

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 374 OF 2021

Andrew Debbarma, son of Hemanta Debbarma,
R/O Village-Nishan Chandra Para, P.O.-Mandai,
P.S. Mandai, District-West Tripura, PIN-799045,
Age-31 years

....**Petitioner.**

Vrs.

1. The High Court of Tripura, to be represented by the
Registrar General, the High Court of Tripura, Agartala,
West Tripura.

2. The Registrar General, High Court of Tripura,
Agartala, West Tripura.

3. Sri Satadip Saha, System Assistant, High Court of Tripura,
Agartala, West Tripura, presently posted in the O/o of the
District & Sessions Judge's Court, Sepahijala Judicial District,
Sonamura.

4. Kripankar Majumder, System Assistant, High Court of Tripura,
Agartala, West Tripura.

....**Respondents.**

WP(C) 375 OF 2021

Ruhini Debbarma, D/o Lt. Rabi Kumar Debbarma,
R/O Village-Khutamara, P.O. Birendra Nagar,
P.S. Jirania, Sub-Division-Jirania, District-West Tripura,
PIN-799045, Age-32 years.

....**Petitioner.**

Vrs.

1. The High Court of Tripura, to be represented by the
Registrar General, the High Court of Tripura, Agartala,
West Tripura.

2. The Registrar General, High Court of Tripura,
Agartala, West Tripura.

3. Sri Satadip Saha, System Assistant, High Court of Tripura,
Agartala, West Tripura, presently posted in the O/o of the
District & Sessions Judge's Court, Sepahijala Judicial District,
Sonamura.

4. Kripankar Majumder, System Assistant, High Court of Tripura,
Agartala, West Tripura.

....**Respondents.**

Present:

**(In both the writ
petitions)**

For the petitioners : Mr. P. Roy Barman, Sr. Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

For the respondents : Mr. B. N. Majumder, Sr. Advocate.
Mr. D.J. Saha, Advocate.

Date of hearing : 15.03.2023

Date of delivery of
judgment : 28.04.2023

Whether fit for reporting : Yes

**HON'BLE MR.JUSTICE T.AMARNATH GOUD
HON'BLE MR.JUSTICE ARINDAM LODH**

JUDGMENT & ORDER

[Arindam Lodh, J]

Since similar and identical questions are involved, both the writ petitions are taken up together for disposal by this common judgment on consent of learned counsels appearing for the parties.

2. By way of filing the present writ petitions, the petitioners have prayed for quashing the Notification dated 25.03.2021 issued by the Registrar General, High Court of Tripura, the respondent no.2 herein, in respect of the appointment of the private respondent nos. 3 and 4 in the post of System Assistant.

3. Brief facts of the case of the petitioners are that the respondent no.2 invited applications from the eligible candidates vide Advertisement dated 29.05.2019, for filling up four posts of System Officer, Group-B Non-Gazetted and 11 posts of System Assistant, Group-C Non-Gazetted under e-Courts Services of the High Court of Tripura. Out of 11 posts of System Assistant, 04 posts are for UR category, 06 posts are reserved for Scheduled Tribes and 01 post is reserved for Scheduled Caste. In the Advertisement [Annexure-1 to the writ petition], it was mentioned that if no suitable candidate is found from the reserved categories as aforesaid, the posts will be filled up by the candidates other than those of the Scheduled Tribes and Scheduled Castes as per the High Court of Tripura e-Courts Services (ACC) Rules, 2013 (as amended).

3.1 Petitioners appeared in the written examination and having successful in that examination, they were asked to appear in the practical and viva voce test to be held on 14.02.2021 vide call letter dated 08.02.2021 issued by the Registrar, (Admn, P & M), High Court of

Tripura. After completion of selection process, the High Court of Tripura published common merit list for the recruitment to the post of System Assistant under e-Court service vide notification dated 17.02.2021. In the said merit list the name of the petitioner Sri Andrew Debbarma in WP(C) No.374/2021 appeared at Sl.No.52 and Smt. Ruhini Debbarma, the petitioner of WP(C) No.375/2021 appeared at Sl. No.51. Here, the main grievance of the petitioners are that out of 6(six) posts which were reserved for ST candidates, 4 (four) posts have been filled up from the ST category candidates and two posts have been filled up from the UR category candidates though they have obtained required marks. No reason has been assigned as to how the petitioners were found to be not suitable.

4. Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioners. Also heard Mr. B. N. Majumder, learned senior counsel assisted by Mr. D.J. Saha, learned counsel appearing for the respondents-High Court of Tripura.

5. Mr. Roy Barman, learned counsel at the outset submitted that the respondents had infringed the constitutional right of the petitioners guaranteed under Articles 14 and 16 of the Constitution of India. Mr. Roy Barman, further submitted that Rule 17 of the High Court of Tripura e-Courts Services (appointment, condition of service & conduct) Rules, 2013

(for short, Rules, 2013) is also arbitrary as blanket power has been given to the appointing authority to fill up the posts reserved for SC/ST candidates by the candidates other than those of Scheduled Castes and Scheduled Tribes and by not defining as to what is meant by 'suitable candidates'. Mr. Roy Barman, learned senior counsel further emphasized that Rule 17 of the Rules, 2013 is to be read in consonance with the provisions of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (for short, the Act of 1991) & Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (for short, the Rules of 1992) framed there-under. Again, Mr. Roy Barman, learned senior counsel pointed out that from the final merit list according to marks obtained by the candidates in the selection process for recruitment to the post of System Assistant, it was revealed that Jiban Mohan Jamatia appeared at Sl.No.17 got 58.62% marks, Bidhata Sagar Debbarma at Sl. No.44 obtained 48.12% and Niresh Debbarma at Sl. No.45 obtained 47.75% marks. Whereas, the petitioners Andrew Debbarma appeared at Sl.No.52 having scored 45.37% and Smt. Ruhini Debbarma at Sl. No.51 having scored 45.87%, were held to be found not suitable which is not discernible.

6. Appearing on behalf of the respondents, Mr. Nandi Majumder, learned senior counsel has pressed into Service Rule 19 of the Rules, 2013, which postulates "Interpretation" clause. Mr. Nandi Majumder, learned

senior counsel further submitted that upon completion of the practical test and viva-voce, the Recruitment Committee had prepared merit list of the candidates who secured 40% marks in average in written examination, practical test and viva-voce. The said merit list prepared by the Committee had been approved by the Hon'ble Chief Justice as per order dated 17.02.2021. Since the petitioners had secured only 45.37% and 45.87% marks respectively, in total, after completion of written, practical and viva voce test, they were found to be not eligible by the Committee for appointment to the post of System Assistant as the Committee had decided to recommend the appointment of those reserved category candidates who secured the cut-off mark of 47% in aggregate in written examination, practical and viva-voce test.

7. Here, the grievance of the petitioners is that no cut-off mark was fixed in the advertisement which debarred the authority concerned to determine the cut-off mark after completion of the selection process.

8. In the instant case, many candidates became successful and obtained the required qualifying marks. The post of System Assistant is highly technical. The candidates who would be appointed must have requisite expertise to fulfil the purpose the High Court wanted to achieve. The committee of experts while taking the practical examination and interview awarded marks in favour of all the candidates and prepared the

merit list. Since the posts are limited, the merit list was forwarded to the Chief Justice of the High Court to make a policy decision to consider the appointment of the best suitable candidates. The Chief Justice in exercise of its power under Article 229 of Constitution of India read with Rule 19 (Interpretation Clause) of Rules, 2013 had given a note in the file that the candidates who obtained minimum 47% of the mark would be considered for selection/appointment so that the purpose of the High Court would be sub-served.

9. The petitioners, Andrew Debbarma [in WP(C) No.374 of 2021] scored 45.37% and Smt. Ruhini Debbarma [in WP(C) No.375 of 2021] scored 45.87%, that is, below the cut-off mark.

It is pertinent to mention herein that one candidate, namely Sri Bubagra Jamatia, who secured more than 47% mark, was considered for appointment since the mark obtained by him was within the cut-off mark.

10. As we said earlier, in absence of any rules framed by the High Court or the Chief Justice, the direction of the Chief Justice operates the field of appointment to any post or posts. The Chief Justice is well within his jurisdiction in deciding the criteria or parameters in determining the merits for filling up the posts of System Assistant/System Officer, and, in fact, that is the most befitting criterion for filling up the posts which takes into consideration the merit as of prime importance. There is no

justification in striking down such a criterion on the ground of lack of non-mentioning of the cut-off mark in the advertisement notified by the High Court.

11. In the case in hand, it is not the case of the petitioners that the Chief Justice of the High Court had exercised his power vested upon him under Article 229 of Constitution of India with bias to favour one or more candidates, which, if substantiated, may vitiate the entire selection process.

12. In view of the aforesaid facts, we find no substance in the submission of learned senior counsel appearing on behalf of the petitioners, in the context of the present subject in dispute, that since the power of the Chief Justice under Article 229 is not unfettered power, he cannot abruptly determine or fix the cut-off mark for selection of suitable candidates.

13. In the light of the principle discussed and drawn here-in-above, in the opinion of this Court, the action of the High Court in fixing the cut-off mark and selecting the candidates, who obtained 47% marks or above, cannot be said to be arbitrary exercise in absence of any allegation of malice or bias to do favour to any of the candidates appeared in the selection process. The policy decision of the Chief Justice of the High Court has been uniform in respect of all the qualified candidates, and thus, it does not offend Articles 14 and 16 of Constitution of India.

14. In the present case, we find that the advertisement dated 29.05.2019 was issued by the High Court for filling up 11(eleven) vacant posts of System Assistant with a condition that the number of posts advertized might increase or decrease. It is a fact that on the date of advertisement, out of 11(eleven) posts of System Assistant, 4(four) posts were for UR category, 6(six) posts were reserved for ST category and 1(one) post was reserved for SC category. However, at the time of selection, 2(two) posts, that is, 1(one) belonging to UR category and 1(one) belonging to SC category, had fallen vacant due to the promotion of 1(one) System Assistant to the post of Sr. Computer Assistant and another due to the appointment of one System Assistant to the post of System Officer. Thus, on completion of the recruitment process, total 13(thirteen) vacant posts of System Assistant lying vacant were filled up. It comes to fore that 5(five) vacant posts under UR category were filled up by the candidates appearing in Sl. Nos.1 to 5 of the merit list, 2(two) vacant posts of SC category were filled up by 2(two) SC category appearing in Sl. Nos.6 and 7 of the merit list. Thereafter, 4(four) posts out of the total 6(six) vacant posts reserved for ST category were filled up by 4(four) ST category candidates appearing in Sl. Nos.9 to 12(Annexure 6 to the writ petition), who secured more than 47% of mark i.e. more than the cut-off mark as fixed by the Chief Justice of the High Court. Since, other ST category candidates

obtained less than 47% of mark i.e. the fixed cut-off mark, 2(two) posts belonging to ST category were filled up by UR category candidates appearing in Sl. Nos.8 and 9 of the merit list since both of them secured more marks than that of the cut-off mark fixed for UR category candidates.

15. Further, we do not find any substance in the submission of learned senior counsel appearing for the petitioners that Rule 17 of the High Court of Tripura e-Courts Services(appointment, condition of service & conduct) Rules, 2013, is arbitrary and that it provides un-canalized, sweeping and arbitrary discretionary power to the appointing authority.

16. Mr. Roy Barman, learned senior counsel appearing for the petitioners has further drawn our attention to Sub-Rule 8(a) of Rule 8 of the Rules, 1992 which provides that, if a candidate belonging to Scheduled Caste or Scheduled Tribe is not available by exchange method, then, the vacant post may be filled up according to the concerned recruitment rules and proviso to Rule 8. Sub-rule (a) of Rule 9 provides that, if the appointing authority after observing the procedure of Sub-Rule (8) considers it necessary to fill any vacant posts by candidates of un-reserved category in the exigency of public service, may initiate a proposal for de-reservation of vacant post reserved for Scheduled Castes and Scheduled Tribes in the manner indicated therein.

17. Most significantly and noticeably, the legislature in both Sub-rule 8(a) of Rule 8 and Sub-rule (a) of Rule 9 of the Rules, 1992 used the word ‘may’, which is not the word of compulsion. The word ‘may’ is enabling word and it only confers capacity, power or authority and imply discretion [*Madanlal Fakrichand Dudhediya v. S. Changdeo Sugar Mills, AIR 1962 SC 1543, p. 1557; 1962 Supp (3) SCR 973; Chinnamar Kathiam v. Ayyavoo, AIR 1982 SC 137, p. 140; 1982 (1) SCC 159*]. It is used in a statute to indicate that something may be done which prior to it could not be done. In view of this, in our opinion, in a certain case, the authority concerned may apply the exchange method in filling up certain post or posts or may initiate a proposal for de-reservation of vacant posts reserved for Scheduled Castes and Scheduled Tribes in the event of non-availability of suitable candidates from Scheduled Caste and Scheduled Tribe candidates. As a corollary, the use of word ‘may’ in these provisions is quite indicating that the said provisions are not mandatory which are strictly to be followed. It is the discretion vested upon the authority or body whether in a given circumstance the power of exchanging method and de-reservation of posts as contemplated under Sub-rule 8(a) of Rule 8 and Sub-rule (a) of Rule 9 of Rules, 1992 is required to be exercised or not.

18. At this juncture, it would be useful to reproduce Rule 17 of the High Court of Tripura e-Courts Services (appointment, condition of service & conduct) Rules, 2013, which reads thus:

*“17. **Reservation-** Except as otherwise provided in these rules, all appointments by absorption or by the other modes of direct recruitment to the service and promotion under these rules shall be subject to the provisions of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and the Rules made there under. If no such suitable candidate is available, the posts will be filled up by the candidates other than those of the Schedule Caste and Schedule Tribe. In case of absorption of all the existing staff, they will be absorbed or appointed irrespective of whether required SC/ST Candidates have been appointed or not.”*

19. According to us, Rule 17 of the Rules, 2013 is neither inconsistent to sub-rule 8(a) of Rule 8 of the Rules, 1992 nor Rule 17 give un-canalised power to the Chief Justice of the High Court. As we already have observed here-in-above, that the provisions envisaged under Sub-rule 8(a) of Rule 8 and Sub-rule (a) of Rule 9 of the Rules, 1992 is not mandatory in nature. The Chief Justice of the High Court in exercise of its power under Article 229 of Constitution of India exercised his discretion in prescribing the methodology as regards the appointment and filling up the posts of System Officer and System Assistant embodied in Rule 17 of the Rules, 2013. This discretionary power, the Chief Justice has exercised considering the expediency of e-Courts Services and, therefore, we find no

substance in the submission of learned senior counsel appearing for the petitioners that Rule 17 of e-Court Services Rules, 2013 is illegal, arbitrary, void *ab initio* and *ultra vires* to the Act of 1991 and the Rules of 1992.

20. Needless to say, the High Court has to be conscious about the need of maintaining efficiency in service. As we said earlier, reservation policy of the State Government in the matter of appointment has been followed in its strict sense and meaning. Keeping in view the posts being highly technical which requires highest standard of expertise for maintaining efficiency in service in the process of administration of justice and the object the High Court wanted to achieve in digitizing the entire justice delivery system in the State Judiciary and taking into account its expediency, the Chief Justice in exercise of its power under Article 229 of the Constitution of India encrypted the Reservation Rule (Rule 17) in the Rules, 2013 without disturbing the basic feature embodied in the Act of 1991 and the Rules of 1992 thereof.

21. The makers while drafting our Constitution had visualised such a situation and for this complete authority has been vested upon the Chief Justice for appointment of officers and servants of the High Court. Under Rule 17 of the Rules, 2013, the Chief Justice of the High Court, as such, making the rule that if no suitable candidate is available, the posts of

System Officer and System Assistant can be filled up by the candidates other than those candidates of Scheduled Castes and Scheduled Tribes wanted to achieve the object of maintaining highest degree of standard in the matter of governing e-Courts Services so that quality, competency and efficiency of the officers holding the posts of System Officer and System Assistant, etc. are not compromised.

22. We reiterate that in the instant case, there is no allegation of any bias or arbitrariness in fixing the cut-off mark as stated above by the Chief Justice and it is a fit case where the Chief Justice has applied his discretion to fix the cut-off mark to select the most suitable, competent and efficient candidates to fill up the posts of System Assistant.

23. For the reasons aforestated, and the law thus being analysed here-in-above, we find no merit in the writ petitions and accordingly, both the writ petitions are dismissed. However, there shall be no order as to costs.

JUDGE

JUDGE