
(1997) 04 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule 195 of 1997

Ramendra Nath Dey

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1997) 2 GLR 438

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.M. Lodh, A. Lodh, M. Dutta and S.B. Bhowmik, for the Appellant; U.R. Saha, G.A., S. Deb, A. De, B.B. Deb, K.N. Bhattacharjee, S. Bhattacharjee and S.B. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the seniority list published on 1.3.1997, the Recruitment Rules framed under Notification dated 5.3.1997 and the appointment of the responded No. 5 as Principal of the Govt. Music College, Agartala.

2. The brief facts of the case as stated in the writ petition are that in the Go Music College, located at Agartala, a Diploma course was being imparted to students, which is affiliated to Bhat Khande Sangit Vidyapith, at Lucknow. In the year 1976 a Degree course in music was also opened in the said college. Initially the said Degree course was affiliated to the Calcutta University. But thereafter it was affiliated with was the Tripura University. The Govt. Music College at Agartala thus has two units, one is Diploma Course and the other is Degree course styled as B. Music.

3. In response to the advertisement issued by the Secretary to the Government of Tripura, Education Department, the Petitioner applied for appointment to a

post of Senior Lecturer in Vocal Music in the said Govt. Music College. He was interviewed and after selection by the Interview Board, constituted by the Tripura Public Service Commission, he was issued an appointment order dated 19.4.1977 and pursuant to the said appointment order, the Petitioner joined as senior Lecturer in Vocal Music in the said College on 30.4.77, The Respondent No. 5 was similarly selected by the interview Board, constituted by the Tripura Public Service Commission and appointed as Senior Lecturer in the said college on 19.4.77 and pursuant to the said order of appointment, the Respondent No. 5 joined the said College on 19.4.77.

4. The case of the Petitioner in this writ petition is that in the year 1978 when the Degree Course in music (B. Music) was affiliated with the Calcutta University, and a report dated 24.5.78 was submitted by the said Inspector of Colleges of the Director of Education, Tripura relating to the subjects which will be taught in the said Music College and in the said report dance was not included. Hence, the Respondent No. 5, who was teaching dance in, the Diploma Course in the Govt. Music College would not be part of the teaching staff of the Degree Course of Music (B. Music) in the said Govt. Music College. This fact will be further clear from the office order dated 24.12.1990, issued by the Joint Secretary to the Government of Tripura, Education Department, by which teaching staff were allocated between the Degree Course and Diploma Course of music on the basis of their qualification and eligibility and while the Petitioner was allocated to the Degree Course of Music in the Govt. Music College on the basis of his qualification and eligibility, the Respondent No. 5 was not allocated to the Degree Course of Music College on account of the fact that she did not have the requisite qualification and eligibility for teaching in the Degree Course of Music (B. Music). The further case of the Petitioner in this writ petition is that under the guidelines issued by the University Grants Commission annexed to the letter dated 17th June, 1987 of Government of India, Ministry of Human Resource Development, Department of Education to the Secretary, Education Department, Government of Tripura, Agartala the minimum qualifications required for appointment to the Posts of Lecturers, readers and Professors in the Universities and Colleges imparting Degree Course are Master's degree in the relevant subject with at least 55% marks or its equivalent grade, and good academic record. In the said guideline issued by the U.G.C. the scales of pay of Lecturers, Readers and Professors have been indicated and it has been stipulated in paragraph 6 of the said guideline that Principals of colleges may be placed in the scale of pay of Reader or Professor on the basis of criteria to be laid down by the State Governments. According to the Petitioner's case, therefore, the Principal of the Govt Music College, in which Degree Course in Music (B. Music) is also imparted, is entitled to the U.G.C. scale of pay of a Reader or Professor. The revised U.G.C. scale of pay of Reader is Rs. 3700-5700/- and of Professor is Rs. 4500-7300/-. Despite the aforesaid new guidelines of the U.G.C., the State Respondents denied the U.G.C. scale of pay to the then Principal of the Govt. Music College. Being aggrieved Shri Tripurendra Bhowmik, the then Principal of

the Govt. Music College filed a writ petition being No. C.R. 78 of 1980 before this Court and a Division Bench of this Court allowed the said writ petition writ and directed the State Respondents to pay the pay scale prescribed by die U.G.C. to the Petitioner, Shri Tripurendra Bhowmik, the then Principal of the Govt Music College. Pursuant to the said order and judgment dated 6.1.89 of the Division Bench of this Court in C.R. 78/80, a Corrigendum was issued by the State Govt, on 31.5.93 making corrections in the Notification dated 31.3.89 fixing the revised scales of pay of leaching staff of different colleges, the effect of which was that the Principal of the Govt. Music College was entitled to the revised pay scale of Rs. 4500-7300/- equivalent to the revised pay scale of Professor as fixed in the guidelines issued by the U.G.C.

5. The further case of the Petitioner in the writ petition is that since die eligibility criteria and qualification far the teaching staff in the Degree Course in Music as laid down by the U.G.C. were different than those of the teaching staff in the Diploma Course in Music, the seniority of the Petitioner, who had the requisite qualification and eligibility criteria as prescribed by the U.G.C. for teaching staff in the Degree Course of Music has to be determined separately in the Degree Course in Music and the Petitioner's seniority can not be fixed vis-a-vis with that of Respondent No. 5, who belongs to the Diploma course in Music and who docs not have the requisite qualification and eligibility criteria for teaching in the unit of Degree course in Music. Notwithstanding the aforesaid fact, the State Respondents published a common tentative seniority list of both the units of the Govt. Music College in which the Respondent No. 5 was shown senior to the Petitioner. In the circumstances, the Petitioner submitted a representation dated 24.1.97 stating therein that Diploma can not be equated with Degree and he had strong objection to such equation of the Degree course with the Diploma Course. Despite the said objection, a final seniority list was published by the Government of Tripura, Education Department (Higher Education) vide order dated 1.3.1997, in which the Petitioner was again shown junior to the Respondent No. 5 in a single final seniority list for the post of Senior Lecturer, Govt. Music College.

6. The Petitioner's further case is that notwithstanding the fact that the Respondent No. 5 did not possess the requisite qualifications in music for teaching in the Music Degree Course the State Respondents promoted the Respondent No, 5 on id-hoc basis as Principal of the Govt. Music College and the Petitioner moved this Court under Article 226 of the Constitution in Civil Rule No. 170 of 1996, which was disposed of by the learned Single Judge by order dated 9.11.96 with the direction to the State Respondents to fill up the post of Principal, Govt. Music College before the expiry of the term of six months for which the Respondent No. 5 has been appointed on ad-hoc basis and with it further direction (sic) no (sic)any further extension on ad-hoc-basis will be allowed to the Respondent No. 1 Thereafter the Recruitment Rules were framed by the State Government under Article 309 of the Constitution by a Notification dated 5.3.97. Immaediately thereafter the Respondent No. 5 was appointed as Principal of the Govt. Music College in the scale of pay of Rs. 3200-5600/- by a

Notification dated 6.3.97.

7. At the time of hearing of the Civil Rule, Mr. A.M. Lodh learned senior Counsel assisted by Mr. A. Lodh, learned Counsel for the Petitioner challenged the aforesaid, Recruitment Rules framed under the Notification dated 5.3.97 (for short lite Recruitment Rules). Mr, Lodh contended that the guidelines issued by the U.G.C as annexed to the letter dated 17.6.87 of the Government of India, Ministry of Human Resource Development in the Department of Education would show that the Principals of Colleges in which Degree Course in Music are imparted, are to be placed in the scale of pay of Reader or Professor on the basis of criteria to be laid down by the State Governments. According to Mr. Lodh since the Principal of College imparting the Degree Course in Music has to be promoted from amongst Lecturers, Readers or Professors in the said College, the person to be appointed to the post of the Principal for college imparting Degree Course in Music must have the qualification of Master's Degree in Music as laid down in the guidelines of the U.G.C. Accordingly, the Recruitment Rules framed by the Government under Article 309 of the Constitution can not provide that the person who does not have any Master's Degree in the Govt. Music College. But the Recruitment Rules framed by appointment to the principal of the Govt. Music will be qualified for appointment to the post of the Govt. Music College. But the Recruitment Rules framed by show that the qualifications laid down for appointment to post of principal of the Govt. Music College is B+Master's agree in Music (Vocal/Instrumental) or Dance. Mr. Lodh vehemently contended of the post, of Principal of a College imparting Music Degree Course as per the aforesaid guidelines of the U.G.C. and the fact that the Recruitment Rules have (Sic)lited that persons with B+Master's Degree in Dance would also be qualified - appointment to the post of Principal of the Govt. Music College will show that Recruitment Rules have been framed only for die purpose of accommodating s Respondent No, 5 in the post of Principal of the Govt. Music College who holds [Master's Degree in Dance and does not hold the Master's Degree in Music, According to Mr. Lodh,. therefore, the aforesaid qualification laid down in the recruitment Rules is violative of the guidelines of the U.G.C. and is ultra-vires to Articles of the Constitution. It was next submitted by Mr. Lodh that the of the Principal of the Govt. Music College, who belongs Diploma Course of Music, but also to the Degree course of Music is Rs. 4500-7300-/ as has been fixed by the Notification dated 31.3.80 of the Government of Tripura, Education Department (Directorate of Higher Education) as amended by the subsequent Notification dated 31,5,93 pursuant to the direction of this Court in Civil Rule No. 78 of 1980 filed by the erstwhile Principal of the Govt. Music College, Shri Tripurendra Bhowmik. But the Recruitment Rules framed by the Government of Tripura would indicate that a lesser pay scale of Rs. 3200-5600-/ has been fixed for the Principal of the Govt. Music College. The said provision in the Recruitment Rules fixing the lesser scale of pay than that prescribed by the earlier Govt. Notification is ultra-vires.

8. In reply, to the aforesaid statement of Mr. Lodh learned Counsel for the

Petitioner. Mr. B.B. Deb, along with Mr. K.N. Bhattacharjee, learned senior Counsel for the Respondent No. 5 and Mr. U.B. Saha, learned Govt. Advocate, State of Tripura submitted that under Article 309 of the Constitution the power of the Governor to frame the Recruitment Rules is subject to the provisions of the Constitution and to the provisions of the law made by the State Legislature. The Recruitment Rules do not violate any provision of the Constitution or the law made by State Legislature and the same can not be declared as ultra vires and struck down by the Court on the ground that it violates the guidelines issued by the U.G.C. In support of the submission, Mr. Deb and Mr. Saha relied on the judgment of the Supreme Court in the case of R.L. Bansal and others Vs. Union of India and others, in which the Supreme Court has held that Rules made under the proviso to Article 309 of the Constitution being legislative in character cannot be struck down merely because the Court thinks that they are unreasonable and they can be struck only on the grounds upon which a legislative measure can be struck down. Mr. Saha further submitted that the Court has to presume that a Rule made under Article 309 of the Constitution as much an Act of the Legislature is constitutionally valid and the onus lies on the Petitioner to rebut the presumption by showing that the rule made under Article 309 of the Constitution was ultra-vires of the provisions of the Constitution. Mr. Deb, learned Counsel for the Respondent No. 5 further argued that a reading of the guidelines issued by the U.G.C. annexed to the letter dated 17.6.1987 of the Government of India, Ministry of Human Resource Development, Department of Education and in particular paragraph 6 thereof would show that no qualification have been laid down for the post of the Principal of the College imparting the B. Music course and the same has been left to the State Government Both Mr. Deb and Mr. Saha further contended that the Govt. Music College does not only impart the Degree Course in Music but also imparts the Diploma Course in Music and the Principal of the Govt. Music College has to act as Principal for both the aforesaid units of Degree Course and Diploma course. Hence the teaching staff employed in both the aforesaid units of Degree course and Diploma Course had to be given opportunity for promotion to the highest post of Principal of the Govt. Music College, It is for this reason that the Recruitment Rules have prescribed qualifications of B+Master's Degree in Music (Vocal/Instrumental) or Dance for appointment to the post of Principal of the Govt. Music College so that the teaching staff in both the units of Degree Course and Diploma Course having B+Master's Degree in any of the aforesaid subjects get the opportunity for promotion to the post of Principal of the Govt. Music College, According to Mr. Deb and Mr. Saha, therefore, the provisions contained in the Recruitment Rules relating to qualification for appointment to the post of Principal of the Govt. Music College is not contrary to the provisions under Articles 14 and 16 of the Constitution, but consistent with the same. Regarding the scale of Rs. 3200-5600/- fixed for Principal of the Govt. Music College in the Recruitment Rules Mr. Saha vehemently argued that the direction of this Court in Civil Rule No. 78 of 1980 filed by Shri Tripurendra Bhowmik was to pay the pay scale prescribed by the U.G.C. to the said Petitioner, Shri Tripurendra Bhowmik and not

lot the post of Principal of the Govt. Music College as such and for this reason the Corrigendra dated 31.5.93 was issued by the Government of Tripura, Education Department (Higher Education) to the earlier Notification dated 31.3.89 and in the said Corrigendum what was mentioned was that the words Principal, Govt. Music College (for B. Muse), Agartala" would be added to the positions named in para of the Notification dated 31.3.89 entitled to the revised pay scale w.e.f. 1.1.86 as notified 1 in the said Notification dated 31.3.89. Mr. Saha in particular emphasised the fact that the words "Govt. Music College have not been added in the said Notification dated 31.3.89 by the Corrigendum dated 31.5.93 as the intention was not to give the benefits of the revised pay scale therein to all the teaching staff of the Government Music College but only to Shri Tripurendra Bhowmik, the then Principal of the said College. On the other hand, the latter part of paragraph 2 would show that the revised pay scale w.e.f. 1.1.86 notified in the said Notification dated, 31.3.89 was not applied to the Music college, Both Mr. Deb and Mr. Saha further pointed out that paragraph 7 of the Notification dated 31.3.89 clearly stated that the revised scales of pay were applicable to teaching staff of Colleges who have been drawing pay in the U.G.C. scales 1973 against sanctioned posts. But admittedly the teaching staff of the Govt, Music College including the Petitioner and Respondent No. 5 have been drawing pay in the U.G.C scales, 1973. Hence the contention of Mr. Lodh that the provisions in the Recruitment Rules fixing the pay scale of the principal of the Govt. Music College as Rs. 3200-5600/- is contrary to the earlier Notification dated 31.5.93 of the Government of Tripura, Education Department (Higher Education) is factually not correct.

9. On a bare reading of Article 309 of the Constitution it is clear that the main provision of the said Article enables the appropriate legislature to make the law regulating recruitment and conditions of service of persons in the case of public services and posts in connection with the affairs of the State. The opening words of the said main provision in Article 309 have clarified that such power of the State legislature to make law regulating the conditions of service of persons appointed to public services and posts in connection with the affairs of the State is "Subject to the provisions of this Constitution". The result is the State Legislature has full power to make laws regulating the recruitment of persons appointed to public services and posts in connection with the affairs of the State and the said power is only subject to the provision in Article 309, however, states that it shall be competent for the Governor of the State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under the article, and any rules so made shall have effect subject to the provisions of any such Act. Therefore, under the said proviso the Governor of the State or any such person as he may direct has been vested with the said power to make the rule regulating the recruitment and conditions of service of persons appointed to

public services and posts in connection with the affairs of the State. But the said power of the Governor or such persons as he may direct is subject to the law made by the appropriate Legislature under the main provision of Article 309 of the Constitution. Further since the power under the main provision of Article 309 of the Constitution of the State Legislature is subject to the provision; of the Constitution, necessarily the power of the Governor of the State or such persons as he may direct for making rules regulating the recruitment and conditions of service of persons appointed, to such services and posts in connection with the affairs of the State is also subject to the provisions of the Constitution. Therefore, there are two limitations on the power of the Governor or any person on his behalf to make rules under the proviso for regulating the recruitment and conditions of service of persons appointed in connection with the affairs of the State, namely, the provisions of the Constitution and the Act made by the State Legislature.

10. The contention of Mr. Lodh that the Recruitment Rules made under the proviso to Article 309 of the Constitution is violative of the guidelines issued by the U.G.C. and must therefore be struck down as ultra-vires will have no force unless it is further shown that the Recruitment Rules are violative of the provisions of Articles 14 and 16 of the Constitution. Articles 14 and 16 of the Constitution provide for equality to all persons in matters of public employment and it has now been settled by law in series of cases by the Apex Court that the equality in the matter of public employment guaranteed by Articles 14 and 16 also includes equality in matters of promotion. The contention of Mr. Lodh is that in the guidelines issued by the U.G.C. it is only the persons having Master's Degree in Music who are entitled to be considered for promotion to the post of Principal of the Govt. Music College and persons having Master's Degree in Dance are not entitled to promotion to the post of Principal of the Govt. Music College. This contention of Mr. Lodh is based on the premise that Govt. Music College imparts only the Degree Course in Music. But the said premise is factually wrong as the Govt. Music College does not impart only the Degree Course in Music, but also the Diploma Course in Music. Hence the provisions contained in Para 6 of the guidelines issued by the U.G.C. which applies to a Principal of the College imparting Degree Course only will not apply to the Govt. Music College at Agartala in which not only the Degree Course is imparted but also Diploma Course.

In the Govt. Music College at Agartala there are teaching staff teaching not only in the Degree Course in Music but also in the Diploma Course in Music which includes subject such as Dance. Promotional opportunities to the highest post of the Principal of the Govt. Music College in which both Degree Course and Diploma Course in Music are being imparted must therefore be available and open to not only the teaching staff of the Degree course, but also to the teaching staff of Diploma Course. The Recruitment Rules provide that persons with B+Master's Degree in Music (Vocal/Instrumental) or Dance are qualified for appointment to the post of Principal of the Government Music College. The

Recruitment Rules further provide that recruitment to the post of Principal of the Govt, Music College is to be made by promotion from amongst the post of Senior Lecturers in Music (Vocal/Instrumental) or Dance having seven years regular service in the grade failing which by direct recruitment. The object of the Recruitment Rules, therefore, is to provide, promotion to all senior Lecturers having B+Master's Degree in Music (Vocal/Instrumental) or Dance and having seven years regular service in the grade in the Govt. Music College. Such a provision of opening up the promotional opportunities to all Senior Lecturers with B+Master's Degree in Music (Vocal/Instrumental) or Dance can not be held to be unfair or unreasonable and violative of Article 14 of the Constitution. On the other hand, such a provision is fair and reasonable and consistent with the equality clauses contained in Articles 14 and 16 of the Constitution, The contention of Mr. Lodh that the provision relating to qualification for appointment to the post of Principal of the Govt. Music College is ultra vires the Constitution has no merit.

11. Regarding the contention of Mr. Lodh that the provision in the Recruitment Rules fixing the scale of pay of the Principal of the Govt, Music College, at Rs. 3200-5600/- was contrary to the earlier Notification dated 31.3.89 as amended by the Addendum dated 31.5.93 of the State Government in the Education Department (Higher Education) under which the revised scale of pay of the Principal w.e.f. 1.1.86 was fixed at Rs. 4500-7300/- and was therefore, ultra vires, I find that as a matter of fact the said revised scale of pay of Rs. 4500-7300/- was only allowed to (Sic) Govt. Music College (Sic) this Court an Civil Rule No. 78 of 1980 disposed (Sic) which has been filed by the said (Sic) It was concerned by Mr. Lodh, learned Counsel for the Petitioner that the present senior Lecturers of the Govt, Music College including, the Petitioner and the Respondent No. 5 are presently drawing U.G.C. scales of pay and that their present scale of pay is Rs. 3000-5000/- under that Tripura State Civil Services (Revised pay) Rules, 1988, Considering the fact that the appointment to the post of Principal of the Govt. Music College was to be made at the first instance way of promotion from amongst senior Lecturers in the said Govt. Music College, who are drawing pay scale of Rs. 3000-5000/- in my considered opinion the scale of pay of Rs. 3200-5600/- fixed in the Recruitment Rules for the post of Principal, Govt. Music College can not be held to be arbitrary or ultra vires. One must remember that under the proviso to Article 309 of the Constitution the Governor of the State or any person so directed by him is empowered to regulate the terms and conditions of appointment to any post or service in connection with the affairs of the State. Hence the Governor of Tripura or any person in his behalf was empowered under the proviso to the Article 309 of the Constitution to the pay scale of the Principal of the Govt. Music College who was holding a (Sic) it. connection with the affairs of the State of Tripura. The fixation of pay scale of the Principal of the Govt. Music College in the impugned Recruitment Rule at Rs. 3200-5600/- was therefore, within the powers of the rule making authority under proviso to Article 309 of the Constitution and the said fixation of pay scale can

not be struck down by the Court as ultra vires the Constitution. However, in a given case if a particular person appointed as Principal of the Govt. Music College and working as such makes a grievance before the Court that the pay scale as fixed for the post was arbitrary and violative of the equality clauses of the Constitution, it is for the Court to examine the facts of the particular case and after being satisfied on the basis of materials on record issue appropriate directions with regard to fixation of pay scale of such a person as was done by this Court in the case *Shri Tripurenda Bhowmik v. State of Tripura* in C.R. 78 of 1980 in its judgment dated 6.1.1989. For the reasons stated above, therefore, the contention of Mr. Lodh, learned Counsel for the Petitioner that the pay scale fixed for the Principal of the Govt Music College the Recruitment Rules is ultra vires and is liable to be struck down has no merit and is accordingly rejected.

12. Mr. Lodh next moved on to his attack to the final seniority list circulated under the order dated 1.3.1997 of the Additional Secretary, Government of Tripura, Education Department (Higher Education). He contended that the Degree Course in the Govt. Music College could be imparted by Lecturers or Senior Lecturers with M.A. in Music (Vocal/Instrumental). While the Petitioner had such qualification, the Respondent No. 5 did not have any such qualification or M.A. in Music. She is however, an M.A. in Dance. On account of such qualification she may be eligible to teach in the Diploma Course, but she was not eligible to teach in Degree Course. Mr. Lodh relied on the order dated 24.12.1990 of the Joint Secretary to the Government of Tripura, which clearly bifurcated the Degree Course from Diploma Course in the Govt. Music College and allotted the Petitioner to the Degree Course, but did not allot the Respondent No. 5 to the Degree Course in view of this bifurcation of the Degree Course and the Diploma Course in the Govt. Music College and in view of the separate qualifications required for teaching staff in the Degree Course, Mr. Lodh submitted that in all fairness separate seniority lists should have been drawn up for Senior Lecturers in the Degree Course and Senior Lecturers in the Diploma Course and the Petitioner should not have been shown junior to the Respondent No. 5 under a common seniority list of the Senior Lecturers of the Govt. Music College. Mr. Lodh pointed out in this connection the objection of the Petitioner to the equation of the Degree Course with the Diploma Course in his representation dated 24.1.97 to the Commissioner, Education Department, Govt. of Tripura, a copy of which is annexed to the writ petition as Annexure-9.

13. Mr. U.B. Saha, learned Govt. Advocate on the other hand pointed out that the said objection of the Petitioner has been rejected by the Government as would be evident from the Memorandum dated 1.3.97 of the Additional Secretary to the Government of Tripura, a copy of which has been annexed to the counter affidavit of the State Respondents as Annexure -R/19. In the said Memorandum it appears that the claim of the Petitioner has been rejected on the ground that while the Respondent No. 5 was a Master's Degree holder and Ph.D in Dance and was selected as a senior Lecturer (Dance) by the Tripura Public Service Commission on 6.2.1976, the Petitioner was a Master's Degree holder in Music

and Bengali and was selected subsequently as Senior Lecturer, Govt. Music College on 15.3.1976 and therefore, the Respondent No. 5 is senior to him.

14. Seniority becomes relevant only for the purpose of promotion. Therefore if promotions to the post of Readers and Professors in the Degree Course of the Govt. Music College were to be considered from amongst the Petitioner and other Senior Lecturers, Mr. Lodh's submission that separate Seniority lists ought to be maintained for the Degree Course in Music and of the Diploma Course in Music in the Govt. Music College would have had a lot of force. This is because it is only Senior Lecturers with M.A. in Music who would be entitled to be considered for such promotion to the post of Readers and Professors in the Degree Course in Music of the Govt. Music College, But on the facts of the present case, I find that the Petitioner and the Respondent No. 5 were not to be considered for promotion to the post of Reader or Professor in Degree Course in Music in the Govt. Music College. Cut to the post of Principal of the Govt. Music College, the Recruitment Rules indicate that for such promotion to the post of Principal of the Govt. Music College, Senior Lecturers in Music (Vocal/Instrumental) or Dance with seven years regular service in the Grade are to be considered for presumably because there are no Readers or Professors in the said Govt. Music College. Considering the fact that senior lecturers in Music Vocal/Instrumental or dance with seven years regular service in the grade were to be considered for promotion to the post of Principal of the Govt. Music College as per the Recruitment Rules, it is only proper that a common seniority list of all such senior Lecturers in Music (Vocal/Instrumental)/ Dance working in the Govt. Music College whether in the Degree Course or in the Diploma Course, is prepared for the purpose of promotion. The second contention of Mr. Lodh, therefore, that separate seniority lists were necessary in respect of the Degree Course and the Diploma Course in the Govt. Music College in the peculiar facts and circumstances of the present case has no merit. Thus the challenge to the seniority list circulated under the order dated 1.3.1997 to the Additional Secretary to the Government of Tripura, Education Department (Higher Education) is rejected.

15. Mr. Lodh next challenged the appointment of the Respondent No. 5 to the post of Principal of the Govt. Music College under the Notification dated 6.3.1997. He vehemently contended that the Recruitment Rules were framed only on 5.3.97 and the D.P.C. met on the same date and made recommendation forthwith and the impugned Notification dated 6.3.97 was issued promptly by the State Government appointing the Respondent No. 5 to the post of Principal of the Govt. Music College. All these facts show that the State Respondents were in extreme haste to appoint the Respondent No. 5 as the Principal of the Govt. Music College and the appointment of Respondent No. 5 was, therefore, vitiated by malafide. Mr. Lodh further contended that the entry "Very Good" in the A.C.R. of the Respondent No. 5, if any, has to be supported by reasons and has to be compared with the other entries in the A.C.R. He cited the judgment of the Kohima Bench of this Court rendered in the case of *Brig SK Awashty v. Union of India* and Ors. 1994 (1) GU107 and relying on the same submitted that the D.P.C.

can not choose to pick up the demerits of , an officer ignoring the beam of merits of the officer and vice-versa. He also cited the judgment of the Central Administrative Tribunal (Allahabad Bench) reported in 1996 (1) S.L.J. 464 wherein it has been held that where an entry "good" is made after an officer has earned entries "Very Good" for some years, such entry of Good" is an adverse entry and cannot be relied on by the D.P.C. for the purpose of promotion unless the same is communicated to the concerned officer. Finally Mr. Lodh cited the judgment of the learned Single judge in the case of Rajinder Sing Yadav v. Union of India and Ors. 1995 (1) GU 169 in support of his argument that the D.P.C. was bound by the guidelines contained in the office Memorandum dated 10.3.89 of the Government of India, Department of Personnel and Training and if any assessment is made by the D.P.C contrary to the said guideline.; resulting in unfair and arbitrary treatment to the Petitioner, the Court will quash the recommendation of the D.P.C. as well as the promotion of the Respondent No. 5 on the basis of the recommendation of the D.P.C.

16. Mr. B.B. Deb, Learned senior Counsel for the Respondent No. 5 and Mr. U.B. Saha learned Govt. Advocate, State of Tripura, on the other hand, argued that it is the settled position of law that the Court while exercising power of judicial review in a matter relating to promotion to a selection post can not sit over appeal on the assessment made by the D.P.C. and that the assessment of the service record made by the D.P.C and the recommendation of the D.P.C can not be interfered with unless bias or malafides on the part, of the D.P.C is established. In support of the said submission. Mr. Deb relied on a judgment of Division Bench of this Court rendered in the case of Union of India and two Ors. y. Major General U.S. Sidhu (1996) 3 GLR 40 . Mr. U.B. Saha, learned Govt. Advocate cited the judgment of the Apex Court in the case of Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, in which the Supreme Court observed that it is not the function of the Court to hear appeals over decisions of Selection Committee which has the expertise on the subject.

Mr. Saha further explained that by the direction of this Court in Civil Rule No. of 1996, filed by the writ Petitioner contained in the order dated 19.11.96 the State Respondents were required to fill up the post of Principal of the Govt. Music College before the expiry of the term of six months for which the Respondent No. has been appointed. By the said order, the aforesaid post of Principal of the Govt. College was to be filled up in accordance with the rules. Thereafter by Order dated 13.1.97 this Court extended the period for compliance with the said direction of the Court by two months, as a result of which the post of the Principal the Govt. Music College was to be filled up on regular basis in accordance with the Recruitment Rules before 13.3.97. To comply with the direction of this Court to fill up the post of the Principal of the Govt. Music College in accordance with the rules before 13.3.97. the Government had to take speedy steps for first Laming the Recruitment Rules and thereafter filling up the post in accordance with the recruitment Rules. Accordingly, the draft Recruitment Rules were first framed sent to the Tripura Public Service Commission and

thereafter finalized and led by the Notification dated 5.3.97. Simultaneously, the Tripura Public service Commission was requested to hold the D.P.C and the Commission held the D.P.C. on 5.3.97 and recommended the name of the Respondent No. 5 for promotion the post of Principal of the Govt. Music College and the Government accepted recommendation of the Commission and issued the impugned appointment in favour, of the Respondent No. 5. Mr. Saha contended that there was thus no (Sic) the part of the State Respondents to appoint the Respondent No. 5 to the it of the Principal of the Govt. Music College, but speedy action was taken by State Respondents with the view to comply with the direction of this Court to fill the post of Principal of the Govt. Music College in accordance with the Rules ore 13.3.97. In this context he further explained that since the Government was Close for holidays on 7.3.97 , 8.3.97 and 9.3.97, a decision on the promotion to be taken before 7.3.97 and for this reason the promotion of the Respondent 5 was made under the Notification dated 6.3.97.

Mr. S. Deb, learned senior Counsel for the Tripura Public Service Commis-Inroduced the records of the DPC and relying on the same submitted that the D.P.C. has considered the ease of the Petitioner and the Respondent No. 5 in a fair, just and impartial manner.

17. It is obvious on the facts available on record that quick action was taken by the State Respondent for framing the Recruitment Rules, holding the D.P.C. and appointing the Respondent No. 5 to the post of Principal of the Govt. Music College on tlie recommendation of the D.P.C. with a view to comply with the direction of this Court in the aforesaid Civil Rule No. 170 of 1996 filed by the Petitioner to fill up the post of Principal, Govt. Music College before 13.3.97 . From such speedy action taken by the Government no inference as such can be drawn by the Court, that there was modified on the part of the State Respondents and that the State Respondents were keen in appointing the Respondent No. 5 to the post of Principal of the Govt. Music College. On the other hand, (hi- Recruitment Rules framed by the Government of Tripura show that all Senior lecturers in Music (Vocal/Instrumental) Dance having sever, years regular service in the grade were entitled to be considered for promotion to the post of the Principal of the Govt. Music College.

The proceedings of the D.P.C. held on 5.3.97 produced before me further disciosc that tlie State Govt, sent a self-contained note to the Secretary, Tripura Public Service Commission in which the particulars of three persons in the feeder post of Senior Lecturers in the Govt. Music College including the Petitioner and tlw Respondent No. 5 were given and on the basis of the said Note the D.P.C took the view that out of the three persons only the Petitioner and the Respondent No. 5 came within the zone of consideration for promotion to the post of Principal of the Govt. Music College. The said proceedings of the D.P.C. also reveal that the criteria laid down in paragraph 7.1.1. of the office Memorandum issued by the Government of India. Ministry of Personnel, Public Grievances and Pensions dated 10.3.89 adopted by the Government of Tripura vide Memorandum dated

23.3.92 of the Appointment and Services Department of the Government of Tripura had to be followed by the D.P.C. for recommending promotion to all posts of pay scale of Rs. 3000-5000 and above and as per the said criteria the minimum bench mark grade for Promotion such posts was to be "Very Good" at the time promotion to said post (Sic) Respondent No. 5 made by the D.P.C. was kept in a sealed cover.

18. The said sealed cover was opened by the Court and from the contents the said sealed cover it appears that the D.P.C. assessed the A.C. Rs. of be. Petitioner and the Respondent No. 5 for five years, i.e. for 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 and gave the bench mark of Very Good to the Respondent No. 5 and Good to the Petitioner, but no reasons have been given by the D.P.C. for its said assessment. Thus, the Court cannot probe into the mind of the D.P.C. and find out the reasons. With a view to ensure that the Petitioner has not suffered any arbitrariness or (Sic) treatment, however looked (Sic) Respondent No. 5 and the Petitioner from the file produced (Sic) Respondent No. 5 have been given a grading of Good" by the Reviewing officer, the Respondent No. 5 (Sic) aforesaid five years. On the aforesaid materials, the Court can not possibly take view that the D.P.C. acted either arbitrarily or in malafide or unfair Manner in giving the bench mark of "very good" to the Respondent No. 5 and "Good" to the Petitioner.

19. On the basis of the said recommendation of the D.P.C. the State Government appointed the Respondent No. 5 to the post of the Principal of the Govt. Music College by the impugned Notification dated 6.3.97. The Recruitment Rules which have been upheld by this judgment provide that the post of the Principal of the Govt. Music College is a selection post. Hence appointment by way of promotion to the said post has to be based on merits and it is settled law that it is not for the Court but for the D.P.C. to assess the merits of the respective candidate for selection; so a selection post and unless the selection made by the D.P.C. is vitiated by malice, arbitrariness or unfairness, the Court in exercising its power of judicial review not set aside the said selection or the appointment made on the basis of the said selection. Since on the materials before the Court I have held that the selection made by the D.P.C. was not vitiated by malafide, arbitrariness or unfairness, this Court has no further jurisdiction to assess the respective merits of the Petitioner and the Respondent No. 5.

20. In the result, this writ petition has no merit and is accordingly dismissed. Considering the facts and circumstances of the case, parties shall bear their own costs.