

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2868 OF 2020
(Arising out of SLP(C) No.9174 of 2020)
(@ D.No.1298 of 2020)

Ajoy Debbarma and others

... Appellants

Versus

State of Tripura and others

... Respondents

WITH

CIVIL APPEAL NO.2869 OF 2020
(Arising out of SLP(C) No.1125 of 2020)

WITH

CIVIL APPEAL NO.2870-2871 OF 2020
(Arising out of SLP(C) No.9176-9177 of 2020)
(@D.No.1324 of 2020)

WITH

CIVIL APPEAL NO.2872 OF 2020
(Arising out of SLP(C) No.9178 of 2020)
(@D.No.1348 of 2020)

WITH

CIVIL APPEAL NO.2873 OF 2020
(Arising out of SLP(C) No.9179 of 2020)
(@ D.No.2268 of 2020)

WITH

CIVIL APPEAL NO.2875-2898 OF 2020
(Arising out of SLP(C) No.9181-9204 of 2020)
(@ D.No.8397 of 2020)

WITH

CIVIL APPEAL NO.2899 OF 2020
(Arising out of SLP(C) No.9205 of 2020)
(@ D.No.8799 of 2020)

WITH

CIVIL APPEAL NO.2874 OF 2020
(Arising out of SLP(C) No.9180 of 2020)
(@ D.No.7994 of 2020)

WITH

MISC.APPLN.D.No.11372 of 2020 IN SLP(C)Nos.18993-19049 OF 2014

J U D G E M N T

Uday Umesh Lalit, J.

1. Leave Granted.
2. These appeals arise out of the judgment and order dated 03.10.2019 passed by the High Court of Tripura at Agartala in Writ Petition (Civil) No.1040 of 2019 and all other connected matters.
3. Selection of 10,323 teachers made by the Government of Tripura, pursuant to advertisements issued in the years 2002, 2006 and 2009 was subject matter of challenge before the High Court of Tripura in **Sri**

Tanmoy Nath & others vs. The State of Tripura & others¹. While accepting the challenge, it was held by the High Court that the selection was contrary to the provisions of the National Council for Teacher Education Act, 1993 and the relevant policies and that the appointments were arbitrary and illegal. It was found that the selection was irrational and illogical and that it suffered from nepotism and favouritism. The conclusions of the High Court were:-

“116. We live in a country which is governed by the rule of law. The action of each and every official or Government functionary has to be in accordance with the Constitution. The rule of law is the golden thread which runs through our Constitution. The two most important facets of the rule of law are fairness and equality. Every citizen has a right to equal opportunity of employment and equal treatment at the time of selection. Nobody can deny this right to any citizen of the country and if such right is denied, then this Court shall step in to ensure that justice is done.

117. Article 14 and 16 of the Constitution of India clearly provide that there should be equality to all, especially in terms of matters of employments. Reservations or preferences by whatsoever name called can be granted only in terms of the Constitution and not at the whims and fancies of the Government. The selection process in all cases should be transparent and above board. There should be clear cut guidelines laid down as to how the interview boards are to award marks to the candidates. This cannot be left to the discretion of the members of the interview board. Even in those cases where the Apex Court has upheld the selection of candidates on interviews, the Court has insisted that proper record should be maintained so that it can be determined how the selection has been made. In the present case, the less said about the selection process the better. We with regard to every category of teachers and with every sub-division/division have given examples which clearly show that there was no method followed by the State in

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making appointments and it is more than apparent to us that the appointments have been made on totally extraneous basis without considering the future of the poor students or the aspirations of the unemployed youth. The whole selection process was a cruel joke on the youth of Tripura.”

3.1 While accepting the challenge, the High Court observed:-

“121.The selections have been totally unfair. The selections have not been made in a transparent manner. The citizens of this country have not been treated equally. Most of the clauses of the policy are illegal and unconstitutional. The entire policy is bad because it gives no guidelines and, therefore, the entire selection will have to be, must be and is accordingly set aside.

122. Though we have set aside the selections, we are concerned with the education of the small children who are innocent and have no concern with the illegalities of the selection. We, therefore, direct that the teachers whose selections have been set aside shall continue to function in their present place of postings till 31.12.2014, i.e. the end of the academic session of this year.

123. The State on or before 31.12.2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31.12.2014.”

3.2. In the end, the High Court issued following directions:-

“125. We would also like to make it clear that other than the benefits indicated by us above there can be no reservation/preference on the basis of age. There shall be no preference to dependent government servants or retired government employee or retrenched employees etc. There can be no reservation for linguistic or religious minorities or on area wise basis. It is further made clear that if the persons who are selected in the previous selection are again

selected then the service rendered by them earlier shall be counted for the purpose of seniority, pension and all other purposes.

126. We may make it clear that the benefit to the candidates on the ground of being needy shall not be granted on the basis of the BPL certificates since we have found that there are no guidelines for issuing the BPL certificates. Other guidelines can also be laid down so that the needy can be identified properly.

127. Since we have set aside the revised employment policy which applies to a large category of posts and not merely to teachers, we would like to make it clear that our judgment shall be prospective in nature and shall not affect the appointments already made unless the said appointments are already under challenge before the Court on the ground that the employment policy is illegal.”

4. The decision in ***Tanmoy Nath***¹ was appealed against in this Court.

While rejecting the appeals, this Court in its Order dated 29.03.2017 observed as under:-

“We have heard learned counsel for the parties and perused the record. We do not find any ground to interfere with the impugned order.

While setting aside the selections, the High Court in para 123 of the impugned order observed:

‘123. The State on or before 31.12.2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31.12.2014.’

While issuing notice in the present matters this Court by its Order dated 04.08.2014 stayed the directions contained in aforesaid para 123 of the impugned order.

Since we do not find any ground to interfere with the impugned order, the directions in para 123 now required to be suitably modified. We, therefore, direct:-

- (a) New Employment Policy should be framed by the State by 30th April, 2017 if not already framed and advertisements for filling up the vacancies may be issued latest by 31st May, 2017.
- (b) The fresh selection process be completed on or before 31st December, 2017 and till the fresh process is completed, the teachers already appointed shall continue.
- (c) The candidates who participated in the selection process pursuant to the advertisements in question, whether selected or not, will be allowed to participate in the fresh selection process by relaxing their age but subject to their having necessary qualifications.
- (d) The qualifications in the case of teachers governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall be in conformity with the relevant statutory provisions of the said Act.
- (e) The qualifications of teachers employed for Classes IX and above shall be strictly in compliance with the relevant provisions concerning such appointments.

Subject to the aforesaid modifications, the view taken by the High Court in the impugned order is affirmed and the special leave petitions are dismissed.

Pending application(s), if any, also stand disposed of.”

5. In May-June, 2017 the State Government created 12,000 non-teaching posts in Group-C as under:-

“(i) Academic Councillor	-	1200 Nos.
(ii) Students Councillor	-	3400 Nos.
(iii) School Library Assistant	-	1500 Nos.
(iv) Hostel Warden	-	300 Nos.
(v) Programme Assistant	-	5600 Nos.
Total	-	12000 Nos.
		”

6. This led to the filing of Contempt Petition (Civil) No.1706 of 2017 in this Court. After considering rival submissions, the following Order was passed by this Court on 04.10.2017.

“This contempt petition has been filed seeking initiation of contempt proceedings against the senior officers of the State of Tripura for willful disobedience of the order dated 29th February, 2017. The case of the petitioner is that the State of Tripura recruited 10323 teachers illegally. The Tripura High Court vide judgment dated 7th May, 2014 quashed the said appointments inter alia holding:-

“It is more than apparent to us that the appointments have been made on totally extraneous basis without considering the future of the poor students or the aspiration of the unemployed youth. The whole selective process was a cruel joke on the youth of Tripura.”

... ..The selection have been totally unfair. The selection has not been made in a transparent manner. The citizens of this country have not been treated equally. Most of the clauses of the policy are illegal and unconstitutional. The entire policy is bad because it gives no guidelines and,

therefore, the entire selection will have to be,
must be and is accordingly set aside.”

The above view was affirmed by this Court vide order dated 29th March, 2017.

To circumvent the order of this Court, vide notification dated 19th May, 2017, the State of Tripura issued a notification and created 12,000 posts of Student Counsellor, School Library Assistant, Academic Counsellor, Hostel Warden and School Assistant with a view to accommodate the same persons whose appointments were quashed being tainted by extraneous reasons apart from lack of qualifications. The age requirement and qualifications have been now tailored with a view to appoint the very same persons whose appointments were quashed to newly created posts and thereby defeat the order of the Court quashing their appointment.

Notice was issued and reply has been filed stating that the decision of the State of Tripura was bona fide and not with a view to flout the order of this Court.

We find prima facie merit in the allegations in the contempt petition and prayer for initiating proceedings against the respondents. Learned counsel for the respondents seeks further time to make submissions.

Adjourned to 24th October, 2017. Personal appearance of the alleged contemnors is dispensed with till further orders. Liberty to file any further affidavit.

Pending further consideration, the State of Tripura is restrained from filling up the posts of newly recruited 12,000 posts of Student Counsellor, School Library Assistant, Academic Counsellor, Hostel Warden and School Assistant.”

7. The Contempt Petition was thereafter taken up for hearing on 24.10.2017 when the following order was passed by this Court:-

“In continuation of proceedings dated 4th October, 2017, learned counsel for the petitioners has drawn our attention to the additional affidavit filed by the Respondent No.1 to show that all the steps leading to notification dated 19th May, 2017 have been taken only after the judgement of this Court dated 29th March, 2017, which is with a view to flout the order of this Court. It was further submitted that the object is to continue in service all those whose appointments were quashed and were found to be for extraneous reasons.

Sri Rakesh Dwivedi, learned senior counsel appearing for the Chief Secretary, Education, Tripura, states that the appointments which are impugned in the present proceedings are proposed to be initiated only after the completion of the selection of teachers which is likely to be over by 31st December, 2017.”

8. The directions issued by this Court were then complied with by the State Government and an affidavit to that effect was filed, whereafter the Contempt Petition was disposed of by this Court vide order dated 02.08.2019.

The time granted in direction (b) of the Order dated 29.03.2017 passed by this Court, was extended from time to time and finally this Court issued directions on 01.11.2018 extending the period of services of the concerned teachers upto the completion of the Academic Session 2019-2020.

9. As per record, by the end of Academic Session 2019-2020, 8,882 ad-hoc teachers were working in the School Education Department and in terms of the directions issued in *Tanmoy Nath*¹ and by this Court, the services of the concerned teachers stood terminated after the Academic Session 2019-2020 was over.

10. In the meantime, some of the teachers had again approached the High Court raising certain submissions which were noted by the High Court in its judgment presently under appeal as under:-

“(a) Instant petitioners were appointed to the posts of undergraduate, graduate and postgraduate teachers in the year 2010/2014; (b) In none of the petitions/proceedings either before this Court or before the Hon’ble Supreme Court, instant petitioners were parties. The only exception being M.A.No.1726/2018 in SLP(C)Nos.18993-19049/2014 (XIV) which was permitted to be withdrawn reserving liberty to approach this Court vide order dated 02.08.2019; (c) Instant petitioners were never ever impleaded as parties in any one of the proceedings either before this Court or Hon’ble the Supreme Court. Also they had no notice of pendency of such proceedings; (d) As such, instant petitioners cannot be bound by the decision rendered by this Court in ...”

10.1 The basic issue which arose for consideration was set out in para 16 of the decision of High Court as under:-

“16. The core issue which arises for consideration is as to whether the instant writ petitioner(s) can be allowed to reopen the issues decided by this Court in *Tanmay Nath* (supra), as affirmed by the Apex Court vide order dated 29.03.2017 on the ground that; (a) this termination is illegal on account of violation of principles of natural justice, inasmuch as no notice stood issued to them, nor were they

impleaded as parties to such proceedings; (b) the services of the petitioners stand protected by and in terms of the directions contained in para-127 of the very judgment; (c) whether the impugned memorandum extending the period of services on ad-hoc basis and rejecting the representations should be quashed or not.”

10.2 The High Court found that the pendency of the original writ petitions was widely circulated throughout the State in the print and electronic media; and that prior to the rendering of its decision in **Tanmoy Nath¹**, the High Court had directed issuance of notices to be published in the newspapers which were also issued; and that none of the petitioners had challenged the decision of the High Court in **Tanmoy Nath¹** nor did they seek any review.

10.3 It was finally concluded:-

“29. In effect, instant petitioners are seeking review of the judgment rendered in Tanmoy Nath (supra) which is not permissible in law, more so on the doctrine of merger. We hasten to add that the issues stand decided only as the Hon’ble Supreme Court granted liberty allowing the instant petitioners to agitate the same before us.

30. State is duty bound, under the constitution, to see proper and effective implementation of the judgment rendered by the Apex Court.

31. In view of above discussion, the present bunch of instant writ petitions, being an abuse of process of law and speculative in nature, stand dismissed.”

11. The Special Leave Petitions challenging the decision of the High Court dated 03.10.2019 came up before this Court on 07.02.2020 when the following order was passed:-

“Mr. Jaideep Gupta and Mr. Manoj Swarup, learned Senior Counsel appearing for the petitioners submit that some of the teachers, whose appointments as a result of the judgment of the Division Bench of the High Court [as affirmed by this Court] will now stand terminated at the end of the Academic Session 2019-2020, are otherwise fully eligible and have the requisite qualifications to be appointed as teachers.

Learned counsel further submitted that such candidates may not be within the permissible age bracket and will therefore stand deprived of any opportunity only because of age bar.

Issue notice confined to the question whether there could be any age relaxation insofar as the teachers already in employment and who otherwise have all the requisite qualifications and are otherwise competent.

Let the notice be made returnable on 16.03.2020.

At this juncture, the proforma respondents need not be served in the matter.

Dasti service, in addition, is permitted.

Liberty is granted to serve the learned Standing Counsel for the State.

It is made clear that the matters are confined only to the aforesaid question and rest of the submissions as advanced by the learned counsel stand rejected.”

12. Thereafter, the order dated 19.06.2020 passed by this Court recorded that the concerned teachers had ceased to be in employment after the end of the Academic Session 2019-2020. The submissions advanced

on behalf of the State Government and by the learned Advocates appearing for the petitioners were noted as under:-

“Mr. Maninder Singh, learned Senior Advocate appearing for the State submitted that after the end of the Academic Session 2019- 2020, the concerned teachers have ceased to be in employment; that some of the teachers had participated in the selection; and, the State had afforded them age relaxation. He also submitted that the State Government is contemplating to accommodate some of the teachers in alternate employment.

Mr. Manish Goswami, learned Advocate appearing for the petitioner submitted that the averments to that effect have already been made on behalf of the State Government in Miscellaneous Application Diary No.11372 of 2020, filed in Special Leave Petition (Civil) No.18993 of 2014.

We call upon the State to place an appropriate affidavit indicating the stand of the State and what steps the State is contemplating and the kind of benefit that it seeks to extend to the teachers by way of alternate employment.”

13. Pursuant to the aforesaid order, an affidavit was filed on behalf of the State reporting the steps undertaken by the State Government. It was submitted that in compliance of the decision of this Court dated 29.03.2017, advertisements through Teachers’ Recruitment Board, Tripura were issued on 27.05.2017 inviting applications for filling up vacancies of teachers; and that large number of candidates, including those who had earlier participated in the selection process pursuant to advertisements dated 29.10.2002, 05.04.2006 and 23.09.2009, had taken part in the process; and that those candidates were given age relaxation and some of

them were selected by the Teachers' Recruitment Board. The necessary averments in said affidavit were:-

"That it is crystal clear that the Respondent-State Government has been giving age relaxation to ad-hoc teachers in the past also complying with the directions of this Hon'ble Court in the judgement dated 29.03.2017. It is further submitted that the Respondent-State has decided that these candidates who had been working as ad-hoc teachers and have been removed from their such engagements, on their getting selected in the fresh selection in terms of the judgement of the Hon'ble High Court and of this Hon'ble Court, is extending full age relaxation to them irrespective of the number of years required and for recruitments to be held till 31st March, 2023 to compete for the post of teachers. It is also emphasized that only such ad-hoc teachers who fulfil the requisite qualifications and are otherwise eligible for employment, are being considered for such age relaxation."

The affidavit also annexed a copy of Miscellaneous Application Diary No.11372 of 2020 which had indicated that there were about 10,618 vacant posts in Group-C and Group-D in different Departments and which had prayed:-

"A) Permit the State Government to consider and appoint these discharged ad-hoc teachers, to vacant sanctioned Group-C/Group-D posts in the services of the State of Tripura on fulfilment of the eligibility conditions and with age relaxation wherever it is required:

B) Permit age relaxation in respect of such appointments as prayed hereinabove, of the ad-hoc teachers against sanctioned vacant non-technical Group-C and Group-D posts in different State Government Department."

14. In appeal arising out of Special Leave Petition (Civil)D.No.1324 of 2020, an application was filed seeking permission to file additional documents. In terms of the document at Annexure A-2 the total vacant posts of teachers in the State were 20,165. The documents appended to the application were relied upon to submit that from 16.09.2016 till 29.05.2020, only 4,300 teachers were appointed in various categories in the State. Dr. Rajeev Dhavan, learned Senior Advocate appearing for the concerned appellants submitted that considering the vacant posts of teachers in the State, the teachers whose services were disengaged and terminated after the completion of Academic Session 2019-2020 be suitably re-employed. It was further submitted that even if some such candidates were selected as teachers after allowing them age relaxation or even if some of the candidates were given alternate employment, some glaring issues would still arise as (a) their past service would not be counted for any purpose; (b) they would start at the bottom in the concerned service or employment; and (c) it would be a case of degradation if the teachers were offered employment in Group-C and Group-D.

15. Mr. Kapil Sibal, learned Senior Advocate, appearing for some other appellants, also submitted that the concerned candidates be accommodated considering the vacancy situation, while Mr. Jaideep Gupta, learned Senior Advocate, appearing in another set of matters

submitted that, it would certainly be a case of degradation if the former teachers were given appointments in Group-C and Group-D. On the other hand, Mr. Colin Gonsalves, learned Senior Advocate, appearing for some of the appellants submitted that his clients were willing to accept the alternate employment provided they were given chance to acquire the requisite qualification.

16. Mr. Maninder Singh, learned Senior Advocate, appearing for the State submitted that the selection and appointments were set aside by the High Court vide its decision in *Tanmoy Nath*¹ as being arbitrary and illegal; and that it was found by the High Court that the selection was based purely on oral interview and suffered from nepotism and favouritism. He submitted that if the appointments themselves were illegal and the selection was set aside being arbitrary and invalid, the past service of such teachers could not be recognised in any manner and that the State Government had afforded adequate opportunity to the concerned candidates by giving age relaxation and apart therefrom no other benefit could be extended to such candidates. Responding to the annexures appended to the application filed in the appeal arising out of Special Leave Petition (Civil) D.No.1324 of 2020, it was submitted that the figure of 20,165, being alleged vacant posts of teachers in the State, was not correct. Such figure was arrived at after taking into account the attempt

on part of the State to create about 12,000 posts in Group-C in non-teaching category in the year 2017, which was subject matter of the action in the Contempt Petition before this Court in its Order dated 04.10.2017 and subsequent Orders.

17. The questions concerning legality and validity of the entire selection process and the appointments of about 10,323 teachers were gone into in detail in *Tanmoy Nath*¹. The findings rendered by the High Court and its conclusions were accepted by this Court while dismissing the appeals arising therefrom. Though the services of the concerned teachers were initially protected only upto 31.12.2017, accepting the plea made on behalf of the State, the concerned date was extended from time to time. It is a matter of record that the services of such candidates now stand terminated. In terms of the directions issued in *Tanmoy Nath*¹ and appeal arising therefrom, the State is obliged to conduct selection process in which the concerned candidates will be entitled to participate with age relaxation. The age relaxation has now been afforded by the State in all selections till 31.03.2023, which benefit is quite adequate and proper.

18. In our view, considering the fact that the very selection and appointments were found to be illegal and invalid, no other advantage can be conferred upon the concerned candidates. It must be noted that the attempt on part of the State in offering certain alternate employment is not

to degrade the teachers but some solace is being offered even in cases where the candidates do not succeed in the selections to the posts of teachers. The candidates, if they are otherwise competent and eligible, will certainly have every opportunity till 31.03.2023 to get selected for the posts of teachers in the State and by way of additional benefit those who are unsuccessful in such attempts may retain the alternate employment. In our view, it does not amount to any degradation.

19. Though the notice was confined to the question of age relaxation as was made clear in the Order dated 07.02.2020, we have considered submissions which were not strictly confined to said question. We, however, do not find any substance in the contentions, which are therefore rejected.

20. Consequently, these appeals and M.A. (D) No. 11372 of 2020 are dismissed without any order as to costs.

.....J.
(Uday Umesh Lalit)

.....J.
(Vineet Saran)

New Delhi,
August 05, 2020.