

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1370/2019

Yoginder Pal, S/O. Sh. Kartar Singh Pal, R/O 216, 2nd Floor, Shri Ram Nagar, Shahdra, Delhi-32.

-----Petitioner(s)

Versus

1. High Court of Tripura through Registrar General, Tripura High Court, Agartala (Tripura).

2. State of Tripura through its Chief Secretary, Government of Tripura, Agartala (Tripura), 799006.

3. The Secretary Law, Government of Tripura, Agartala (Tripura), 799006.

-----Respondent(s)

For Petitioner(s) : Mr. Prashant Manchanda, Advocate,
Mr. S. Chakraborty, Advocate.

For Respondent No.1 : Ms. Paramita Dhar, Advocate.

For Respondents No.2 & 3 : Mr. Debalay Bhattacharjee, G.A.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment: **27th January, 2020.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

(Akil Kureshi, C.J.)

Heard learned counsel for the parties for final disposal of the petition.

2. The petitioner has prayed that the respondent No.1, High Court of Tripura should recommend his name to the State Government for appointment to Tripura Judicial Service Grade-I with consequential benefits.

3. Brief facts are as under:

Appointments and promotions to various posts in the Tripura Judicial Service are governed by the Tripura Judicial Service Rules, 2003 (hereinafter to be referred to as the said Rules). Rule 3 of the said Rules envisages constitution of a service known as Tripura Judicial Service which would be consisting of 3(three) grades of officers namely Judicial Officers Grade-I, Grade-II and Grade-III.

4. Rule 7 of the Rules pertains to method of recruitment, qualification, reservation and age limit. Under this Rule Tripura Judicial Service Grade-I posts would be filled up from the following sources:

“Method of Recruitment:

(i) Not exceeding 25% of the posts in the Grade may be filled by direct recruitment on the basis of the aggregate marks/grade secured in a competitive examination conducted by the High Court, as specified in Schedule B of the Rules.

(ii) 65% of the posts in the grade shall be filled by promotion from the cadre of Grade-II of the Service on the basis of merit cum seniority by the High Court following the criteria in Schedule 'C'.

(iii) Remaining 10% of the posts in the Grade shall be filled up by promotion strictly on the basis of merit through limited departmental competitive examination conducted by the High Court as specified in Schedule-B of the Rules.

Provided that if candidates are not available for 10% of seats, or are not able to qualify in the examination then vacant posts shall be filled up by regular promotion.”

5. Rule 10 of the Rules pertains to selection procedure and reads as under:

"10. SELECTION PROCEDURE:-

(1)

(i) Whenever two or more vacancies required to be filled by direct recruitment occur in a cadre in the service or once in two years, whichever is earlier, the High Court shall invite by advertisement in the official Gazette and in at least two newspapers, applications in such form as it may determine from intending candidates, who possess the prescribed qualifications. The advertisement shall indicate the number of vacancies reserved for Scheduled Castes, Scheduled Tribes and shall contain all necessary information relating to the recruitment. It shall also indicate that an additional list of selected candidates would be prepared as per clause (iv).

(ii) The decision of the High Court as to the eligibility or otherwise of a candidate for admission to the written and viva-voce examination shall be final. No candidate to whom certificate of admission has not been issued shall be admitted for the examination.

(iii) The High Court shall on the basis of cumulative grade value secured by a candidate, and taking into consideration the orders, if any, in force relating to reservation of posts for Scheduled Tribes. Scheduled Castes prepare in the order of merit, assessed as provided in Schedule B, a list of selected candidates which shall be equal to the number of vacancies notified.

(iv) The High Court shall, in accordance with the provisions of clause (iii), also prepare an

additional list of candidates on merit not included in the list of candidates prepared under clause- (iii) above, in which the number of candidates to be included shall, as far as possible be ten percent of the number of vacancies notified for recruitment or one, whichever is higher.

(v) The lists of successful candidates so prepared under clauses (iii) and (iv) above shall be published in at least two newspapers and they shall cease to be operative on the expiry of one year from the date of such publication.

(vi) Candidates whose names are included in the first list prepared under clause (iii) above shall be considered for appointment in the order in which their names appear in the list. Candidates whose names are included in the additional list may be similarly considered for appointment against vacancies, if available, after appointment of the candidates of the first list.

(2) All vacancies in all Grades of service either by promotion or direct recruitment, as may be, shall be filled up in accordance with the time schedule mentioned in schedule E."

6. Rule 11 of the Rules pertains to other conditions relating to suitability, fitness and character of a direct recruit and reads as under:

"11. OTHER CONDITIONS RELATING TO SUITABILITY, FITNESS AND CHARACTER OF A DIRECT RECRUIT:-

(1) No person selected for direct recruitment shall be appointed-

(i) Unless the appointing authority is satisfied that he possesses a good moral character

and is in all other respects suitable for appointment to the service;

(ii) Unless he is certified by the medical authority of the State Health department for the purpose that he is medically fit to discharge the duties of the post for which he is selected for appointment.

(2) Every candidate selected for appointment by direct recruitment shall furnish certificates, from two respectable persons unconnected with his college or university where he studied and not related to him, testifying to his character, in addition to the certificate which may be required to be furnished from the educational institution last attended by him."

7. The details of competitive examination for direct recruitment to various judicial posts is prescribed in Schedule B which is referred to in Rule 7 and in clause (iii) of sub-rule (1) of Rule 10. Relevant portion of this Schedule reads as under:

"A. FOR DIRECT RECRUITMENT & PROMOTION TO GRADE-I UNDER LIMITED DEPARTMENTAL EXAMINATION:-

(1) A competitive examination for recruitment to the service in grade-I shall be conducted by the High Court at such interval as it may determine from time to time. The examination shall be conducted with the following syllabus, namely:-

Paper-I:- One paper of 100 marks (duration not less than 2 hours) to test the General Knowledge, aptitude, intelligence, test of comprehension and expression of law and General English including

Essay Writing on legal topic and information technology.

Paper-II:- One paper of 100 marks of not less than 2 hours duration regarding objective questions and problems of law as regards the Transfer of Property Act, Civil Procedure Code, Code of Criminal Procedure, Indian Evidence Act, Indian Penal Code, Limitation Act.

Paper-III:-One paper of 100 marks (duration not less than 2 hours)-consisting of Judgment writing (Paper Book to be supplied)-Legal theories on jurisprudence, provision of the Constitution of India.

NOTE:- (The candidate is expected to refer to the relevant decisions of the Apex Court and the High Court while writing answers in Paper-II and III).

Interview:- Viva-voce – 50 marks.

3. **GENERAL INSTRUCTIONS**:-

(i) ***All candidates who obtain sixty percent or more in the written examination shall be eligible for viva voce examination.***

Provided that Scheduled Caste/ Scheduled Tribe candidates who obtain fifty percent or more in the written examination shall be eligible for the viva voce examination.

(ii) The object of the viva voce test is to assess the suitability of the candidate for the cadre by judging the mental alertness, knowledge of law, clear and logical exposition, balance of judgment, skills, attitude, ethics, power of assimilation, power of communication, character and intellectual depth.

(iii) ***A candidate must secure minimum 30% marks in the viva voce to be eligible for***

being recommended for appointment to the Service in Grade-I as well as in Grade-III.

The marks obtained in the viva voce will be added to marks obtained in the written examination in case of Grade-I and in the main written examination in case of Grade-III and the position of the candidate in the merit list will depend on the aggregate of both."

8. Under an advertisement dated 09.01.2018 High Court of Tripura notified one vacancy in Grade-I of Tripura Judicial Service for direct recruitment in reserved category. The advertisement contained the syllabus of written examination and the interview for such direct recruitment specifying that there would be three papers in the written examination carrying 100 marks each followed by viva-voce test of 50 marks. On 10.10.2018 the High Court issued an addendum notifying two vacancies of Grade-I Tripura Judicial Service by direct recruitment. As in the previous advertisement in the present one also it was provided that if no suitable candidate for such reserved category is available, the post will be filled up from unreserved category and, therefore, candidates of unreserved category were also allowed to apply.

9. The petitioner having the necessary qualifications and belonging to unreserved category applied in response to the said advertisements. He appeared in the written examinations conducted by the High Court on 2nd and 3rd February, 2019. The result of the written examination was declared on 05.03.2019. The petitioner was awarded 183 out of 300 marks which came to 61%.

He not only, therefore, passed the written examination but was the highest ranked candidate. Only one more candidate namely Sri Anshuman Chowdhury had cleared the said written examination with 60.83% marks. He was ranked at No.2 in the written examination. The petitioner as well as said Anshuman Chowdhury were called for viva-voce test. The result of the examinations was declared under a notification dated 19.03.2019. Such notification contained following information:

Roll No.	Name of the Candidates	Category	Marks obtained in the Written Examination			Marks obtained in the Interview (Viva Voce) out of 50 marks	Total Marks obtained out of 350 marks
			Paper-I out of 100 marks	Paper-II out of 100 marks	Paper-III out of 100 marks		
35	Sri Anshuman Chowdhury	UR	71.5	69	42	27	209.5
50	Sri Yoginder Pal	UR	63.5	75.5	44	15	198

10. As per the combined total of the written as well as oral examination marks said candidate Sri Anshuman Chowdhury was awarded 209.5 marks. The petitioner Sri Yoginder Pal was awarded a total of 198 marks. In the result so published by the High Court, therefore, Anshuman Chowdhury was shown at Sl. No.1 and petitioner was shown at Sl. No.2. At this stage we may recall that the rules prescribe minimum pass percentage of viva-voce test as 30%. The petitioner who was awarded 15 out of 50 marks in the viva-voce examination thus had secured the minimum required marks.

11. Despite such facts, it appears that the High Court recommended only the name of Anshuman Chowdhury for appointment to the said post. The petitioner, therefore, made a representation dated 21.05.2019 to the High Court pointing out that he had cleared written as well as oral tests. He was placed at Sl. No.2 in the merit list despite which he has not been offered appointment. He requested that necessary steps may, therefore, be taken. His representation was rejected by the High Court which was communicated to him by the Registrar General under a letter dated 01.06.2019. Thereupon the petitioner first approached the Supreme Court directly but withdrew the petition with a liberty to approach the High Court. That is how this petition has been filed for the above noted prayers.

12. Appearing for the petitioner, learned counsel Sri Prashant Manchanda submitted that the petitioner had cleared written as well as oral examinations. His name was, therefore, placed in the merit list at Sl. No.2 according to his tally of marks. There were two vacancies notified by the High Court. Both these vacancies were for reserved category candidates. Since admittedly not a single reserved category candidate was available, as in the case of Sri Anshuman Chowdhury the petitioner should also have been appointed. No reasons are cited for not appointing the petitioner or for rejecting his representation. He relied on the decision of Supreme Court in case of **Malik Mazhar Sultan (3) and another vrs. Uttar Pradesh Public Service Commission**

and others reported in **(2008) 17 SCC 703** in which the Supreme Court has stressed on the requirement of timely recruitments in the judicial posts. He submitted that in the present case a vacancy as well as suitable candidate were both available despite which the High Court without any justification refused to recommend the petitioner for appointment.

13. On the other hand, learned counsel Ms. Paramita Dhar appearing for the respondent No.1 High Court of Tripura opposed the petition contending that the petitioner has no vested right to be appointed merely because his name is placed in the merit list. The High Court had not treated the said list as a select list. In any case, a candidate whose name is placed in the select list also does not have a vested right of appointment. She submitted that suitability of a candidate for being appointed is one of the requirements under the rules. The Full Court considered the suitability of the petitioner and found that his name should not be recommended for appointment. She placed the file of the High Court for our perusal.

14. Having thus heard learned counsel for the parties and having perused the documents on record, we may analyze the facts and the statutory provisions applicable more minutely. We have taken note of the relevant statutory provisions contained in the said Rules. We may recall, as per sub-rule (3) of Rule 7, 25% of the posts in Grade-I service would be filled up by direct recruitment on the basis of aggregate marks/grade secured in the competitive examination which would be conducted by the High Court as

specified in Schedule B of the Rules. Clause (iii) of sub-rule (1) of Rule 10 also provides that the High Court would on the basis of cumulative grade value secured by a candidate and taking into consideration the orders in relation to reservation of posts for Scheduled Castes and Scheduled Tribes prepare in order of merit, assessed as provided in Schedule B, a list of selected candidates which would be equal to the number of vacancies notified. This preparation of the list of successful candidates in order of merits equal to the number of vacancies notified is thus an exercise in furtherance of preparing the select list. As per Schedule B, for direct recruitment to the Grade-I post there would be a competitive examination which would comprise of three written papers carrying 100 marks each followed by an oral interview of 50 marks. As per the general instructions which are also part of Schedule B all candidates who obtain sixty percent or more marks in the written examination (55% for SC/ST candidates) would be eligible for viva-voce test. It is further provided that the candidate must secure minimum 30% marks in the viva-voce to be eligible for being recommended for appointment to the Service in Grade-I as well as Grade-III. It is clarified that the marks obtained in the viva-voce shall be added to marks obtained in the written examination in case of Grade -I and the position of the candidate in the merit list will depend on the aggregate of both. It may be noted that clause (iii) of paragraph 3 i.e. General Instructions of Schedule B was inserted by Tripura Judicial Service (Eighth Amendment) Rules 2019 dated 15.02.2019 w.e.f. 25.02.2019. This clause which prescribes

minimum marks in viva-voce test was not there in earlier Rule. In other words prior to 25.02.2019 the said Rules did not prescribe any passing marks for viva-voce. The advertisement for recruitment in the present case was issued on 09.01.2018 i.e. before the amendment but the examinations i.e. written and oral were taken in March, 2019 and thereafter i.e. after the said amendment. In the present case it is not necessary to decide whether such amendment which was brought into effect after the notification of vacancies would apply to the selection process since we are prepared to proceed on the basis that such minimum pass marks prescribed in the amended Rule would be applicable in the present case.

15. Broadly stated, the procedure adopted by the High Court under the said Rules for direct recruitment to the Grade-I post was that all eligible candidates would be invited for appearing in written examinations comprising of three papers of 100 marks each. Those who secure a minimum of 60% marks in the written examination (55% for SC/ST candidates) would be called for viva-voce comprising of 50 marks. Only those candidates who secure a minimum of 30%, i.e. 15 out of a total of 50 marks in viva-voce test would be eligible for appointment. The select list would be prepared on the basis of the total marks in written examination and the marks secured in the viva-voce. In case vacancies are reserved for any reserved category, an unreserved candidate would be recommended for appointment only if qualified reserved category candidates are not available.

16. In the present case, as noted, only two candidates both belonging to unreserved category were declared successful in the written examination. The petitioner with 61% marks was placed at Sl. No.1. Both were called for oral interview. The petitioner was awarded 15 out of 50 marks in the viva-voce test. In the combined result of the written and oral examinations declared by the High Court the petitioner was shown to have secured 198 out of 350 marks. The other candidate Sri Anshuman Chowdhury had secured a total of 209.5 marks and was, therefore, placed at Sl. No.1. The petitioner was placed at Sl. No.2 in the declaration of result.

17. The respondents have not cited any reason why the petitioner was not recommended for appointment despite successfully clearing the written as well as oral examinations and being placed at a Sl. No.2 in the result against two notified vacancies. It is futile for the respondents to argue that the notification dated 19.03.2019 was not a select list but only a publication of the result of the examination. Clause (iii) of sub-rule (1) of Rule 10 of the said Rules requires the High Court to prepare a list of selected candidates in order of merit assessed as provided in Schedule B which would be equal to the number of vacancies notified on the basis of cumulative performance of the candidates. Whether any such formal select list was prepared and published or not is of no consequence since the necessary facts are undisputed. Performance-wise the petitioner was at Sl. No.2 in the grand total comprising of marks in written and the oral examinations against two notified vacancies. If the respondents desired that the

petitioner despite his performance during such examination, should not be recommended for appointment, there had to be specific reason emerging from the record. In this context before referring to the reply of the respondent No.1 and the original file of the High Court, we may take note of Rule 11 of the said Rules. Sub-rule (1) of Rule 11 provides that no person selected for direct recruitment shall be appointed unless (i) the appointing authority is satisfied that he possesses a good moral character and is in all other respects suitable for appointment to service and (ii) unless he is certified by the medical authority that he is medically fit to discharge his duties for the post in question. The respondents have not cited the reason of the petitioner being medically unfit for appointment. The grounds of non-recommendation of the name of the petitioner, therefore, must be judged within the parameters of clause (i) of sub-rule (1) of Rule 11 namely the appointing authority not being satisfied that the petitioner possesses a good moral character or in all other respects is not suitable for appointment to the service. Here again the respondents have not cited any reason of the petitioner not possessing good moral character. The entire issue would, therefore, boil down to the question whether there is any material enabling the High Court to be satisfied that the petitioner in other respects is not suitable for appointment to the service. Reply of the High Court in this respect is totally silent. No specific reasons are cited for not recommending the petitioner for appointment. In this context we may also refer to the original file of the High Court. During the Full Court meeting convened on

05.03.2019 Agenda Item No.1 discussed by the Full Court was publication of the result of the written examination held on 02.02.2019 and 03.02.2019 for filling up the vacant posts in Grade-I of Tripura Judicial Service by direct recruitment. The proposal was approved by the Full Court. The resolution also stated that *"Since no candidate of reserved category has qualified for viva voce, the Full Court, in terms of Rule 8 of Tripura Judicial Service Rules, has resolved that candidates namely Shri Yoginder Pal of Roll No.50 and Shri Anshuman Chowdhury of Roll No.35 of UR category who alone have qualified for viva voce as per Rule shall be called for appearing in the viva voce examination on 14.03.2019 at 4.30 p.m."*

18. On 19.03.2019 the Full Court considered an Agenda Item No.1:-The final select list of two candidates of unreserved category namely Shri Anshuman Chowdhury and Shri Yoginder Pal for publication of final result and recommendation of their names to the State Government for appointment in Grade-I of Tripura Judicial Service by direct recruitment. The resolution adopted by the Full Court was as under:

"RESOLUTION: The Full Court after consideration of the matter has found Shri Anshuman Chowdhury of Unreserved Category (UR) fit for being recommended for appointment in Grade-I of Tripura Judicial Service by direct recruitment as no suitable candidate of the reserved category is found available.

The result of the two candidates namely, Shri Anshuman Chowdhury and Shri Yoginder Pal be put on the website of the High Court and thereafter name of Shri Anshuman Chowdhury be recommended to

the State Government for appointment in Grade-I of the Tripura Judicial Service immediately.

The Registry will take follow up action.”

19. The representation dated 21.05.2019 of the petitioner was placed before the Full Court in its meeting dated 31.05.2019. The Full Court decided to reject the said representation by adopting following resolution:

“RESOLUTION: The Full Court has considered the matter and found that after considering the suitability of the 02 candidates including the petitioner, in the Full Court meeting held on 19.03.2019 the name of Sri Anshuman Chowdhury was recommended for appointment in Grade-I of Tripura Judicial Service by direct recruitment.

Therefore, the representation dated 21.05.2019 of Sri Yoginder Pal stands rejected.”

20. Few things immediately become clear from such materials on record. The petitioner having passed the written as well as viva-voce examinations, was at Sl. No.2 in the merit order against two vacancies. Since no candidate belonging to the reserved categories was available both the posts were to be filled up by unreserved category candidates if available. The petitioner, therefore, had a legitimate claim to be recommended for appointment to the post in question. The same could have been withheld only if any of the grounds specified in Rule 11 was in existence. We are conscious that as per settled law a candidate whose name is placed in the select list does not have a vested right

of appointment. However, his non-appointment must also be for valid reasons. Reference in this respect can be made to the decision of Supreme Court in case of **Munna Roy vrs. Union of India and others** reported in **(2000) 9 SCC 283**. Even the rules do not envisage automatic appointment of a successful candidate. Rule 11 specifies grounds on which such appointment may be withheld. Rule 11 is framed in double negatives providing that no person selected for direct recruitment shall be appointed unless following three requirements are satisfied:

- (i) The appointing authority is satisfied that the candidate possesses a good moral character; and he is in all other respects suitable for appointment to the service;
- (ii) He is certified to be medically fit.

21. The respondents have not pressed in service either the ground of the petitioner lacking in good moral character or physical fitness. His appointment could have been thwarted only on the ground of his unsuitability which had to be based on material on record. Once the entire selection process was completed, the task of evaluating the candidates undertaken and the petitioner was awarded marks which warranted his being included in the merit list, the High Court could not have withheld his name from recommendation on the ground that he was not suitable for appointment without any material on record. His suitability on the basis of competence had to be judged only through the written and the oral examinations. The Full Court could not thereafter make a

second opinion on his merit to be appointed to the post in question. Reference to his suitability contained in clause (i) of sub-rule (1) of Rule 11 certainly would not include judging of the competence of the candidate for which the Rules envisage full scale written as well as oral examinations.

22. The petitioner, however, cannot claim seniority from the back date. His recommendation would be prospective. He must, however, get appointment ahead of any other candidate selected pursuant to subsequent selection process for the post in question. In the result, it is provided that the respondent No.1 shall recommend the name of the petitioner to the Government for appointment to Tripura Judicial Service Grade-I post which we are informed is vacant at present. The State Government thereafter shall act in accordance with such recommendations after completing necessary formalities, such as medical and antecedent verifications. Entire exercise shall be completed within a period of 3(three) months from today.

23. With these directions, petition is disposed of.

(ARINDAM LODH), J

(AKIL KURESHI), CJ