

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.148/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Satya Ram Shil

..... Respondent(s).

WA No.150/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Suman Miah

..... Respondent(s).

WA No.151/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Niraj Miah

..... Respondent(s).

WA No.152/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Joy Debbarma.

..... Respondent(s).

WA No.153/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Dipankar Debnath.

..... Respondent(s).

WA No.154/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Jaggeshwar Majumder

..... Respondent(s).

WA No.157/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Prabir Dey

..... Respondent(s).

WA No.158/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Md. Akchir Miah

..... Respondent(s).

WA No.159/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Narayan Debnath.

..... Respondent(s).

WA No.160/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Tapash Bhowmik.

..... Respondent(s).

WA No.161/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Priyalal Majumder

..... Respondent(s).

WA No.162/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Pranab Debnath

..... Respondent(s).

WA No.163/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Dhiresh Ch. Debnath

..... Respondent(s).

WA No.164/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Rajesh Marak.

..... Respondent(s).

WA No.165/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Narayan Nath.

..... Respondent(s).

WA No.166/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Joydeep Bhowmik

..... Respondent(s).

WA No.167/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Debabrata Biswas

..... Respondent(s).

WA No.168/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Jayanta Debnath

..... Respondent(s).

WA No.169/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Rupeshwar Sharma.

..... Respondent(s).

WA No.176/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Pintu Choudhury

..... Respondent(s).

WA No.177/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Litan Debnath

..... Respondent(s).

WA No.178/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Rajib Dey

..... Respondent(s).

WA No.179/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Jayanta Deb

..... Respondent(s).

WA No.180/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Jiban Debnath.

..... Respondent(s).

WA No.181/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Bapi Dey.

..... Respondent(s).

WA No.182/2020

The State of Tripura and 22 others

..... Appellant(s).

Vrs.

Sri Titan Saha

..... Respondent(s).

For Appellant(s) : Mr. D. Bhattacharjee, Govt. Advocate.

For Respondent(s) : Mr. P. Roy Barman, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.
Mr. Kawsik Nath, Advocate.

W.P(C) No.291/2020

Sri Sanjoy Dey and 10 others

..... Petitioner(s).

Vrs.

The State of Tripura and 22 others.

..... Respondent(s).

W.P(C) No.499/2020

Sri Sudip Bhowmik

..... Petitioner(s).

Vrs.

The State of Tripura and 22 others.

..... Respondent(s).

W.P(C) No.500/2020

Sri Sankar Das

..... Petitioner(s).

Vrs.

The State of Tripura and 22 others.

..... Respondent(s).

W.P(C) No.501/2020

Sri Raju Nama

..... Petitioner(s).

Vrs.

The State of Tripura and 22 others.

..... Respondent(s).

W.P(C) No.565/2020

Sri Bishnu Das

..... Petitioner(s).

Vrs.

The State of Tripura and others.

..... Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.
Mr. Kawsik Nath, Advocate.
For Respondent(s) : Mr. D. Bhattacharjee, Govt. Advocate.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY**

ORDER

02/02/2021

(Akil Kureshi, CJ)

These appeals and writ petitions arise in common background. The Writ appeals are filed by the State Government to challenge the common judgment of the learned Single Judge dated 04.02.2020 in W.P(C) No.640/2018 and connected petitions in case of *Satya Ram Shil Vrs. the State of Tripura and others*. The learned Single Judge allowed all the petitions and directed the State Government to appoint the petitioners if their merit position in a panel of candidates prepared by the Government for the post of Drivers was within remaining 256 vacancies. The writ petitions which are tagged along with these writ appeals have been filed by similarly situated candidates who had appeared for selection to the post of Drivers and were not offered appointment by the Government. They seek similar directions as have been given by the learned Single Judge in the impugned judgment.

[2] Brief facts are as under:

In exercise of powers under Article 309 of the Constitution of India, the Government of Tripura has framed Tripura Government Vehicles Drivers Services Rules, 1979 (hereinafter to be referred to as the said Rules) under a notification dated 7th March, 1979. Rule 10 of the said Rules pertains to initial recruitment, relevant portion of which reads as under:

“10. *Initial Recruitment- (a) All Departments mentioned in the Schedule to this rule shall prepare vacancy position of the drivers as per authorized strength and shall forward request for sponsoring names to the Transport Department. The number of vacancies so prepared shall be calculated including (i) Existing vacancies and (ii) Future vacancies that may arise within next one year due to retirement, deputation, etc. the vacancy position along with requisition to sponsor names shall be forwarded to the Transport Department so as to reach them latest by 31st March every year.

(b) Seventy per cent of the total vacancies arising in a year shall be filled up by direct recruitment while the rest thirty per cent shall be filled up by promotion from the regular .Group-D employees having valid licence for driving vehicles. In case of the direct recruits, Transport Department shall conduct interview and suitability test as may be prescribed and select a panel of eligible candidates for forwarding the same to the respective Departments. The list to be prepared shall contain selected candidates double the number of vacancies that may be filled up. The list shall remain valid for a period of one year.”

[3] The Government of Tripura issued an advertisement on 21.07.2015 inviting eligible candidates to appear in walk-in-interview for preparation of a panel of 500 (five hundred) drivers in Group ‘C’ posts in the scale of Rs.5700-24000 with Grade Pay of Rs.2200/-, in Pay Band-2 for sponsoring such candidates to various departments as per the requisition from the departments. Out of 500 candidates to be so empanelled, 85 would be SC candidates, 155 would be ST candidates and 260 would be unreserved category candidates. The advertisement provided the age limit and minimum educational qualifications

required for the post in question. The schedule of the walk-in-interviews at various centers was published. All the petitioners appeared in such walk-in-interviews. The Government authorities prepared a list of 500 successful candidates who were empanelled. A copy of the list is on record. It appears that as per the requisitions from different departments for appointing drivers as per the requirements, the Government also started operating the said select list of the panel as is referred to by the respondents. The Government operated the panel by offering appointment to number of candidates from the said panel which included UR, SC and ST candidates as well. However, subsequently, the Government took a policy decision and circulated the same under circulation dated 20th August, 2018 to discontinue all recruitment processes in view of the new recruitment policy framed by the Government. On the strength of the circular, the Government stopped making any further appointments of drivers from the said panel. Thereupon a few of the empanelled candidates approached the High Court in group cases of W.P(c) No.689 of 2018 and connected petitions filed by Shri Khagendra Reang and others. The learned Single Judge gave a judgment on 10.01.2019 and directed the Government to offer appointments to those petitioners. Perusal of this judgment would show that before the High Court the Government had contended that at the time of issuance of the advertisement, there were in all 244 vacancies of drivers in different departments of the Government which would be broken up into 129 vacancies for UR, 70 for ST and 42 for SC candidates. Further stand taken by the Government was that in view of introduction of new recruitment policy, the Government had taken a conscious decision not to make any fresh appointments of the drivers from the

panel previously drawn which was pursuant to a procedure adopted by the Government before the new recruitment policy was framed. The learned Single Judge found that all petitioners involved in the said group would merit appointments, even if the Government were to fill up only 244 posts of drivers from the panel already prepared. Only question before the Court, therefore was, was the Government correct in discarding the existing panel even for admittedly existing vacancies only on account of introduction of a new recruitment policy at a later stage. The Single Judge overruled this objection of the Government and issued appropriate directions for appointment of the petitioners according to their merits. It may be noted that the Government did not challenge this judgment of learned Single Judge in case of *Shri Khagendra Reang* and we are informed that the directions have been complied with.

[4] In the present group of appeals and writ petitions, however, except in two cases, we are concerned with those candidates who would not come within the merit position if only 244 vacancies were to be filled up from the panel prepared by the Government. Their case is that in all there were 500 vacancies existing and likely to arise in near future. These vacancies were notified and published by the Government. A panel of 500 candidates with suitable reservation positions was therefore prepared. The Government therefore, cannot now resile from such position and refuse to offer appointments from such panel only on the ground that, long after preparation of the panel the Government had framed a new recruitment policy.

[5] The stand of the Government is that at the relevant time there were only 244 vacancies, which alone could be filled up from the select panel. Additionally, since a new recruitment policy was framed by the Government, the Government had decided not to make any further recruitments on the basis of the old policy.

[6] The learned Single Judge overruled both these objections of the Government. The contention that there were 244 vacancies existing at the time of publication of advertisement was not accepted. The learned Judge held that 500 vacancies which were published were actually existing and therefore, up to a maximum 500 appointments could be made from the panel prepared by the Government. It was also held that the change in the recruitment policy was made prospective by the Government itself and the same could therefore not be applied in case of the select panel which was already drawn before the policy had changed.

[7] We have heard learned counsel for the parties at considerable length. At the outset, we may clear the question of applicability of new recruitment policy in the present case. Firstly, we are in agreement with the view of learned Single Judge that the new recruitment policy which was framed after the preparation of the panel of successful candidates, could not be stated as a reason for not operating the select list. Entire recruitment procedure was completed before the Government framed the new recruitment policy and on the basis of which decided to make all fresh recruitments on the basis of such new procedure. The policy itself envisaged that the same would be applicable

prospectively. Quite apart from this, the Government itself has accepted this position since the decision of the learned Single Judge in case of *Shri Khagendra Reang* (supra) has been accepted without challenge. We may recall, in the said case all the petitioners on the strength of the merits were within the list of 244 candidates whom the Government, in any case admitted match the number of vacancies existing. When the Single Judge, therefore, directed the Government to operate the panel in favour of those petitioners, the Government implemented the directions without challenge the judgment. In other words, thus the Government accepted the view of the High Court that in the present case, introduction of the new recruitment policy is not a good enough reason for denying appointments to the selected candidates, at least to the extent of the vacancies existing at the time of initiation of recruitment process.

[8] The fundamental question therefore, is what was the vacancy position when the Government started the recruitment process. If there were 500 vacancies already existing as is contended by the petitioners, the Government cannot cite the change in recruitment policy as a reason for not making appointments to the selected candidates. On the other hand, if the Government is correct in contending that there were only 244 existing vacancies, the petitioners could claim no vested right of appointment merely because their names were short listed and included in a panel prepared by the Government.

[9] In this context, in reply to the writ petition, the Government had stated that:

“6. That, with respect to paragraph-6 & 7, I say that the Department has prepared merit list of 500 successful candidates for sponsoring the names. As per requisition of different department the respondent has sponsored the names up to SL. No. 128 of UR Merit list. The SL. No. of the petitioner is outside the sponsored name i.e. 163.”

[10] We may recall, in case of *Khagendra Reang* (supra) also the stand of the Government was that there were only 244 existing vacancies on the date of notification of the recruitment. In the present judgment, the learned Single Judge did not accept this version though the Government had given a break up of different vacancies existing in different departments which came to about 237 as per the stand of the Government. This was discarded on the ground that the Government had already offered appointments up to a total of 244 candidates. As against this, the advertisement had referred to a total of “500 vacancies” which according to the learned Single Judge showed that they were as many vacancies existing at the time of publication of the advertisement. To clarify the matters further, the Government has now filed an affidavit before us of one Shri Nihar Ranjan Das, Under Secretary to Government of Tripura, Transport Department, dated 1st February, 2021 in which it has been stated that as per the vacancy position, transport department of Government of Tripura sponsored 244 names to various departments which included both reserved and unreserved category candidates. Along with this affidavit the respondents have also produced a total break up of number of vacancies of drivers relating to various departments of the Government, which break up reads as under:

SL. No.	Department	Number of sponsored candidates			
		U.R	S.C.	S.T.	Total
1.	Law Department	-	-	01	01
2.	Directorate of Small savings, G.I. & I.F	01	-	-	01
3.	Directorate of S.T. Welfare	-	02	02	04
4.	Directorate of E.S.M. Planning.	01	-	-	01
5.	State Forensic Science Laboratory under Home Department	01	01	-	02
6.	Directorate of ICA	-	-	01	01
7.	Directorate of Panchayat	02	01	-	03
8.	Directorate for welfare of Minorities	01	-	-	01
9.	P.W.D	08	03	05	16
10.	Directorate of Fisheries	01	01	-	02
11.	Directorate of A.R.D.D	03	-	01	04
12.	Directorate of Land Records & Settlement	01	-	01	02
13.	Deputy Registrar of Co. Operative Societies.	01	01	01	03
14.	Directorate of Economics & Statistics.	01	-	-	01
15.	O/o the P.C.C.F	08	03	05	16
16.	Revenue	18	04	07	29
17.	Health Directorate	77	23	48	148
18.	Labour Directorate	01	-	01	02
19.	Directorate of Higher Education.	04	03	-	07
	Total	129	42	73	244

[11] In our view, there is no reason to discard the stand of the Government that on the date of publication of the advertisement of walk-in-interviews there were 244 existing vacancies of drivers in different departments of the Government and therefore, the Government cannot be compelled to make appointments beyond the said number. The advertisement in question did not specify the number of vacancies, it only referred to a panel of 500 candidates

which would be prepared by the government as can be seen from the following portion of the advertisement:

“The undersigned invites Walk-in-Interview for preparation of Panel of 500 (five hundred) Drivers, Group “C” (Non-Gazetted) in the pay scale of Rs.5700-24000/- with Grade Pay of Rs.2200/-, under Pay Band-2 on fixed pay basis for sponsoring candidate to various Departments as per requisition from the Departments. Out of 500(five hundred) candidates SC, ST & UR Category candidates would be 85 nos., 155 nos. and 260 nos. respectively. According to Tripura Government Vehicle Drivers Service Rules, 1979 (7th Amendment), the willing candidates must be citizens of India, permanent residents of Tripura and having age between 18 to 40 years. Upper age limit is relaxed in case of SC & ST and Ex-Servicemen candidates by 5 years. Educational qualification of the willing candidates should not be less than Class VIII passed. He must be a qualified Driver and should possess commercial driving license.*”**

[12] This advertisement thus only indicated that the Government was in the process of preparing a panel of 500 names for appointment to the post of drivers. The length of the panel need not necessarily be equal to the existing vacancies. Rule 10 of the said rules, does not change its position. Clause (a) of Rule 10 only provides that all departments of the Government would prepare vacancy position of the drivers as per the authorized strength and forward the request for sponsoring names to the Transport Department. The number of vacancies so prepared would include existing as well as future vacancies which may arise within one year due to retirement, deputation etc. Drawing up of panel of 500 candidates, it would be operated as per the requisition of the different departments for appointment of drivers, would not indicate that there were 500 vacancies on the date of publication of the advertisement. No direction, therefore, could be issued for making appointments of additional candidates

from the said panel when we find that a total of 244 candidates have already been appointed.

[13] There would be two exceptions to the above proposition. In case of Writ Appeal No.154 of 2020, the original petitioner, Sri Jaggeshwar Majumder was a Scheduled Caste candidate and as per his merit, he was placed at Sl. No.131 in the panel. It is undisputed that large number of not only Scheduled Caste but even unreserved category candidates with less merit marks than the petitioner have been appointed His exclusion thus was totally illegal and perhaps was on account of oversight on part of the administration. This is also the case of petitioner No.7 Sri Bishnu Deb of W.P(c) No.291 of 2020 who was placed at Sl. No.86 in the panel. Number of unreserved category candidates less meritorious than him have been appointed. His name also appears to have been omitted due to oversight. Both these petitioners would be appointed on the post of drivers within a period of three months from today. Such appointments would be prospective.

[14] Subject to above directions, the writ appeals of the Government are allowed. The judgment of the learned Single Judge is reversed. Writ petitions are dismissed. Pending application(s), if any, also stands disposed of.

(S. G. CHATTOPADHYAY),J.

(AKIL KURESHI),CJ.

Dipankar