
(2015) 07 TP CK 0028
In the Tripura High Court
Case No : WP(C) 124 of 2013

Nepal Ch. Sarkar

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 07 TP CK 0028

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

Bench : Division Bench

Advocate : P. Roy Barman, S. Bhattacharji and K. Nath, for the Appellant; S. Chakraborty, Addl. G.A., Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J.

1. By means of this petition, the petitioner has challenged the order dated 16.04.2013 whereby he has been dismissed from service on the ground that his scheduled caste certificate was cancelled by the State Level Scrutiny Committee.

2. The undisputed facts are that the petitioner applied for grant of scheduled caste certificate claiming that he belongs to "Namasudra" community. The certificate was granted in his favour on 18.09.1979. However, according to the petitioner, he was not actually given appointment against reserved category post and has never received any benefit of being a reserved category candidate. The petitioner was appointed as Helper Grade-II under the PWD on 23.08.1990. This is a Group-D post. It is not denied that the petitioner was appointed against a vacancy which was meant for the unreserved category. The case of the petitioner is that when he was a young boy, he had taken the scheduled caste certificate at the instance of his father. 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.

3. As far as the petitioner is concerned, in the year 2004 some vigilance proceedings were initiated and when the vigilance officer asked the petitioner as to what was his caste, he clearly stated that he did not belong to the scheduled caste community. According to the petitioner, he immediately surrendered his scheduled caste certificate. Thereafter the State Level Scrutiny Committee vide order dated 04.05.2010 has cancelled the caste certificate.

4. The petitioner was granted employment in 1990. He surrendered his Caste certificate in 2004 and no action was taken till the year 2010. By this time, the petitioner had already worked for 20(twenty) long years.

5. 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.

6. 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.

7. It may be pointed out that in W.P.(C) No. 66 of 2014 (Dr. Bishnupada Biswas Vrs. 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 the order dated 16.04.2013 and the respondents are directed to re-instate the petitioner, Nepal Chandra Sarkar in service. However, he is only be entitled to 50% of the back wages which must be paid to him by the State by 30th November, 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.

9. Petition is disposed of in the aforesaid terms. No order as to costs.