



2025 INSC 1049

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 4426-4466 OF 2023

PARTHA DAS & ORS.

....APPELLANT(S)

VERSUS

THE STATE OF TRIPURA & ORS.

....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 4473-4479 OF 2023

SUJAN ROY & ORS.

....APPELLANT(S)

VERSUS

THE STATE OF TRIPURA & ORS.

....RESPONDENT(S)

J U D G M E N T

J.K. Maheshwari J.

Signature Not Verified
Digitally signed by
Gulshan Kumar Arora
Date: 2019.10.03
20:56:49 IST
Reason:

Questioning the validity of the judgment dated 03.10.2019

of the Division Bench of the High Court of Tripura commonly

passed in a batch of writ petitions, two set of Civil Appeal Nos. 4426-4466 of 2023 and 4473-4479 of 2023 have been filed. The issue involved in these appeals relates to cancellation of the ongoing recruitment process of 'Enrolled Followers' midway on the pretext of a policy decision of the State Government.

2. The subject matter in dispute is appointment on the post of Enrolled Followers in Tripura State Rifles Battalions. In the State of Tripura, the recruitment of Enrolled Followers is governed by the Tripura State Rifles Act, 1983 (hereinafter referred to as "**TSR Act**") read with the Tripura State Rifles (Recruitment) Rules, 1984 (hereinafter referred to as "**TSR Rules**"). For the sake of convenience, some pertinent provisions of the TSR Act, which govern the recruitment of Enrolled Followers, are referred.

2.1 Section 3(s) defines 'the Rifles' as Tripura State Rifles. Section 3(g) defines 'Enrolled Followers' as any person appointed to do the work of a cook, masalchi, water-carrier, mess-servant, ward-boy, washerman, cobbler, barber, sweeper, helper or cleaner. Section 4 specifies that the State Government shall constitute a force called Tripura State Rifles and Section 5 grants power to the Commandant to appoint Enrolled Followers. As per Section 9, the

State Government is vested with the power of superintendence and control over Tripura State Rifles, and that its administration shall be done by the State Government as per the provisions of TSR Act and the rules made thereunder through Director General of Police, Inspector General or such Deputy Inspector General or other officers as the State Government may so appoint. Section 22 confers power on the State Government to make rules to carry out the purpose of the TSR Act. Thus, the TSR Act is a complete code in itself which provides for constitution of and recruitment in Tripura State Rifles and confers power on the State Government to frame rules.

3. In furtherance of the power under Section 22 of TSR Act, State Government enacted TSR Rules, wherein Rule 3 talks about powers of State Government and certain officers, i.e., Inspector General, the Deputy Inspector-General and Commandant of Tripura State Rifles. Further, it confers powers on Inspector General, the Deputy Inspector-General and Commandant to supervise and control Tripura State Rifles. Rule 6 categorises Tripura State Rifles into ranks wherein Enrolled Followers are defined at serial no. xii as non-gazetted, class-IV. Rule 8 prescribes the method of appointment of the members of the

Rifles and the appointing authority. The said rule is relevant, therefore, reproduced hereunder:

“8. Method of appointment of the members of the Rifles:

- (1) The members of the Rifles shall be appointed by one or more of the following methods-*
 - (a) Direct recruitment;*
 - (b) Promotion;*
 - (c) Re-employment of ex-services or ex-Central Police Organization personnel; and*
 - (d) Deputation or transfer of the personnel of Armed Forces of the Union or Central Police Organization or Police Organization of any State.*
- (2) 75% of direct recruitment in all ranks shall be make from within Tripura and the remaining 25% of such direct recruitment shall be made from states and Union Territories outside Tripura.*
- (3) The appointing authorities for members of the Rifles shall be as follows:*

<i>Sl. No.</i>	<i>Rank</i>	<i>Authority competent</i>
<i>(i)</i>	<i>Subedar</i>	<i>Inspector-General</i>
<i>(ii)</i>	<i>Naib Subedar</i>	<i>Commandant</i>
<i>(iii)</i>	<i>Havildar</i>	<i>Commandant</i>
<i>(iv)</i>	<i>Naik</i>	<i>Commandant</i>
<i>(v)</i>	<i>Lance Naik</i>	<i>Commandant</i>
<i>(vi)</i>	<i>Riflemen</i>	<i>Commandant</i>
<i>(vii)</i>	<i>Enrolled Followers</i>	<i>Commandant</i>

4. The present matter relates to recruitment to the post of Enrolled Followers, for which Rule 24 is also relevant, the same is reproduced hereunder:

“24. Recruitment Rules for the Posts of Enrolled Followers:

Recruitment to the post of enrolled followers shall be made from amongst person who satisfy the following conditions, namely-

- (a) should be in the age group of 18-21 years as on 1st day of July of the year in which advertisement for recruitment is made;*
- (b) should possess good physique;*
- (c) should be able to read and write a simple passage in their mother tongue; and*
- (d) should have proficiency in the work for which they are to be engaged; and*
- (e) should pass such test as may be specified by the Inspector-General in writing.”*

5. As per Rule 24(e), it is the Inspector-General, who has the power to specify the tests to be undertaken for recruitment of the Enrolled Followers. However, on perusal of records, the Draft Recruitment Programmes finalised by the Chairman of both the Recruitment Boards and sent for approval to Police Head Quarters, Tripura (hereinafter referred to as “**PHQ**”), were approved by Director General of Police (Tripura State Rifles) (hereinafter referred to as “**DGP**”). When an explanation was sought from the learned counsel for the respondent-State, it was fairly stated that Inspector-General has been replaced by DGP *vide* the Tripura State Rifles (Second Amendment) Act, 2006. As such, the drafts sent by the Chairman of Recruitment Board are now being approved by DGP, specifying the lists which are to be

cleared. Thus, the procedure as explained is having statutory backing.

FACTS RELEVANT FOR THE MATTER:

6. It is not in dispute, that as per Rule 8 of TSR Rules and *vide* communication of the PHQ, the recruitment process for total 506 vacancies of Enrolled Followers in the Tripura State Rifles was bifurcated in two categories – “inside-state quota” and “outside-state quota”, specifying the number of posts for respective categories, which is the subject matter in this case.

Inside-State Quota

6.1. PHQ on 05.11.2014 sent a communication to the Government of Tripura (Home) Department (hereinafter referred to as “**Home Department**”) indicating the number of total vacancies of Enrolled Followers in Tripura State Rifles Battalions. The same was approved by the Home Department directing initiation of the recruitment process *vide* communication dated 30.07.2015. Pursuant to the same, on 14.03.2016, a draft proposal was sent by PHQ to the Home Department for constitution of a Recruitment Board. The Home Department approved the same on 18.06.2016. The Draft Recruitment

Programme by Chairman of the Recruitment Board, was sent to PHQ for approval on 26.08.2016 and the same was approved by DGP and communicated to the Chairman on 07.09.2016. After the approval, the Chairman issued an advertisement on 09.09.2016 for filling up 372 vacancies of Enrolled Followers in the inside-state quota.

6.2. Subsequently, recruitment rallies were held from 24.09.2016 to 07.12.2016. The proceedings of recruitment were submitted to the PHQ on 23.04.2017 by the Recruitment Board. The same were forwarded to the Home Department by PHQ on 12.05.2017, for approval and for starting the process of character verification. The same were approved by Home Department for further course of action on 29.05.2017. On 09.06.2017, a communication was sent by the PHQ to the Commandant, 2nd Battalion, Tripura State Rifles to complete necessary steps towards issuing appointment offers.

Outside-State quota

6.3. PHQ on 05.11.2014 sent a communication to the Home Department indicating the number of total vacancies of Enrolled Followers in Tripura State Rifle Battalions. The same was

approved by the Home Department directing to initiate the recruitment process *vide* communication dated 30.07.2015. Pursuant to the same, on 14.03.2016, a draft proposal was sent by the PHQ to the Home Department for constitution of a Recruitment Board. The Home Department approved the same on 18.06.2016. The Draft Recruitment Programme by Chairman of Recruitment Board was sent to PHQ for approval on 02.09.2016 and the same was approved by DGP and communicated to the Chairman on 08.09.2016. After the approval, the Chairman issued an advertisement on 14.09.2016 for filling up 134 vacancies of Enrolled Followers in the outside-state quota.

6.4. Subsequently, recruitment rallies were held from 23.10.2016 to 15.11.2016. The proceedings of recruitment were submitted to the PHQ on 20.12.2016 by the Recruitment Board. PHQ on 21.12.2016 forwarded the same to the Home Department for its necessary approval for starting the process of character verification. The same was approved by the Home Department for further course of action on 30.12.2016. On 09.06.2017, a communication was sent by the PHQ to the Commandant, 2nd Battalion, Tripura State Rifles to complete necessary steps towards issuing appointment offers.

7. The record pertaining to recruitment indicates that on 13.07.2017, the Commandant, 2nd Battalion, Tripura State Rifles requested for more time to complete the verification process of the prospective selectees in both quotas for which three months' time was granted by the DGP on 26.07.2017 with request to complete such process early. The Commandant, 2nd Battalion, Tripura State Rifles on 17.10.2017 requested PHQ to suspend issuance of offers of appointment until verification reports are received, with the intention to avoid any complicity, which was allowed because in process of verification some forged certificates were noticed. The PHQ forwarded this to the Secretary, LR & Law, Government of Tripura (hereinafter referred to as "**Secretary, LR & Law**"), who *vide* noting dated 31.10.2017 opined that appointment offers shall be issued only after completion of verification. In case of any delay, appointment offers could be issued excluding those cases where the verification report had not been received. This was further approved by the DGP on 15.11.2017.

8. That being so, during the ongoing recruitment process, the State of Tripura was occupied with the elections of Legislative Assembly. After the elections, new government was formed on 03.03.2018. On 14.03.2018, a memorandum no. F.20(1)-

GA(P&T)/18 (hereinafter referred to as “**Abeyance Memorandum**”) was issued stating that for the purpose of reviewing the recruitment process, all the ongoing recruitment by all the departments/autonomous bodies under Government shall be kept in abeyance until further orders. As a consequence of this, the recruitment process in the present case came to a halt. The said notification is quoted hereinbelow:

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

Dated, Agartala, the 14th March 2018.

M E M O R A N D U M

Sub: - Recruitment/selection process in all Department kept in abeyance.

The undersigned is directed to state that the State Government has decided that the recruitment process of the Government shall be reviewed and pending such review, all the ongoing recruitment/selection processes in Departments/autonomous bodies etc. under the Government, shall be kept in abeyance with immediate effect. However, the recruitment process initiated on the directions of Hon'ble Supreme Court/High Court or any other court within the State shall not be stopped without obtaining specific orders from the concerned court in this regard.

2. All Departments/ Heads of Departments, Autonomous bodies are, therefore, requested to comply the same and make necessary arrangement for further circulation of the aforesaid instruction to their subordinate offices also for necessary compliance.

Sd/-
(Santosh Das)
Additional Secretary to the
Government of Tripura

9. On 05.06.2018, the State Government *vide* notification no. F-20(1)-GA(P&T)/18, issued a new recruitment policy (hereinafter referred to as “**NRP**”) applicable to all the establishments under administrative control of the State Government. For ready reference, the same is reproduced hereunder:

“Subject: New Recruitment Policy for all establishments under administrative control of the Government of Tripura.

In supersession of all earlier instructions in connection with selection/recruitment of different categories of candidates by direct recruitment for government employment under the administrative control of Government of Tripura, the State Government has decided the following principles:-

1. Written test should be the primary means to test suitability of candidates for Government Jobs. The test should be designed in such a manner that the required skills and competencies can be tested in an online mode. For such posts where special skills are required, separate proficiency/ personality test may be taken in a transparent manner.

1.2. Interview should be completely abolished for Group-D posts, however soft skill test may be taken.

1.3. Interview should ordinarily, not be taken for B and C category of posts. However, only in exceptional circumstances, for certain categories of Group B and C posts, where justification is given by the Department concerned, provision for interview/ skill test may be kept with prior approval of the Cabinet. Further, wherever such a provision is kept, the weightage for interview/ skill test should not exceed 10% of total marks and the interview should be video graphed.

1.4. 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.

1.5. There are certain Group-A posts, which are at present outside the purview of TPSC. For the time being, this system may continue subject to the condition that the processes shall be made more fair, open and transparent. Adequate changes shall be made in the recruitment process/rules for these posts so that selection is done on the basis of written exam followed by interview with weightage of latter not being more than 10%. Further, review should be taken up by the concerned Departments to narrow down this category so that over a period of time, as far as practicable, all such posts are filled through recruitment conducted by TPSC.

1.6. Keeping in view the need to have a highly professional cadre at higher positions in the Government, recruitment for the left over (remaining Group-B) posts should also be taken up by TPSC.

1.7. The posts in Police, Fire Service and Jail Department which are currently outside the purview of TPSC should be filled by the respective Departments subject to the overall principles proposed at Para -1.1, 1.2 and 1.3 above.

1.8. There is a need to revise existing Recruitment Rules (RRs) such that there is proper mapping/correlation between the qualification, competencies and job profile. Further, in such cases where there is similarity in the nature of jobs or jobs are common across various Departments, the RRs have to be suitably revised to bring in a greater degree of uniformity so as to facilitate common recruitment as far as practicable.

1.9. For the posts where there is intake by both direct recruitment and promotion, the intake ratio from each stream (direct and promotion) should, to the extent possible, be kept uniform across all the Departments.

1.10. The role of TPSC may be expanded and suitable manpower and resources may be placed at its disposal to enable it to ensure recruitment following the recruitment principles mentioned above.

1.11. A new institution may be set up which may take up the recruitments for all Group-B, C and D posts, excluding the posts covered in Para 1.4 above. This body may function within the broad principles proposed at Para 1.1, 1.2 and 1.3. For this, further follow up action may be taken by GA (P&T) Department.

2. All the above recommendations will be applicable with the prospective effect only.

3. The Revised General Employment Guidelines for all Departments of the State Government for selection of candidates by open interview for Group-C and Group-D posts to be filled up by direct recruitment issued vide Memorandum No.F.23(8)-GA(P&T)/14 dated 23rd July, 2016 is hereby repealed and replaced by this Notification.

By the order of the Governor

Sd/-

(Santosh Das)

Additional Secretary

to the Government of Tripura.”

10. With respect to the said policy, the State Government vide memorandum no. F.20(1)-GA(P&T)/18 dated 20.08.2018 decided to make all new appointments under NRP, and all the existing recruitment processes initiated by the respective departments were directed to be cancelled (hereinafter referred to as **“Cancellation Memorandum”**). The said Cancellation Memorandum as challenged is reproduced hereunder:

“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 with these decisions.

Sd/-

(Vishwasree B)
Joint Secretary to
the Government of Tripura

Aggrieved by such cancellation, multiple writ petitions were filed before High Court challenging Abeyance and Cancellation Memorandums, and seeking direction for completion of the ongoing recruitment process.

FINDINGS OF HIGH COURT IN THE IMPUGNED JUDGMENT:

11. By a common impugned judgment dated 03.10.2019, High Court dismissed all the writ petitions. While dismissing, the Court noted the change in the political dispensation in the State after elections. The new government had taken a policy decision to keep all the ongoing recruitment processes in abeyance, following which NRP was notified, which led to issuance of the Cancellation Memorandum. The High Court, while referring to the TSR Act and TSR Rules, observed that the administrative instructions cannot prevail over statutory rules. It further observed that neither the NRP nor the Cancellation Memorandum has overriding effect over the statutory rules nor the government had any intention to do so, because to bring any

change, rules have to be reframed to bring them in sync with the policy decision.

12. In the latter part of the judgement, it was observed that NRP was introduced by the State Government to bring more transparency and fairness in the process of recruitment in larger public interest and to bring greater uniformity. In such situation, the Court observed that interference in the policy decision of the State is not warranted. Further, it was said that the present case does not attract principles of promissory estoppel and legitimate expectation as claimed by the appellants. It was also observed that mere completion of process of selection to the post of Enrolled Followers does not confer any indefeasible right of appointment on the appellants. As such, it was concluded that interjection in the ongoing recruitment process was not because of the change of the government or political dispensation, but due to change of policy in larger public interest.

13. Some of the writ petitioners had filed these appeals challenging the judgment of the High Court while some of the appellants who were affected by the impugned judgment sought

permission to challenge the same as such these appeals assailing the judgment of the High Court have been heard together.

CONTENTIONS OF THE APPELLANTS AND RESPONDENTS:

14. Learned senior counsel, Mr. Pallav Shishodia has vehemently argued and submitted that appellants had applied for the post of Enrolled Followers and participated in the selection process. On completion of the selection process, they were granted tokens and called to concerned police stations for character verification. The said recruitment process was undertaken as specified by TSR Act and TSR Rules. Thus, cancelling such process of selection in the wake of NRP, without amending the TSR Act and TSR Rules, is not based on valid statutory backing which is arbitrary and illegal. It was submitted that once a recruitment process begins, it cannot be changed midway by executive instructions, i.e., by bringing the NRP and issuing the Cancellation Memorandum for ongoing recruitment process. In support of his contentions, reliance has been placed on the Constitution Bench judgment of this Court in **Tej Prakash Pathak and Others vs. Rajasthan High Court and Others**¹. It was also submitted, that as per Clause (2) of NRP, its

¹ (2025) 2 SCC 1, 2024 INSC 847.

applicability is prospective hence it cannot be made applicable on the pending recruitment processes.

15. It was also contended that once a recruitment process is in progress in terms of the relevant statute, no policy decision can stall and/or cancel the process of recruitment. In the facts of this case, when selection process was completed, and appellants were selected provisionally, they have a legitimate expectation of appointment, which is not against the public policy. To buttress the said contention, reliance has been placed on the Constitution Bench judgment of this Court in **Sivanandan C.T. and Others vs. High Court of Kerala and Others**².

16. In view of the foregoing, appellants submit that Abeyance Memorandum dated 14.03.2018 and Cancellation Memorandum dated 20.08.2018 be quashed and direction be issued to complete the recruitment process within a time frame.

17. Per contra, learned senior counsel, Col. R. Balasubramanian appearing for the State has vociferously contended that High Court has rightly dismissed the writ petitions giving cogent reasons. It is not disputed by the State that the process of recruitment for the post of Enrolled Followers

² (2024) 3 SCC 799, 2023 INSC 709.

was conducted in accordance with TSR Act and TSR Rules. In the meantime, new government was formed, which issued Abeyance Memorandum and subsequently, cancelled the ongoing recruitment processes *vide* Cancellation Memorandum which was in larger public interest.

18. It was contended that the decision to cancel the ongoing recruitment process was taken consciously relying upon the NRP, which was well within the competence of the State. The decision was taken with the intention to bring more transparency and fairness in the process of selection. It was further contended that recruitment process was still ongoing as no final merit list was published. Thus, mere participation in the recruitment process will not confer any indefeasible right of appointment on the appellants. Further, there can be no legitimate expectation in their favour. In support of their contention, reliance has been placed on the Constitution Bench judgment of this Court in the case of **Shankarsan Dash vs. Union of India**³.

19. Learned senior counsel also contended that Clause (2) of NRP has been wrongly interpreted by the appellants. The intent of Clause (2) of NRP was for the policy not to apply to those

³ (1991) 3 SCC 47, 1991 INSC 120.

recruitments which have been completed prior to the issuance of NRP. In the present case, as the recruitment process was still ongoing, NRP will apply. It is therefore submitted that the High Court has rightly dismissed the writ petitions and no interference is warranted by this Court.

ISSUES FOR CONSIDERATION:

20. After hearing learned counsel for the parties at length and on perusal of the facts and material placed on record, the following issues arise for consideration:

- (1)** *Whether the Abeyance Memorandum dated 14.03.2018 and Cancellation Memorandum dated 20.08.2018 purportedly issued in the wake of change of policy of the State in larger public interest, under the executive instructions, and in consequence, the cancellation of recruitment process as specified in TSR Act and TSR Rules for the post of Enrolled Followers after preparation of the provisional selection list, is justified and has any sanction of law?*

- (2) *Whether the State's decision to apply NRP to the ongoing recruitment process of Enrolled Followers under the pretext of the Cancellation Memorandum would amount to changing the rules of the game after the game has begun, i.e., the recruitment process has commenced?*
- (3) *Whether in the context of this case, the principle of legitimate expectation is attracted; and in the facts, what relief can be granted?*

ANALYSIS OF ISSUE NOS. 1 AND 2:

Issue nos. 1 and 2 posed above are interlinked, hence, the contentions are being appreciated and answered collectively.

21. The dispute in the present case revolves around the challenge to Abeyance Memorandum dated 14.03.2018, and Cancellation Memorandum dated 20.08.2018 pursuant to the decision to apply NRP in the ongoing recruitment process for Enrolled Followers in Tripura State Rifles. The pertinent factual backdrop leading to the said decision needs to be referred.

22. The Council of Ministers in exercise of powers under Rule 20(2) of the Rules of Executive Business of the Government of the State of Tripura, 1972 (hereinafter referred to as “**Rules of**

Executive Business”), on 10.03.2018, decided that the recruitment process is required to be reviewed and pending such review, all ongoing recruitment / selection processes in all Departments / autonomous bodies etc. under the control of Government shall be kept in abeyance. In pursuance of the said decision of the Cabinet, the Abeyance Memorandum dated 14.03.2018 was issued by the General Administration (Personnel & Training) Department, under the signature of the Additional Secretary to the Government of Tripura.

23. While process of review was undertaken, the Review Committee recommended that interviews for Group-D posts should be completely abolished. The Review Committee pertinently made the recommendation that recruitment rules need to be amended / revised in order to bring about uniformity in posts and to facilitate common recruitment. In consequence, NRP dated 05.06.2018 was notified for and on behalf of the Governor of the State, styled as ‘New Recruitment Policy for all establishments under administrative control of the Government of Tripura’.

24. On 02.08.2018, in a meeting of the Council of Ministers, in furtherance to the publication of NRP, it was decided that all existing recruitment processes (except for Tripura Judicial Service) whether undertaken by the Tripura Public Service Commission or the respective departments, will be cancelled and all new appointments shall be made as per NRP providing the age relaxation to the participants of the ongoing recruitment processes. The decision of the Council of Ministers dated 02.08.2018 fructified in the form of Cancellation Memorandum dated 20.08.2018, whereby the ongoing recruitment processes were cancelled in the above terms.

25. The meeting of the Council of Ministers dated 10.03.2018, which is the inception of the series of events detailed above was conducted under the Rules of Executive Business framed in exercise of the powers conferred under Article 166(2) and 166(3) of the Constitution of India. As per the Second Schedule of the said Rules read with Rules 8, 14 and 31, proposals for making or amending rules regulating the recruitment and conditions of service of persons appointed to the public service and posts in connection with the State and proposals involving any important

change of policy or practice, are to be brought before the Council of Ministers.

26. From the above conspectus, we can safely conclude that the NRP dated 05.06.2018 is an executive instruction of the State issued under Article 166(1) of the Constitution of India, following the meeting of the Council of Ministers. It was in the nature of a general policy decision to bring about a change in recruitment process of the State. It did not have a statutory and legislative backing, rather it was a decision taken solely in the exercise of the power vested in the executive. As such, Abeyance Memorandum and Cancellation Memorandum are also issued in exercise of the executive power of the State by issuing executive orders.

Status of the recruitment process of enrolled followers

27. The present appeals concern two categories of candidates, i.e., citizens within Tripura and residents of other states. For both, two separate advertisements were issued and recruitment processes were undertaken separately, although they were for the same post of Enrolled Followers in Tripura State Rifles. We have examined the voluminous record and documents supplied by the

Respondent pertaining to both the advertisements and as discussed in paras 6.1 to 6.4 and 7 of this judgment, without an iota of doubt it can be said that in both the recruitment processes, selection lists were prepared and significant progress was made up to the stage of character verification which was in process.

28. In the recruitment for inside-state candidates for the citizens within Tripura, advertisement was issued on 09.09.2016. Various recruitment rallies were conducted all across Tripura on various dates between 24.09.2016 to 07.12.2016. During the said recruitment rallies, candidates having required physical standards as well as other eligibility criteria, were put through a physical / endurance test. Qualified candidates in the physical test were allowed to sit for a written test, and those candidates who had qualified both the physical / endurance test and written test were then allowed to appear for a 'viva - voce'. In total, 2,388 candidates of the inside-state quota participated in recruitment process, out of which 1,696 candidates were found to be qualified after completion of the physical test, written test and viva-voce. Out of the combined

merit list of 1,696 candidates, the Board recommended only for filling up 350 vacant posts.

29. In the recruitment for outside-state quota candidates, advertisement was issued on 14.09.2016, recruitment rallies were conducted between 23.10.2016 to 15.11.2016 in Kotdwar (North India), Ranchi (Central India) and Vishakhapatnam (Vizag) (South India) on different dates. During the said recruitment rallies, candidates having required physical standards as well as other eligibility criteria, were put through a physical / endurance test. Qualified candidates in the physical test were allowed to sit for a written test and those candidates who had qualified both the physical / endurance test and the written test were allowed to appear for a 'viva-voce'. In total, 1,429 candidates were preliminarily shortlisted at the recruitment rallies, where 372 candidates were qualified after completing the physical test, written test and viva voce. Out of the combined merit list of 372 candidates, the Board recommended only for filling up 134 vacant posts, and the remaining 238 candidates were recommended to be kept on a panel list / waiting list.

30. As such, it is needless to say, the process of recruitment was not at a nascent stage. Much prior to the issuance of Abeyance Memorandum dated 14.03.2018, NRP dated 05.06.2018 and Cancellation Memorandum dated 20.08.2018, the recruitment process for the post of Enrolled Followers either inside-state quota or outside-state quota in Tripura State Rifles had reached the stage of preparation of the final merit list after completion of the recruitment process as specified.

Statutory Rules vs. Executive Order

31. At this juncture, it is pertinent to note that the recruitment for the post of Enrolled Followers in Tripura State Rifles was carried out under TSR Act and TSR Rules. The relevant provisions have already been discussed in the factual part in paras 2, 3, 4 and 5 of this judgement. The said facts have not been disputed by the Respondents in their counter affidavit.

32. Under TSR Act read with TSR Rule 24(e), the mandate is for the candidate to pass such test as may be specified by the DGP in writing. In respect of the advertisement for inside-state candidates, the DGP accorded his approval for a 'physical test, written test and viva voce' on 07.09.2016, whereas for outside-

state candidates, approval was accorded for 'physical test, written test, practical, interview' on 08.09.2016. Such a stipulation was plainly reflected in both advertisements, and after commencement of the recruitment process, it was carried out keeping in mind the stipulation in the TSR Rules.

33. As per Cancellation Memorandum dated 20.08.2018, the reasoning for cancellation of ongoing recruitment processes was to implement NRP, and in particular, in the context of the present two advertisements, to completely abolish interviews in the recruitment for Group-D posts. As such, the ancillary question which arises for our consideration is whether a policy decision in general, notified by way of executive instructions, can override the mandate of TSR Act and TSR Rules.

34. While appreciating the said question it is to be recorded that the recruitment for the post of Enrolled Followers, within the inside State quota or outside State quota, was at the verge of completion. Undisputedly, it is not rebutted by the Government that the said process was not carried out under TSR Act and TSR Rules, or that the character verification of the candidates who found place in the panel, had not been initiated. From the record,

it reveals that the appointment orders were to be issued subject to verification of the documents. In the meantime, legislative assembly elections were notified and after elections there was a change in the political landscape of the State. Immediately upon assuming the functioning of the government by the new political dispensation, a decision to review the recruitment process of all departments was taken on the pretext of making the process more fair, open and transparent. From the record of the selection or as per averments in the counter affidavit, nothing can be elucidated as to why the existing process of selection was not fair and transparent. For the recruitment to the post of Enrolled Followers, the process undertaken was as per the provisions of TSR Act and TSR Rules framed thereunder, having statutory backing. It is not contended in the counter affidavit that the pending recruitment process for Enrolled Followers, has in any manner violated the provisions of the TSR Act and/or TSR Rules, and was not transparent or unfair in any manner. In the said context, it can safely be observed that if recruitment process was carried out as per the TSR Act and TSR Rules framed thereunder, deviation was not permitted by way of executive instructions in the wake of policy decision of the government, otherwise it would

amount to overriding the recruitment process carried out under the aforesaid Act and Rules by means of executive instructions. For clarity, it is to be observed that where the subject and the field is occupied by the statute and the rules, the executive instructions cannot supplant the same; they can only supplement, otherwise it would render the act done under the statute to be void. It cannot be lost sight of the fact that Enrolled Followers is a Class-IV (Group-D) post and as per policy decision of NRP, interview for Class-IV (Group-D) post is to be completely abolished. However, no such amendment to that effect has been brought either in the statute and/or in the rules yet. Under such circumstances, merely because of a new recruitment policy, the recruitment process under the Act and Rules cannot be cancelled.

35. This Court has had the occasion to examine similar legal issue in multiple cases. The Constitution Bench in **Sant Ram Sharma vs. State of Rajasthan**⁴, while dealing with an office memorandum of the Central Government in respect of promotion under the All India Services Act, 1951 and the Indian Police Service (Fixation of Seniority) Rules, 1954, held:

⁴ 1967 SCC OnLine SC 16, 1967 INSC 167.

“7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

36. This Court in the case of **A.B. Krishna and Ors. vs. State of Karnataka and Ors.**⁵, observed as under:

“8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions Validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of “doctrine of occupied field”. If, however, any matter is not touched by that enactment, it will be competent for the

⁵ (1998) 3 SCC 495, 1998 INSC 22.

Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.”

37. In Jaiveer Singh and Ors. vs. State of Uttarakhand and Ors.⁶, while deciding a similar legal issue, this Court observed as follows:

“49. *It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it.”*

38. In Bank of Baroda and Another vs. G. Palani and Others⁷ where an executive instruction by the name of ‘joint note’ was issued to change pensionary benefits provided to the employees under Banking Companies Act, 1970 and Regulations of 1995 made u/s 19 of the Act, it was held that such an executive instruction cannot supplant the provisions of the statute. The relevant paragraph is reproduced below as thus:

“14. *First we come to the rigour of the regulations, The regulations have statutory force, having framed in exercise of the powers under section 19(2)(f) of the 1970 Act and are binding. They could not have been supplanted by any executive fiat, order or joint note, which has no statutory basis. The joint*

⁶ 2023 SCC OnLine SC 1584, 2023 INSC 1024.

⁷ (2022) 5 SCC 612.

note of the officers also had no statutory force behind it and could not have obliterated any of the provisions of 1970 act or the existing regulations. Thus, joint notes could not have taken away the rights that were available under the 1995 pension regulations to the officer.”

39. Recently, in **R. Ranjith Singh and Others vs. State of Tamil Nadu and Others**⁸, service rules were framed under the relevant state Act and Article 309 of the Constitution of India and various government orders were issued by the State without amending the relevant rules to give 20% reservation to in-service candidates in direct recruitment posts and for maintenance of their seniority. It was held by this Court that the government orders had the effect of supplanting the statutory rules instead of supplementing them, which is not permissible. This Court noted as follows:

“19.

xxxx

....The State Government has certainly issued various executive directions from time to time for appointment under the direct recruitment quota providing reservation to in-service candidates to the extent of 20%; however, the rules were never amended till 21.11.2017. It is a well settled proposition of law that executive instructions cannot supplant the statutory rules. They can supplement/clarify the statutory rules. In the present case, the executive instructions issued from time to time have in fact supplanted the statutory rules and such a process is unheard of in the field of service jurisprudence.”

⁸ 2025 SCC OnLine SC 1009, 2025 INSC 612.

40. Applying the above principles of law, it can safely be concluded that executive instructions issued under Article 166(1) of the Constitution of India cannot override the act done under the statute and the rules made thereunder. The executive instructions can only supplement the provisions of the act and the rules in case of any ambiguity or if gaps are to be filled but such executive instructions cannot supplant the specific provisions which already occupy the field. It is not the case of the government that to fill the gaps and to supplement the TSR Act and TSR Rules, the NRP is relevant, therefore, Abeyance Memorandum or Cancellation Memorandum may be upheld. In absence of the same, in our view, the action of the government in cancelling the process of recruitment for the post of Enrolled Followers is not justified and would amount to arbitrary exercise of power.

41. It is further relevant to discuss that the pretext which has been taken to issue Cancellation Memorandum is NRP dated 05.06.2018. The said policy is based on the recommendation of the three-members review committee constituted by the State Government to review recruitment policy across the State and all its departments. The recommendations of the committee were

plain and specific, inter-alia, observing that “all the above recommendations will be applicable with prospective effect only”. In addition to the discussions as made hereinabove, in absence of the statutory backing behind the policy, the recommendations as made for abolition of the interview of Class-IV (Group-D) posts would apply with prospective date only. Meaning thereby, it would not apply to the process of recruitment of Enrolled Followers, for whom, the interviews have already been conducted. Hence, application of NRP on the pending recruitment process is contrary to clause (2) of the said policy.

Plea of Larger Public Interest

42. It is vehemently argued that the recruitment process was kept in abeyance and later cancelled based on NRP which was a bona fide decision by the Government in larger public interest. In support of the said contention, in the Counter Affidavit, it is said that the decision of the State shall be of benefit in the long run, because qualified candidates shall be recruited on merit, which may enhance overall efficiency of administration in the State.

43. Apart from this, there is no mention even in the NRP as to how larger public interest can be achieved by abolition of

interviews for Group-D posts such as Enrolled Followers. It is difficult to see how such larger public interest can be achieved in the present context specifically where the recruitment process for Enrolled Followers was at a significantly advanced stage and interviews had already been conducted.

44. The Constitution bench judgement of this Court in **Tej Prakash Pathak** (Supra) has noted the importance of interviews in a recruitment process to assess the suitability of a candidate. The relevant portion of the said judgement is reproduced below as thus: -

“49. The ultimate object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services. [Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159, para 4 : 1981 SCC (L&S) 588] It is now well settled that while a written examination assesses a candidate’s knowledge and intellectual ability, an interview test is valuable to assess a candidate’s overall intellectual and personal qualities.

xx xx xx xx

51. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in

Articles 14 and 16 of the Constitution as also the rules/statute governing service and reservation.”

45. It goes without saying that certain level of discretion must be given to the State but merely suggesting that a decision to keep an ongoing recruitment process in abeyance and its subsequent cancellation was in the larger public interest, is not sufficient. The burden is on the State to justify the decision on the anvil of Articles 14 and 16 of the Constitution of India and show how its decision was in furtherance of larger public interest.

46. In our considered opinion, the State has miserably failed in discharging such burden, and in the facts and circumstances of this case, we are unable to agree with the contention of the State that the decision to keep the ongoing recruitment process in abeyance and its subsequent cancellation was in the larger public interest.

Change of rules of the game after the game has begun

47. The recruitment process under the two advertisements commenced on the date of their respective issuance. At the cost of repetition and as discussed above, much water had flown after such commencement. The State had taken active and tangible steps such as constituting the Recruitment Board, setting up

different State teams for recruitment rallies which were conducted all across India, candidates were tested physically, in a written exam and orally through an interview. A provisional merit list was purportedly prepared in pursuance of the recruitment process. After all this, Cancellation Memorandum was issued on 20.08.2018 which was general in nature, effectively setting the clock back and putting the entire process at nought.

48. The reasoning behind the said cancellation, as suggested by the State of Tripura, is that it was decided by the Government that not only future recruitment, but also ongoing recruitment processes must invariably be governed by the NRP. In the context of the present case, the marked difference which would be brought about by the NRP is that interview cannot be conducted as a part of the procedure for recruitment given that the post of 'Enrolled Follower' is a Group-D post, even though the stage of taking interviews is already over in the present case.

49. This Court in **Tej Prakash Pathak** (Supra) has affirmed the decision in **K. Manjusree vs. State of A.P. and Another**⁹, and held that the recruitment authority can devise a procedure for selection only in absence of rules to the contrary, however, the

⁹ (2008) 3 SCC 512, 2008 INSC 195.

same should be done prior to commencement of the recruitment process. It has been held that if benchmarks are to be laid down in different steps of the recruitment process, they cannot be laid down after the completion of that particular step, when the game has already been played. The relevant portion of the said judgement is reproduced below as thus: -

“52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

53. The decision in *K. Manjusree* [*K. Manjusree v. State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.”

50. In the present case, not only benchmarks are being set after the game has been played, rather the State has decided that a portion of the game itself, the step of interview, should not have

been played at all. As discussed above, in pursuance of Rule 24(e) of the TSR Rules, the DGP had approved interview as one of the tests required to be passed. Thereafter, candidates participated in interviews and were ranked accordingly. It can be said that the stage of interview was over much prior to the issuance of the Cancellation Memorandum.

51. The Constitution bench in ***Tej Prakash Pathak*** (Supra) has also clarified that the procedure prescribed in the extant rules cannot be violated and administrative instructions can only be used to supplement and fill the gap in the Rules; they cannot be used to supplant the Rules completely, as has been done in the present case. These administrative instructions, in any case, cannot be diametrically opposite to what the Rules provide. The relevant portion of the said judgement is reproduced below as thus: -

“62. *There can therefore be no doubt that where there are no rules or the rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the rules. In that event administrative instructions would govern the field provided they are not ultra vires the provisions of the rules or the statute or the Constitution. But where the rules expressly or impliedly cover the field, the recruiting body would have to abide by the rules.”*

52. In the present case, on the strength of a general policy decision of the State, an ongoing recruitment process was first put in abeyance and then cancelled, it has been derailed with the intention to implement NRP when the recruitment has already reached the stage of preparation of the merit list. The very application of NRP to the ongoing process is illegal on three counts – firstly, because it is an executive instruction and in the absence of an amendment in the TSR Act and TSR Rules, the recruitment procedure could not have been changed. Secondly, because the application of NRP to the ongoing recruitment process would amount to changing the rules of the game after the game has already begun, i.e. recruitment process has commenced. Thirdly, as per clause (2) of NRP, the recommendation to abolish interviews for Group-D posts would only apply prospectively and it would not mean to apply in the recruitment process wherein the interview has already taken place. In view of the conclusions drawn as above, Issue Nos. 1 and 2 are answered in the above terms.

ISSUE NO. 3

Legitimate expectation and indefeasible right

53. Another aspect of the matter is the question as to whether any absolute right of appointment has accrued in favour of the appellants by participating in the recruitment process after completion of the recruitment rallies and when a provisional merit list has been prepared, or if they have a legitimate expectation to be recruited having participated in the process. If so, whether cancellation of the recruitment process would impinge upon such legitimate expectation.

54. On the said issue, the State has placed heavy reliance on the judgement in ***Shankarsan Dash*** (Supra) to argue that mere participation in the selection process or even placement on the select list would not create an indefeasible right for appointment in favour of the appellants. On the other side, the appellants have placed reliance on ***Sivanandan C.T.*** (Supra) to argue that they have a legitimate expectation to be appointed after having participated in the recruitment process.

55. It is trite law, and no contest can be made in respect of the settled proposition that mere participation in the recruitment process or placement in a select list would not create an indefeasible right to be appointed, even if vacancies are available.

The judgement in **Shankarsan Dash** (Supra) has been followed subsequently in a plethora of decisions of this Court. The relevant portion of the said judgment is quoted hereinafter:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

56. It is clear from a plain reading of the above judgement that State may choose not to appoint a person who has been placed on the select list. This was the specific decision of this Court also in **State of Haryana vs. Subash Chander Marwaha and Others**¹⁰, subsequently clarified in **Tej Prakash Pathak** (Supra) where a select list of 40 candidates was drawn up, but against 15 vacancies available, only 7 appointments were made. In that context, it was held that mere placement on the select list would not create an obligation for the State to fill up all the vacancies

¹⁰ (1974) 3 SCC 220

and make appointments, since no indefeasible right of appointment has accrued in favour of the candidates. Simultaneously, it goes without saying that the action of the State should not be arbitrary and decision taken for not filling the vacancies must be bona fide.

57. However, the candidates who have taken part in a recruitment process conducted by a public authority have a legitimate expectation that the selection process will be conducted fairly and without arbitrariness. Consistency and predictability are important aspects of non-arbitrariness, and the rule of law obligates the State to only take decisions which are rooted in fairness and equality. It was held in **Sivanandan CT** (Supra) and later clarified in **Tej Prakash Pathak** (Supra) that in order to frustrate the legitimate expectation of candidates the burden is on the State by placing relevant material to objectively demonstrate that the decision taken by it was in the larger public interest and not arbitrary. Relevant excerpts from the Constitution bench decision in **Sivanandan CT** are quoted below:

“40. *The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens.*

Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In Nadarajah [R. (Nadarajah) v. Secy. of State for the Home Deptt., 2005 EWCA Civ 1363] , Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

xx xx xx xx

45. *The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.”*

58. In the present case, it is not that the State has decided to fill up only some of the available vacancies, but rather it has decided to do away with the recruitment process altogether. It goes without saying that the State’s decision not to appoint a person who has been placed on the select list must not be arbitrary and must be rooted in objective reasoning. The recruitment process, especially when it is conducted on the strength of Act and Rules,

cannot be left at the whims and fancies of the State to interfere, through executive orders, without adhering to the principles of consistency and predictability, which are warranted by the rule of law and are pillars of non-arbitrariness.

59. As discussed above, the State has failed to prove that the decision to apply NRP to the ongoing recruitment process was in the larger public interest – as such, the legitimate expectation of fairness in the recruitment process must be upheld.

60. From the discussion made hereinabove and in the facts of this case, the appellants have participated in the process of recruitment conducted in furtherance to the provisions of TSR Act and TSR Rules. Undisputedly, they found place in the panel of selection. It was only at the stage of character verification, the process was kept in abeyance, later cancelled, in terms of NRP which could not have been made applicable to the ongoing recruitment process. The application of the NRP to the ongoing recruitment process for the post of Enrolled Followers in Tripura State Rifles was not in public interest. Therefore, the appellants do have a legitimate expectation of completion of recruitment process in a fair and non-arbitrary manner. The recruitment

process should be concluded fairly as per TSR Act and TSR Rules and the candidates may be appointed if they are found to be meritorious. As such, Issue No. 3 is answered accordingly.

61. In view of the discussions made hereinabove, we allow this batch of appeals setting aside the impugned judgment passed by the High Court. As a consequence, the writ petitions of the appellants are allowed quashing Abeyance Memorandum dated 14.03.2018 and Cancellation Memorandum dated 20.08.2018 insofar as their application to the recruitment process for the post of Enrolled Followers in Tripura State Rifles is concerned. It is further directed that the recruitment process for the post of Enrolled Followers in Tripura State Rifles shall now be finalized and completed by the Respondents following the provisions of TSR Act and TSR Rules within a period of two months. Pending application(s), if any, shall stand disposed of.

.....**J.**
(J.K. MAHESHWARI)

.....**J.**
(RAJESH BINDAL)

NEW DELHI;
AUGUST 28th, 2025.

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 4467-4468 OF 2023

THE STATE OF TRIPURA & ANR.APPELLANT(S)

VERSUS

SAMUDRA DEBBARMA & ORS.RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4469 OF 2023

THE STATE OF TRIPURA & ANR.APPELLANT(S)

VERSUS

DEBAPRATIM NAG & ANR.RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4471 OF 2023

CHIMAN DEBBARMA & ANR.APPELLANT(S)

VERSUS

THE STATE OF TRIPURA & ORS.RESPONDENT(S)

J U D G M E N T

J.K. MAHESHWARI J.

1. In this batch of appeals, Civil Appeal Nos. 4467-68 of 2023 relate to the recruitment for Tripura Civil Services (hereinafter referred to as “**TCS**”), Grade-II, Group ‘A’ gazetted category posts, which was decided by the impugned judgment dated 03.12.2019¹. The Division Bench of the High Court of Tripura sustained the order of the learned Single Judge with certain modifications. Review petition filed was also dismissed *vide* judgment dated 13.01.2020². Aggrieved by the same, the State Government has filed these appeals.

2. Civil Appeal No. 4469 of 2023 relates to the recruitment to the Tripura Police Service (hereinafter referred to as “**TPS**”), Grade II, Group ‘A’ Gazetted category posts, which was decided by the impugned judgment dated 20.01.2020³. The Division Bench relying upon the judgment dated 03.12.2019, which is under challenge in Civil Appeal Nos. 4467-68 of 2023, set aside the memorandum dated 20.08.2018 to the extent of Tripura Police

¹ WA No. 142 of 2019.

² Review Petition No. 01 of 2020.

³ WP (C) No. 1437 of 2019.

Service Grade-II examination with directions to complete the recruitment process in connection with the said posts.

3. Civil Appeal No. 4471 of 2023 also relates to Tripura Police Service, wherein vide order dated 17.09.2021⁴, the Writ Petition filed by the candidate was allowed and disposed of, making certain observations in view of the stay granted in C.A. Nos. 4467-4468 of 2023 and directing that the directions in C.A. Nos. 4467-4468 of 2023 shall apply.

4. In all the above matters, the controversy revolves around the abrupt cancellation of the recruitment process of TPS and TCS governed by the respective rules which are *pari materia* to each other. Since the recruitment for the posts of TPS and TCS had commenced and controversy involved is similar, looking into the similitude of the origin and controversies in all the aforesaid appeals, we have proposed to take up all these appeals analogously and the same are being dealt with by this common judgment. Since the appellant in Civil Appeal Nos. 4467-48 and 4469 of 2023 is the State of Tripura and the appellant in Civil Appeal No. 4471 of 2023 is a recruitment candidate, we shall be

⁴ WP (C) No. 365 of 2021.

referring to the candidates collectively as ‘Candidates’ and the State of Tripura as ‘State’.

FACTS RELEVANT FOR THE MATTER:

5. The genesis of the present appeals arises from the recruitment notification styled as ‘Advertisement No. 04/2016’ dated 30.04.2016 published by the Tripura Public Service Commission (hereinafter referred to as “**TPSC**”). By the said advertisement and addendum dated 03.07.2017, applications were invited for 30 posts of TCS Grade-II and 15 posts of TPS Grade-II. Both the posts are Group ‘A’ gazetted posts and are required to be filled up by direct recruitment. The appointments to the post of TCS and TPS are governed by the rules known as Tripura Civil Service Rules, 1967 (hereinafter referred to as “**TCS Rules**”) and Tripura Police Services Rules (hereinafter referred to as “**TPS Rules**”), respectively, which are the rules framed in exercise of the power under the proviso to Article 309 of the Constitution of India. As the rules relating to TCS and TPS are *pari materia*, therefore, we are referring to the TCS Rules for ready reference. Rule 5 provides for a method of recruitment, whereby 50% of the substantive vacancies shall be filled by direct

recruitment, while the remaining vacancies are to be filled by selection from amongst the persons in service as specified therein. The direct recruitment has been prescribed through competitive examination specified in Rule 6, which is to be held at such intervals as the State Government may in consultation with the TPSC, from time to time, determine. The date and place is to be fixed by the TPSC. The said rule is relevant, therefore, reproduced as thus:

“6. Competitive examination – (1) A competitive examination for direct recruitment to the Service shall be held at such intervals as the Central Government may, in consultation with the Commission from time to time, determine. The dates on which and the places at which the examination shall be held shall be fixed by the Commission.

(2) The qualifications for admission to the examination and the consent thereof shall be in accordance with such regulations as the Central Government may, from time to time, issue in this behalf in constitution with the commission.”

6. Pertaining to the qualification for admission to the examination and conduct thereof, the same shall be in accordance with such regulations as the State Government may, from time to time, issue in this respect in consultation with TPSC. In exercise of the power under Rule 6 of TCS / TPS Rules, the Governor of the State of Tripura after consultation with TPSC had issued the Notification styled as “Tripura Civil Service and

Tripura Police Service (Appointment by Combined Competitive Examination (12th Amendment)] Regulation, 2012” (hereinafter referred to as “**the Regulations**”). As informed, the Regulations, which were amended and notified on 30.06.2012, are invoked for the purpose of recruitment of TCS and TPS. Regulation 11(1) which was substituted as on the date of notification, relates to the conduct of the examination, and therefore, it is reproduced as thus:

*“11. (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.*

...

(ii) Purpose of preliminary Examination

*The Preliminary Examination is meant to serve as a screening test only for the purpose of selection of candidates for the Main Examination. **The marks obtained in this examination by the candidates will not be considered for final selection.** Only those candidates who will be declared qualified at the Preliminary Examination will be eligible for admission to the TCS and TPS Main Examination.”*

7. The said Regulation 11(1)(i) specifies the scheme of the preliminary examination; (ii) specifies the purpose of preliminary examination and (iii) describes syllabi for preliminary examination. Regulation 11(2), as substituted by the said Notification, specifies about the compulsory papers which can be opted by the candidates for the purpose of main examination. The Preliminary Examination is scored out of 200 marks, Main Examination carries 800 marks and Interview (Personality Test) carries 100 marks. The regulation further states that the purpose of preliminary examination is that of a screening test and marks obtained by the candidates in the same would not be considered for final selection.

8. For initiation of the recruitment process to the TCS and TPS Grade-II Group – ‘A’ Gazetted posts, TPSC issued Advertisement No. 04/2016 dated 30.04.2016 (hereinafter referred to as **“Advertisement”**). The relevant portion of the advertisement is reproduced hereinunder:

“(ii) The final selection will be made in order of merit on the basis of the marks obtained by a candidate in Main Examination, in aggregate, adding the marks obtained in the Personality Test.”

The aforesaid clarifies that the final merit list of selected candidates shall be prepared on the aggregate of marks obtained in the Main Examination in addition to those obtained in the Personality Test.

9. The candidates in the respective cases appeared for the Preliminary Examination held on 10.09.2017. The result of Preliminary Examination was published on 30.09.2017, in which they were declared successful. The Main Examination was conducted between 29.12.2017 and 21.01.2018. In the meantime, elections to the Tripura State Legislative Assembly were notified; however, the results of the Main Examination were not declared. In the said election, the political landscape of the State changed and the new Government assumed control of the State. Consequently, on 14.03.2018, a memorandum no. F.20(1)-GA(P&T)/18 (hereinafter referred to as “**Abeyance Memorandum**”) was issued placing the recruitment process in abeyance on the ground that a comprehensive review of the recruitment process in the departments / autonomous bodies under the Government was necessary. The said notification dated 14.03.2018 is quoted hereinbelow:

“NO. F.20(1)-GA(P&T)/18

GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION (PERSONNEL & TRAINING)
DEPARTMENT

Dated, Agartala, the 14th March 2018.

M E M O R A N D U M

Sub: - Recruitment/selection process in all Department kept in abeyance.

The undersigned is directed to state that the State Government has decided that the recruitment process of the Government shall be reviewed and pending such review, all the ongoing recruitment/selection processes in Departments/ autonomous bodies etc. under the Government, shall be kept in abeyance with immediate effect. However, the recruitment process initiated on the directions of Hon'ble Supreme Court/High Court or any other court within the State shall not be stopped without obtaining specific orders from the concerned court in this regard.

2. All Departments/ Heads of Departments, Autonomous bodies are, therefore, requested to comply the same and make necessary arrangement for further circulation of the aforesaid instruction to their subordinate offices also for necessary compliance.

sd/-

*(Santosh Das)
Additional Secretary to the
Government of Tripura*

10. Thereafter, *vide* notification no. F-20(1)-GA(P&T)/18, a New Recruitment Policy (hereinafter referred to as “**NRP**”) was notified on 05.06.2018 with the stated objective of standardising the recruitment procedure. In the NRP, with respect to Group – ‘A’, ‘B’

and 'C' posts, clauses 1.4 and 2 were added which are relevant, therefore, reproduced as thus:

"Subject: New Recruitment Policy for all establishments under administrative control of the Government of Tripura.

In supersession of all earlier instructions in connection with selection/recruitment of different categories of candidates by direct recruitment for government employment under the administrative control of Government of Tripura, the State Government has decided the following principles:

1. Written test should be the primary means to test suitability of candidates for Government Jobs. The test should be designed in such a manner that the required skills and competencies can be tested in an online mode. For such posts where special skills are required, separate proficiency/ personally test may be taken in a transparent manner.

1.2. Interview should be completely abolished for Group-D posts, however soft skill test may be taken.

1.3. Interview should ordinarily, not be taken for B and C category of posts. However, only in exceptional circumstances, for certain categories of Group B and C posts, where justification is given by the Department concerned, provision for interview/ skill test ay be kept with prior approval of the Cabinet. Further, wherever such a provision is kept, the weightage for interview/ skill test should not exceed 10% of total marks and the interview should be video graphed.

1.4. 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.

1.5. There are certain Group-A posts, which are at present outside the purview of TPSC. For the time being, this system may continue subject to the condition that the processes shall made more fair, open and transparent. Adequate changes shall be made in the recruitment process/rules for these posts so that selection is done on the basis of written exam followed by

interview with weightage of latter not being more than 10%. Further, review should be taken up by the concerned Departments to narrow down this category so that over a period of time, as far as practicable, all such posts are filled through recruitment conducted by TPSC.

1.6. Keeping in view the need to have a highly professional cadre at higher positions in the Government, recruitment for the left over (remaining Group-B) posts should also be taken up by TPSC.

1.7. The posts in Police, Fire Service and Jail Department which are currently outside the purview of TPSC should be filled by the respective Departments subject to the overall principles proposed at Para -1.1, 1.2 and 1.3 above.

1.8. There is a need to revise existing Recruitment Rules (RRs) such that there is proper mapping/correlation between the qualification, competencies and job profile. Further, in such cases where there is similarity in the nature of jobs or jobs are common across various Departments, the RRs have to be suitably revised to bring in a greater degree of uniformity so as to facilitate common recruitment as far as practicable.

1.9. For the posts where there is intake by both direct recruitment and promotion, the intake ratio from each stream (direct and promotion) should, to the extent possible, be kept uniform across all the Departments.

1.10. The role of TPSC may be expanded and suitable manpower and resources may be placed at its disposal to enable it to ensure recruitment following the recruitment principles mentioned above.

1.11. A new institution may be set up which may take up the recruitments for all Group-B, C and D posts, excluding the posts covered in Para 1.4 above. This body may function within the broad principles proposed at Para 1.1, 1.2 and 1.3. For this, further follow up action may be taken by GA (P&T) Department.

2. All the above recommendations will be applicable with the prospective effect only.

3. The General Guidelines for all Departments of the State Government for selection of candidates by open interview for Group-C and Group-D posts to be filled up by direct recruitment

issued vide Memorandum No.F.23(8)-GA(P&T)/14 dated 23rd July, 2016 is hereby repealed and replaced by this Notification.

By the order of the Governor

Sd/-

(Santosh Das)

Additional Secretary

to the Government of Tripura."

11. In the wake of the said policy, the State Government issued a memorandum F.20(1)-GA(P&T)/18 dated 20.08.2018 (hereinafter referred to as "**Cancellation Memorandum**") cancelling the recruitment processes which were ongoing including that to the posts of TPS and TCS under the Advertisement. In the said memorandum, one time age relaxation to the candidates affected by the Cancellation Memorandum was allowed. The said Cancellation Memorandum, as challenged, is reproduced as under:

*"NO.F. 20(1)-GA(P&T)/18
GOVERNMENT OF TRIPURA*

*GENERAL ADMINISTRATION (PERSONNEL & TRAINING)
DEPARTMENT*

Dated, Agartala, the 20th August, 2018

M E M O R A N D U M

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 processes 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 with these decisions.

Sd/-

*(Vishwasree B)
Joint Secretary to
the Government of Tripura"*

12. Being aggrieved by the Cancellation Memorandum dated 20.08.2018 and the NRP dated 05.06.2018, the candidates ensued litigation by filing writ petitions seeking quashing thereof and sought directions commanding the State of Tripura to complete the process of recruitment of TCS Grade-II and TPS Grade-II within a designated time frame.

13. The State of Tripura filed two counter affidavits before the High Court resisting the claim of the candidates, *inter-alia*, contending that the Abeyance Memorandum was issued since review of the recruitment policy by the Government was necessary and the NRP was notified on 05.06.2018 after such review. As such, the Cancellation Memorandum directing to cancel the pending selection process was issued in order to make all future recruitment in compliance with the NRP. By filing supplementary affidavit dated 14.02.2019, it is stated that such an action of the State is to achieve impartial, lawful, fair and transparent process of selection. Therefore, the State Government has decided to cancel the existing recruitment policy, substituting the same by a new policy in larger public interest. In the context of the subject matter, the NRP provides that except in exceptional cases, weightage of interview should not exceed 10%

of the total marks in respect of Group – ‘A’ posts. In view thereof, it was contended that the pending process of selection to the TCS Grade – II Group ‘A’ and TPS Grade - II Group ‘A’ has rightly been cancelled issuing the Cancellation Memorandum.

FINDINGS OF LEARNED SINGLE JUDGE:-

14. Learned Single Judge of the High Court of Tripura by judgement dated 14.05.2019, allowed the writ petition, holding that the executive notification cannot supersede statutory rules and observed that cancellation of recruitment process lacked valid justification. The Court also held that executive instructions, namely NRP dated 05.06.2018 and Cancellation Memorandum dated 20.08.2018, were subordinate to the rules framed under Article 309 of the Constitution of India. As the TCS Rules and TPS Rules had not been amended by the competent authority in consultation with TPSC, the cancellation of the recruitment process, which was at an advanced stage, was deemed to be without authority and was consequently quashed insofar as it pertained to recruitment for the TCS Grade-II and TPS Grade-II posts is concerned.

FINDINGS OF THE LEARNED DIVISION BENCH:

15. Learned Division Bench of the High Court refrained to comment upon the policy parameters laid down by the State Government, particularly in the form of NRP. The Division Bench was only called upon to decide whether such policy change could be applied to a process of selection which had advanced to the stage of conducting written examination (Main Examination) of those eligible candidates, who had passed the Preliminary examination for the purpose of screening. The Court further examined the issue as to whether the rules of the game could be changed after the game had begun. While analysing those issues, the Division Bench has referred to the TCS Rules and Regulations as framed by the Governor after consultation with the TPSC. The Division Bench proceeded to observe that as per the rules and the amended regulations, Preliminary Examination was conducted which was cleared by the candidates. Thereafter, they had appeared in the Main Examination conducted in terms of the Rules and Regulations. While concluding in reference to preparation of result of the Preliminary and Main Examinations, the said marks for interview (Personality Test) is 100 which may come to the extent of 11% of the total marks. The NRP notified that the marks for the interview were not to exceed 10% of total

marks which may not be a plausible change and cause for cancellation of the pending selection process since it was exceeding merely 1% from the ceiling of the new policy which does not affect the process of selection which had travelled up to an advanced stage. As such, the contention of the State to sustain the Cancellation Memorandum has been repelled observing *inter-alia* that no pressing grounds were demonstrated for taking such a drastic measure for an insignificant departure from the policy parameters. The Court further observed that executive discretion cannot be allowed to intervene the selection process midway by changing the very selection criteria. It is said that such an action gives rise to uncertainty in public selection process. The Court further proceeded to observe that such application of policy may be *mala-fide* where the rules of selection may be changed so as to include certain wanted or to eliminate unwanted candidates. As such, the Court held that change of criteria would amount to change of the rules of game, which is arbitrary. Therefore, the finding of the Single Bench to set-aside the Cancellation Memorandum insofar as it relates to the ongoing recruitment process to the post of TCS and TPS under the

Advertisement was upheld while interference with the NRP dated 05.06.2018 was declined.

16. By filing a review petition, the State challenged the judgment passed in the writ appeal. However, the review petition was dismissed by the High Court on 13.01.2020. In its order, the High Court distinguished the writ appeal judgment concerning TCS and TPS (Grade-II, Group – ‘A’ Gazetted posts) from its earlier decision in Sri Partha Das vs. State of Tripura & Others, dated 03.10.2019, rendered in Writ Petition No. 946 of 2018 and batch. The High Court observed that the said judgment in Partha Das — which was subsequently challenged in Civil Appeal Nos. 4426–4466 of 2023 which was decided by a separate order — was not applicable to the TCS and TPS Grade-II posts which are Group – A posts. Accordingly, the judgment in Partha Das was held to have no bearing on the issues involved in the present matter.

CONTENTIONS OF THE STATE OF TRIPURA:

17. Col. R. Balasubramanian, learned senior counsel has assiduously urged that the NRP dated 05.06.2018 was introduced by the State Government to ensure transparency and

fairness in public appointments. The policy decision is based on the executive discretion of the State, interference in such policy decisions of the State should be minimal and is not warranted unless such decision is arbitrary and violative of Article 14 of the Constitution of India. In terms of the NRP, the marks of the interview have been reduced and should not exceed 10% of the total marks in the competitive examination. The said decision cannot be said to be arbitrary and does not restrain the State Government from cancelling the pending process of selection for compliance with the said policy decision. The process of selection was ongoing and only the main examination was conducted without declaring the result. In such a situation, if cancellation of the pending process as directed by the impugned notification is brought about, it would not amount to change of rules of the game midway. As such, it has also been submitted by the State that mere participation in the recruitment process and completion of the preliminary examination and the main examination would not create any indefeasible right of appointment in favour of the candidates as per the judgement of this Court in **Shankarsan Dash vs. Union of India**⁵.

⁵ (1991) 3 SCC 47, 1991 INSC 120.

18. It is urged that the State Government, while cancelling the examination, has clearly specified in the notification that age relaxation shall be granted to the affected candidates. It is also contended that the judgment in the case of Partha Das (Supra) the application of NRP to an ongoing recruitment process was upheld prior to the impugned judgment, the High Court committed an error in taking a different view and not allowing the review petition on the said ground. It is also submitted that merely by qualifying the preliminary examination and appearing in the main examination, the candidates do not acquire any indefeasible right of appointment or to seek direction to complete the process of selection and claim appointment on the basis of existing rules ignoring the NRP. As such the present appeals deserve to be allowed.

CONTENTIONS OF THE CANDIDATES:

19. On behalf of the candidates, during hearing, it was informed that respondent No. 1, Samudra Debbarma in Civil Appeal Nos. 4467-4469 of 2023 is no longer pursuing the litigation as he has

secured employment elsewhere. The respondent No. 2 – Tripura Public Service Commission (TPSC) was a proforma respondent, which concurred with the submissions of the appellant – State. As per the order of the Chamber Judge dated 29.07.2022, I.A. No. 148490 of 2021 being the application for impleadment filed by candidates – similarly situated persons at par with Samudra Debbarma was allowed and they were joined as respondent Nos. 3 to 13. Mr. P.V. Dinesh, learned counsel appearing on their behalf has advanced the arguments, *inter-alia* contending that the recruitment for the posts of TCS and TPS is governed by the rules framed under proviso to Article 309 of the Constitution of India and the regulation promulgated in exercise of the power conferred under Rule 6, notified by the Governor after consultation with the TPSC. Therefore, the rules and the regulations would come within the purview of subordinate legislation. The NRP is a policy decision and in the nature of executive instructions which cannot override the provisions of the Rules and Regulations until amendment in rules and regulation is made. As such, on the basis of the NRP, the rules of the game cannot be changed midway in an ongoing recruitment process. Reliance has been placed on the judgment of this Court in **Tej**

Prakash Pathak and Ors. vs. High Court of Rajasthan and Ors.⁶ It is contended that the candidates who have passed the Preliminary Examination and have appeared in the Main Examination, will have legitimate expectation to succeed in the process of selection. In support of the said contention, reliance is placed on the case of **Sivanandan C.T. and Ors. vs. High Court of Kerala and Ors.**⁷

20. In view of the aforesaid, it is urged that Cancellation Memorandum cancelling the pending process of TCS and TPS deserves to be quashed, maintaining the orders of the High Court and dismissing the appeals filed by the State.

21. In Civil Appeal No. 4471 of 2023, it is contended that on account of the stay granted by this Court in Civil Appeal Nos. 4467-4468 of 2023, the writ petition itself has not been decided on merits, it was allowed and disposed of subject to final outcome of the said Appeals, therefore, the judgment delivered on merit in two batches of appeal shall follow in this case.

ISSUES FOR CONSIDERATION:

⁶ (2025) 2 SCC 1, 2024 INSC 847.

⁷ (2024) 3 SCC 799, 2023 INSC 709.

22. After hearing learned counsel for the parties at length and on perusal of the facts and material placed before us, the following issues arise for consideration:

- (1) *Whether Abeyance Memorandum dated 14.03.2018 and Cancellation Memorandum dated 20.08.2018, purportedly issued in the wake of change in State policy in larger public interest under executive instructions, and resulting in the cancellation of the recruitment process as specified in TCS and TPS Rules for the post of Grade-II, Group 'A' gazetted after the conduct of the main examination, are justified and have any sanction of law?*
- (2) *Whether the State's decision to apply the NRP to an ongoing recruitment process of Grade-II, Group 'A' gazetted posts in TCS and TPS under the pretext of Cancellation Memorandum would amount to changing the rules of the game after the game has begun, i.e., the recruitment process has commenced?*
- (3) *Whether, in the facts and circumstances of the case, the doctrine of legitimate expectation is attracted and if so, what relief, if any, are the candidates entitled to?*

ANALYSIS OF ISSUE NOS. 1 AND 2:

Issue nos. 1 and 2 posed above are interlinked, hence, the contentions are being dealt with and answered collectively.

23. The dispute in the present case revolves around the challenge to the Abeyance Memorandum dated 14.03.2018, and the Cancellation Memorandum dated 20.08.2018 pursuant to applying the NRP dated 05.06.2018 to the ongoing recruitment process for the post of TCS and TPS. The pertinent factual backdrop leading to issuance of these memorandum needs to be referred.

24. The Council of Ministers in exercise of Rule 20(2) of the Rules of Executive Business of the Government of the State of Tripura, 1972 (hereinafter referred to as “**Rules of Executive Business**”), on 10.03.2018, decided that the recruitment process is required to be reviewed and pending such review, all ongoing recruitment / selection processes in all Departments / autonomous bodies etc. under the control of Government shall be kept in abeyance. The Abeyance Memorandum was issued by the General Administration (Personnel & Training) Department,

under the signature of the Additional Secretary to the Government of Tripura.

25. While process of review was undertaken, the committee recommended that for the recruitment of Group – ‘A’, ‘B’ and ‘C’ posts conducted by the TPSC, the weightage for interview should not exceed 10% of the total marks, it may only exceed 10% with the approval of the cabinet, if sufficient justification exists. The Review Committee pertinently made the recommendation that recruitment rules need to be amended / revised in order to bring about uniformity in posts and to facilitate common recruitment. As a consequence, the NRP dated 05.06.2018 was notified for and on behalf of the Governor of the State, styled as ‘New Recruitment Policy for all establishments under the control of the Government of Tripura’.

26. On 02.08.2018, the Council of Ministers, in furtherance to the publication of the NRP, decided that all existing recruitment processes (except for Tripura Judicial Service) whether undertaken by the TPSC or the respective departments, will be cancelled and all new appointments shall be made as per the NRP, providing age relaxation to the participants of the ongoing

recruitment processes. The decision of the Council of Ministers dated 02.08.2018 fructified in the form of the Cancellation Memorandum dated 20.08.2018, whereby the ongoing recruitment processes were cancelled in the above terms.

27. The meeting of the Council of Ministers dated 10.03.2018, which is the inception of the series of events detailed above, was conducted under the Rules of Executive Business in exercise of the powers conferred under Article 166(2) and 166(3) of the Constitution of India. As per the Second Schedule of the said Rules read with Rules 8, 14 and 31, proposals for making or amending rules regulating the recruitment and conditions of service of persons appointed to the public service and posts in connection with the State and proposals involving any important change of policy or practice, are to be brought before the Council of Ministers.

28. From the above conspectus, we can safely conclude that NRP dated 05.06.2018 is an executive instruction of the State under Article 166(1) of the Constitution of India after a meeting of the Council of Ministers under Article 166(3). It was in the nature of a policy decision to bring about a change in recruitment

process of the State. It did not have legislative backing, rather it was a decision taken solely in exercise of the power vested in the executive. As such, the Abeyance Memorandum and the Cancellation Memorandum were also issued in exercise of the executive power of the State Government in the shape of executive orders.

Status of recruitment process of TCS and TPS

29. As discussed, the present appeals concern two categories of posts, under the TCS and the TPS for Grade - II, Group 'A' Gazetted posts. A common advertisement was issued on 30.04.2016 and the recruitment process commenced. We have examined the voluminous record and documents supplied by the State pertaining to the recruitment process and without an iota of doubt it can be said that significant progress had been made in the recruitment process. The preliminary exam was conducted and candidates who had qualified the preliminary examination had already appeared in the main examination as discussed in paragraph 9 of this judgement; but the result of the main examination has not been declared.

30. As such, it is needless to observe, the process of recruitment was not at a nascent stage. Much prior to the issuance of the Abeyance Memorandum dated 14.03.2018, NRP dated 05.06.2018 and Cancellation Memorandum dated 20.08.2018, the recruitment process had commenced and two sets of examinations had already been completed.

Statutory Rules vs. Executive Order

31. At this juncture, it is pertinent to note that the recruitment for TCS and TPS is conducted by TPSC under TCS and TPS Rules respectively, which have been framed by the State in exercise of power under the proviso to Article 309 of the Constitution of India. The Governor has framed the Regulations in exercise of the powers enshrined under Rule 6 thereof. On the date of the issuance of the advertisement, Regulation 11 quoted in para 6 above held the field which prescribes that the recruitment process will contain a preliminary examination carrying 200 marks, main examination carrying 800 marks and personality test carrying 100 marks. On reading Regulation 11 it is clear that the preliminary examination is only for short-listing the candidates for the main examination and the marks secured in

the preliminary examination were not to be considered for final selection. This stipulation was also reflected in the advertisement, which mentioned that the final selection shall be made in the order of merit on the basis of marks obtained in main examination in aggregate, adding the marks obtained in the personality test.

32. As per Cancellation Memorandum, the reasoning for cancellation of the ongoing recruitment processes was to implement the NRP. In the context of the present recruitment process, it was to limit the marks for interview in recruitment for Group – 'A' posts to maximum 10% of the total marks. In such a factual situation, the ancillary question that arises for our consideration is whether a policy decision in general, notified by way of executive instructions, can override the mandate of the TCS/TPS Rules and the Regulations framed thereunder.

33. While appreciating the said question in the facts as discussed above, it must be observed that the recruitment for TCS and TPS had been initiated and the main examination had been conducted and only personality test was left. In the meantime, legislative assembly elections were notified and after

election there was a change in the political landscape of the State. Immediate on assuming the office by the new political dispensation, a decision to review the recruitment process of all departments was taken on the pretext of making the same more fair, open and transparent. From the record of the selection or as per averments of the State nothing can be elucidated as to why the process existing at that point in time was not fair or transparent. The entire process until it was put in abeyance had been conducted under the TCS/TPS Rules and Regulations framed thereunder, which have statutory backing. It is not contended by the State that the pending recruitment process in any way violated the provisions of the TCS/TPS Rules. In the said context, it can be safely observed that if recruitment process is carried out under the Rules framed and under the Regulations, deviation was not permitted in the wake of the policy decision of the government by way of executive instructions, otherwise it would amount to overriding the recruitment process carried out under the Rules. For clarity, it is to be observed that where the subject and the field is occupied by the rules, the executive instructions cannot supplant the same; they can only supplement, otherwise it would render the act done under the

rules as void. It cannot be lost sight that Regulation 11 has a statutory backing prescribing 800 marks for main examination and 100 marks for interview (apart from 200 marks for preliminary examination). No amendment has been brought either in the Rules or in the Regulations yet. In such circumstances, merely because of a policy decision in the form of NRP, the recruitment process which was at the verge of completion cannot be cancelled.

34. The TCS/TPS Rules are rules framed under the proviso to Article 309 of the Constitution of India. Rule-making power under said proviso is said to be an exercise of 'legislative' power as opposed to 'executive' power since Legislature is competent to exercise. Meaning thereby that, these are statutory rules in the nature of subordinate legislation. This Court has had the occasion to examine similar legal issue in multiple cases. The Constitution Bench of this Court in **Sant Ram Sharma vs. State of Rajasthan**⁸, while dealing with an office memorandum of the Central Government in respect of promotion under the All India Services Act, 1951 and the Indian Police Service (Fixation of Seniority) Rules, 1954 held: -

⁸ 1967 SCC OnLine SC 16, 1967 INSC 167.

“7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

35. In **State of Haryana vs. Shamsher Jang Bahadur**⁹, this Court held that where qualifications are already prescribed in the rules framed under Article 309, the same may not be altered by means of an executive instruction. The relevant portion of the said judgement is reproduced as thus: -

*“7. It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under the Rules framed under Article 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to do so. This Court has ruled in *Sant Ram Shama v. State of Rajasthan* [(1968) 1 SCR 111] that while the Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and*

⁹ (1972) 2 SCC 188, 1972 INSC 116.

supplement the rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are concerned, so far as relate to the clerks in the Secretariat amend or they alter the conditions of service prescribed by the rules framed under Article 309. Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affects the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Article 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the instructions in question, the Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules.”

36. In **S.B. Patwardhan and Anr. vs. State of Maharashtra and Ors.**¹⁰, it was held that merely because executive instructions affecting conditions of service are issued ‘by order and in the name of Governor’ they cannot be considered as rules under Article 309 or its proviso, but those are only executive instructions issued under Article 166 of the Constitution of India. The relevant portion of the said judgement is reproduced as thus:

-

“26. *It is common ground that except the Bombay Rules dated September 21, 1939 and the Gujarat Notification dated August 21, 1965 the rest of the rules are in the nature of executive instructions. The Rules of 1941, 1960, 1963, 1965 and 1970 were not framed by the State Government concerned in the exercise of constitutional or statutory power. The Rules of*

¹⁰ (1977) 3 SCC 399, 1977 INSC 141.

1960 and 1970 were issued “By order and in the name of the Governor”, but that does not lend support to the construction faintly suggested on behalf of the direct recruits that the two sets of rules must be deemed to have been made under Article 309 of the Constitution. All executive action of the Government of a State is required by Article 166 of the Constitution to be taken in the name of the Governor. The appeals have therefore to be disposed of on the basis that except for the Bombay rules dated September 21, 1939 and the Gujarat Notification dated August 21, 1965 the remaining rules, whether of recruitment or of seniority, are in the nature of executive instructions. These instructions, unlike rules regulating recruitment and conditions of service framed under the proviso to Article 309 of the Constitution or Section 241(2)(b) of the Government of India Act, 1935, cannot have any retrospective effect.”

37. In **P.D. Aggarwal and Ors. vs. State of U.P. and Ors.**¹¹, this Court relied upon the judgement in **Sant Ram Sharma** (Supra) and held: -

“20. The office memorandum dated December 7, 1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court in Sant Ram Sharma v. State of Rajasthan [AIR 1967 SC 1910 : (1968) 1 SCR 111 : (1968) 2 LLJ 830] . Moreover the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable.”

¹¹ (1987) 3 SCC 622, 1987 INSC 163.

38. In **K. Kuppusamy and Anr. vs. State of T.N. and Ors.**¹², while dealing with a similar legal issue, this Court held that administrative instructions cannot override statutory rules merely because the government has indicated a decision to bring about an amendment in the rules in the future. The relevant portion of the said judgement is reproduced as thus: -

“3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.”

39. This Court made a luculent pronouncement in **Ajaya Kumar Das vs. State of Orissa and Ors.**¹³, that rules made under Article 309 of the Constitution of India cannot be tinkered

¹² (1998) 8 SCC 469.

¹³ (2011) 11 SCC 136, 2009 INSC 978.

by the administrative orders. The relevant paragraphs of this judgement are quoted herein below: -

“14. Neither the Circular dated 18-6-1982 nor the subsequent Circular dated 19-3-1983 modifying the earlier Circular dated 18-6-1982 can override the statutory provision contained in Rule 74(b) of the Code if it results in reduction of pay of the employee on promotion. That the Orissa Service Code has been framed under Article 309 of the Constitution of India is not in dispute. It is well settled that the statutory rules framed under Article 309 of the Constitution can be amended only by a rule or notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the executive orders or circulars or instructions, statutory rules cannot be altered or amended by such executive orders or circulars or instructions nor can they replace the statutory rules. The Rules made under Article 309 of the Constitution cannot be tinkered by the administrative instructions or circulars.”

40. In **Bank of Baroda and Anr. vs. G. Palani and Ors.**¹⁴, where an executive instruction by the name of ‘joint note’ was issued to change pensionary benefits provided to the employees under Banking Companies Act, 1970 and Regulations of 1995 made u/s 19 of the Act, it was held that such an executive instruction cannot supplant the provisions of the statute. The relevant paragraph is reproduced below: -

“14. First we come to the rigour of the regulations, the regulations have statutory force, having framed in exercise of the powers under section 19(2)(f) of the 1970 Act and are binding. They could not have been supplanted by any executive fiat, order or joint note, which has no statutory basis. The joint note of the officers also had no statutory force behind it and

¹⁴ (2022) 5 SCC 612.

could not have obliterated any of the provisions of 1970 act or the existing regulations. Thus, joint notes could not have taken away the rights that were available under the 1995 regulations.”

41. Recently, in **R. Ranjith Singh and Ors. vs. State of Tamil Nadu and Ors.**¹⁵, where service rules were framed under the State Act and the proviso to Article 309 of the Constitution of India and various government orders were issued by the State without amending the Rules to give 20% reservation to in-service candidates in direct recruitment posts and for maintenance of their seniority, it was held by this Court that the government orders had the effect of supplanting the statutory rules instead of supplementing them, which is not permissible. This Court noted as follows: -

“19....The State Government has certainly issued various executive directions from time to time for appointment under the direct recruitment quota providing reservation to in-service candidates to the extent of 20%; however, the rules were never amended till 21.11.2017. It is a well settled proposition of law that executive instructions cannot supplant the statutory rules. They can supplement/clarify the statutory rules. In the present case, the executive instructions issued from time to time have in fact supplanted the statutory rules and such a process is unheard of in the field of service jurisprudence.”

42. Applying the above principles of law, it can safely be concluded that executive instructions issued under Article 166(1) of the Constitution of India cannot override the act done under

¹⁵ 2025 SCC OnLine SC 1009, 2025 INSC 612.

TCS/TPS Rules framed under the proviso to Article 309 of the Constitution of India and the Regulations framed thereunder. The executive instructions can be used to supplement the rules in case of ambiguity or if gaps are to be filled but such executive instructions cannot supplant the specific provisions of the TCS/TPS Rules which already occupy the field. It is not the case of the government that to fill the gaps and to supplement the TCS/TPS Rules, NRP is relevant. In absence thereof, in our view, the action of the government cancelling the process of recruitment for TCS and TPS midway is not justified and is arbitrary. It is further relevant to discuss that the pretext which has been taken to issue the Cancellation Memorandum is the NRP dated 05.06.2018. The said policy is based on the recommendation of the three-member committee constituted by the State Government to review recruitment policy across the State and of all its departments. The recommendations of the committee were plain and specific, inter-alia, observing that “all the above recommendations will be applicable with prospective effect only”. In addition to the discussions, in absence of the statutory backing to the policy, the recommendations as made limiting the marks of interview at worst would apply

prospectively. Meaning thereby, it shall not apply to the recruitment process for TCS and TPS which had started way back in April 2016 and the preliminary as well as main examination has already been conducted. Hence, application of the policy decision on the pending recruitment process is contrary to clause (2) of the said policy.

Plea of Larger Public Interest:

43. It is vehemently argued that the issuance of the Abeyance and Cancellation Memorandum is because of change required and to make the process fair, transparent in larger public interest. It is nowhere specified as to how due to NRP, larger public interest can be achieved. After bestowing our consideration, indeed it can be observed that the executive does have a discretion to bring new policy and to implement the same applying the rule of law. Once the process of the recruitment is notified following the subordinate legislation, such general policy cannot occupy the field which is already occupied by the provisions of the statutory rules.

44. Regulation 11 vividly indicates that the interview should be of how many marks. As such the same cannot be supplanted by

NRP which is in the form of executive instructions and to rely upon the said decision, cancellation of the process of recruitment by issuing Cancellation Memorandum is not justified. In our view, the claim that the policy decision was in larger public interest is wholly unjustified, rather it is antithetical to public interest. On the basis of the stand taken and the material placed, in our considered opinion, the State has miserably failed to discharge the burden to substantiate that the decision of the cancellation of the recruitment process was in larger public interest.

Change of rules of the game after the game has begun:

45. The recruitment process under the advertisement for TCS/TPS commenced on the date of its issuance. At the cost of repetition and as discussed above, much water had flown. The TPSC had taken active and tangible steps to conduct the preliminary examination and the main examination under the TCS/TPS Rules and Regulations. After all this, by issuing the Cancellation Memorandum, effectively setting the clock back and putting the entire process at nought, under the garb of policy decision is arbitrary.

46. This Court in **Tej Prakash Pathak** (Supra) has affirmed the decision in **K. Manjusree vs. State of A.P. and Anr.**¹⁶, and held that the recruiting authority can devise a procedure for selection only in absence of rules to the contrary, however the same should be done prior to commencement of the recruitment process. The relevant portion of the said judgement is reproduced as thus: -

“52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.”

47. In the present case, the Regulations framed under the TCS/TPS Rules, which in turn are framed under the proviso to Article 309 of the Constitution of India, have clearly laid down the specific marking criteria – 800 marks for main examination and 100 marks for interview (personality test), which are to be considered for the purpose of final selection. Here, the effect of

¹⁶ (2008) 3 SCC 512, 2008 INSC 195.

NRP is such that by an administrative instruction, the Regulations have been rewritten, which is not permissible.

48. The Constitution bench in **Tej Prakash Pathak** (Supra) has also clarified that the procedure prescribed in the extant rules cannot be violated and administrative instructions can only be used to supplement and fill the gap in the Rules, they cannot be used to supplant the rules completely. The relevant portion of the said judgement is reproduced as thus: -

“62. *There can therefore be no doubt that where there are no rules or the rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the rules. In that event administrative instructions would govern the field provided they are not ultra vires the provisions of the rules or the statute or the Constitution. But where the rules expressly or impliedly cover the field, the recruiting body would have to abide by the rules.”*

49. In the present case, on the strength of a general policy decision of the State, an ongoing recruitment process is first put in abeyance and later cancelled, with intent to implement the NRP, though preliminary and main examinations have already been conducted as per Rules. The very application of the NRP to the ongoing process is illegal on three counts – Firstly, because it is an executive instruction and in the absence of an amendment in the TCS/TPS Rules or in Regulations, the recruitment

procedure could not have been changed. Secondly, because the application of NRP to the ongoing recruitment process would amount to changing the rules of the game after the game has already begun, i.e., the recruitment process has commenced. Thirdly, as per clause (2) of the NRP, the recommendation to limit the interview marks for Group – ‘A’ posts to 10% of total marks would only apply prospectively, in case, rules are amended, which would not mean to apply the same on ongoing recruitment process. As such Issues 1 and 2 are answered in the above terms.

ISSUE NO. 3

Legitimate expectation and indefeasible right

50. Another aspect of the matter is the question as to whether any absolute right of appointment or legitimate expectation has accrued in favour of the candidates who participated in the recruitment process. If so, whether cancellation of the recruitment process would impinge upon such legitimate expectation.

51. On the said issue, the State has placed heavy reliance on the judgement in **Shankarsan Dash** (Supra) to argue that mere participation in the selection process would not create an

indefeasible right for appointment in favour of the candidates. On the other side, the candidates have placed reliance on **Sivanandan C.T.** (Supra) to argue that they have a legitimate expectation to be appointed after having participated in the recruitment process.

52. It is trite law, and no contest can be made in respect of the settled proposition that mere participation in the recruitment process or placement in a select list would not create an indefeasible right to be appointed, even if vacancies are available. The judgement in **Shankarsan Dash** (Supra) has been followed subsequently in a plethora of decisions of this Court. The relevant portion of **Shankarsan Dash** (Supra) is quoted hereinafter:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

53. It is clear from a plain reading of the above judgement that State may choose not to appoint a person who has been placed on the select list. This was the specific decision of this Court also in ***State of Haryana vs. Subash Chander Marwaha and Ors.***¹⁷, subsequently clarified in ***Tej Prakash Pathak*** (Supra) where a select list of 40 candidates was drawn up, but against 15 vacancies available, only 7 appointments were made. In that context, it was held that mere placement on the select list would not create an obligation for the State to fill up all the vacancies and make appointments, since no indefeasible right of appointment has accrued in favour of the candidates. Simultaneously, it is said that the action of the State should not be arbitrary and the decision taken for not filling the vacancies must be bona fide.

54. However, candidates who have taken part in a recruitment process conducted by a public authority have a legitimate expectation that the selection process will be conducted fairly and without arbitrariness. Consistency and predictability are important aspects of non-arbitrariness and the rule of law obligates the State to only take decisions which are rooted in

¹⁷ (1974) 3 SCC 220

fairness and equality. It was held in **Sivanandan C.T.** (Supra) and later clarified in **Tej Prakash Pathak** (Supra) that in order to frustrate the legitimate expectation of candidates the burden is on the State by placing relevant material to objectively demonstrate that the decision taken by it was in the larger public interest and not arbitrary. Relevant excerpts from the Constitution bench decision in **Sivanandan C.T.** (Supra) have been quoted below: -

“40. The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In Nadarajah [R. (Nadarajah) v. Secy. of State for the Home Deptt., 2005 EWCA Civ 1363] , Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

xx xx xx xx

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles

of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.”

55. In the present case, it is not that the State has decided to fill only some of the vacancies. Rather it has decided to do away with the recruitment process altogether. It goes without saying that the State’s decision not to appoint a person must not be arbitrary and must be rooted in objective reasoning. The recruitment process, especially when it is conducted under the strength of statutory rules framed under the proviso to Article 309 of the Constitution of India, cannot be left at the whims and fancies of the State to interfere, through executive orders, without adhering to the principles of consistency and predictability, which are warranted by the rule of law and are pillars of non-arbitrariness.

56. As discussed above, the State has failed to prove that the decision to apply the NRP to the ongoing recruitment process was in larger public interest – as such, the legitimate expectation of fairness in the recruitment process must be upheld.

57. From the discussion made hereinabove and in the facts of this case, the candidates have participated in the process of

recruitment conducted in furtherance to the TCS/TPS Rules and Regulations framed thereunder. Undisputedly, they have cleared the preliminary examination and also participated in the main examination. It was only at the stage of declaration of results of the main examination the said process was kept in abeyance, later cancelled applying the NRP which could not have been made applicable to the ongoing recruitment process. The application of the NRP to the ongoing recruitment process for the TCS and TPS was in fact arbitrary and unjust. Therefore, the candidates do have a legitimate expectation of completion of recruitment process in a fair, transparent and non-arbitrary manner. As such, the recruitment process should be concluded following TCS/TPS Rules and Regulations and the candidates may be appointed if they found place in merit. The Issue no. 3 is answered accordingly.

58. In view of the discussions made hereinabove, we dismiss Civil Appeal Nos. 4467-68 and 4469 of 2023 and the Civil Appeal No. 4471 of 2023 is disposed of in terms of this order. The direction of the learned Single Judge as confirmed by the Division Bench of the High Court in the impugned judgements in Civil Appeal Nos. 4467-68 of 2023 and 4469 of 2023 are

maintained. It is directed that the process of recruitment for TCS and TPS Grade-II shall now be finalized and completed by declaring the results of the main examination and conducting personality test following the provisions of the TCS/TPS Rules and Regulations within a period of four months.

59. Pending applications, if any, shall stand disposed of.

.....**J.**
(J.K. MAHESHWARI)

.....**J.**
(RAJESH BINDAL)

NEW DELHI;
AUGUST 28th 2025.

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4470 OF 2023

THE STATE OF TRIPURA & ORS.

....APPELLANT(S)

VERSUS

ARUNABHA SAHA & ANR.

....RESPONDENT(S)

J U D G M E N T

J.K. Maheshwari, J.

1. This appeal arises out of the judgment and order passed by the Division Bench of the High Court of Tripura dated 25.08.2020¹, affirming the decision of the learned Single Judge dated 05.08.2019², whereby cancellation of the ongoing recruitment process for the post of Inspector of Boilers (Group-A Gazetted) in Factories and Boilers Organization under the Labour Department, Government of Tripura, (hereinafter referred to as “**Inspector of Boilers**”) was set aside.

¹ W.A. No. 196 of 2019

² W.P. (C) No. 186 of 2019

2. In the instant appeal, the dispute revolves around the appointment and subsequent cancellation of recruitment process for the post of Inspector of Boilers. The recruitment to this post is governed by the Boilers Act, 1923 (hereinafter referred to as **“Boilers Act”**), wherein Section 2(c) defines a Chief Inspector, Deputy Chief Inspector and Inspector as a person appointed to be as Chief Inspector, a Deputy Chief Inspector, and an Inspector under the Act. Section 28 confers power on the Central Boilers Board to make regulations consistent with the provisions of the Boilers Act. Section 28A confers powers on the Central Government to make rules to carry out the purpose of the Boilers Act, which includes power to make rules with respect to the qualifications and experience of persons to be appointed as Inspector of Boilers. Section 29 confers power on the State Government to make the rules consistent with the provisions of the Boilers Act and regulations thereunder for the purpose as specified in the section.

3. In furtherance to the powers under Section 28A, the Central Government promulgated Chief Inspector, Deputy Chief Inspector and Inspector (Qualification and Experience) Rules, 2012 (hereinafter referred to as **“Central Rules”**) wherein the

minimum qualifications for appointment to the post of Inspector of Boilers have been laid down. Similarly, in exercise of power under Section 29 of the Boilers Act read with proviso to Article 309 of Constitution of India, State Government in consultation with Tripura State Public Service Commission (hereinafter referred to as “**TPSC**”) enacted the Rules called the ‘Recruitment Rules, 2013’ (hereinafter referred to as “**State Rules**”) for the post of Inspector of Boilers under Labour Department (Factories and Boilers Organization) (hereinafter referred to as “**Labour Department**”). The State Rules classify the Inspector of Boilers as Group – ‘A’ Gazetted post and regulate its method of recruitment. Rule 4 deals with ‘method of recruitment, age limit, qualification and other matters’ which shall as be as specified in columns 5 to 13 of the Schedule appended to the State Rules. The Schedule specifies that the post of Inspector of Boilers shall be filled by direct recruitment by the State Government through TPSC unless exemption is granted.

FACTS RELEVANT FOR THE MATTER:

4. The present case has its inception on 29.12.2016 when the Labour Department sent a requisition to TPSC for selection of

candidates on 2 posts of Inspector of Boilers. Consequently, Advertisement No. 01/2017 was notified by the TPSC on 05.01.2017 (hereinafter referred to as **"Advertisement"**). As per TPSC, out of 126 applications, 36 candidates were called for written screening test on 21.08.2017, out of which only 30 candidates appeared. Finally, 7 candidates were declared successful including respondent no.1, and were called for personality test/interview on 07.12.2017. Accordingly, the interview took place, however, results were not declared.

5. While the recruitment process was ongoing, State of Tripura was busy with State Assembly elections, wherein a new government was elected on 03.03.2018, changing the political landscape of the State. Thereafter, on 14.03.2018, the State Government issued a memorandum no. F.20(1)-GA(P&T)/18 (hereinafter referred to as **"Abeyance Memorandum"**) stating that a decision has been taken by State Government to review the recruitment process of the Government, in furtherance of which, all the ongoing recruitment by all the departments/autonomous bodies under Government were to be kept in abeyance until further orders. Subsequent to this, 3 days later, on 17.03.2018, TPSC wrote to Labour Department seeking its views as to

whether the results of personality test/interview conducted in recruitment process for the post of Inspector of Boiler ought to be declared by TPSC or deferred in light of the Abeyance Memorandum. The Labour Department on 29.03.2018 reverted with the opinion to keep the results pending.

6. While the results were kept in abeyance, on 05.06.2018, the State Government *vide* notification no. F-20(1)-GA(P&T)/18, issued a new recruitment policy (hereinafter referred to as “**NRP**”) applicable to all the establishments under the administrative control of the State Government. For ready reference, the same is reproduced hereunder:

“1.4. 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. Consequently, on 20.08.2018, the Government *vide* memorandum no. F.20(1)-GA(P&T)/18 (hereinafter referred to as “**Cancellation Memorandum**”) directed that in the wake of the NRP, the State Government has decided to cancel all ongoing recruitment processes initiated by the respective departments

and TPSC, and all new appointments shall be made as per the NRP.

8. Subsequently, on 22.11.2018, TPSC issued a notification cancelling the subject recruitment process for the post of Inspector of Boilers. The respondent no.1, by filing W.P. (C) No. 186 of 2019, challenged the Cancellation Memorandum and the TPSC notification dated 22.11.2018. He further sought a declaration that NRP is not applicable in any manner whatsoever on the present ongoing recruitment process and sought a direction for completing the recruitment process by fixing a defined time limit.

FINDINGS OF THE LEARNED SINGLE JUDGE:

9. Learned Single Judge, *vide* judgment dated 05.08.2019 allowed the writ petition and quashed the Cancellation Memorandum, as well as TPSC notification dated 22.11.2018 to the extent of their applicability to the post of Inspector of Boilers. The Court observed that the factual matrix and legal issues involved herein were squarely covered by its earlier Single Bench judgment dated 14.05.2019 in Samudra Debbarma v. State of Tripura, W.P. (C) No. 831 of 2018 (upheld with modification by

Division Bench on 03.12.2019 in W.A. No. 142 of 2019, which is also challenged in connected Civil Appeal Nos. 4467-4468 of 2023 titled as ***State of Tripura and Anr. vs. Samudra Debbarma and Ors.***). It was observed that recruitment rules cannot be changed midway once the recruitment process has begun. Further, where a recruitment is governed by a subordinate legislation enacted under the proviso to Article 309 of the Constitution of India, then no executive instructions can override it, unless an amendment is made in that legislation. The Court further observed that once a candidate applies for recruitment pursuant to an advertisement under the then existing rules, he acquires a right to be considered for selection under those rules, unless any amendment is brought to the rules that is retrospective in nature. As the NRP is consciously given prospective effect, hence it is not applicable on the subject recruitment process. The Court directed the State to complete the selection process and publish the results and make recommendations within a period of two months from the date of the judgment. This judgment of the learned Single Judge was assailed before Division Bench in writ appeal, which has been dismissed by the impugned order.

FINDINGS IN THE IMPUGNED JUDGMENT:

10. The Division Bench *vide* judgment dated 25.08.2020 upheld the judgment of the Single Bench on the ground that the issues in the present case are similar to those in Samudra Debbarma's case (*supra*), and these have been dealt with accordingly and rightly so. Hence, there is no reason to allow the appeal of the State.

CONTENTIONS OF THE APPELLANTS AND RESPONDENT:

11. Learned senior counsel for appellants has assiduously urged that the NRP dated 05.06.2018 was introduced to promote transparency and fairness in public appointments in larger public interest. This policy decision, rooted in executive discretion, aimed to address concerns of subjectivity in the selection process and was uniformly applied across all the departments. Such decisions are not open to judicial interference, unless shown to be arbitrary or violative of Article 14 of the Constitution of India. In the present case, the process of selection was ongoing as the interview was conducted and no results were declared. It was also contended that here the entire recruitment

process was cancelled in pursuance of the NRP, hence, no rules of game have been changed after the game has begun.

12. The appellants submitted that in the present case, out of total 200 marks, interview was conducted carrying 100 marks, which constituted 50% weightage, which was excessive and susceptible to subjectivity and manipulation. The NRP was introduced precisely to remedy this issue and bring uniformity in the selection process. Thus, such cancellation cannot be said to be arbitrary.

13. It was further contended that respondent no. 1 does not have any indefeasible right to be appointed as it is open to State Government to not select such candidate even if he makes it in the final merit list. Here, there was no select list in the first place. Furthermore, the doctrine of legitimate expectation and promissory estoppel will not be applicable.

14. Per contra, learned senior counsel for the respondent no. 1 contended that pursuant to the advertisement, the respondent no. 1 applied for the post and participated in the recruitment process. He went through a screening test, a written test and then an interview. All of this was done in accordance with the

statutory rules framed under the Boilers Act and proviso to Article 309 of the Constitution of India, which has not been disputed by the State. Thus, cancellation of such recruitment process by Cancellation Memorandum on pretext of the NRP and further cancellation by TPSC without making any amendment to the statutory rules is invalid, arbitrary and illegal. It was contended that once a recruitment process has begun, its rules cannot be changed midway through executive instructions, i.e., the NRP and Cancellation Memorandum.

15. It was also contended that prior to bringing any change by the State Government, particularly in respect of the post of Inspector of Boilers, TPSC is required to be consulted, which was not done in the present case. Therefore, the NRP is inapplicable in the subject recruitment process.

16. It was also contended that as per clause (2) of the NRP, it is applicable prospectively. Therefore, it cannot be applied to an ongoing recruitment process. There is no express provision in the NRP which indicates its retrospective application on the ongoing recruitment processes. Therefore, the Division Bench has rightly dismissed the appeal filed by appellants.

ANALYSIS AND FINDINGS:

17. After hearing learned counsel for the parties and on perusal of the impugned judgment, it is clear that the writ appeal filed by the State had been dismissed relying upon the Division Bench judgment dated 03.12.2019 passed in the case of Samudra Debbarma in W.A. No. 142 of 2019, which is also under challenge in connected Civil Appeal Nos. 4467-4468 of 2023. The said Civil Appeals have been dismissed by a judgment pronounced by us today. In summary, in the said judgment, we have held as follows:

- i.** Once the field is occupied by subordinate legislation, executive instructions cannot override the same. They may only supplement, but not supplant the extant rules.
- ii.** The NRP could not have been applied to the ongoing recruitment process since it would amount to change of rules of the game after the game has begun.
- iii.** State could not discharge its burden to prove that the application of NRP to the ongoing recruitment process was in larger public interest.

- iv.** While candidates do not have any indefeasible right to be appointed merely by participating in the recruitment process, they do have a legitimate expectation of completion of recruitment process in a fair and non-arbitrary manner.
- v.** As per Clause (2) of the NRP, it is applicable prospectively and would not apply to the ongoing recruitment processes.

18. As the legal issues involved in the present case are squarely covered by Samudra Debbarma's case (Supra), the reasoning in that case will apply to all the issues involved herein in this case also. The operative part of Samudra Debbarma (Supra) is reproduced herein below:

"In view of the discussions made hereinabove, we dismiss Civil Appeal Nos. 4467-68 and 4469 of 2023 and the Civil Appeal No. 4471 of 2023 is disposed of in terms of this order. The direction of the Single Judge as confirmed by the Division Bench of the High Court in the impugned judgements in Civil Appeal Nos. 4467-68 of 2023 and 4469 of 2023 are maintained. It is further directed that the recruitment for TCS and TPS Grade II shall now be finalized and completed by the State after declaring the results of the main examination and conducting personality test following the provisions of the TCS/TPS Rules and Regulations within a period of four months."

19. As such, we are not inclined to deal with all the similar issues separately in the present case. The candidates participated

in the recruitment process carried out under the Boilers Act read with the Central Rules and State Rules. After issuance of advertisement, a written screening test was conducted on 21.08.2017, pursuant to which selected candidates, including respondent no. 1 were called for interview on 07.12.2017. Thus, only the result of the interview was left to be declared. As such the recruitment process for the post of 'Inspector of Boilers' was at a significantly advanced stage when the recruitment process was kept in abeyance, later cancelled by the Cancellation Memorandum and TPSC notification dated 22.11.2018. The application of the NRP to the ongoing recruitment process was arbitrary and unjust and candidates do have a legitimate expectation of completion of the recruitment process in a fair and non-arbitrary manner. It is pointed out by the appellant – State that in the facts of this case, in the Boilers Act, Central Rules or the State Rules or even in the Advertisement, there is no prescription of marks to be obtained in the written test or the interview, but the fact remains that the written test was already conducted out of 100 marks and the interview was also conducted out of 100 marks. As such, the subsequent decision to apply NRP to the said recruitment process cannot be sustained.

The recruitment should be completed as per the Boilers Act, Central Rules and State Rules, and the candidates may be appointed, if found to be meritorious, subject to fulfilling all other criteria.

20. In view of the discussions made hereinabove, the present Civil Appeal is dismissed, and the direction of the Single Judge as confirmed by the Division Bench of the High Court in the impugned judgment is maintained. It is further directed that the recruitment for 'Inspector of Boilers' shall now be finalized and completed by the State within a period of two months.

21. Pending applications, if any, shall stand disposed of.

.....**J.**
(J.K. MAHESHWARI)

.....**J.**
(RAJESH BINDAL)

NEW DELHI;
AUGUST 28th 2025.