
(2016) 03 TP CK 0012
In the Tripura High Court
Case No : WP (C) Nos. 532 and 534 of 2012

Asis Debbarma and Others

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 16(4), Article 16(4-A),
Article 226, Article 309, Article 335
Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 — Section 3(5),
Section 4

Citation : (2016) 03 TP CK 0012

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : S.M. Chakraborty, S. Bhattacharji, P. Chakraborty and D. Das,
Advocates, for the Appellant; A.S. Lodh, Addl. Govt. Advocate, for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J.—1. Both the writ petitions were heard together on the prayer of learned counsel of both side since the facts, points of law and reliefs sought in both the writ petitions were identical and this common judgment is passed, which shall govern both the writ petitions.

2. Heard learned senior counsel, Mr. S.M. Chakraborty for the petitioners, learned Additional Government Advocate, Mr. S. Chakraborty and Ms. A.S. Lodh for the State-respondents and learned counsel, Mr. J. Majumder for the private respondents in both the writ petition.

3. The petitioners joined Tripura Health Services (for short "THS") as Medical Officers and while in service, Dr. Asis Debbarma, petitioner of W.P.(C) No. 532 of 2012 done his M.D. in Bio-Chemistry from Regional Institute of Medical Science, Imphal in the year 2007. Similarly, Dr. Mani Ranjan Debbarma, petitioner of W.P. (C) No. 534 of 2012 done his M.S. in General Surgery from the same Institute in the year 2006. After doing their M.D. and M.S. respectively, they joined in their

original place of posting and thereafter on transfer Dr. Asis Debbarma joined GBP hospital, Agartala on 05.10.2007 and Dr. Mani Ranjan Debbarma joined GBP hospital in the month of December, 2006.

The State-respondents by issuing Notification dated 24.12.2008 (Annexure-4 to W.P.(C) No. 532 of 2012) directed Dr. Asis Debbarma to function as a full time Tutor and accordingly, from that date Dr. Asis Debbarma has been performing his duties as a full time Tutor in Agartala Government Medical College and Gobinda Ballavh Pant Hospital (for short "AGMC & GBP Hospital"). Similarly, the State-respondents by issuing Notification dated 08.05.2007(Annexure-3 to W.P.(C) No. 534 of 2012) directed Dr. Mani Ranjan Debbarma to work as a senior resident in the department of General Surgery of AGMC & GBP Hospital and accordingly, he has been working in the said post.

Subsequently, by issuing another Memo dated 13.10.2009 (Annexure-4 to W.P. (C) No. 534 of 2012) the State-respondents directed that the post of senior resident in various departments of AGMC & GBP Hospital has been re-designated as Registrars and accordingly, Dr. Mani Ranjan Debbarma was designated as Registrar in the department of General Surgery of AGMC & GBP Hospital.

4. Since almost similar and identical documents were referred by the parties in the writ petitions, with the consent of learned counsel of both sides, Case No. W.P.(C) 532 of 2012 was taken up as the lead case and henceforth the documents annexed in that writ petition shall be referred.

5. It is an admitted position that both the writ petitioners belong to Scheduled Tribes community and, therefore, entitled to get the benefits of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (for short "SC & ST Reservation Act").

6. Respondent No. 3 made an advertisement on 25.06.2012 (Annexure-5 to the writ petition) inviting applications from the interested candidates having requisite academic qualification and professional experience as per MCI guideline to fill up 34 vacant posts of Assistant Professor in 21 departments/disciplines of AGMC & GBP Hospital on ad hoc basis. Those 21 departments/disciplines were:

7. It was further stipulated that the vacancy positions were liable to be changed without any intimation to the applicants and that out of 34 posts, 7 posts were earmarked for Scheduled Castes (for short "SC") and 8 posts for Scheduled Tribes (for short "ST") candidates. The eligibility for the post of Assistant Professor has been mentioned in Para-2 of the advertisement, which reads as follows:--

"2. Eligibility for the post of Assistant Professor:

2.1. Essential : MD/MS/MDS from an Institute recognized by MCI/DCI in the concerned subject. (MD/MS course should be of 3(three) years" duration and in case of 2(two) years" MD/MS course 1(one) year experience as Resident/Registrar/Demonstrator/Tutor in concerned discipline after obtaining the Post

Graduation is mandatory.

2.2. Desirable : a) Tutorship/Senior Residency in concerned discipline for three years is desirable.

b) Publication in indexed professional journals as first/second author would be given due weight age during selection."

8. Mode of appointment as mentioned in Para-4 of the advertisement was:--

"Mode of appointment : The appointment is on ad-hoc basis initially for a period of 6(six) months subject to satisfactory performance and shall be regularized as per existing Govt. rule."

9. The petitioner, Dr. Asis Debbarma, applied for the post of Assistant Professor in Bio-Chemistry and the petitioner, Dr. Mani Ranjan Debbarma, applied for the post of Assistant Professor in General Surgery. Interview was held and the petitioners did not get selection in the interview.

10. The petitioner, Dr. Asis Debbarma contended that he was the senior most Tutor in the Bio-Chemistry department of AGMC & GBP Hospital having all qualifications for appointment to the post of Assistant Professor, but he was not selected though he was entitled to get the selection as ST candidate. Whereas the private respondents of W.P.(C) No. 532 of 2012 both belonged to SC community were selected and were appointed.

11. Dr. Mani Ranjan Debbarma, the petitioner of W.P.(C) No. 534 of 2012 contended that he was entitled to get selection as an Assistant Professor since he has all qualifications and experience, but the private respondents of W.P.(C) No. 534 of 2012 were selected illegally.

12. Both the writ petitioners contended that some of the Doctors, who were selected even had no experience at all, though in the advertisement it was mentioned that experience in Tutorship or senior residency shall be desirable for selection. It is also contended by the petitioners that the reservation law was not followed. According to the SC & ST Reservation Act, out of 34 total vacancies, 10 posts ought to be reserved for ST candidates, whereas by impugned advertisement dated 25.06.2012 only 8 posts were reserved for the ST candidates, which was in violation of the provisions of SC & ST Reservation Act and ultimately only 6 candidates belonging to ST community were given ad hoc appointment by Notification dated 18.09.2012(Annexure-7 to the writ petition) and thereby the petitioners were deprived.

13. It is an admitted position that the State-respondents made recruitment rule for appointment of faculty of AGMC & GBP Hospital under the department of Health and Family Welfare of the Government of Tripura, namely, "The Recruitment Rules of Faculty of Agartala Government Medical College Rule, 2008 under Article 309 of the Constitution of India" and it was notified on 18.03.2010. BY that recruitment rule the State-respondents made provisions for appointment

to the post of Principal, Professor, Associate Professor, Assistant Professor, Basic Teacher (Tutor, Registrar) etc. A copy of the recruitment rules is annexed as Annexure-6 to the writ petition.

14. The number of posts, essential qualifications, method of recruitment, age limit, pay scales etc. for each of the nomenclature of posts of AGMC has been prescribed in particular schedule to the notification. The relevant rule in respect of appointment to the post of Assistant Professor, as prescribed in the schedule of the rule, reads as follows:--

1. Name of the post(s)

Assistant Professor.

2. Number of Post(s)

74 (seventy four) plus additional posts as when created.

3. Classification

Group-A Gazetted.

4. Scale of pay

Rs. 15,600-37,100 + GP Rs. 6,000 (UGC Pay Structure) + Spl. Allowance Rs. 8,000. Other Allowances as admissible to the THS.

5. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods.

i. 80% of the post by promotion from the post of Basic Teachers viz. Tutor, Registrar of Agartala Govt. Medical College or by absorption of Medical Officer from THS failing which by direct recruitment.

ii. 20% by direct recruitment failing which by promotion from the Post of Basic Teachers viz. Tutor, Registrar of Agartala Govt. Medical College or by absorption of Medical Officer from THS.

6. Age limit for direct recruitment

Age limit is for direct recruitment 50 years. Upper age limit is relaxable by 5(five) years in case of SC/ST/PH candidates and 3(three) years for the Basic Teachers belonging to Agartala Government Medical College and Medical Officers belonging to Tripura Health Services provided that the SC/ST/PH Medical Officers belonging to Tripura Health Services and Basic Teacher belonging to Agartala Government Medical College shall not get this relaxation over and above the general relaxation of 5(five) years available to them.

7. Educational and other qualifications required for direct recruitment

Minimum qualifications as prescribed by the Medical Council of India and

specified in the 'Minimum qualification Teachers in Medical Institutions Regulations 1998', (published in Part-III, Section-4 of the Gazette of India dated the 5th December 1998 and as amended by MCI from time to time).

8. Whether age and Educational qualifications prescribed for direct recruitment will apply in the case of promotees.

Age will not be a bar in case of promotees having requisite qualification and teaching experiences.

9. Whether selection or non-selection post.

Selection Post.

10. Period of probation, if any

2(two) years in case of appointment on regular scale of Pay.

11. In case of Recruitment by Promotion/deputation/transfer grade from which promotion/deputation/transfer is to be made.

Promotion to be made from the posts of Tutor/Registrar (Basic Teacher) having 3 (three) years experience in the grade with requisite qualification as prescribed by MCI.

12. If a D.P.C. exists, what is the composition.

Group-A(Gazetted)D.P.C.

13. Circumstances in which T.P.S.C. is to be consulted in making recruitment.

As required under Tripura - Public Service Commission (exemption from consultation) Regulation, 1973.?

15. It is contended by the petitioners that the State-respondents made the advertisement in total violation of the prescribed provisions of the rule and, therefore, the appointments, so far made pursuant to the advertisement dated 25.06.2012 was altogether unconstitutional and illegal and as such liable to be struck off. They have also prayed for directing the respondents to appoint them in the posts of Assistant Professor w.e.f. 18.09.2012 (Annexure-7 to the writ petition) and to give them all other benefits of service.

16. The State-respondents, i.e., respondent Nos. 1 to 4 submitted a joint counter affidavit, inter alia, contending that advertisement for filling up of 34 posts was made in accordance with the rule and that the reservation law was followed. The SC and ST department verified the roster and as per roster verification made by the SC and ST department, 8 posts were reserved for ST candidates out of total 34 posts in different disciplines. There was no violation of the reservation law. The petitioners consciously participated in the selection process and when they failed to get selection, they turned around and challenged the selection process

which they cannot. If they had any objection about the advertisement and/or reservation, they would protest it before their participation in the interview process. Once they participated in the interview process, they cannot challenge the advertisement and process of interview and, therefore, the writ petition should be dismissed with cost.

17. It is also contended by the State-respondents that the petitioner, Dr. Asis Debbarma was directed to do the job of Tutor and he was never absorbed in the post of Tutor. Similarly, the petitioner, Dr. Mani Ranjan Debbarma was appointed in the post of senior resident, which was subsequently re-designated as Registrar and he was also never absorbed in the post and, therefore, they cannot claim that they were holding the feeder posts for promotion to the posts of Assistant Professor. It is further contended by the State-respondents that the State-respondents resorted to appoint Assistant Professor on ad hoc basis since there was no eligible person in the feeder post for promotion to the post of Assistant Professor. Mere continuous functioning in the post of Tutor or Registrar does not qualify the petitioners for their promotion to the posts of Assistant Professor in the respective discipline since they were not absorbed in the feeder posts. The petitioners are Medical Officers of THS and they cannot claim that they are holding the feeder post of Assistant Professor only because they were performing the duties of Tutor/Registrar and so, there was no illegality or irregularity in the advertisement, selection and appointment of the private respondents and others as per appointment order dated 18.09.2012.

18. The private respondents, inter alia, contended that they participated in the selection process pursuant to the advertisement made by respondent No. 3 having all requisite qualifications and the Interview Board in due process selected them considering their merit. The writ petitioners also participated in the interview and selection process and having been unsuccessful they cannot have any right to challenge the selection of private respondents.

19. Let us first decide --

"Whether the petitioners, while participated in the selection process, pursuant to advertisement dated 25.06.2012, have any right to challenge the advertisement and consequential selection and appointment of private respondents?"

19.1. Annexure-5 is the advertisement dated 25.06.2012, issued by the respondent No. 3 for appointment to 34 vacant posts of Assistant Professor in 21 disciplines of AGMC & GBP Hospital. The petitioner, Dr. Asis Debbarma is an M.D. in Bio-Chemistry, working as Tutor and the petitioner, Dr. Mani Ranjan Debbarma is an M.S. in General Surgery, working as Registrar. Admittedly, they applied for the posts of Assistant Professor in the respective discipline, but they did not get selection, whereas the private respondents were selected in the respective department of Bio-Chemistry and General Surgery and were appointed on ad hoc basis. The petitioners since participated in the interview process and taken a chance of being selected, cannot turn around and say that the selection of the

private respondents were bad. It is a settled law that persons, who voluntarily participated and/or taken part in the selection process and are unsuccessful in the same, cannot be permitted to impugn the process of interview.

19.2. The Supreme Court in the case of Madan Lal & ors. V. State of Jammu & Kashmir & ors., reported in , (1995) 3 SCC 486, referring to its earlier decision in the case of Om prakash Shukla V. Akhilesh Kumar Shukla, reported in , AIR 1986 SC 1043, in para-9 of the judgment has held:--

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors, (, AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

19.3. In the case at hand, since the petitioners participated in the interview and selection process, they cannot now turn around it and challenge the selection process of private respondents in the posts of Assistant Professor in the respective discipline.

20. Let us now turn to the next issue, which fell for consideration of this Court -

"Whether the petitioners have a right to challenge the entire interview/selection process on the ground that the provisions of recruitment rule were violated?"

20.1. It is a settled law of the land that all public employment shall be made strictly in accordance with the Constitutional provisions and according to law. If the law regulating the employment/recruitment is violated, every citizen has a right to challenge it before a Court of law. A person, who has participated in the selection process initiated de hors the rule and/or constitutional mandate, also have a right to challenge it since there is no estoppel against law. If such an issue is raised before the Constitutional Court, it is the solemn duty of the Court to examine the issue and to set the law in operation removing the illegalities

committed by any authority.

20.2. The Supreme Court in the case of Raj Kumar & ors. V. Shakti Raj & ors., reported in , (1997)9 SCC 527 has observed that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he has estopped to question the correctness of the selection. But if it is found that the Government has committed glaring illegalities in the procedure to get the candidates for selection, the principle of estoppel or acquiescence has no application in such case. We may gainfully refer here para-16 of the judgment, which reads as follows:--

"16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J and K, (1955) 3 SCC 486 : (, 1995 AIR SCW 1109) and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law."

20.3. In the case of Nar Singh Pal V. Union of India & Ors., reported in , (2000) 3 SCC 588, the Apex Court has held:

"..... Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can thereby any estoppel against the exercise of Fundamental Rights available under the Constitution....."

20.4. In the present writ petitions, the petitioners clearly contended that the recruitment rule framed by the State has been given goodbye and not followed at all while making the advertisement and appointing the private respondents and others as Assistant Professors in different disciplines and so, in my considered opinion, the petitioners were entitled to challenge advertisement, selection and appointment of the private respondents and others, which is alleged to be in violation of recruitment rule.

21. The next issue, which fell for consideration of this Court, is --

"Whether the reservation law was followed by the State-respondents?"

21.1. It is an admitted position that advertisement was made for filling up of 34 vacant posts in 21 department/disciplines of AGMC for the posts of Assistant Professor. Out of 34 posts, 7 posts were reserved for SC and 8 posts were reserved for ST. Section 4 of the SC & ST Reservation Act prescribes that there shall be 31% reservation for the Scheduled Tribes in case of direct recruitment in any vacancy or vacancies in services or posts in an establishment. It is an admitted position that as per the SC & ST Reservation Act even in case of ad hoc appointment, the roster should be maintained and reservation law should be followed. Though as per the advertisement the recruitment was in 21 discipline/departments of AGMC in 34 vacant posts, all posts were clubbed together and 8 posts were reserved for ST candidates. Apparently, not less than 10 posts ought to be reserved for ST candidates, out of those 34 posts.

21.2. The State-respondents contended that the roster was verified by SC and ST department and it was agreed by SC and ST department that 7 posts should be reserved for SC and 8 posts should be reserved for ST candidates. Since the appropriate department of the Government verified the roster and held that 8 posts should be reserved for ST candidates, the petitioners have no right to challenge the reservation proposed in the advertisement.

21.3. The petitioners contended that since the reservation was not followed according to rules, the Secretary of Tribal Welfare Department wrote a letter to the Secretary, Health & Family Welfare Department on 22.09.2012 (Annexure-8 to the writ petition) referring to the said advertisement that there shall be 10 posts reserved for ST candidates. That letter of Tribal Welfare Department was not duly attended and is not disputed by the State-respondents. The Director, Tribal Welfare Department has been made a party in the writ petitions as respondent No. 4 and a common counter affidavit has been filed by respondent Nos. 1 to 4 contending that reservation law was followed and as per the roster verification 8 posts were reserved for ST candidates. It is, therefore, evident that the Tribal Welfare Department also consciously disputed Annexure-8, i.e., letter of the Secretary, Tribal Welfare Department dated 22.09.2012. The petitioners cannot say that they were not aware of the reservation law. They having been aware participated in the selection process knowing fully well that 8 posts were reserved for ST candidates. But their participation in the process cannot prevent them to challenge the same, if it is found that the law itself has been violated by not making the reservation as per statute. The reservation law clearly stipulates that there shall be 31% reservation for the ST candidates. In that case, while total vacancies were 34, not less than 10 posts were supposed to be reserved for ST candidates. Admittedly, 8 posts were reserved out of 34 total vacancies/posts. It is in sheer violation of the provisions of the SC & ST Reservation Act. The roster verification report has not been submitted by the respondents. Therefore, I have no hesitation to observe that the respondents did not strictly follow the

reservation law while making the advertisement for the 34 vacant posts.

21.4. It is contended by Dr. Asis Debbarma, petitioner of W.P.(C) No. 532 of 2012 that both the posts of Bio-Chemistry department were given to private respondent Nos. 5 and 6, who belonged to SC community. Thereby the State-respondents actually made 100% reservation in favour of SC candidates, whereas deprived the ST candidates from the benefits. In W.P.(C) No. 534 of 2012, Dr. Mani Ranjan Debbarma has contended that the private respondents, one belonged to SC community and another belonged to ST community, were selected and that was also in violation of the reservation rules.

21.5. It is an admitted position that reservations were not ascertained and made discipline-wise, whereas all the vacant posts were clubbed together and thereafter the reservation was made in 8 posts for ST and 7 posts for SC, which is clearly in violation of the law settled by the Apex Court. It is a settled position that if in any particular department all posts are filled only by those appointed on basis of reservation and not on basis of merit, then the reservation will be more than 50% in that particular department and that will adversely affect the efficiency as clearly laid down by the Apex Court in the case of *M. Nagaraj & Ors. V. Union of India & ors.*, reported in , (2006) 8 SCC 212. We may gainfully refer here para-44 of the Apex Court's observation in *M. Nagaraj(supra)*, which reads as follows:--

"44. The above three concepts are independent variable concepts. The application of these concepts in public employment depends upon quantifiable data in each case. Equality in law is different from equality in fact. When we construe Article 16(4), it is equality in fact which plays the dominant role. Backward classes seek justice. General class in public employment seeks equity. The difficulty comes in when the third variable comes in, namely, efficiency in service. In the issue of reservation, we are being asked to find a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system. Equity and justice in the above context are hard-concepts. However, if you add efficiency to equity and justice, the problem arises in the context of the reservation. This problem has to be examined, therefore, on the facts of each case. Therefore, Article 16(4) has to be construed in the light of Article 335 of the Constitution. Inadequacy in representation and backwardness of the Scheduled Castes and Scheduled Tribes are circumstances which enable the State Government to act under Article 16(4) of the Constitution. However, as held by this Court the limitations on the discretion of the government in the matter of reservation under Article 16(4) as well as Article 16(4-A) come in the form of Article 335 of the Constitution."

21.6. In the case of *Jayanta Chakraborty & Ors. V. State of Tripura & Ors.*, reported in , (2015) 1 TLR 846, a Full Bench of this Court dealt with the provisions of the SC & ST Reservation Act and rules framed thereunder. I am aware that the said decision is challenged before the Apex Court and it is pending. The issue has also been substantially dealt with in the case of *Smt.*

Bijaya Bhattacharya V. State of Tripura & ors. [W.P.(C) No. 172 of 2015]. It is not known whether that decision has been challenged before the superior forum or not.

21.7. It has been settled by the Apex Court that reservation must be subject-wise in respect of appointment to a post like Assistant Professor to a Medical College. In the case of State of U.P. & Ors. V. M.C. Chattopadhyaya & Ors., reported in (2004) 12 SCC 333, the Apex Court observed that there can be reservation in respect of the post of Professor and the provisions of the Reservation Act would apply, but the same cannot be applied taking all the Professors as a cadre and that it has to be made subject-wise. We may gainfully refer here Para-6 of the judgment, which reads as follows:--

"6. While, therefore, we are of the considered opinion that there can be a reservation in respect of post of Professor and the provisions of the Reservation Act would apply, but the same cannot be applied taking all the Professors as a cadre and it has to be made subjectwise, as has been earlier construed and held by this Court. We are also of the opinion that there cannot be a reservation for an isolated post. We further observe that in deciding the question of reservation the appropriate authority must follow the roster as has been published in exercise of power under Section 3(5) of the Reservation Act and then the roster should be duly complied with in accordance with the principles enunciated by this Court in Sabharwal Case [, (1995) 2 SCC 745]."

21.8. In the case of Dr. Suresh Chandra Verma & Ors. V. The Chancellor, Nagpur University & Ors., reported in , AIR 1990 SC 2023, the Supreme Court in para-7 of the judgment has observed that the number of posts reserved for the reserved category candidates must be indicated as subject-wise and mere mention of the total number of reserved posts in advertisement is not sufficient. We may gainfully refer here para-7 of the judgment, which reads thus:--

"7. The argument based on Section 57 (4)(a) of the Act to support the procedure adopted by the University is, according to us, not well merited. The contention is that since Section 57 (4)(a) requires the University to state in the advertisement only the total number of posts and the number of reserved posts and not postwise, i.e., subjectwise, -the employment notice in question was not bad in law. According to us, the word "post" used in the context has a relation to the faculty discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57 (4) (a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e., the subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner

itself defeats the purpose for which the applications are invited from the reserved category candidates and consequently negates the object of the reservation policy. That this is also the intention of the legislature is made clear by Section 57 (4) (d) which requires the selection committees to interview and adjudge the merits of each candidate and recommend him or her for appointment to "the general posts" and "the reserved posts", if any, advertised."

21.9. A Single Bench of this Court in the case of Dr. Md. Mijan Hossain V. The State of Tripura & ors., reported in (2015) 1 TLR 749, referring to the decisions of the Apex Court has clearly held that the reservation must be made subject-wise in different disciplines.

21.10. In the case of Smt. Bijaya Bhattacharya(supra) [W.P.(C) No. 172 of 2015] this issue fell for consideration before the Division Bench. In that case the issue of reservation in the post of Assistant Professor in different Government Degree College was under consideration and the Division Bench of this Court in para-38 of the judgment has observed:--

"38. Section 4 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act also clearly provides for reservation for SC and ST in services and posts under the State. Section 4 does not talk of cadre, it talks only of posts. It may be true that all the Assistant Professors constitute to one cadre but they do not occupy the same post. True it is that the general qualification may be the same but a Professor of English must have graduated with English as a subject or with Honours in English. He must have done his M.A., M. Phil etc. in English and should have qualified his NET, SLET in the concerned subject. If he is a postgraduate, obviously he has to be a postgraduate in English. Such a person cannot teach any subject other than English. He cannot be posted in any other department and, therefore, we are of the view that if reservation is not made subject-wise, it will lead to WP(C) 172, 419, 420, 421, 422 & 424 of 2015; Page 32 of 71 32 incongruous situations. Even in the State of Tripura, we find that certain departments are filled up by reserved category candidates and in certain departments there are hardly any candidates belong to the SC or ST. Even the stand of the State is that in science subjects it is very difficult to find ST candidates and most of the ST candidates are mainly teaching general subjects in the field of Arts and they are very few in the science subjects."

21.11. In view of the position of law so far settled, as indicated hereinabove, the advertisement dated 25.06.2012 making reservation of posts, clubbing together all the vacant posts in different discipline was not according to law as settled by the Apex Court and it was totally misleading to the deserving candidates since the candidates did not know as to which of the posts of which department/disciplines were reserved.

21.12. It is expected that the State-respondents in future shall follow the directions of the Apex Court in respect of reservation subject-wise indicating therein the reservation of posts strictly in accordance with the law of reservation

and such reservation in particular discipline cannot exceed 50% as already held by the Apex Court in the case of Nagaraj(supra) so far to ensure efficiency/quality in each of the department.

22. Let us now come to the core issue which fell for consideration of this Court -

"Whether advertisement dated 25.06.2012 (Anexure-5 to the writ petition) and consequential recruitment/appointment dated 18.09.2012 (Annexure-7 to the writ petition) on ad hoc basis were in violation of the recruitment rule?"

22.1. It is an admitted position that the State notified Recruitment Rule in conformity with the provisions of the Constitution as contained in Article 309 on 18.03.2010. The recruitment rule was in force when impugned advertisement dated 25.06.2012 was notified. The relevant provision of the recruitment rule as contained in the schedule of the notification in respect of recruitment to the post of Assistant Professor has already been reproduced hereinbefore, which clearly contends that the method of recruitment shall be 80% by promotion from the post of Basic Teachers, i.e., Tutor, Registrar of Agartala Government Medical Collage or by absorption from Medical Officer from THS failing which by direct recruitment. 20% by direct recruitment failing which by promotion from the post of Basic Teachers, i.e., Tutor, Registrar of Agartala Government Medical Collage or by absorption of Medical Officer from THS. There is no provision in the recruitment rule to make ad hoc appointment to the post of Assistant Professor.

22.2. Admittedly, advertisement dated 25.06.2012 was made to fill up 34 vacancies on ad hoc basis for a period of six months. There is no doubt that the State, in a given circumstance, to meet exigencies, in exercise of its inherent jurisdiction can make ad hoc appointment to any post. The expression "ad hoc" in Black's Law Dictionary means "for a special purpose". In Oxford dictionary, the word "ad hoc" means "for a particular purpose only". In P. Ramanathan Ayer's Law Lexicon the word "ad hoc" is described as "for particular purpose". An "ad hoc appointment" means an appointment as a stopgap arrangement to meet the exigencies for a limited purpose and time. There cannot be an ad hoc appointment for perpetuity.

22.3. Learned State counsel produced the relevant files of the department in the open Court which was examined in the open Court and the relevant Note in File No. F.1(01)/MS/Estt./AGMC & GBPH/Appointment/2010 simply reflected the Government decision for appointment on ad hoc basis, but why the decision for ad hoc appointment was made, though there was specific provision prescribed under the recruitment rule, has not been mentioned. It was the duty of the departmental experts to bring it to the notice of the executive heads in the Government that there was a recruitment rule, which prescribes the provision for recruitment to the post of Assistant Professor and that the provisions of the recruitment rule cannot be ignored in normal circumstances and ad hoc appointment can be made only in extraordinary and exceptional circumstances. It is quite clear that the relevant provisions of the recruitment rule have been

purposely withheld, and, having no reason assigned, the State-respondents went for ad hoc appointment.

22.4. The Supreme Court in the case of Secretary, State of Karnataka & Ors. V. Umadevi(3) & Ors., reported in , (2006) 4 SCC 1 clearly and categorically held that all public employment should be made according to the constitutional scheme. The Court has observed that it should not shut its eyes to the persistent transgression of the rules of regular recruitment. The Court has held that the State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and appointments to non-available posts should not be taken note of regularization. The Supreme Court is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent can only encourage the State, the model employer, to flout its own rule and would confer undue benefits on a few at the cost of many waiting to compete. It is not the rule of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the constitutional scheme of appointment." (paras 26, 33 and 13 refers).

22.5. All public employment shall be made according to constitutional scheme, is the fundamental law of the land. The State, consistent with the constitutional provision, framed the recruitment rule. That recruitment rule admittedly does not provide any provision for ad hoc appointment to the post of Assistant Professor. While there is a rule made by the State Government it has to be strictly followed and the State cannot adopt any other method of recruitment bypassing the recruitment rule.

22.6. It is expected that the State shall act fairly and transparently according to the procedure prescribed by law. Shockingly here, the State-respondents have done the reverse. Admittedly, the State-respondents appointed the petitioners in the post of Tutor/Registrar etc. on full time basis and they have been performing their duties in the post of Tutor/Registrar, which are the feeder posts for promotion to the post of Assistant Professor. It is a matter of shy that the State-respondents have taken a stand that the petitioners were only engaged to function as Tutor and Registrar respectively, but they were not absorbed in those posts. Nothing is stated as to why they were not absorbed though they have been performing the duties of Tutor/Registrar for a pretty long time. The recruitment rule prescribes the provision for appointment to the post of basic teacher (Tutor, Registrar) and the provision prescribed in the rule is that 50% of

the posts should be filled up from the Medical Officer of THS on deputation/transfer and the rest 50% by direct recruitment through the Public Service Commission. Why that recruitment rule was not followed and why the petitioners were simply asked to function as Tutor/Registrar, as the case may be, has not been elaborated by the State-respondents. It is not understood how a State can take such a stand that they had gone for ad hoc appointment simply because that there was no eligible person for promotion in the feeder post of Assistant Professor. It is apparent that the State-respondents have created a situation of litigious employment by way of making appointment de hors the rule and thereby proper teaching to the student is liable to suffer as well as eligible and potential candidates for the post will also be deprived. It was the solemn duty of the State-respondents to appoint the petitioners and other eligible persons of THS regularly in the posts of Tutor/Registrar according to the rule. Having not doing so, the State-respondents, as it appears, kept the eligible doctors in a hanging position in the feeder post of Assistant Professor, possibly, so far it can be inferred, that for the purpose, to somehow ignore and/or avoid the procedure prescribed by the Rules framed by the State Government itself. It is not understood as to what was the difficulty or hurdle in doing the things that is the recruitments at all level according to law where a recruitment rule framed according to law is in force. There should not have any grievance had the recruitments were made at all levels according to rule. It appears that the State-respondents, in spite of a statutory rule in force, have candidly given goodbye to the rule of law, rather adopted some tactical approach of appointing in different posts ignoring the statutory rule, which, in my considered opinion, is totally unfair.

22.7. As already indicated hereinbefore, the file was moved by the department of Health and Family Welfare with a Note for appointment to the post of Assistant Professor on ad hoc basis in different disciplines. The relevant file does not show what was the emergent situation or compelling circumstance for appointment on ad hoc basis. The files produced by the State-respondents show that the ad hoc appointment made on 18.09.2012 (Annexure-7 to the writ petition) had been extended time to time and continued till today. File No. 8(132)-DME/Estt/2014 produced by the learned State counsel shows that by notification dated 31.10.2015 the ad hoc appointment of private respondents and others, made on 18.09.2012, has further extended till 17.09.2016, which means the ad hoc appointment made in the year 2012 is still in continuance and may be continued further and there was no attempt made for regular appointment according to the rule, which cannot be entertained. It is, therefore, quite clear that the State-respondents are flouting their own rules and making litigious employment, which is liable to be discouraged and this Court while exercising power under Article 226 of the Constitution is bound to interfere in such a situation to set the rule of law in order.

22.8. The Supreme Court in the case of Ratanlal & Ors. V. State of Haryana & Ors., reported in , AIR 1987 SC 478 has held that the appointment of teachers

on ad hoc basis at the commencement of the year and terminating the services before summer vacation was violative of Article 14 and 16 of the Constitution and it was held that the Government should make appointment as per rules.

22.9. The State is a benevolent employer. It is the prerogative of the State to make its own rules for public employment and to follow it in letter and spirit. As already indicated hereinbefore, to meet exigencies or to overcome a particular situation, the State can no doubt resort to temporary or ad hoc appointment, but soon it has to be regularized according to the rules. By executive instruction the State no doubt has power to make appointment, but while the particular appointment has to be made as per rules, the executive instruction cannot override the rules.

22.10. In the case of Paluru Ramkrishnaiah & Ors. V. Union of India & anr., reported in , AIR 1990 SC 166, the Supreme Court has discussed the law and we may refer here para-11 of the judgment, which reads as follows:--

"11. It is thus apparent that an executive instruction could make a provision only with regard to a matter which was not covered by the Rules and that such executive instruction could not override any provision of the Rule. Notwithstanding the issue of instruction dated 6th November, 1962, therefore, the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed. Since Rule 8 in the instant case prescribed a procedure for making promotion the said procedure could not be abrogated by the executive instruction dated 6th November, 1962. The only effect of the circular dated 6th November, 1962 was that Supervisors "A" on completion of 2 years" satisfactory service could be promoted by following the procedure contemplated by Rule 8. This circular had indeed the effect of accelerating the chance of promotion. The right to promotion on the other hand was to be governed by the Rules. This right was conferred by Rule 7 which inter alia provides that subject to the exception contained in Rule 11, vacancies in the posts enumerated therein will normally be filled by promotion of employees in the grade immediately below in accordance with the provisions of Rule 8. The requirements of rule 8 in brief have already been indicated above. Rule 12 provides that no appointment to the posts to which these rules apply shall be made otherwise than as specified in these rules. This right of promotion as provided by the Rules was neither affected nor could be affected by the circular. The order dated 28th December, 1965 which provided a minimum period of service of three years in the lower grade for promotion to the next higher grade and the circular dated 20th January 1966 which provided that promotions in future will be effected in accordance with the normal rules and not merely on completion of 2 years" satisfactory continuous service had the effect of doing away with the accelerated chance of promotion and relegating Supervisors "A" in the matter of promotion to the normal position as it obtained under the Rules."

22.11. In the case of The Rajasthan State Industrial Development and Investment Corporation V. Subhash Sindhi Co-operative Housing Society, Jaipur

& ors., reported in , AIR 2013 SC 1226, the Apex Court in para-19 of the judgment has observed:--

"19. Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced.(Vide: B.N. Nagarajan & ors. etc. V. State of Mysore and Ors. etc., , AIR 1966 SC 1942; Sant Ram Sharma V. State of Rajasthan & Ors., , AIR 1967 SC 1910; Secretary, State of Karnataka & ors. V. Umadevi & Ors., , AIR 2006 SC 1806 : (2006 AIR SCW 1991); and Mahadeo Bhau Khilare(Mane) & Ors. V. State of Maharashtra & Ors., , (2007) 5 SCC 524 : (AIR 2007 SC(Supp) 1320 : 2007 AIR SCW 3323)."

22.12. The AGMC is considered to be an institution of State of the art. It is expected that best education will be imparted in the institute by the best potential teachers to ensure the best qualified future doctors coming out of the institute. It is, therefore, expected that all posts of Professor, Associate Professor, Assistant Professor as well as the Tutor/Registrar, in all positions, no vacancy is left and all the vacancies are filled up with best possible competent and qualified persons. The law of reservation is the law of the land and that also should be strictly followed to ensure representation at all level of the backward communities. If the teachers are not regularly appointed and they are kept in a tenterhook for an uncertain period, one cannot expect to deliver the best of his ability. It is, therefore, expected that the State-respondents should ensure the appointment of the teachers at all level according to rules and best potential teachers should be appointed following the rules for the benefit of future generation.

22.13. I have, therefore, no hesitation in coming to the conclusion that the advertisement for ad hoc appointment and the consequential ad hoc appointments were made de hors the rule and such ad hoc appointments cannot be allowed to continue for perpetuity and, therefore, the continuance of such appointments is liable to be interfered for fair ends of justice and to ensure the rule of law.

23. The next issue which fell for consideration is --

"Whether the petitioners are entitled to be appointed in the posts of Assistant Professor in their respective discipline w.e.f. 18.09.2012".

23.1. I find no force in this prayer of the petitioners. The advertisement for ad hoc appointment, in spite of a recruitment rule, as already observed hereinbefore, without assigning any reason was altogether wrong. Therefore, the petitioners cannot claim their ad hoc appointments from the date the private respondents were appointed and there is no basis for allowing such prayer of the petitioners.

24. Whether there was any exercise made by the State-respondents to fill up the posts of Assistant Professor according to rule?

As already indicated hereinbefore, the rule prescribes recruitment to the post of Assistant Professor, 80% by promotion from the post of Basic Teachers, i.e., Tutor, Registrar etc. of Agartala Government Medical College or by absorption of Medical Officer from THS failing which by direct recruitment and 20% by direct recruitment failing which by promotion from the post of Basic Teachers, i.e., Tutor, Registrar of Agartala Government Medical College or by absorption of Medical Officer from THS. It is clear that no attempt was made by the respondents for filling up of the posts by promotion from the post of Basic Teachers, i.e., Tutor, Registrar etc. The stand of the State-respondents is that the petitioners were not absorbed in the posts. As already discussed hereinbefore, it is not expected from the State-respondents, who is a benevolent employer, would take such step having no reason behind, that the eligible persons having all qualification would be kept in a hanging position while ordering them to work in a particular post, but not absorbing them in such posts without any reason. The stand of the State-respondents cannot be accepted as a reasonable stand on the part of the State and hence, I have no hesitation to observe that the stand of the State-respondents was illegal and unconstitutional and is against the public policy.

25. It was also contended on the part of the petitioners that in the advertisement dated 25.06.2012 it was clearly stated that the appointment on ad hoc basis should be made initially for a period of six months, but the appointment letter, Annexure-7, shows that it was made for a period of one year, which is in violation of the terms of advertisement. It apparently appears to be true that though advertisement was made for ad hoc appointment initially for six months, but the initial appointment itself was made for one year and that has been allowed to continue till now and the last extension has been made, as already indicated hereinbefore, for the period till 17.09.2016. The extension so far made, as already indicated hereinbefore, is not acceptable and cannot sustain.

26. In view of the discussions made above, both the writ petitions are disposed of with the following directions:--

"(i) The advertisement dated 25.06.2012 (Annexure-5 to the writ petition) for ad hoc appointment to the posts of Assistant Professor and the ultimate ad hoc appointments dated 18.09.2012 (Annexure-7 to the writ petition) were made in violation of the provisions of the recruitment rule and, therefore, liable to be interfered and accordingly quashed.

(ii) The ad hoc appointment made by order dated 18.09.2012 (Annexure-7 to the writ petition) shall continue till 30.06.2016 and from 01.07.2016 the ad hoc appointments made pursuant to letter of appointment dated 18.09.2012 shall stand terminated without any further reference.

(iii) Process for appointment, at all level of AGMC, strictly in accordance with the rules, in a transparent, objective and credible manner should be completed within 30.06.2016.

(iv) The petitioners, private respondents, ad hoc appointees and similarly all others, who were eligible for promotion/direct recruitment on the date of advertisement dated 25.06.2012, shall be allowed and/or considered to participate in the selection process, if necessary with relaxation of age etc.

(v) It is left to the wisdom of the State respondents to decide in respect of absorption in the posts of Basic Teacher (Tutor/Registrar) in accordance with the provisions prescribed in the rules and taking into account the services already rendered by the petitioners and other similarly situated persons."

27. The State-respondents shall pay a cost of Rs. 5,000/- (Rupees five thousand) to each of the petitioner.

28. Files submitted by the learned Additional Government Advocate be returned.