
(2015) 06 TP CK 0006
In the Tripura High Court
Case No : Writ Petition (C) No. 88 of 2011

Gopal Notial

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 06 TP CK 0006

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

Bench : Division Bench

Advocate : S. Deb, Senior Advocate, S.C. Das and S. Datta, for the Appellant;
B.C. Das, Advocate General, A.S. Lodh, Addl. G.A. and D.C. Nath, Advocates for
the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.

1. As if it is from the narrative of Thomas Hardy, a celebrated 19th Century novelist where the protagonist faces the destruction by the invisible hands of chance or in other words it is the nature of life to dangle pretty prospects before our eyes, inner and outer, and then to snatch them away, the indifference of the will to justice, the universe manifests not only indifference but cruelty, inner potentiality and practical possibility are all out of step, a gross lack of correspondence between man's nature and the materials of his life results.

2. The father of the petitioner migrated from Garhwal, a District of Uttarakhand, in search of a job in the year 1957 and he enrolled him as the Constable in the Tripura Armed Police, 2nd Battalion and when he died on 02.11.1984, he was a Head Constable. He married a Bengali girl, namely Archana Notial (nee Datta) and in the wed-lock the petitioner was born. The mother of the petitioner stayed back in Tripura and struggled to provide education to her son at Jatanbari. At the instance of the Principal of the school, the petitioner's mother applied for the

Scheduled Tribe Certificate. From the record it appears that on the purported inquiry, the Sub-Divisional Officer, Amarpur issued the status certificate under No. 5873/SD/AMP/CERT, dated 19.12.1995, Annexure-5 to the writ petition, with the endorsement that the petitioner belongs to the Garhwali community which is recognised as the Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950.

3. The fact which remains undisputed is that the petitioner continued his studies on getting the benefits as a member of the Scheduled Tribe community and on completing his education he was appointed as the Riflemen (GD) against a vacancy for the Scheduled Tribe candidate. By the memorandum No. 36312-19/F.8(187)-PHQ/TSR/2009 dated 10.09.2009, Annexure-7 to the writ petition, the petitioner was given his place of posting. Later on, by the order No. 09/TSR-3/Estt/appoint/96/3807-24 dated 27.04.2002, Annexure-9A to the writ petition, the petitioner was directly recruited as the Havildar (GD) against a vacancy reserved for the Scheduled Caste candidate.

4. With sudden turn of events, the petitioner was served with a notice dated 09.06.2009 from the State Level Scrutiny Committee, Tripura for verification of his status certificate, Annexure-10 to the writ petition. With that notice, a copy of the verification report alongwith all other relevant materials submitted by the Deputy Superintendent of Police (Vigilance), Special Vigilance Cell, Tripura, Agartala, was furnished to the petitioner for having his response on 24.06.2009. He was cautioned that if he failed to answer or produce all relevant records in support of his claim to the status by the appointed date, the proceeding would be determined ex parte. Finally by the order dated 09.10.2009, the State Level Scrutiny Committee came to the inference that Garuwali (Notiyal) community is not recognised as the Scheduled Tribe in the State of Tripura as such community or group is not included in the Constitution (Scheduled Tribes) Order, 1950 or in its subsequent amendment or clarifications made by the various notifications issued by the Government of India.

5. Having received the said order dated 09.10.2009, as it appears, a Departmental inquiry was instituted against the petitioner by the memorandum No. 02/TSR-3/Estt/SS/06/3353, dated 08.07.2010, Annexure-13 to the writ petition, on the following article of charge:

"During the course of genuineness verification of ST certificate bearing No. 5873/SDO/AMP/CERT dated 19.12.1995 in respect of No. 98060130 Hav. (GD) Gopal Notial of "Adm"-Coy. 3rd Bn TSR by the Board of State level Scrutiny committee by conducting a proceeding vide No. 159 of 2007, a judgment passed by the SLSC that the above Hav. does not belong to ST community and the ST certificate submitted by the above Hav. at the time of joining in service is required to be cancelled immediately. Therefore, No. 98060130 Hav (GD) Gopal Notial is charged with gross misconduct. The Act on the part of No. 98060130 Hav (GD) Gopal Notial is an act of prejudicial to good order and discipline of the Rifles U/S 12 of TSR Act, 1983."

It is clear that the basis of the charge is the order passed by the State Level Scrutiny Committee on 09.10.2009.

6. The petitioner, by filing the written statement, has admitted that he was appointed in both the posts of Rifleman (GD) under the Tripura State Rifles 6th Bn. and Havilder (GD) directly as a Scheduled Tribe candidate. He has further submitted that if the Garuwali (Notiyal) community is not recognised as the Scheduled Tribe, he may not be allowed the benefits of the Scheduled Tribe community. Finally on completing the inquiry, the Enquiry Officer submitted the report on 17.12.2010, where he has observed as under:

"In summing up of all documents on record, it has become clear and established that ST certificate possessed by Sri Gopal Notial S/O Lt. Gopiram Notial, Hav(GD) of 3rd Bn TSR, issued by SDM Amarpur bearing No. 5873/SDO/AMP/CERT dated 19.12.995 has been cancelled by State Level Scrutiny Committee being found him not belongs to ST community and ST certificate under above reference has been cancelled by issuing authority. SDM, Amarpur vide No. F.1(28)/SDM/AMP/ST/10/3167-73 dated 02.12.2010. Hence, charge No. 1 of DP No. 05/2010 as drawn up against No. 98060130 Hav(GD) Gopal Notial of this unit is proved beyond doubt."

7. Even the Enquiry Officer, namely Kallol Roy, Asstt. Comdt., 3rd Bn TSR, held nowhere that the petitioner had committed any fraud or misrepresentation or suppression of the fact. What he has held is that the petitioner does not belong to the Scheduled Tribe recognised in the State of Tripura and for returning the said finding he has relied on the evidence as well as the order dated 09.10.2009. On the basis of that inquiry report, a Provisional Dismissal Order under No. DP.05/2010/TSR-3/Estt/GN/2010/0098 dated 11.01.2011, Annexure-19 to the writ petition, was issued by the Commandant, 3rd Bn. Tripura State Rifles.

8. Having received that provisional dismissal order, the petitioner has filed this writ petition challenging both the order dated 09.10.2009 (Annexure-12 to the writ petition), the memorandum of charge dated 08.07.2010 (Annexure-13 to the writ petition), the inquiry report dated 17.12.2010 (Annexure-20 to the writ petition) and the provisional dismissal order dated 11.01.2011 (Annexure-19 to the writ petition).

9. The respondents were directed by the order dated 07.03.2011 passed in this writ petition, to maintain the status quo so far the status of the petitioner is concerned and thereafter, by the order dated 10.05.2011, the said order dated 07.03.2011 was made absolute. Hence the petitioner is still serving as the Havildar (GD) in the Tripura State Rifles, 3rd Battalion and for the order of status quo, this court assumes that the final order has not been passed following the provisional dismissal order.

10. The respondents however, by filing the counter-affidavit, has categorically asserted that even the Garuwali (Notiyal) community is not recognised as the Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950 for the

State of Uttar Pradesh. Uttarakhand was earlier the part of Uttar Pradesh. They have also enclosed a list of the Scheduled Tribe communities which are recognised in the State of Uttar Pradesh. Similarly, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, which introduced an amendment in the Constitution (Scheduled Tribes) Order, 1950 for the State of Tripura, has been placed on record with their counter-affidavit. Alongwith that, the notification dated 29.10.1956, which brought about some changes in the list has been placed on record. Garuwali (Notiyal) community does not find place in that list. The respondents have placed the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. In the Second Schedule (under Section 4 of the said Act), the Scheduled Tribe communities recognised in the State of Tripura has been catalogued. They have also produced the Scheduled Tribes Orders, Second (Amendment) Act, 2002 and under the Second Schedule thereof, the list of Scheduled Tribes with their various sub-groups has been described. The respondents have contended further by filing the additional counter affidavit that on affording due opportunities to the petitioner, the State Level Scrutiny Committee has correctly arrived at the impugned decision. On culmination of the Departmental enquiry, the impugned provisional order of dismissal has been passed and there is no infirmity as the petitioner, even in the writ petition has failed to demonstrate that he belongs to the Scheduled Tribe recognised in the State of Tripura.

11. Mr. S.C. Das, learned counsel appearing for the petitioner has missed no call to contend that the petitioner never misrepresented any fact about his status and when the status certificate was issued he was a minor. Mr. Das, learned counsel has further contended that the persons who enjoyed the benefit of the status certificate by obtaining employment were not terminated or dismissed even on discovery that their status certificates were not genuine. Our attention has been drawn to the paragraph 34 of the writ petition, where the illustrations of such exemption or leniency has been laid by the petitioner. Smt. Binapani Debbarma, who was not a member of Scheduled Tribe community, got appointment in the Secretariat Administration on production of a Scheduled Tribe certificate and on getting several promotions she reached to the level of Deputy Secretary. On discovery that she was not a member of the Scheduled Tribe community, she was not terminated from the service, rather she was allowed to continue as a general category (UR) candidate and further she had been given promotion to the post of Joint Secretary. Some more illustrations relating to Subedar Anil Lakra, Nayeb Subedar Jerman Baskey and Subedar Birsha Tirkey have also been laid for demonstrating the differential treatment. Even though they were appointed against the vacancies reserved for the Scheduled Tribe candidates, on verification when it was found that they did not belong to the Scheduled Tribe community, they were not terminated from the service. Those averments have not been denied by the respondents. Mr. Das, learned counsel appearing for the petitioner, has therefore prayed that there cannot be two different approaches in the circumstance by the respondent.

12. Mr. B.C. Das, learned Advocate General, Tripura, has submitted that as law has taken a very stringent view as regards deriving of benefits including employment by dint of a status certificate, which is not genuine, such benefit cannot for a moment be allowed to stay but be stripped of. He has further submitted that, the appointment of the petitioner forthright be terminated in view of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules 1992, which provides as under:

"As soon as the findings is recorded by the Scrutiny Committee holding that the certificate obtained was false and the Certificate is cancelled and confiscated, it shall be communicated to the head of the Educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The head of the educational institution responsible for making the admission or the appointing authority, shall cancel the admission or appointment as the case may be without any further notice to the certificate holder and debar him from further study or continue in office in a post."

(Inserted by the Second Amendment Rules, 2007).

According to Mr. Das, learned Advocate General, the equality clause as embodied in Article 14 of the Constitution of India cannot be invoked for continuance of any wrong. Article 14 is for a right-based approach, not the other way round and hence the illustrations as laid in the writ petition would be of no help to the petitioner.

13. Having regard to the records and the averments made in the writ petition, counter-affidavit, additional counter-affidavit and reply thereto, it has unequivocally surfaced that the petitioner does not belong to any Scheduled Tribe community which is recognised by the Constitution (Scheduled Tribes) Order, 1950 or its amendments and hence there is no infirmity in the order dated 09.10.2009 passed by the State Level Scrutiny Committee by cancelling the status certificate of the petitioner. But, the memorandum dated 08.07.2010, which has charged the petitioner with gross misconduct cannot be sustained as no misconduct has been made out against the petitioner as he has not suppressed, misrepresented or otherwise manipulated any string of fact for obtaining the questioned status certificate. Hence the impugned memorandum dated 08.07.2010, Annexure-13 to the writ petition is quashed and as consequence, the provisional dismissal order dated 11.01.2011, Annexure-19 to the writ petition alongwith the Enquiry Report and the findings dated 17.12.2010, Annexure-20 to the writ petition, are quashed. By quashing the disciplinary proceeding as drawn against the petitioner under Rule 14 of the CCS (CCA) Rules, 1965 read with Rule 40 of the TSR (DCSC etc.) Rules, 1986 the petitioner would not be relieved from the rigours of the law, inasmuch as, sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992, provides that, as soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false and the

Certificate is cancelled and confiscated, it shall be communicated to the appointing authority by registered post with acknowledgement due with a request to cancel the appointment, the appointing authority thereafter shall cancel the appointment without any further notice to the certificate holder and debar him to continue in office in a post.

On a keen reading of the above provision, it would also appear that sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 would only be applicable when the certificate obtained was false. The word "false" is as expansive as to obfuscate its true meaning. Whether the status certificate which has been obtained on furnishing the true particulars can be called false for the reason that the issuing authority ought not have issued such status certificate as in the particulars the community that was described does not come within the list of the Constitution (Scheduled Tribes) Order, 1950 *mutatis mutandis*.

14. In this case, the petitioner cannot be accused of any falsity. There cannot be any disagreement that the person who is not entitled to get the status certificate, on discovery that he has obtained such certificate falsely and enjoyed the benefits, his benefit be discontinued or the service so obtained on the basis of the said certificate be terminated at once. The State Government in certain cases has not resorted to such stringent action. It is true, the unamended provisions were flexible, but that has been now made extremely stringent. This court cannot however substitute the statutory provisions by its direction. But, as the petitioner did not suppress or conceal any material about to his origin or the community, in the considered opinion of this court, the case of the petitioner is required to be considered on a different premise, as this court in *Dr. Bishnupada Biswas v. The State of Tripura and Ors.* (judgment dated 25.02.2015 delivered in W.P. (C) No. 66/2014), has noticed that, various doctors had obtained employment by furnishing false Scheduled Caste certificates but no stringent action like termination or dismissal was taken against them. Some were only warned and some of them who had obtained the benefit of promotion, were reverted to the lower posts. On consideration of that aspect of the matter, in *Smt. Namita Das v. The State of Tripura and Ors.* (judgment dated 06.05.2015 delivered in W.P. (C) No. 190/2009), the order of termination was set aside, directing the respondents to reinstate the petitioner in service. That approach is required to be adopted in this case having regard to the fact that no misconduct can be attributed to the petitioner. What is more important to observe is that justice is incomplete if the fairness does not find accommodation in it. For that equity has been developed as a tool two or three hundred years after the birth of the common law system. It is now common place that the law courts adopt many of the procedures of the equity court for doing fairness as justice. This court, in order to mitigate the rigours of the common law or the statute law can use their discretion as available in the equity to do the justice. But, we are equally conscious that our discretion cannot be unbridled. Discretion has to be exercised in the rarest of the rare occasion and it is according to us is one of such

occasions where such discretion for protecting the petitioner from the inscrutable doom if the rigour of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is allowed to take its sweep, be exercised.

15. Having regard to all these aspects, we hold that the petitioner shall not be entitled to benefits what he had been receiving so long as the Scheduled Tribe. Now, the petitioner shall be considered in the Un-Reserved (UR) category. His seniority shall be re-fixed in the Un-Reserved (UR) category in the post of Havildar (General Duty) in the Tripura State Rifles, 3rd Bn. as he was directly recruited in the post of Havildar (General Duty) by the order dated 27.04.2002, Annexure-9A to the writ petition.

16. Thus, we allow the writ petition partly and to the extent as indicated above. There shall be no order as to costs.