
(2011) 08 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (Civil) No.555 of 2010

Monica Kansuan Nee Debbarma

APPELLANT

Vs

State of Tripura and Anr.

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Constitution of India, 1950 — Article 341(2), 341(2), 342(2), 342(2)
Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992 — Rule 5(2)(d), 5(2)(d)

Citation : (2011) 6 GLR 151 : (2011) 5 GLT 41

Hon'ble Judges : U.B.Saha, J

Bench : Single Bench

Advocate : Mr.Somik Deb for the petitioner, Mr.S.Talapatra and Mr.B.Banerjee for the respondents., Advocates appearing for Parties

Judgement

1. The instant writ petition is filed by the petitioner, a graduate unemployed belonging to Scheduled Tribe Community for a direction to the State respondents to issue a letter of posting in terms of offer of appointment dated 15.7.2010 (Annexure P2 to the writ petition) whereby and whereunder the petitioner was given offer of appointment to the post of graduate teacher under the Education Department (School Education) Tripura, on fixed pay basis.
2. Heard Mr. Somik Deb, learned counsel for the petitioner as well as Mr. S Talapatra, learned senior counsel assisted by Mr. B Banerjee, learned counsel for the respondents.
3. As agreed to by the learned counsel for the parties the matter is taken up for final disposal at the admission stage.
4. Pleaded case of the petitioner is that the petitioner is a member belonging to the Schedule Tribe community ("ST") recognised under article 342 of the Constitution of India and she hails from a village Awanglchui falling under SubDivision Tamenglong in the State of Manipur and belongs to Kabul (Rongmei) Community, which is recognised as ST community in the State of Manipur vide

Constitutional Order, 1950 and in that respect a ST Certificate has also been issued in favour of her on 11.1.1996. She enrolled herself in the North Eastern Hill Society and prosecuted her studies there and after completion of her studies at the PreUniversity level she emerged successful. Ultimately she completed her graduation in Arts, from the Manipur University. The petitioner contracted her marriage with one Sri Mahadeb Debbarma and in support of her marriage she affirmed an affidavit, and further making a declaration that posterior to such marriage, she would use her name as Manica Kansuan (Debbarma), in place of her former name.

5. It is further stated that while she was searching for job, an advertisement was issued by the Department of School Education, Government of Tripura on 23.9.2009 inviting applications from intending candidates in plain paper as per prescribed format and in response to the said advertisement the petitioner made an application tendering her prayer for appointment to the substantive post of graduate teacher and such prayer of the petitioner was duly received by the Office of the Director of School Education, respondent No. 2 herein and thereafter the appropriate authority after taking note of all the facts and circumstances made a threadbare assessment of the candidature of the petitioner and thereafter on completion of the necessary formalities the respondent No. 2 has issued an offer of appointment letter vide memorandum dated 15.7.2010 (Annexure P2 to the writ petition) in favour of her to the said temporary post of graduate teacher. Upon receipt of the offer of appointment as stated supra, the petitioner promptly tendered her prayer on 24.7.2010 requesting the respondent No. 2 to issue letter of posting.

6. It is also stated that although earlier she was in private employment but taking into account the prospect of government service she has resigned from the private employment. In spite of submission for prayer of issuance of letter of posting the respondent authority did not issue any letter of posting and, thus, violated the provisions of articles 14, 19 and 21 of the Constitution of India and, hence, the writ petition.

7. The respondent State by way of filing the counter affidavit stated, inter alia, that the authority committed bona fide mistake while issuing the offer of appointment in favour of her and the writ petitioner has been trying to take advantage of such bona fide mistake as committed by the respondent No. 2. After issuance of the offer of appointment, on scrutiny and verification, it was found that the status of the writ petitioner, as considered by the authority, is a wrong one and she does not belong to a community which is recognised as ST in the State of Tripura and ultimately appropriate action for cancellation of the offer of appointment was taken in public interest and remedied the mistake by way of issuing show cause notice vide memorandum dated 10.12.2010 asking the petitioner to explain why her offer of appointment to the post of graduate teacher so issued in her favour shall not be cancelled as she does not belong to the ST Community in Tripura to which the petitioner did not respond.

8. Mr. Deb while urging for the relief sought for firstly contended that the petitioner admittedly belongs to ST community in the State of Manipur and migrated from Manipur to Tripura. He further contended that a ST belonging to one State is all along ST in all other states of the country. The status of a person as ST will remain till his death and more so even not for any other purpose but for the purpose of employment. He further submits that in the instant case the petitioner was initially treated as an ST and on the basis of that an offer of appointment was issued in her favour and the authority without referring to the caste status of the petitioner before the State Level Scrutiny Committee depriving her for employment which is not permissible. In support of his aforesaid contention he placed reliance on the decision of the Apex Court in *Sudhakar Vithal Kumbhare v. State of Maharashtra and Others*, (2004) 9 SCC 481 wherein the Apex Court while deciding the question as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation of the region in terms of the States Reorganisation Act noted that:

"It is one thing to say that the expression "in relation to that State" occurring in article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by the members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States and ultimately held that being the appellant's case was not referred to the appropriate committee the judgment and order impugned therein has been set aside and directed that the appellant therein shall be reinstated forthwith as Assistant Engineer and shall continue to hold the said post till the matter is decided by the Committee."

9. In support of his aforesaid contention he also placed reliance on *State of Uttaranchal v. Sandeep Kumar Singh and Others*, (2010) 12 SCC 794 wherein a question arose before the Apex Court for consideration of a point as to whether a person belonging to a Scheduled Caste in relation to a particular State would be entitled or not, to the benefits or concessions allowed to Scheduled Caste candidate in the matter of employment, in any other State and ultimately the Apex Court considering its earlier decision referred the matter before the hon'ble Chief Justice of India for constituting a Bench of appropriate strength to decide the question and being the same is not yet decided this court cannot say that the petitioner is not entitled to the benefit as ST in the State of Tripura being a migrated ST from Manipur.

10. He also placed reliance on a decision of the Apex Court in *S. Pushpa and Others v. Sivachamugavelu and Others*, (2005) 3 SCC 1 wherein the Apex Court

considered the provisions of article 16(4) visavis article 341(1) as well as article 342(1) of the Constitution to show that article 16(4) though enabling provision but within Part III of the Constitution and, thus, the same also created a right in favour of the petitioner and a State has a right to extend the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such State.

11. He finally referring clause (a) of subrule (2) of rule 5 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992, ("Rules, 1992") as amended in the year 2007 would contend that if the authority is satisfied then it can issue a community certificate to an applicant who has migrated to Tripura from another State on production of the genuine community certificate issued to his/her father by the prescribed authority of the State of his father's origin and if the competent authority feels that before issuing such a community certificate a detailed inquiry is necessary through the applicant's State of origin, he may do so and in the instant case without following the prescribed procedure the respondent authority has taken away the accrued right of the petitioner treating her as a migrant ST though she is married to a ST belonging to Tripura.

12. Mr. Talapatra refuting the submission of Mr. Deb would contend that the offer of appointment does not create any right when such offer of appointment is issued due to bona fide mistake and before issuance of letter of posting the authority has the right to cancel the same. He farther submits that admittedly the petitioner belongs to Kabul (Rongmes) Community and SubTribe Ranglong under Kuki Community in the State of Manipur which has not been included in the Scheduled Tribes order applicable for the State of Tripura.

13. In support of his aforesaid contention that a mistake cannot vest illegal right in favour of the petitioner to be posted against a reserved category while admittedly she does not belong to the ST Community in the State of Tripura, he placed reliance on *Ramesh Gajendra Jadhav v. Secretary, SGSP Mandal and Others*, (2010) 12 SCC 130 wherein the Apex Court while considering the order of termination issued by the respondent college noted that the "Fact of the matter remains that there was a collective error on the part of the University and College and more on the part of the University that led to this situation. But this mistake cannot vest indefeasible legal right in the appellant to be appointed or deemed to have been appointed against a reserve category while he is a candidate, admittedly, belonging to the open category and was so appointed by the Selection Committee" and ultimately dismissed the appeal preferred appellant.

14. The next point raised by Mr. Talapatra is the purpose of the presidential order for which he refers article 326(24)7(25) of the Constitution wherein the framers of the Constitution defined the meaning of Scheduled Caste under article 341 and Scheduled Tribe in article 342 of the Constitution and according to him, the benefit of a present amendment to a particular caste or tribe can only be provided subject to the caste status of the person is mentioned in the Scheduled

Caste or Scheduled Tribe Order, 1950 of a particular State and ultimately the present petitioner is not a scheduled tribe within scheduled tribe list prescribed for the State of Tripura as she obtained her ST certificate admittedly from Manipur.

15. Mr. Talapatra while refuting the submission of Mr. Deb, inter alia, that if one is recognised as an ST in one State then he has to be provided the benefit of ST anywhere in the country particularly relating to employment, would contend that the same is not correct in view of the decision of the Constitution Bench of the Apex Court in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Others*, (1990) 3 SCC 130 wherein the Apex Court noted, inter alia,

"For the purposes of this Constitution in article 341 as well as in article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitution right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all to Scheduled Castes or Tribes and to nonScheduled Castes or Tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not carry and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area of part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither articles 14,16,19 nor article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates."

16. He also referred paragraph 14 of the aforesaid judgment wherein the Apex Court while interpreting the expression "in relation to that state" or "for the purpose of this Constitution" noted, inter alia,

"[I]t appears to us that harmonious construction enjoins that we should give to each expression "in relation to that State" or "for the purposes of this Constitution" its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or girl who migrates and gets deducted (sic. inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other nonScheduled Castes or nonScheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the

Constitution."

17. Referring the aforesaid paragraph of the Constitution Mr. Talapatra also urges that in the State of Tripura 31% reservation is meant for Scheduled Tribes not only for employment but almost in all sectors and 17% for the Scheduled Castes, but the petitioner is provided a job within the said percentage though she does not belong to the Scheduled Tribe Community in the State of Tripura then an ST belonging to the State of Tripura will be deprived. Thus, the respondent authority rightly did not issue offer of posting on the basis of her offer of appointment letter issued by way of mistake.

18. The aforesaid decision of Mam Chandra Shekhar Rao (supra) has also been considered by the Apex Court in the case of Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India, (1994) 5 SCC 244 wherein the Apex Court also reiterated the same language, he contended.

19. He further submitted that ultimately, the Apex Court in the case of S. Pushpa (supra), as referred by Mr. Deb, stated that article 16(4) is not controlled by the Presidential Order issued under article 341(1) or article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory and this article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognised as backward classes of citizens and none else. Placing reliance on the aforesaid observation of the Apex Court, Mr. Talapatra said that the State has the right to provide the benefit of ST even to a migrant ST settled in its State but in the instant case the State of Tripura has not provided such benefit to the migrant STs. Rather by way of clause (d) of subclause (2) of rule 5 of Rules, 1992 specifically prohibited a Scheduled Tribe who has migrated to Tripura from his State of origin for the purpose of seeking education/employment etc., the benefit of reservation.

20. While distinguishing the case of Sandeep Kumar Singh (supra) mainly placed reliance on paragraph 9 of that case wherein the Apex Court reproduced paragraph 21 of S. Pushpa (supra) and contended, though not admitted, that even if for argument sake the contention of Mr. Deb is granted then also the debate is not complete before the Apex Court as S. Pushpa (supra) is a good law and the decision in the case of Subhash Chandra and Another v. Delhi Subordinate Services Selection Board and Others, (2009) 15 SCC 458 is not a good law being per incuriam which would be evident from Sandip Kr. Singh (supra). Referring paragraph 10 of Sandip Kr. Singh (supra) Mr. Talapatra finally contended that the Apex Court even in Sandip Kr. Singh (supra) also approved its earlier decision in S. Pushpa (supra) and, thus, approved their decision in Subhash Chandra (supra). Therefore, the law reports relied upon by Mr. Deb have no application so far as the case in hand is concerned, he contended.

21. He finally contended that clause (d) of subrule (2) of rule 5 of the Rules, 1992 is not under challenge in the instant case. Therefore, the action taken by the respondent being separated by the said clause cannot be negated by this court.

22. Having heard the learned counsel for the parties and on going through the relevant pleadings and the provisions of law referred by them, this court is of the considered opinion that the fact of Sudhakar Vithal Kumbhare (supra) cannot be treated as a precedent for the case in hand, particularly when the appellant in that case was admittedly ST recognised both in the State of Madhya Pradesh as well as in the State of Maharashtra and the appellant therein had also got employment on the basis of his caste status and also promoted as Asstt. Engineer (Civil) against a post reserved for the ST Community by the competent authority of the State of Madhya Pradesh and while he was holding the post of Asstt. Engineer (Civil) against a post meant for the reserved category a show cause notice was issued as to why he should not be reverted from the post of Assistant Engineer as he was not entitled to the benefit of reservation for Scheduled Tribes in the State of Maharashtra. In response to the said show cause notice the appellant submitted an explanation justifying his promotion against the reserved post. Despite that explanation the appellant was reverted from the post of Assistant Engineer to the post of Junior Engineer without referring the matter to the Scrutiny Committee. But in the instant case, though the offer of appointment was issued in favour of the petitioner but consequent thereto no posting order had been issued and subsequently a show cause notice was issued failing which the offer of appointment had been cancelled as contended by Mr. S. Talapatra and the said order of cancellation is not under challenge before this court. In view of the above Sudhakar Vithal Kumbhare (supra) has no application in the instant case as in that case, the Apex Court took note of the fact that the appellant therein belongs to ST community in both the States of MP and Maharashtra. In the instant case, the petitioner admittedly does not belong to the ST community as declared in the Presidential Order for the State of Tripura which would be evident from Annexure R3 to the counter affidavit wherein it is mentioned Kuki including the following sub Tribes (i) Balte, (ii) Belalhuat, (iii) Chhalya, (iv) Fun, (v) Hajangao, (vi) Jangetei, (vii) Khareng, (viii) Khepen, (ix) Kuntei, (x) Laifang, (xi) Lentei, (xii) Mizel, (xiii) Namte, (xiv) Paitu, paite (xv) Rangkole, (xvi) Rangchan and (xvii) Thangluya.

23. Now let us examine the contention of Mr. Deb, inter alia, that an ST in one State remains ST for his whole life within the country and is entitled to the benefit so far employment is concerned even in another State than the State of his/her origin.

24. According to this court there is no doubt that a person remains ST for his whole life as he belongs to a particular tribe but he cannot claim the benefit as an ST except his State of origin to any other State as the purpose of Presidential Order is only to provide the benefit to a person belonging to a particular caste or

tribe as prescribed in the Presidential Order and that must be in terms of clause (i) article 341 and also of article 342 of the Constitution of India and no deviation from the procedure laid down therein is permissible in law in view of the decision of the Apex Court in. Action Committee on Issue of Caste Certificate to SCs/STs (supra) and Sudhakar Vithal Kumbhare (supra).

25. In the case of Subhash Chandra and Another (supra) the Apex Court while considering the validity/legality of the Notifications/Circulars issued by the National Capital Territory of Delhi in terms of article 341(1) of the Constitution of India and in that context their lordships expressed that both the Central Government and the State Government indisputably have the power to lay down a policy decision in regard to the reservation having regard to articles 15 and 16 of the Constitution of India but such a policy cannot violate other constitutional provisions as a policy cannot have primacy over the constitutional scheme. It is also stated that purpose of articles 341 and 342 of the Constitution of India not only refer to States but also to Union Territories and are at par on the ground of administrative eligibility (sic.) or in exercise of administrative power. The Constitutional interdict contained in article 341(2) or article 342(2) of the Constitution of India cannot be got rid of. In the instant case, the petitioner did not challenge the contention of the respondents, inter alia, that the offer of appointment to the post of graduate teacher was issued in favour of the petitioner due to bona fide mistakes committed by the respondent No. 2. Therefore, there is no other alternative before this court except to hold that the offer of appointment was issued due to misunderstanding of the law as well as bona fide mistake and it is settled that a bona fide mistake can be corrected by the subsequent action of the authority which committed the mistake. In the instant case, by way of issuing the memorandum dated 10.12.2010 (Annexure R4 to the counter affidavit) the authority admittedly issued a show cause notice providing liberty to the petitioner why her offer of appointment shall not be cancelled as she does not belongs to the ST community in Tripura, which was not responded by the petitioner. It appears from the record that the petitioner filed the writ petition on 2.12.2010 and the aforesaid show cause notice was issued on 10.12.2010, i.e., after filing of the writ petition and the petitioner also admittedly did not challenge the same in the instant writ petition by way of amending her writ petition.

26. Mr. Deb also did not raise any question about that show cause notice and also did not say anything about the cancellation of the offer of appointment as contended by Mr. Talapatra. Therefore, being the show cause remained unchallenged and the action consequent thereto, the petitioner is not entitled to be posted on the basis of the offer of appointment (Annexure P2 to the writ petition).

27. As Mr. Deb and Mr. Talapatra both referred to subrule (2) of rule 5 it would be proper for this court to reproduce the said subrule as that would help this court to come to a proper conclusion regarding the dispute in question. Accordingly,

the same is reproduced hereinunder :

"5(2)(a) A competent authority, if satisfied, may issue a (Community) certificate to an applicant who has migrated to Tripura from another State on production of the genuine community certificate issued to his father by the prescribed authority of the State of his father's origin. If the competent authority feels that before issuing such a community certificate a detailed enquiry is necessary through the applicant's State of origin, he may do so.

(b) The certificate under clause (a) may be issued irrespective of whether the Caste/Tribe in question is included in the list of Scheduled Castes or Scheduled Tribes of Tripura or not.

(c) When a (community certificate) under clause (a) of subrule (2) is issued the competent authority shall indicate in a note below the certificate in block letters that "THIS COMMUNITY CERTIFICATE HOLDER IS A MIGRANT TO TRIPURA".

(d) A community certificate holder who has migrated to Tripura from his State of origin for the purpose of seeking education, employment, etc., will be deemed to be Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of his origin and not from Tripura."

28. It appears from clause (d) of subrule (2) of rule 5 of the Rules, 1992 that a person who migrated to Tripura from his State of origin like the petitioner for the purpose of seeking education, employment, etc., will be deemed to be Scheduled Castes or Scheduled Tribes of the State of his/her origin and will be entitled to the benefit from the State of Origin only and not from the State of Tripura. Therefore, it can be safely said that a person having a certificate issued by the authority of the State of Manipur declaring him/her as a ST of that State, is prohibited from getting the benefit provided to the ST/SC's belonging to the State of Tripura and very rightly contended by Mr. Talapatra has that unless the said clause is under challenge the court cannot provide any benefit to the petitioner as sought for, particularly when the offer of appointment is issued contrary to the provisions of clause (d) of subrule (2) of rule 5.

29. This court is of further opinion that a Scheduled Caste or Scheduled Tribe in one State cannot get the benefit provided to the Scheduled Castes or Scheduled Tribes in other States unless he or she is covered by the Presidential Order relating to Scheduled Caste or Scheduled Tribe of that State.

30. If a Scheduled Caste or Scheduled Tribe, who has migrated from his State of origin to another State, is allowed the benefit provided for the Scheduled Caste or Scheduled Tribe of the latter State, then that would frustrate the object of article 341(2) and article 342(2) of the Constitution and according to this court the respondent did not commit any wrong in not issuing any posting letter as sought for.

31. In view of the above, this court has no other option except to hold that the writ petition is devoid of merit and is liable to be dismissed. Accordingly, the

same is dismissed. No costs