
(2023) 01 TP CK 0017
In the Tripura High Court
Case No : Writ Appeal No. 227 Of 2021

Sabita Debbarma

APPELLANT

Vs

State Of Tripura And Others

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 — Section 4, 8, 8(1), 8(8)
Central Civil Services (Pension) Rules, 1972 — Rule 9, 9(1), 9(2), 9(2)(a), 9(2)(b)(ii)

Citation : (2023) 01 TP CK 0017

Hon'ble Judges : T. Amarnath Goud, J; Arindam Lodh, J

Bench : Division Bench

Advocate : P. Roy Barman, Samarjit Bhattacharjee, Kawsik Nath, Mangal Debbarma

Final Decision : Dismissed

Judgement

1. Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee and Mr. Kawsik Nath, learned counsel, appearing for the appellant. Also heard Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the respondents-State.

2. This writ appeal is directed against the judgment and order dated 12.08.2021 passed by the learned Single Judge in WP(C) No.237 of 2021 whereby the learned Single Judge did not find the reasons assigned in the impugned memorandum dated 12.06.2020 issued by the Secretary, Government of Tripura by which a departmental inquiry has been instituted against her to be treated as illegal and arbitrary and consequently, dismissed the writ petition.

3. In the present writ appeal, appellant-petitioner has prayed for the following reliefs:

"A. Admit the Appeal;

B. Call for the records;

C. After hearing both the parties, set aside the impugned Judgment and Order, dated, 12.08.2021, passed by Ld. Single Judge, in WP(C) No.237/2021;

D. Pass any other order/orders as the Hon'ble High Court may deem fit and proper."

4. Case of the appellant-petitioner, in a nutshell, is that the petitioner was appointed as a Lower Division Clerk in the Education department, Government of Tripura on 06.11.1981. She was promoted to the post of Upper Division Clerk by order dated 07.10.1987. She was then promoted to the post of Head Clerk by order dated 20.01.1994. In the year 2000 the department asked the petitioner to supply her caste certificate for verification. On 17.12.2004 SLSC issued a show-cause notice to the petitioner why her Scheduled Tribe certificate should not be cancelled on the ground of suppression of facts. It was alleged that she belonged to Laskar community and had obtained ST certificate by misrepresentation. The petitioner refuted such allegations by filing a reply. The SLSC passed order on 07.11.2005 cancelling the petitioner's ST certificate which the petitioner challenged by filing WP(C) No.94 of 2006 before High Court of Tripura. The learned Single Judge by common judgment dated 25.11.2013 disposed of the said petition along with bunch of similar petitions and set aside the order of SLSC. The State of Tripura preferred appeals being W.A. No.09 of 2014 and others. The Division Bench decided these appeals by a common judgment dated 16.07.2015. The view of the learned Single Judge that the order of SLSC was required to be set aside was confirmed. However, with respect to the decision of learned Judge that the matter should not be remanded to SLSC, the Division Bench differed. Consequently, the appeals of the State were allowed partially and all proceedings were remanded to SLSC for fresh disposal. The petitioners would be allowed to cross-examine the witnesses examined by the Inquiry Officer and they would also be allowed to examine their own witnesses.

5. SLSC thereupon passed fresh order in case of the petitioner on 31.05.2016 again cancelling the ST certificate of the petitioner. Petitioner filed a fresh petition being WP(C) No.1070 of 2016 challenging the said order of the SLSC and prayed for the stay of the implementation of the order. The Single Judge dismissed the petition on 31.10.2017 along with other similar petitions. Though many other petitioners filed writ appeals against the said judgment of the Single Judge, the petitioner did not. The judgment of the Single Judge thus achieved finality. In the meantime, the petitioner retired on superannuation w.e.f. 30.09.2016.

It is in this backdrop that the Secretary, Government of Tripura had issued the impugned memorandum dated 12.06.2020 along with articles of charge. The petitioner has challenged the said memorandum by filing a writ petition being WP(C) No.237 of 2021 on the ground that the allegations relate to an incident which took place 4 years prior to the date of institution of the departmental proceedings and, therefore, in terms of Rule 9 of CCS (Pension) Rules as adopted by the State of Tripura the disciplinary authority does not have jurisdiction to initiate the departmental proceedings but the learned Single Judge finding no

reason to consider the impugned memorandum as illegal and arbitrary dismissed the writ petition. Aggrieved thereby, the petitioner filed the instant writ appeal. Hence, this case.

6. Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee and Mr. Kawsik Nath, learned counsel appearing for the appellant, referred to Rule 9(2) of CCS (Pension) Rules and contended that no inquiry against the retired employee would be instituted in respect of any event which took place more than 4 years before such institution. He submitted that the allegations contained in the articles of charge referred to the promotion of the petitioner from U.D. Clerk to Head clerk which took place on 20.01.1994 and also the order of cancellation of the ST certificate by the SLSC on 07.11.2005. Thus all events which the department intends to rely upon in the charge-sheet had taken place several decades before issuance of the charge-sheet and, therefore, the institution of the inquiry is bad in law.

7. In support of his contentions, learned senior counsel has relied on following decisions:

(i) In case of State of U.P. and another vrs. Shri Krishna Pandey, reported in (1996) 9 SCC 395 in which the Supreme Court held that the departmental inquiry for misappropriation initiated more than 4 years after the delinquent officer was allowed to retire on superannuation was incompetent.

(ii) In case of Brajendra Singh Yambem vrs. Union of India & another reported in (2016) 9 SCC 20 in which the Supreme Court finding that the inquiry against the retired employee was instituted in relation to event which took place more than 4 years before the institution, quashed the proceedings.

8. On the other hand, Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the respondents, has opposed the petition contending that the appellant-petitioner was retired from service on superannuation w.e.f. 30.09.2016 only when the cause of action started and the departmental proceedings against the petitioner was instituted on 12.06.2020. He has also contended that the period of 4 years must be reckoned from the date of her retirement from which it can be ascertained that the departmental inquiry was initiated well within the period of 4(four) years. He has further contended that the learned Single Judge did not commit any error in dismissing the writ petition and accordingly, prayed to dismiss the writ appeal.

9. Relevant portion of the Rule 9 of CCS (Pension) Rules reads as under:

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is

found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of Rupees Three thousand five hundred per mensem.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

10. As per sub-rule (1) of Rule 9, the Government reserves the right of withholding pension of gratuity or both if the pensioner is found guilty of grave misconduct or negligence during his service tenure in any departmental or judicial proceedings. As per Clause (a) of sub-rule (2) of Rule 9, the departmental proceedings if instituted against the Government servant while in service shall after the retirement be deemed to be proceedings under this rule and shall be continued and concluded by the authority in the same manner as if the Government servant had continued in service. Rule 9(2)(b)(ii) which is most relevant for us provides that the departmental proceedings, if not instituted while the Government servant was in service, shall not be in respect of any event which took place more than four years before such institution.

11. After hearing both sides, this Court is of the considered view that there is a statutory embargo under Section 8 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (the SC/ST Act, for short), relevant portion of which is extracted hereinbelow:

"8. Offences and Penalties:

(1) (a) If an appointing authority makes any appointment in contravention of the provisions of Section 4 of the Act or the rules made there-under, he shall, on conviction, be punishable with simple imprisonment for a term which may extend to five years and also with fine which may extend to rupees ten thousand. In addition, the State Government may, if it considers necessary, draw up disciplinary proceedings against such appointing authority for punishment under the service rules;

(b) Nothing contained in Sub-Section(1)(a) above shall apply in relation to an appointment to any service or post of which the appointing authority is the Governor;

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(7) Any person or authority, who, while performing the functions of a competent authority under this Act or the rules made there-under, intentionally or with full knowledge that a person applying for issue of Scheduled Caste or Scheduled Tribe certificate does not actually belong to the Scheduled Castes or Scheduled Tribes, issues in favour of such person a community certificate shall, on conviction, be punishable with imprisonment and fine as provided in Sub-Section (1)(a) above;]

(8) Whoever intentionally gives any false report, information or evidence before any competent authority under this Act or rules made there-under with full knowledge that a person claiming himself to be a member of the Scheduled Castes or Scheduled Tribes does not actually belong to the Scheduled Castes or Scheduled Tribes, shall be punishable with imprisonment and fine as provided under Sub-Section (1) (a) above;]

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(11) (a) Notwithstanding anything contained in any other law or service rules, whoever, not being a person belonging to the Scheduled Castes or the Scheduled Tribes, secures or has secured any appointment to any service or post on the basis of false certificate in any establishment under the State shall, on cancellation of the community certificate, be forthwith terminated from the service or post;

(b) Whoever not being a person belonging to the Scheduled Castes or the Scheduled Tribes secures or has secured any admission or selection for admission to any educational institution for any study or training against a seat reserved for the Scheduled Castes or the Scheduled Tribes or enjoys any benefit or concession of the Scheduled Castes or the Scheduled Tribes shall, on cancellation of his community certificate, be forthwith debarred from the educational institution and any other benefit or concession being enjoyed by him as aforesaid shall forthwith be withdrawn. Any amount paid to such person by way of stipend, scholarship, grant, allowance, educational loan etc. on the basis

of the false community certificate shall also be recovered from him as arrears of land revenue;

(c) Any degree or diploma or any other educational qualification acquired by such person on the basis of a false community certificate, shall, on cancellation of the false community certificate obtained by him, also stand cancelled;"

Therefore, Section 8(8) of the SC/ST Act categorically expresses that whoever having full knowledge that he does not actually belong to the Scheduled Castes or Scheduled Tribes intentionally gives false information or evidence before any competent authority claiming himself to be a member of Scheduled Castes or Scheduled Tribes, shall be punished with imprisonment or fine as provided under Clause (a) of sub-section (1) of Section 8 of the SC/ST Act.

12. In view of the above discussion, it cannot be said that the petitioner who is an educated person and also a Government employee can express her ignorance and shed away from her moral and statutory responsibility and depriving legitimate person in getting the opportunity of his employment and other benefits. Petitioner is belonging to Laskar community which has been notified as non-tribal and the petitioner is not an ST candidate in view of the notification. It is a bounden duty of the petitioner to surrender the certificate and communicate the same in terms of the notification to her officials but instead, the petitioner has continued to enjoy the benefit to which she is not entitled to. The petitioner has acted in gross violation of statutory provisions of law and has not approached this Court with clean hands. Insofar as treating the term "any event", it can as well be considered in the broader ambit of "cause of action". The caste certificate issued by the concerned authorities which was cancelled on 31.05.2016 was challenged by the petitioner in the writ petition being WP(C) No.1070 of 2016 and vide judgment dated 31.10.2017 learned Single Judge dismissed the said writ petition. But the petitioner did not challenge the said judgment for which the same became final and the petitioner no longer continues to be a Scheduled Tribe. Since the entire proceedings is a continuous process, the petitioner cannot pick and choose a portion of the proceedings and challenge the same under Rule 9(2)(b)(ii) of the CCS(Pension) Rules saying that the action taken against the petitioner is beyond 4(four) years and he shall be exonerated. It is also seen that the petitioner retired on 30.09.2016 and the disciplinary proceedings was initiated on 12.06.2020, meaning thereby the institution of the proceedings was well within four years. Therefore, the argument advanced by the learned counsel for the appellant in the light of the above discussion cannot be accepted.

13. Accordingly, the writ appeal stands dismissed. Consequently, the impugned judgment and order dated 12.08.2021 passed by the learned Single Judge in WP(C) No.237 of 2021 is hereby confirmed.

Pending application(s), if any, also stands disposed of.