

(2015) 05 TP CK 0040
In the Tripura High Court
Case No : Writ Petition (C) No. 190 of 2009

Namita Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) LabIC 3013

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

Bench : Division Bench

Advocate : P. Roy Barman, N. Majumder, B. Dutta and S. Bhattacharjee, for the Appellant; B.C. Das, Advocate General, J. Majumder and S. Chakraborty, Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J—By means of this petition the petitioner has challenged the order dated 03.10.2008 whereby he has been dismissed from service on the ground that his scheduled caste certificate was cancelled by the State Level Scrutiny Committee. He has also challenged the order dated 13.04.2009 passed by the appellate authority whereby the appeal filed by him has been rejected. The undisputed facts are that the petitioner applied for grant of scheduled caste certificate claiming that she belongs to the Mahishya Das community. This certificate was granted in her favour on 16.07.1986. However, according to the petitioner, she was not actually given appointment against reserved category post and has never received any benefit of being a reserved category candidate. In Tripura there were a large number of cases where persons had obtained employment showing themselves to be scheduled caste whereas actually they were not so. Thereafter, on 14.12.1999 a notification was issued by the Govt. of Tripura wherein it was decided that those persons who had fake scheduled caste certificate will be permitted to return the same and the Government would take a lenient view against those persons who return fake scheduled caste certificate.

The last date for return of such scheduled caste certificate was 27th January, 2000.

2. As far as the petitioner is concerned on 08.03.1999 she was asked to appear before the Sub-Divisional Officer, Sadar because an inquiry was to be conducted with regard to her certificate. It is not denied that the petitioner appeared before the Sub-Divisional Officer and surrendered her scheduled caste certificate. Therefore, she had surrendered her scheduled caste certificate even prior to the issuance of the notification in question. The question is whether she should have been punished with the dismissal from service after so many years.

3. The petitioner had been given employment in the year 1992. She surrendered her scheduled caste certificate in the year 1999 and no action was taken till the year 2008. By this time she had already worked for 16 (sixteen) long years.

4. This Court normally has no sympathy with persons who do not belong to the scheduled caste but masquerade as such and obtain employment claiming to be members of the scheduled caste community. However, the State also must be fair and must treat all the persons equally. There cannot be two sets of standards for similarly situated employees. We had asked the Chief Secretary of the State to file an affidavit and from the affidavit we find that the State has not been following a uniform policy while imposing penalty. In respect of the certificate surrendered up to 14.12.2009 we find that in some cases annual increment was withheld, in some cases no action has been taken till date, in some cases reduction to lower stage in case of promotion has been ordered, in some cases proceedings have been dropped and in hardly one or two cases the persons has been dismissed from service.

5. Equality is guaranteed to all under Article 14 of the Constitution. The State cannot have a policy of pick and choose. When all these employees are similarly situated viz. that they have obtained employment by giving false scheduled caste or scheduled tribe certificates, we see no reason why different standards should apply. The State is expected to be a model employer. The State is expected to treat all its employees equally. The affidavit of the Chief Secretary reflects a sorry state of affairs where the action taken by the Government varies from no action being taken i.e. the employee continues to be in service till his retirement, minor penalties being imposed, major penalties other than termination from service being imposed and in rare cases like the present one imposition of order of termination from service has been passed.

6. On behalf of the State it is urged that the petitioner had not surrendered her certificate pursuant to the notification and later it was cancelled by the State Level Scrutiny Committee. However, in the counter affidavit it is admitted that when the petitioner appeared before the officials in March, 1999 she admitted that she did not belong to the scheduled caste community and handed over her scheduled caste certificate. It would be a travesty of law that a person who had handed over and surrendered her scheduled caste certificate prior to the

notification dated 14.12.1999 is terminated, but an employee who surrenders the certificate after the notification dated 14.12.1999 was issued is retained in service. The argument of the respondents that those who have surrendered prior to rise notification cannot get the benefit of this notification is a highly immoral argument whereby those who have voluntarily surrendered earlier are denied benefit of the scheme.

7. It may be pointed out that in W.P(C) No. 66 of 2014 (Dr. Bishnupada Biswas v. The State of Tripura and three others) decided on 25.02.2015 this Court had noticed that various doctors had obtained employment by furnishing fake caste certificates but no action was taken against them. Some were only warned and some who had obtained the benefit of promotion on the ground that they belong to the scheduled caste were reverted to the lower post. In that case also we had set aside the termination of the petitioner.

8. We, therefore, allow the writ petition and quash both the orders dated 03.10.2008 and 13.04.2009 and the respondents are directed to re-instate the petitioner, Smt. Namita Das in service. However, she is only be entitled to 50% of the back wages which must be paid to her by the State by 30th September, 2015 failing which the State shall be liable to pay interest @ 12% per annum on the 50% of the back wages. This entire period of service shall be counted for fixing seniority and pensionary benefits of the petitioner. Petition is disposed of in the aforesaid terms. No order as to costs.