

(2014) 02 TP CK 0073
In the Tripura High Court
Case No : Writ Petition (C) 71 of 2005

Dr. Narayan Bhaumik Vs The State of Tripura and Others

Date of Decision : 26-02-2014

Acts Referred:

Citation : (2014) 02 TP CK 0073

Hon'ble Judges : Deepak Gupta, C.J.; S.C. Das, J

Bench : Division Bench

Advocate : B. Das and Mr. D. Chakraborty, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.—By means of this petition, the petitioner has challenged the action of the State in terminating his services vide order dated 14-10-2003 and the dismissal of his appeal by order dated 20-12-2004. Briefly stated, the facts of the case are that the petitioner obtained a certificate that he belonged to the Scheduled Caste Community in the year 1972. On the basis of the certificate that he belonged to the Scheduled Caste of "Mali Community", he got admission into the Regional Medical College, Imphal as a State sponsored candidate and passed the MBBS examination in 1979.

2. Thereafter, the petitioner joined service under the Government of Tripura in 1980 as Junior Medical Officer (Grade-V) in the Tripura Health Service. He was also recommended by the Tripura Public Service Commission for appointment to the said service in the year 1981. His selection was made against a post reserved for the Scheduled Caste.

3. On 25-06-1994, the petitioner was granted promotion and promoted to Grade-IV of the Tripura Health Service on account of the fact that he belonged to the reserved category and he was promoted out of turn only because he was treated as a reserved category candidate.

4. Here it would be pertinent to mention that on 08-07-1991, the Government of Tripura issued a press note that it had come to the notice of the government that

many employees had obtained employment on the basis of false caste certificates issued to them. It was directed that if the employees surrender the caste certificates, a lenient view would be taken. This offer was made on 08-07-1991.

5. The petitioner did not surrender his caste certificate pursuant to this offer and in fact, a memo was issued to him on 20-05-1992 by the District Magistrate & Collector, West Tripura intimating the petitioner that on inquiry it was found that he did not belong to the Scheduled Caste community. He was issued show-cause notice why his Scheduled Caste certificate should not be cancelled. The Scheduled Caste certificate in favour of the petitioner was cancelled on 15-10-1992 and the order of cancellation reads as follows:-

GOVERNMENT OF TRIPURA OFFICE OF THE DISTRICT MAGISTRATE & COLLECTOR WEST TRIPURA DISTRICT: GENERAL SECTION

No. 4512-20/F. 1(17)-DM/GL/W/79

Dated, Agartala, the 15th October, 1992.

MEMORANDUM

The Scheduled Caste certificate in favour of Shri Narayan Bhowmik, S/o Shri Hari Madhab Bhowmik of vill-Amtali in District West Tripura had been issued under this office No. 238/DM/GL/W/72 dated 3rd June, 1972 due to misrepresentation of facts.

2. The said certificate is hereby cancelled.

Sd/- (J.P. Gupta) District Magistrate & Collector, West Tripura District: Agartala .

6. This order was never challenged by the petitioner and on 24-04-1993, a notice was issued to the petitioner why inquiry proceedings be not initiated against him and his services be not terminated. The petitioner replied to this letter and he stated that he had agreed to surrender his certificate. Thereafter, an inquiry proceeding was initiated against him which resulted in his termination from service. Here it would be pertinent to mention that on 25-06-1994, the petitioner was reverted from Grade-IV to Grade-V of the services and the said order reads as follows:-

No. F. 3(238)-HFW/91 GOVERNMENT OF TRIPURA HEALTH & FAMILY WELFARE DEPARTMENT

Dated, Agartala, the 25th June, 1994.

ORDER

WHEREAS Dr. Narayan Bhowmik was appointed as Junior Medical Officer in Grade-V of T.H.S. against the post reserved for Sch. Caste on the basis of S.C. certificate obtained from the competent authority and subsequently promoted to a post reserved for Sch. Caste in Grade-IV of T.H.S. on ad-hoc basis with effect

from 1-8-1991 on the basis of the same certificate.

AND WHEREAS it reveals from an enquiry that Dr. Narayan Bhowmik obtained caste certificate by falsehood and his caste certificate has been cancelled by the D.M. & Collector, West Tripura.

NOW, THEREFORE, the Governor, Tripura is pleased to revert Dr. Narayan Bhowmik from Grade-IV of T.H.S. to the post of Junior Medical Officer in Grade-V of T.H.S. with effect from the date of issue of the order.

By order of the Governor, Sd/- (22.6.94) Deputy Secretary to the Government of Tripura.

7. We have heard Sri B. Das, learned Sr. Counsel for the petitioner and Mr. A. Ghosh, learned counsel for the State.

8. Sri Das, learned Sr. Counsel, has raised the following three issues:-

(i) That, the Scheduled Caste certificate could not have been withdrawn because the petitioner had not obtained the certificate by force, but the State had issued the certificate to him after due inquiry;

(ii) That, the benefit which the petitioner has been given cannot be taken away in view of the judgment of the Apex Court in Dattu, S/o. Namdev Thakur vs. State of Maharashtra and others;

(iii) His last contention is that the petitioner having been punished once by reverting him from Grade-IV to Grade-V, no other punishment can be imposed upon him.

9. As far as the first submission is concerned, the same is totally without any merit. A person who obtains the Scheduled Caste certificate by withholding material facts or telling a lie cannot claim that the same should not be cancelled. Any inquiry which may have been conducted is based on the falsehood told by him and, therefore, he cannot be permitted to wriggle out of the same by trying to shift the burden upon the State.

10. As far as the second point is concerned, reliance placed by Sri Das on the judgment in Dattu's case (supra) is totally misplaced. In the cases before the Apex Court, the Scheduled Caste certificates were granted to the petitioners in 2001 and were invalidated in 2009. The Apex Court held that some of the petitioners had been permitted to continue in services and some of them were continuing their studies and were appearing in the final examination and only the results were to be declared. It was in these circumstances that the Apex Court held that though the petitioners would not be entitled to any further benefit under the caste certificate, whatever advantage may have been obtained earlier would continue. Even thereafter with regard to fees, the Apex Court clarified that these candidates will have to pay the full fees.

11. The Apex Court has given the petitioners before it certain benefits on the

basis of the facts of those cases and this judgment cannot be treated as a precedent. In fact, in this very judgment the Apex Court makes it clear that the petitioners would not be entitled to take any further advantage of reservation in future either for studies or for employment. We are of the considered view that this judgment is not at all applicable to the facts of the present case. In the present case, the petitioner has already got a lot of advantages which cannot be taken away. He got admission to a medical college as a Scheduled Caste candidate at a very low fees. He probably would not have got admission if he had not falsely represented that he belonged to the Scheduled Caste. He earned salary for many years by posing to be a Scheduled Caste officer. We are not taking away his degree of MBBS granted to him and he can continue to function as a doctor but at the same time, we are of the considered view that no leniency can be shown to such a person and he does not deserve to be in government service.

12. Coming to the last submission of Sri Das, on first blush this contention is attractive because it is a well settled position of law that no person can be punished twice for the same offence. However, on closer analysis we find that this is not a case of two punishments. As mentioned above, the petitioner was appointed in Grade-V of the Tripura Health Service in the year 1980. On 01-08-1991, he was granted benefit of belonging to the reserved category and promoted to Grade-IV of Tripura Health Service as a reserved category candidate and not as an ordinary category candidate. What was done by the order dated 25-06-1994 is that he was reverted to the post of Grade-V since he did not belong to the reserved category. This order of reversion was not by way of punishment, but was on account of the fact that the petitioner had been promoted treating him to be a reserved category candidate.

13. It would not be out of place to mention here that prior to the order dated 25-06-1994, inquiry proceedings against the petitioner under Rule 14 of the C.C.S. (C.C.A.) Rules had commenced in October, 1994. In those proceedings after inquiry, it was found that the petitioner had obtained employment by falsely declaring himself to be belonging to the Scheduled Caste community. Thereafter, punishment of removal of service was imposed upon him. There is no question of the principle of double jeopardy applying in the present case because the petitioner was not reverted by way of punishment, but because of the fact that he had been promoted against a reserved category post and was reverted to his original post when it was found that he did not belong to the Scheduled Caste. In the facts and circumstances of the case, we are of the considered view that the penalty imposed upon the petitioner is just and legal, calling for no interference. The writ petition is accordingly dismissed. No order as to costs.