
(2015) 07 TP CK 0048
In the Tripura High Court
Case No : W.As. 56 and 59 of 2014

State of Tripura and Others	Vs	APPELLANT
Samiran Deb and Others		RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 07 TP CK 0048

Hon'ble Judges : Deepak Gupta, C.J.;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : S. Chakraborty, Addl. G.A., for the Appellant; Somik Deb, A. Bhowmik and S. Datta, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J—These two writ appeals are being disposed of by a common judgment since identical questions of fact and law are involved.

2. Briefly stated, the facts of the case are that the petitioners were serving as constables in the Police Department. In the year 2010 selection process through departmental examination was initiated for filling up the posts of Assistant Sub Inspector of Police (ASI), (Unarmed Branch) by the Director General of Police, Tripura. The petitioners participated in the selection process and they qualified the examination and their names find mention in the select list.

3. According to the case set up by the petitioners, the persons whose names appeared in the select list upto Sl. No. 54 were given promotion on merit to the post of ASI. On 15.10.2011 three more persons from the select list whose names were at Sl. No. 55 to 57 were also promoted. Lastly, on 02.5.2012, four persons belonging to the Scheduled Caste category whose names appeared at Sl. Nos. 154, 159, 165 and 166 were also promoted. The case of the petitioners is that there were many vacancies but the petitioners were not promoted to the post of ASI and thereafter, the Director General of Police issued a memorandum on 18.5.2012 again constituting a DPC calling for fresh departmental examinations.

4. The petitioners contended that till the entire select list is exhausted, no fresh test can be held. The case of the petitioners is that the select list shall remain valid until it is completely exhausted. Therefore, they challenge the second test being conducted. The learned Single Judge after an elaborate discussion allowed the writ petitions and quashed the memorandum dated 18.5.2012 calling for fresh departmental examination and further ordered that the select list prepared and published on 18.12.2010 shall remain valid till the entire list is exhausted.

5. The State by means of this writ appeal has challenged this judgment and it is contented by the State that the select list is only valid for a period of one year and thereafter, fresh examinations have to be conducted. The tests are held in accordance to the Recruitment and Promotion Rules. Annexure-II of the Rules which is part of the Schedule contains the procedure for holding the examination for post of ASI of Police, Unarmed Branch (Men and Women). Paras-4, 5, and 6 are relevant which read as follows:-

"4. Only those who qualify in the part I (Written test) securing 50% of total marks, will be declared to have passed the Part I, and will be eligible for the Part II (Practical test). Similarly, only those who qualify in the part II (Practical test) securing 50% of total marks, will be eligible for part III. The result of Part I and II shall be declared separately. A candidate securing 60% in part III (interview, service records and length of service) will be considered for inclusion in the panel (select list) for promotion in the order of merit according to the availability of vacancies. When two or more candidates secure equal marks they shall be arranged in the list as per their inter se seniority. Panel thus formed will remain valid till exhausted.

5. Those declared passed once in Part I and or Part II will not be required to re-appear in the same part of examination. The panel of the candidates fit for promotion to the rank of Assistant Sub-Inspector of Police of Un-armed branch (Men & Women), shall be prepared in order of merit in accordance with the result of Part III only. Separate panels will be prepared for candidates belonging to General, ST and SC categories. The panel for unreserved (General) category will include the names of candidates of all categories in the order of merit. The panels for ST and SC category will contain respectively the names of candidates of ST & SC categories only in order of merit. The total number of names in a panel shall not be more than the number of existing vacancies plus the number of vacancies anticipated during the coming one year.

6. Those who have qualified in written test or practical test in previous examinations held so far, will not be required to appear at subsequent examinations."

6. A perusal of para-4 clearly shows that only those who qualify all three parts of the test would be considered for inclusion in the panel for promotion in the order of merit according to availability of vacancies. The last part of para-5 makes it clear that the total number of names in a panel shall not be more than the

number of existing vacancies plus the number of vacancies anticipated during the coming one year. Para-6 provides that those who have qualified in written test or practical test in previous examinations will not be required to appear at subsequent examinations.

7. We are clearly of the view that in view of the provisions of Paras 4, 5, 6 and 7 of the Rules, the panel which is prepared by the DPC is valid till all the existing vacancies on the date when the DPC is constituted or meets are filled in. The second part of the Rules provides that the DPC shall also recommend names for anticipated vacancies for a further period of one year. We are also of the view that the period of one year will have to be counted from the date when the DPC submits its report.

8. In this case, the interviews were held from 19th to 21st October, 2010 and on 26th October, 2010. We had, therefore, directed the Secretary, Home to file an affidavit what were the anticipated position of vacancies till 31.10.2011. We have been informed that even the committee submitted its report either in the end of October or beginning of November, 2010. Therefore, the select list would be valid only to fill up the vacancies upto 31.10.2011. Now, an affidavit has been filed and the Secretary, Home has admitted in the affidavit that as per the recalculated position on 31.10.2011, there were 6(six) more posts under the unreserved category which were required to be filled in. Therefore, the next 6(six) persons belonging to the unreserved category in the order of merit have to be appointed.

9. However, in view of what is stated in the rules, we are clearly of the view that the learned Single Judge erred in holding that the select list would remain valid till all the persons whose names are mentioned in the select list are promoted. We are clearly of the view that what was prepared was a merit list and as per the rules the names in the select list had to be confined to the number of existing vacancies and to the number of vacancies anticipated in the next one year. Therefore, in our view only those anticipated vacancies can be filled in on the basis of the examination held in 2010.

10. Sri Somik Deb, learned counsel for the respondents, has urged that in case of Scheduled Castes some promotions were made even in April, 2012 and, therefore, the same benefit should be given to unreserved category candidates also.

11. We are not in agreement with the same because we are not even clear whether the Scheduled Caste candidates who are promoted in April, 2012 were promoted in respect of vacancies which may have occurred prior to 17.12.2011.

12. Accordingly, we partly allow the appeals and set aside the judgment of the learned Single Judge quashing the memorandum dated 18.5.2012 and directing that the select list prepared and published on 18.12.2010 shall remain valid till the entire list is exhausted. We, however, direct that the select list prepared and published on 18.12.2010 shall remain valid only till 17.12.2011. Therefore, we

direct that on the basis of the select list prepared and published on 18.12.2010, all anticipated vacancies arising up to 17.12.2011 including the 6(six) indicated in the affidavit of the Secretary, Home shall be filled up on the basis of the select list prepared and published on 18.12.2010. If there is any other vacancy which has occurred after 31.10.2011 to 17.12.2011 that shall also be filled up on the basis of this select list. For the vacancies occurring on or after 18.12.2011, the department is entitled to conduct a fresh departmental examination. The only benefit which the petitioners can get is that they need not appear in Part I and Part II of the examination in view of the provisions of para-6 quoted hereinabove.

13. The appeals are, therefore, disposed of in the aforesaid terms.