

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No.509 of 2023

Dr. Indrajit Das son of Sri Suchitra Mahishya Das aged about 40 years, resident of Village & P.O. Bilthai, P.S. Panisagar North Tripura, Sub-Division, Panisagar, District- North Tripura, Pin-799260.

..... Petitioner(s)

V E R S U S

1. The State of Tripura represented by Secretary Health and Family Welfare Department, Civil Secretariat, New Capital Complex, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura, Pin-799006.
2. Director of Medical Education, Government of Tripura, Bidurkarta Choumuhoni, Building of Lal Path Lab, P.S. West Agartala, Agartala, P.O. Agartala, District- West Tripura, Pin-799001.
3. Dr. Tushar Majumder, Tripura Health Service, Grade-IV, presently posted at Agartala Government Medical College and GBP Hospital, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura, Pin-799006.
4. Dr. Shimal Sarkar, Tripura Health Service Grade-III, presently posted at Bimal Sinha Memorial Hospital, Kamalpur, District- Dhalai, Tripura.

..... Respondent(s)

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : **19th October, 2023.**

Whether fit for reporting : YES.

JUDGMENT & ORDER(ORAL)

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner and also heard Mr. Dipankar Sharma, learned Additional Government Advocate appearing for the respondents-State.

[2] Petitioner has approached this Court with a grievance that his name has been excluded in the revised final merit list published on 05.08.2023 (Annexure-8) whereas respondents No.3 and 4 both belonging to

SC category have been placed above him for the purposes of appointment as Basic Teacher in the subject of Anesthesiology under the advertisement dated 11.02.2022 (Annexure-1). The case of the petitioner is encapsulated in the order dated 14.08.2023 whereby learned counsel for the State was asked to seek instructions and in the meantime the respondents were restrained from offering appointment in favour of any candidate in SC category in the subject of Anesthesiology in AGMC and GBP Hospital, Tripura on the post of Basic Teacher. The order dated 14.08.2023 is extracted hereunder.

“The grievance of the petitioner is in relation to his exclusion from the revised final merit list published on 05.08.2023 [Annexure-8] in which the petitioner has gone down in the merit list and respondents No.3 and 4, both also belonging to the SC category, have been placed above him. The final merit list notified on 25.04.2023 inclusive of UR or SC candidates for the subject of Anesthesiology showed the petitioner as the first candidate who had got 76.67 marks. The private respondent No.4 had got 66.334 marks and respondent No.3 had got 58.19 marks in the SC category. Even before that, in the provisional merit list published on 11.01.2023 for appointment to the post of Basic Teacher in AGMC and GBP Hospital in the subject of Anesthesiology under advertisement dated 11.02.2022 [Annexure-1], petitioner had got 85.67 marks, whereas respondents No.3 and 4 had got 88.19 and 63.334 marks respectively on evaluation of the eligibility criteria such as API score, seniority in Tripura Health Services, placement in difficult/remote area and performance (ACR) as per the criteria prescribed under Rule 3(b) of the Tripura Medical Education (Administrative & Faculty) Service Conditions (2nd Amendment Rules), 2021 [Annexure-5] notified on 07.09.2021. Petitioner apprehends that the period of his service spent in a remote area at Khedacherra Primary Health Centre has been excluded while preparing the revised merit list.

Mr. S. Lodh, learned counsel for the petitioner, submits that since the amended Rules of 2021 do not prescribe for the criteria for awarding marks for posting in a difficult/remote area, the only notification which can be banked upon is dated 07.07.2018 issued by the Health & Family Welfare Department, Government of Tripura [Annexure-4]. Against the UR category, one Dr. Rajesh Choudhury has got the maximum marks as per the revised merit list for the subject of Anesthesiology being 62.31 marks; but since petitioner's marks have been reduced in the revised merit list, he has been ousted from being considered for appointment to one SC vacancy for the said subject. Instead, in his place, Dr. Tushar Majumder, who is having 58.19 marks, is going to be appointed. Petitioner has applied under RTI vide Annexure-9 for seeking information as to the manner in which the tabulation sheet and declaration of the final merit list has been done; and on what basis, the marks under the head of difficult/remote area service has been awarded. However, since the application has been made only on 08.08.2023, till date information has not been supplied.

Mr. D. Sarma, learned Additional Government Advocate for the respondents-State, seeks short time to obtain instructions.

As such, let the matter appear on 23.08.2023. In the meantime, the respondents would not proceed to offer appointment to the post of Basic Teacher in favour of any candidate in SC category in the subject of Anesthesiology in AGMC and GBP Hospital, Tripura.”

[3] Respondents have filed their counter-affidavit. It is stated that the advertisement dated 11.02.2022 invited application from all in service eligible Medical Officers those who had completed their MCI/NMC recognized Postgraduate (MD/MS/DNB) course from any MCI/NMC recognized institution and were presently working under the Health & Family Welfare Department, Government of Tripura, along with all relevant documents/certificates and service certificates for absorption in 19 vacancy positions in different disciplines from Tripura Health Services, Government of Tripura to Agartala Government Medical College, as per Tripura Medical Education (Administrative & Faculty) Service Condition (2nd Amendment) Rules, 2021 to the post of Basic Teacher (Tutor/Senior Resident/Registrar). Candidates were required to submit their application on or before 25.02.2022 within office hours. Subsequently, by notice dated 16.02.2022, the last date for submission of application was extended up to 5.00 p.m. of 28.02.2022. Taking through the chronology of dates, the counter-affidavit of the respondent refers to the provisional common merit list prepared by the Scrutiny Committee on 11.01.2023 inviting objection from any Medical Officers regarding the provisional common merit list with supporting documentary evidence. Initially, writ petitioner was awarded 21.67 marks under the head of API, 30 marks under the head of seniority, 30 marks under the head of serving in difficult/remote area and 4 marks under the head of

publication and performance, total 85.67 marks in the provisional merit list. Respondent No.3, Dr. Tushar Majumder was awarded 19.99 marks under head of API, 30 marks under the head of seniority, 30 marks under the head of serving in difficult/remote area and 8.2 marks under the head of publication and performance, total 88.19 marks. Similarly, respondent No.4 Dr. Shimal Sarkar was awarded 63.334 marks i.e. 17.334 marks under the head of API, 30 marks under the head of seniority, 12 marks under the head of serving in difficult/remote area and 4 marks for publication and performance. After objections by some Medical Officers of the Tripura Health Services, the Director, Medical Education requested the Director, Health Services, Government of Tripura to provide fresh details of information regarding total duration of service in Tripura Health Services and total duration of service as Medical Officer in difficult/remote area of all Medical Officers who had applied. Such information was supplied vide memo dated 13.01.2023. Thereafter, the Scrutiny Committee prepared the final discipline wise merit list which was published on 25.04.2023 (Annexure-R/2). After publication of discipline wise final merit list, again objections were raised by Medical Officers about the award of marks under heading of service in the difficult/remote area where 30% weightage i.e. 6 marks for each year of the difficult/remote area up to maximum of 30 marks were awarded. The respondents state that the weightage for serving in difficult/remote area was determined by the notification dated 09.07.2018 (Annexure-4 to the writ petition). But all of these candidates had served for considerable period in rural areas prior to 09.07.2018. In the earlier merit list, 30% weightage for serving in difficult/remote area were awarded to

Medical Officers of Tripura health Services (*THS, for short*) for the period even prior to the notification dated 09.07.2018. Therefore, after receiving complaints, the views of the Law Department was obtained as to whether 30% weightage for serving in very difficult/difficult area would be applicable or not for candidate who served in the rural area prior to the notification dated 09.07.2018. After consultation/advice from the Law Department and the information from the Director of Health Services, Government of Tripura containing the service details of all applicant Medical Officers vide memo dated 23.06.2023 the Scrutiny Committee prepared a revised final merit list which was published on 05.08.2023 in which the writ petitioner was shown at Sl. No.7 with the overall API score of 55.67 and respondent Nos.3 & 4 were shown at Sl. No.2 & 4 with the overall API scores of 58.19 and 56.33 marks respectively. In this revised final merit list, the writ petitioner was awarded 21.7 marks under the head of API, 30 marks under the head of seniority and 4 marks under the head of publication and performance. No mark was awarded under the head of serving in difficult/remote area. On the other hand, the respondents No.3 and 4 were awarded 19.99 and 17.334 under the head of API, 30 each under the head of seniority and 8.2 and 9 under the head of publication and performance but no marks were awarded under the head of serving in difficult/remote area to them also. Even after publication of the revised merit list dated 05.08.2023, objection was raised by one candidate regarding the marks awarded up to 2023 under the heading of total service duration. As per the advertisement dated 11.02.2022 and the corrigendum dated 16.02.2022 the service duration supposed to be calculated to award the mark

under the heading of total service duration was up to 28.02.2022. Therefore, the Scrutiny Committee again re-verified the process and submitted a revised final merit list in supersession of all the previous merit list published earlier i.e. notifications dated 11.01.2023, 25.04.2023 and 05.08.2023 to the Director of Medical Education, Government of Tripura for further process which is yet to be published. The appointment to the post of Basic Teacher (Tutor/Senior Resident) in the Department of Anesthesiology in the category of SC has been made subject to the final verdict of this Court. The respondents further state that in the earlier merit list Dr. Manna Bhattacharjee was awarded 30 marks under the head of serving in difficult/remote area on his service details but the Scrutiny Committee on the basis of the memo dated 23.06.2023 supplied by the Director of Health Services again re-verified the matter and he was awarded 4.5 marks under the head of serving in difficult/remote area as he was physically serving as a Medical Officer at Khedachara PHC with effect from 01.06.2021 to 09.03.2022. The committee prepared a revised final merit list in supersession of all earlier published merit list which has been submitted on 14.08.2023 to the Director, Medical Education.

[4] Mr. Dipankar Sharma, learned Additional Government appearing for the State submits that upon scrutiny of the merit list again after obtaining opinion of the Law Department and the competent authority, Director of Health Services now the revised final merit list which has been submitted by the Scrutiny Committee counting service in difficult/remote area as per Tripura Medical Education (Administrative & Faculty) Service

Condition (2nd Amendment) Rules, 2021 notified on 07.09.2021 and published in the extraordinary gazette on 09.09.2021. Learned counsel for the respondents submits that since the circular for determining the service duration in a difficult/remote area was published on 07.07.2018 by the Department of Health & Family Welfare, Government of Tripura (Annexure-4), petitioner in any case would not be benefited on this criteria as he has served as a Medical Officer in Khedachara in the North Tripura District between August, 2007 to February, 2011. Therefore, by any interpretation of the relevant rules read with the notification dated 07.07.2018 petitioner is not eligible to get any marks for serving in difficult/remote area. It is further submitted that prior to 07.07.2018 there was no notification which prescribed the difficult/remote area and difficult area as in the earlier notification of 2001 determined the urban and rural area. Mr. D. Sharma, learned Additional Government submits that the petitioner is, therefore, not entitled to any relief. The writ petition may be dismissed.

[5] Mr. Sankar Lodh, learned counsel for the petitioner has referred to the criteria for absorption prescribed under the Tripura Medical Education (Administrative & Faculty) Service Condition (2nd Amendment) Rules, 2021 notified on 07.09.2021, published on 09.09.2021 in extraordinary Tripura Gazette and submitted that there is no reason why the computation of marks for difficult/remote area ought not to be computed with effect from 07.07.2018 in preparation of the merit list by the respondents. It is submitted that the prospective application of the Second Amendment Rules 2021 is

taken into account then the criteria (IV) under Clause (b) of Rule 3 would also be rendered ineffective as weightage for publication and performance by any candidate prior to the notification of the second amendment rules could not be taken into account. Such a construction would lead to absurd results. However, learned counsel for the petitioner has not been able to countenance that any application of the criteria under Rule 3(b)(III) even if reckoned from the notification dated 07.07.2018 by the Health and Family Welfare Department prescribing the difficult/remote area would not come to the benefit of the petitioner since his period of service in Kedacherra under North Tripura was between August 2007 to February 2011 when no such criteria for difficult/remote area was prescribed by the Department of Health and Family Welfare. He, however, submits that even if the criteria under Rule 3(b)(III) is applied from the date on which such difficult/remote area has been prescribed by the notification dated 07.07.2018, the merit list prepared by the department would suffer from various infirmities. MANY eligible and meritorious candidates have been disadvantaged due to non-allocation of marks for difficult/remote area service despite having served in those areas after having come into force of the notification dated 07.07.2018. It is submitted that the rules have to be interpreted in a manner consistent with the principles of interpretation so that it does not lead to absurd results. As such, the department needs to re-visit the merit list on the intelligible criteria of service in difficult/remote area is concerned reckoning the date of notification dated 07.07.2018.

[6] I have considered the submissions of learned counsel for the parties at some length. I have also taken note of the relevant rules and the supporting documents enclosed to the writ petition as well as the counter-affidavit relied upon by learned counsel for the parties for the purposes of deciding the issue at hand. The pleadings of the writ petitioner projected a case that in the allocation of marks under Rule 3(b)(III) under the Second Amendment Rules notified on 07.09.2021 and published on 09.09.2021 in the Tripura Extraordinary Gazette, the petitioner's period of service in a difficult/remote area i.e. Khedachara in North Tripura District during the period August, 2007 to February, 2011 have not been taken into account though in the provisional merit list published on 13.01.2023 petitioner was also allocated 30 marks counting 6 marks for each year of service in difficult/remote area.

The relevant provisions of the Tripura Medical Education (Administrative & Faculty) Service Condition (2nd Amendment) Rules, 2021 i.e. Rule (I), (II) and (III) are extracted hereunder for better appreciation of the case of the parties :

“I. Academic Performance Index (API) based on the carrier marks 30% weightage [0.3 x (20% of marks in Madhyamik + 20% of marks in HS (+2) + 0.3 x average percentage of marks in MBBS + 0.3 x % of marks in MD/MS/DNB)] with deduction of two marks for each additional attempt.

II. Seniority in Tripura Health Service. – 30% weightage (2.5 marks for each year of service. Maximum upto 30 marks).

III. Difficult/remote area service as Medical Officer under Tripura Health Service – 30% weightage (6 marks for each year of difficult/remote service. Maximum upto 30 marks.)”

[7] On the basis of pleadings on record and from the notification dated 07.07.2018 (Annexure-4 to the writ petition) it is now clear that the

definition and description of difficult/remote area was for the first time notified by the Department of Health and Family Welfare, Government of Tripura in July, 2018. Prior to that notification the existing notification did not delineate the difficult/remote area. As stated by Ld counsel for the State and not refuted by the petitioner, there existed a classification of urban and rural area under the 2001 notification. As such, the advantage of having served in a difficult/remote area for the purposes of computation of marks under Rule 3(b)(III) would enure only on the basis of the notification dated 07.07.2018. As such, petitioner does not have a case to seek addition of marks under Rule 3(b)(III) for having served in a difficult/remote area for the period August, 2007 to February, 2011. An alternative submission has been made by learned counsel for the petitioner during the course of argument that the decision of the respondents to apply the allocations of marks under Rule 3(b)(III) should be from the date of notification dated 07.07.2018 prescribing the difficult/remote area and not from the date of publication of the Tripura Medical Education (Administrative & Faculty) Service Condition (2nd Amendment) Rules, 2021 i.e. 07.07.2021/09.09.2021. This submission of learned counsel for the petitioner though has no consequence for the case of the petitioner though may be a plausible one. However, since the final merit list has already been published on 24.08.2023, as informed by Ld Counsel for the State on instructions, this Court refrains from making any comments thereupon as it is unnecessary for the present case.

[8] Therefore, I do not find any merit in the instant writ petition and the same is dismissed. Interim order, if any, stands vacated. Pending application(s), if any, stands disposed of.

(APARESH KUMAR SINGH) CJ

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