absence from 01.09.1990 to 15.08.1994 remained un-regularized but the statement made in paragraph-7 of the additional counter affidavit of the respondents does not leave any doubt that the period of absence of 1445 days has already been settled and sanctioned as Extra-ordinary leave (without pay) by the disciplinary authority vide an order dated 13.07.2021 copy whereof also issued to the petitioner. The next contention of the petitioner is that despite regularization of his leave period, his seniority has perhaps not been counted from 1988 and his juniors have been granted promotion vide notification dated 31.12.2021. It is submitted that though earlier in the tentative gradation list published on 25.01.2017 [Annexure-G] to the writ petition, his name occurred much below at serial No.167 but in the fresh tentative gradation list published by the Directorate of Health Services, Government of Tripura vide memo No.2941 dated 22.03.2023 inviting objections from the concerned employee within 30 days, his seniority has been restored and shown at serial No.26 with his qualification also as B. Pharma. Therefore, on both counts i.e. counting of his seniority from the initial date of appointment after regularization of his absence period and on the criteria of educational qualification, petitioner fulfilled the necessary conditions for being promoted in the last promotional exercise dated 31.12.2021.

Learned counsel for the respondents-State prays for some time to obtain fresh instructions in the light of what has been recorded hereinabove from the pleadings on record.

As prayed for by the learned counsel for the State, matter be listed on 23rd May, 2023.

Though memorandum dated 22.03.2023 is not on record but learned counsel for the petitioner has produced it during the course of hearing with a copy to the learned counsel for the State. The same is kept on record.”

[3] Petitioner had approached this Court in the present writ petition instituted on 1st February, 2022 *inter alia* seeking quashing of the promotion notification order dated 31st December, 2021 and also to direct the respondents to give promotion to the petitioner as he is senior Pharmacist under the respondents who has been deprived from getting promotion though his juniors were promoted vide notification dated 31st December, 2021. Petitioner also sought direction to regularize the absence period from 01.09.1990 to 15.08.1994 and to restore his seniority on the basis of his joining in service on 29.11.1988. Petitioner also sought interim relief for stay of the notification of promotion.

[4] Pursuant to the directions passed by this Court on 3rd May, 2023, an additional affidavit has been filed by the respondents explaining the correct position. In fact, the affidavit contains an extract of the relevant facts relating to the petitioner's claim at Annexure-R/4 which has been framed by the State official respondents pursuant to the order dated 3rd May, 2023 which is extracted hereunder :

“As per Order dated 03.05.2023 passed by this Hon'ble Court of Tripura, in c/w Case No. W.P.(C) 101 of 2022, the following clarifications are made by the Stat Official Respondents:-

(a) Minor punishment of censor and withholding of one increment for one year without cumulative effect imposed on 03.04.2019 by Disciplinary Authority has been over on 03.04.2020.

(b) Un-authorised absent from 01.09.1990 to 15.08.1994 has been settled by way of granting Extra-ordinary leave(without pay) by the Disciplinary Authority on 13.07.2021.

(c) In regards to the seniority position of the petitioner due to litigations and problematic situations in respect of accepting the higher qualification of the petitioner as B. Pharma in his service have not been incorporated initially in the B.Pharma seniority list. However, his higher qualification as B.Pharma has accepted by the Administrative Department and accordingly, his name has been incorporated in the latest tentative seniority list of Pharmacist (Allo) as on 28.02.2023 published on 22.03.2023 and after obtaining opinion/ objection from concerned employee, if any, would be final.

(d) In respect of the ad-hoc promotion to the petitioner it may be found from the proceedings of the DPC that ad-hoc promotion to the post of Inspecting Officer (Drugs) from the post of Pharmacist having Degree in Pharmacy was recommended by the Group-A, Departmental Promotion Committee held on 15.12.2021. Total vacancy position for promotion quota was 6(six) posts out of which one post reserved for SC and two for ST and three for UR categories. 16 eligible officers including the petitioner was come in the zone of consideration for promotion but his seniority position was in Sl. No.9 in the combined seniority list under UR category. There are 05(five) Officers under UR category who are higher in seniority than the petitioner and therefore his name has not been recommended for ad-hoc promotion by DPC.”

[5] The gist of the clarification submitted by the State official respondents to this additional affidavit at Annexure R/4 makes it clear that the effect of withholding of one increment for one year without cumulative effect imposed on 3rd April, 2019 has been over on 3rd April, 2020. His unauthorized absence from 01.09.1990 to 15.08.1994 has been regularized by granting Extra-ordinary Leave (without pay) on 13th July, 2021 by the Disciplinary Authority. As regards the seniority position, it is stated that due to litigations and problematic situations in respect of accepting the higher qualification of the petitioner as B. Pharma in his service have not been incorporated initially. Now, the administrative

department accepted it and incorporated in the latest tentative seniority list of Pharmacist (Allopathic) as on 28th February, 2023 published on 22nd March, 2023 and after obtaining opinion/objection from the concerned employees, if any, would be final. The statement made at paragraph-D quoted hereinabove is all the more clear that in the promotional exercise held on 15th December, 2021, 6(six) posts were to be filled up out of which 3(three) posts were for UR category and 1(one) and 2(two) posts respectively were for SC/ST category in which 16(sixteen) eligible officers including the petitioner were considered. However, at the relevant point of time, the seniority of the petitioner was at Sl. No.9 in the combined seniority list under UR category. There were 5(five) officers under UR category who were higher in seniority than the petitioner in the said seniority list and therefore his name was not recommended for *ad hoc* promotion by the DPC.

[6] The situation as it stands today is that petitioner's seniority has been restored in the tentative seniority list of Pharmacist (Allopathic) on 28th February, 2023 as per the list published on 22nd March, 2023. According to the learned counsel for the respondents, his name would be considered towards available vacancies for *ad hoc* promotion. It is also contended by the official-respondents that it would not be proper to unsettle the promotion granted to the persons who ranked senior to the petitioner as per the seniority list of 25th January, 2017 in the promotional

exercise held on 15th December, 2021. It may also not be interest of the petitioner as the matter may likely be more litigated.

[7] Learned counsel for the petitioner submits that an appropriate direction may be issued to the respondents to consider the case of the petitioner against the available vacancies in view of the petitioner's qualification and seniority position in the tentative seniority list published on 22nd March, 2023 in the UR category.

[8] Learned counsel for the respondents does not have any objection to such a request.

[9] Having regard to the facts and circumstances noted hereinabove, taking into consideration the background history of litigation involving the petitioner's service tenure in which there was a long period of absence between 1990-1994 which has been regularized only in 13th July, 2021 and that he was also suffering a minor punishment whose effect has ceased on 3rd April, 2020 and in the last promotional exercise based on the seniority list of 25th January, 2017, petitioner was shown down below at Sl. No.9 in the UR category against 3(three) vacant posts of UR categories considered in DPC held on 15th December, 2021, it would not be proper to unsettle the position where the concerned candidates who ranked senior to the petitioner as on that date have already been promoted and are serving since long in the promoted post and are not parties in the

present litigation. Therefore, this Court is of the view that interest of justice would be served by directing the competent authority under the respondent department to consider the case of the petitioner, in accordance with law, for *ad hoc* promotion to the next promotional post of Inspecting Officer (Drugs) as per the latest seniority list and his eligibility, experience and qualifications as are prescribed under the rules together with all other eligible candidates. In case the vacancies exist, such promotional exercise be undertaken within a reasonable time, preferably within 2(two) months from the date of receipt of copy of this order.

The instant petition is disposed of with the aforesaid directions.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ