

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.831 Of 2018

Sri Samudra Debbarma,
son of Sri Girish Debbarma,
resident of village Udai Jamader Para, Paschim Takarjala,
P.O. & P.S. Takarjala, District: Sepahijala, Tripura, PIN: 799102

----Petitioner(s)

Versus

1. The State of Tripura,
represented by the Secretary to the Government of Tripura,
GA(P&T) Department, Civil Secretariat, Agartala, West Tripura
2. The Secretary to the Government of Tripura,
GA(P&T) Department, Civil Secretariat, Agartala, West Tripura
3. Tripura Public Service Commission,
represented by its Secretary,
Akhaura Road, P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN: 799001

----Respondent(s)

For Petitioner(s)	:	Mr. S.M. Chakraborty, Sr. Advocate Ms. B. Chakraborty, Advocate
For Respondent(s)	:	Mr. A.K. Bhowmik, Advocate General Mr. P. Datta, Advocate Mr. P.K. Chakma, Advocate Mr. T. Debbarma, Advocate
Date of hearing	:	26/02/2019
Date of judgment	:	14/05/2019
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

The Royal Commission, popularly called 'The Lee Commission' (1924) on superior services in India, observed:

“Wherever democratic institutions exists experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influences and give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion may give effect to their policies. In countries where this principle has been neglected, where the “spoil system” has taken its place, an inefficient and deorganized civil service has been the inevitable result and the corruption has been rampant.”

[quoted in The Framing of India’s Constitution – A Study, B. Shiva Rao, pp. 427-725]

2. In this writ petition, the petitioner has challenged the memorandum bearing No.F.20(1)-GA(P&T)/18 dated 20.08.2018 issued by the General Administration (Personnel & Training) Department, Government of Tripura (Annexure-7 to the writ petition) whereby the selection process in the State Civil/Police Services has been cancelled.

The petitioner has, as well, urged this court to declare that the new recruitment policy as published under the notification bearing No.F.20(1)-GA(P&T)/18 dated 05.06.2018 issued by the General Administration (Personnel & Training) Department, Government of Tripura (Annexure-6 to the writ petition) cannot have any manner of bearing over the process of recruitment in TCS Grade-II and TPS Grade-II as initiated by the advertisement No.04/2016 dated 30.04.2016 (Annexure-1 to the writ petition). Further it has been urged to direct the respondents to complete the process of recruitment in TCS Grade-II/TPS Grade-II within a time frame as would be laid by this court.

3. Tripura Public Service Commission (in short ‘TPSC’) by the said advertisement No.04/2016 dated 30.04.2016 had invited

applications for selection of candidates for recruitment to the TCS Grade-II and TPS Grade-II, Group-A Gazetted by direct recruitment in terms of Rule 5 of the Tripura Civil Services Rules, 1965 as amended from time to time. It is apparent from the said notification that 30 vacancies in TCS Grade-II and 15 vacancies in TPS Grade-II were to be filled by the said selection process. The said advertisement was supplemented later on by the addendum dated 03.07.2017 (Annexure-2 to the writ petition), whereby out of those 30 vacancies in TCS Grade-II, one vacancy has been earmarked for the physically challenged (locomotor) candidate whereas 6 vacancies for SC candidates, 11 vacancies for ST candidates and the rest 13 vacancies were earmarked for UR category candidates. Thus, the advertisement No.04/2016 dated 30.04.2016 (Annexure-1 to the writ petition) has to be read with the addendum dated 03.07.2017 (Annexure-2 to the writ petition).

4. The petitioner here had applied for the said selection in terms of the said advertisement dated 30.04.2016 and the addendum dated 03.07.2017. Since the petitioner was found eligible he was asked to appear in the preliminary examination held on 10.09.2017 for recruitment to the TCS Grade-II and TPS Grade-II. The result of the said preliminary examination was published by the TPSC by their notification dated 30.10.2017 (Annexure-4 to the writ petition). In this regard there is no controversy. The petitioner was thus selected for appearing in the Main Examination.

5. Subsequently, the programme for the main examination for direct recruitment to the TCS Grade-II and TPS Grade-II, 2016-17 was

published showing the date of examination for various optional papers from 29.12.2017 to 09.01.2018 and, accordingly the said examination was held as per the schedule and the petitioner alongwith other candidates were waiting for the result of the main examination conducted by the TPSC.

6. Suddenly, on 05.06.2018 the GA(P&T) Department had issued the notification bearing No.F.20(1)-GA(P&T)/18 (Annexure-6 to the writ petition), laying down the new recruitment policy for all establishments under the administrative control of the Government of Tripura. In the said recruitment policy, it has been provided that the Group-A, Group-B and Group-C posts, which are at present covered by TPSC will continue to be filled as per the existing practice. However, it has been stipulated in clause (4) of the said notification dated 05.06.2018 as under:

"The Group-A, Group-B and C posts which are at present covered by TPSC will continue to be filled as per the existing practice. However, weightage for the interview should not exceed 10% of total marks. In exceptional case weightage of interview may be increased beyond 10% with the approval of cabinet, if sufficient justification exists."

7. There is no controversy, TCS Grade-II and TPS Grade-II posts fall in the Group-A category. It appears that in terms thereof the memorandum under No.F.20(1)-GA(P&T)/18 dated 20.08.2018 (Annexure-7 to the writ petition) has been issued by the GA(P&T) Department. The said memorandum dated 20.08.2018 is the instrument to cancel the said selection process as initiated by the TPSC vide their

advertisement No.04/2016. For purpose of reference the said memorandum dated 20.08.2018 is extracted as a whole:

**No.F.20(1)-GA(P&T)/18
GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (PERSONNEL & TRAINING)
DEPARTMENT**

Dated, Agartala, the 20th August, 2018.

MEMORANDUM

Subject : Recruitment/Selection process as per New Recruitment Policy.

Attention is invited to this Department's Memorandum of even number dated 14.03.2018 wherein all the recruitment/selection processes were kept in abeyance w.e.f. 14.03.2018 until further orders.

2. The State Government has now notified a New Recruitment Policy vide this Department's Notification of even number dated 05.06.2018. Accordingly, the Memorandum issued vide No.F.20(1)-GA(P&T)/18 dated 14.03.2018 now stands superseded.

3. The competent authority in the State Government has decided that in view of the New Recruitment Policy approved by the Government, all new appointments should be made as per the New Recruitment Policy and all existing recruitment processes initiated by the respective Departments or the TPSC, hereby, stand cancelled excepting ongoing recruitment of Tripura Judicial Service Grade-III only for which specific exemption has been accorded in consultation with the Hon'ble High Court of Tripura.

4. As regards the candidates who had participated in the cancelled recruitment processes, they are to be given one time relaxation in upper age limit to enable them to participate once in the fresh recruitment process subject to providing documentary evidence of their participation in the earlier recruitment processes for the same post(s).

5. It is also directed that henceforth, all direct recruitment should be made strictly as per guidelines contained in the New Recruitment Policy issued vide Notification No.F.20(1)-GA(P&T)/18 dated 05.06.2018 together with prior concurrence of the Finance

Department, the GA(P&T) Department and the approval of the Council of Ministers.

6. All Departments are, therefore, advised to strictly comply the these decisions.

**Sd/-Illegible
(Vishwasree B)
Joint Secretary to the Government of Tripura**

[Emphasis added]

8. It is apparent from para 3 of the said memorandum dated 20.08.2018 that the State Government, the respondents No.1 and 2, having approved the new recruitment policy vide notification dated 05.06.2018 (Annexure-6 to the writ petition) has decided that all new appointments should be made as per the new recruitment policy and all existing recruitment processes initiated by the respective departments or the TPSC shall stand cancelled with exemption only to the ongoing recruitment process of the Tripura Judicial Service Grade-III. This decision of the Government as contained in the memorandum dated 20.08.2018 has been challenged by the petitioner. The selection and appointment of TCS Grade-II and TPS Grade-II are regulated by their respective service rules viz. Tripura Civil Service Rules, 1967 and Tripura Police Service Rules, 1967. The provisions for selection in those services are *pari materia*. There are two sources of selection and appointment, one by direct recruitment and another by promotion. We are concerned in this writ petition with the method of direct recruitment.

9. It has been clearly provided under Part-IV of the Service Rules that there shall be competitive examination for direct recruitment to the Service. It is required to note that by the notification under

No.F.10(1)-GA(P&T)/2004 dated 30.06.2012 (Annexure-9 to the writ petition), the amendment that was carried out in the regulations was published. In exercise of the powers conferred by rule 6 of the Tripura Civil Service Rules, 1967 and rule 6 of the Tripura Police Service Rules, 1967, the Governor in consultation with the TPSC has made the Regulations to amend the Tripura Civil Service and Tripura Police Service (Appointment by Combined Competitive Examination) Regulation, 2000. The said amended regulation is called "Tripura Civil Service and Tripura Police Service [Appointment by Combined Competitive Examination (12th Amendment)] Regulation, 2012". The detail process of selection has been laid down by the TPSC. The said amendment includes the amendment carried out in sub-rule(1) of Regulation 11 of the Principal Regulations. The following sub-regulation has been substituted by the amended regulation as extracted below:

"(1) The Examination will be held in three successive stages namely (i) Preliminary Examination (Objective type) (ii) Main Examination (Conventional type-written) and (iii) Personality Test. A number of candidates, maximum 10 (ten) times of total posts (category wise) will be selected merit wise on the basis of the result of the Preliminary Examination, subject to securing minimum qualifying marks as fixed by the Commission. These selected candidates will be allowed to appear in the Main Examination. The selected candidates on the basis of the results of the Main Examination will be allowed to appear in the Personality Test. The Preliminary Examination, Main Examination and Personality Test will carry 200 marks, 800 marks and 100 marks respectively."

10. From the said amended sub-regulation(1) of Regulation 11 of the Principal Regulation, it appears that 12.5% marks as a whole has been allotted for personality test. It further appears from para-2 of the new Recruitment Policy notified under No.F.20(1)-GA(P&T)/18 dated

05.06.2018 (Annexure-6 to the writ petition) that all the recommendations, made in the new recruitment policy, will come into force prospectively. Despite that, by the memorandum dated 20.08.2018 the ongoing selection for the TCS Grade-II and TPS Grade-II has been cancelled and, according to the petitioner such cancellation is grossly arbitrary and colourable exercise of power. Even such action is contrary to the new recruitment policy as stipulated in para-2 of the said notification dated 05.06.2018.

11. Mr. S.M. Chakraborty, learned senior counsel appearing for the petitioner has submitted that issuance of the memorandum dated 20.08.2018 by the GA(P&T) Department is grossly arbitrary and unsustainable in the constitutional framework. With serious emphasis, Mr. Chakraborty, learned senior counsel has submitted that the said new recruitment policy cannot survive the test of repugnance inasmuch as the notification dated 05.06.2018 and the memorandum dated 20.08.2018 are mere executive instructions or order. So far the new recruitment policy is concerned its source of authority is rooted in Article 162 of the Constitution of India, but so far the TCS Rules, 1967 and TPS Rules, 1967 are concerned, their source of authority is rooted in the proviso to Article 309 of the Constitution of India. When there is a conflict between an executive instruction or order with a subordinate legislation or statutory rules, the executive instruction or order shall pave their way to the subordinate legislation or the statutory rules. For repugnancy by its literal meaning, the executive instruction or order is bound to have the effect of *ultra vires*.

12. There cannot be any dissenting view inasmuch as a Constitution Bench of the apex court in **Ramchandra Shankar Deodhar & Ors vs. The State Of Maharashtra & Ors**, reported in **(1974) 1 SCC 317**, has held unambiguously that in absence of legislative rules, the State Government is competent to take a decision in the exercise of its executive power under Article 162 of the Constitution. The said decision of apex court is the restatement of law as enunciated in two earlier decisions in **B.N. Nagarajan vs. State of Mysore**, reported in **AIR 1966 SC 1942** and **Sant Ram Sharma vs. State of Rajasthan**, reported in **AIR 1967 SC 1910**. Even that aspect of the matter was further considered by the apex court in **Union of India vs. Somasundaram Viswanath**, reported in **(1989) 1 SCC 175**.

13. In the backdrop of those decisions, in **Paluru Ramkrishnaiah & Ors. vs. Union of India & Anr.**, reported in **(1989) 2 SCC 541**, it has been observed that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of civil services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India prevail, and if

there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate legislature, the law made by the appropriate legislature prevails. Thereafter, the apex court has observed as under:

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

[Emphasis supplied]

14. Mr. Chakraborty, learned senior counsel has relied on another decision of the apex court in **Gopal Krushna Rath vs. M.A.A. Baig & Ors.**, reported in **(1999) 1 SCC 544**. This decision has been

relied for the reason that no retrospective operation of the subsequent rules can be given in a pending selection process. The primary fact in **Gopal Krushna Rath** (supra) is that there was a change in the qualification subsequent to the commencement of the selection process. The apex court has observed in that report as under:

6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirement regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of P. Mahendran v. State of Karnataka : (1990) 1 SCC 411 this Court has observed:

“5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.”

The Court further observed that:

“Since the amending rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover, as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment.”

[Emphasis supplied]

15. Mr. Chakraborty, learned senior counsel has on the basis of **P. Mahendran** (supra) contended that since the recruitment policy was not retrospective it cannot adversely affect the right of those candidates, who had qualification for selection or appointment, inasmuch as the process of selection had commenced when the change by means of the new recruitment policy has come into force.

As to this court, this submission has been made as an alternative plea, but when the conflict between the subordinate legislature and executive instruction (new recruitment policy) is laid bare, this may not be of any relevance for taking the final decision.

16. In the similar line, the decision in **K. Manjusree vs. State of Andhra Pradesh & Anr.**, reported in **(2008) 3 SCC 512** has been relied by Mr. Chakraborty, learned senior counsel. In **K. Manjusree** (supra), the apex court has held *inter alia* as under:

27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them - P. K. Ramachandra Iyer v. Union of India : (1984) 2 SCC 141, Umesh Chandra Shukla v. Union of India : (1985) 3 SCC 721 and Durgacharan Misra v. State of Orissa : (1987) 4 SCC 646.

[Emphasis supplied]

17. Reliance has also been placed on **A. Manoharan & Ors. Vs. Union of India & Ors.**, reported in **(2008) 3 SCC 641**, where the apex court has observed that when the change has been made with prospective effect it cannot be applied retrospectively. Any vacancy

which arose prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto (see para 25). The apex court has made a reference to its previous decision to restate the law as declared in **State of Rajasthan vs. R. Dayal**, reported in **(1997) 10 SCC 419** (see para 8).

18. Mr. Chakraborty, learned senior counsel by referring to **Bishnu Biswas v. Union of India**, reported in **(2014) 5 SCC 774**, has contended that if the new recruitment policy is given effect to in the selection process which has commenced, that would cause not only violation of the constitutional guarantee but also is likely to cause irreparable and irreversible harm to the interest of the petitioner. Having regard to the said aspect, the following passage from **Bishnu Biswas** (supra) is extracted:

8. This Court has considered the issue involved herein in great detail in Ramesh Kumar v. High Court of Delhi : (2010) 3 SCC 104, and held as under:

"13. In Shri Durgacharan Misra v. State of Orissa : (1987) 4 SCC 646, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the Rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in B.S. Yadav v. State of Haryana : 1980 Supp SCC 524, P.K. Ramachandra Iyer v. Union of India : (1984) 2 SCC 141 and Umesh Chandra Shukla v. Union of India : (1985) 3 SCC 721 wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that

such deviation from the Rules is likely to cause irreparable and irreversible harm.

14. Similarly, in *K. Manjusree v. State of A.P.* : (2008) 3 SCC 512, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

15. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce."

9. In *Himani Malhotra v. High Court of Delhi* : (2008) 7 SCC 11, this Court has held that it was not permissible for the employer to change the criteria of selection in the midst of selection process. [See also *T.N. Computer Science BEd. Graduate Teachers Welfare Society(1) v. Higher Secondary School Computer Teachers Association* : (2009) 14 SCC 517, *State of Bihar v. Mithilesh Kumar* : (2010) 13 SCC 467 and *Arunachal Pradesh Public Service Commission v. Tage Habung* : (2013) 7 ScC 737].

10. In *P. Mohanan Pillai v. State of Kerala* : (2007) 9 SCC 497, this Court has held as under:

"It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as was prevailing on the date of vacancy should ordinarily be followed.

11. The issue of the change of rule of the game has been referred to the larger Bench as is evident from the judgment in *Tej Prakash Pathak and Ors. v. Rajasthan High Court* : (2013) 4 SCC 540.

[Emphasis added]

19. Having regard to the supplementary affidavit filed by the respondents No.1 and 2 on 14.02.2019, Mr. Chakraborty, learned senior

counsel has submitted that the concern as reflected in the said supplementary affidavit is grossly misplaced. In that supplementary affidavit, the respondents have stated that the State Government took note of some features of the existing recruitment policy for public employment and also some decision of the apex court and of this court. With a view to achieve impartial, lawful, fair and transparent employment, the State Government has decided 'to cancel existing recruitment policy' by the said notification dated 05.06.2018. In that policy, it has been stated that Group-A, Group-B and Group-C posts, which are covered by the TPSC will continue to be filled up as per the existing practice. But they have not explained what they do mean by the 'existing practice'. Mr. Chakraborty, learned senior counsel has submitted that the subsequent memorandum No.F.20(1)-GA(P&T)/18(Part-3) dated 26.07.2018 (Annexure-G to the supplementary affidavit) and the memorandum No.F.20(1)-GA(P&T)/18 dated 27.12.2018 (Annexure-H to the supplementary affidavit) are equally infirm. In the memorandum dated 26.07.2018, the Departments were requested to examine and revise the existing recruitment rules whereas by the memorandum dated 27.12.2018 the Departments were further asked to send the proposal for amendment of recruitment rules to the GA(P&T) Department in consistent to the new recruitment policy. But no amendment to the TCS Rules, 1967 or TPS Rules, 1967 has taken place. This has been confirmed by Mr. A.K. Bhowmik, learned Advocate General appearing for the respondents No.1 and 2 as well as by Mr. P. Datta, learned counsel appearing for the TPSC.

20. Mr. Chakraborty, learned senior counsel has drawn attention of this court to para 15 of the writ petition and according to him the said averment has not been contested by the respondents No.1 and 2 and as such they may not be permitted to make any submission on that factual matrix and to treat the said averment in para 15 of the writ petition as admitted under non-traverse rule.

21. By filing the reply on 21.12.2018, the respondents No.1 and 2 have categorically contended that the petitioner has no cause of action on cancellation of the recruitment process as the Government has inherent power to cancel the recruitment process, whether initiated by the Government Departments or by the TPSC. It has been further asserted that all existing recruitment processes initiated by the respective departments or the TPSC have been cancelled as the old recruitment policies failed to ensure transparency and fair play in the recruitment by the memorandum dated 20.08.2018 (Annexure-7 to the writ petition) by exempting only the recruitment process of the TJS Grade-III and, such cancellation is the imminent result of the change as brought about by the new recruitment policy.

22. The respondent No.3 by filing their reply on 12.10.2018 has admitted the factual matrix that has been projected in the writ petition laying the perspective of issuance of the addendum dated 03.07.2018 in terms of the judgment and order dated 11.06.2018 delivered in W.P.(C) No.822 of 2017 by this court. The addendum was issued in terms of the fresh requisition made by the GA(P&T) Department, Government of

Tripura by their letter No.F.2(14)-GA(P&T)/2015 dated 16.08.2018 (see para 13 of the said reply).

Significantly, the respondent No.3 did not oppose the prayer of the petitioner. Subsequently on amendment of the writ petition, the respondent No.3 has filed an additional reply on 24.01.2019 to state in para 14 as follows:

"14. Subsequently the GA(P&T) Department, Government of Tripura issued a Memorandum vide No.F.20(1)-GA(P&T)/18, dated 20.08.2018, in which it has been communicated that, all existing recruitment process initiated including that of the TPSC remained cancelled and also the State Government has approved a New Recruitment Policy, which will also be applicable in case of ongoing recruitment process of TPSC except Tripura Judicial Service Grade-III for which specific exemption has been accorded in consultation with the Hon'ble High Court of Tripura."

23. Mr. A.K. Bhowmik, learned Advocate General appearing for the respondents No.1 and 2 has vehemently submitted that at any moment, the State Government as an employer can withdraw any recruitment process and initiate a fresh process in terms of the new recruitment policy. Selection process can be revoked by the State Government at any stage in terms of the changed recruitment policy. As such, the writ petition is bereft of merit and is liable to be dismissed. When the petitioner's interest has been taken care of by the new recruitment policy, the petitioner cannot be allowed to acquire *locus standi* for approaching this court under Article 226 of the Constitution. Mr. Bhowmik, learned Advocate General has further submitted that the entire action is based on the change in the policy and as such there cannot be any question of arbitrariness when no challenge has been

projected against the new recruitment policy. He has urged this court not to interfere in the cancellation action of the said selection process as the State Government has contemplated to initiate a new recruitment process in terms of the new policy. However, he has maintained his silence on the specific plea raised by Mr. S.M. Chakraborty, learned senior counsel that no amendment in the recruitment rule has been carried out by the respondents No.1 and 2 till now. As such, the executive instruction cannot have any force to let the subordinate legislation suffer paralysis in any form.

24. In this regard, on ancillary question that surfaces is that - when the new recruitment policy as contained in the notification dated 05.06.2018 (Annexure-6 to the writ petition) is a mere executive instruction sourced in Article 162 of the Constitution of India, cannot it override the provisions of the subordinate legislation meaning TCS Rules, 1967 and TPS Rules, 1967 for cancelling the said recruitment process? Even in view of the apex court decisions as cited above, if any amendment had carried out in the service rules, even that would not have any impact on the ongoing recruitment process, unless there is any foundation relating to the greater public interest in recalling the selection process as initiated through the TPSC. Under no other grounds such process can be cancelled, else it would jeopardise the independence of TPSC. The State Government cannot act arbitrarily or on whim inasmuch as in **E.P. Royappa vs. State of Tamil Nadu & Anr.**, reported in **(1974) 4 SCC 3**, a Constitution Bench of the apex court has held that, where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is,

therefore, violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice. In fact the matter comprehends the former. Both are inhibited by Articles 14 and 16. [see para 85 of **E.P. Royappa** (supra)].

25. In **Kumari Shrilekha Vidyarthi & Ors. vs. State of U.P. & Ors.**, reported in **(1991) 1 SCC 212**, the apex court had occasion clearly to observe that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect the State cannot claim comparison with a private individual even in the field of contract. The question whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply

is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humor, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always. [see para 36 of the report].

It has been further observed in **Kumari Shrilekha Vidyarthi** (supra) that the scope of judicial review is limited to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. The power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. In the case of arbitrariness, the defect of irrationality is obvious. [see para 36 of the report].

26. On appreciation of the submission made by the learned counsel for the parties, this court finds that the respondents No.1 and 2 have utterly failed to provide any reason for cancelling the recruitment process inasmuch as no foundation has been raised to show that action has been taken to protect any greater or public interest the mode prescribed by those service rules for selection is infested impediment in following that procedure. When the law is well enunciated and settled if any change in the recruitment rules is made in the midst of the process that cannot be given a retrospective operation to apply that change or the amended rule in the pending selection process. That apart, when the conflict between the provisions of the subordinate legislation as enacted under proviso to Article 309 of the Constitution of India is eminent with the executive action (the new recruitment policy and the impugned memorandum), there cannot be any amount of hesitation that the provision of the subordinate legislation so far the allotted marks for the personality test is concerned would prevail. Therefore, the State action as aforesaid is grossly arbitrary, irrational and predominantly unfair. However, the new recruitment policy may apply where the recruitment rules are not in force and where the recruitment rules are amended in accordance with the executive instructions, consolidated in the new recruitment policy. Since there is no dispute that the TCS Rules, 1967 and TPS Rules, 1967 are not amended by the competent authority as yet with consultation with the TPSC, the cancellation of the recruitment process as initiated by the advertisement No.04/2016 (Annexure-1 to the writ petition) is liable to be interfered by this court on the above grounds and, accordingly it is interfered. The notification dated

05.06.2018 (Annexure-6 to the writ petition) so far it has bearing on the selection of TCS Grade-II and TPS Grade-II and the memorandum dated 20.08.2018 (Annexure-7 to the writ petition) so far it relates to TCS Grade-II and TPS Grade-II stand quashed. The respondent No.3 is directed to complete the selection process within a period of 8(eight) weeks from the date when they would receive a copy of this order and recommend the selected candidates for appointment to the post of TCS Grade-II and TPS Grade-II within the said stipulated time.

27. It is clarified that this direction of this court shall be restricted to 30 vacancies of the TCS Grade-II and 15 vacancies of TPS Grade-II as declared by the addendum dated 03.07.2017 (Annexure-2 to the writ petition). The consequential order shall be passed by the respondents forthwith.

28. Before parting, this court is persuaded to remind the executive the observation by the Lee Commission way back in 1924 which has been reproduced as the preface to this judgment.

Thus, this writ petition is allowed to the extent as indicated above.

There shall be no order as to costs.

A copy of this order be furnished to Mr. P. Datta, learned counsel appearing for the respondent No.3 forthwith.

JUDGE