

(2013) 10 TP CK 0005

In the Tripura High Court

Case No : Writ Petition (C) No. 66 of 2007

Shyamal Roy Vs State of Tripura and Others

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 10 TP CK 0005

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : S.M. Chakraborty, Mr. S. Debnath, Mr. A. Sengupta and Mr. S. Bhattacharjee, for the Appellant; S. Chakraborty, A.G.A., for the Respondent

Judgement

S.C. Das, J.—Heard learned senior counsel, Mr. S.M. Chakraborty for the petitioner and learned Addl. GA., Mr. S. Chakraborty for the State respondents. None appeared for respondent No. 3. The petitioner, inter alia, contended that he joined in The Tripura Health Services as a Medical Officer in Grade-IV on 19.02.1983 and at the relevant point of time he was working as a Resident Physician in Gobinda Bhallav Pant Hospital (GBP hospital for short). In the year 2005, Agartala Government Medical College (AGMC for short) was established and recruitment process for the college, including teaching staff, was taken up by the State respondents. An advertisement was made on 22.12.2004 in the daily newspaper, namely the "Aajkal", inviting applications from the interested candidates for appointment to different posts such as Professors, Associate Professors/Readers, Assistant Professors/Lecturers, etc. Copy of the advertisement has been annexed as Annexure-1 to the writ petition. Pursuant to that advertisement the petitioner, since found himself eligible as per MCI guidelines, applied for the post of Assistant Professor in General Medicine and pursuant to his application he was called for interview vide Memo. dated 22.03.2005 (Annexure-2 to the writ petition). He faced the interview for the post of Assistant Professor in General Medicine. By Notification dated 26.05.2005 (Annexure-3 to the writ petition) he was appointed to the post of Senior Resident in General Medicine. Respondent No. 3 also appeared before the interview board similarly for the post of Assistant Professor in General Medicine and by Notification dated 26.05.2005 (Annexure-4 to the writ petition) respondent No. 3

was appointed as Assistant Professor in General Medicine but the petitioner, though faced interview for the post of Assistant Professor in General Medicine, was given appointment as Senior Resident in General Medicine. At the inception the petitioner thought that might be respondent No. 3 positioned better in the interview and therefore he was given appointment to the post of Assistant Professor in General Medicine. But in the meantime on September, 2006 the petitioner got some unauthenticated information that in the merit list he was above respondent No. 3, but respondent No. 3 was illegally appointed as an Assistant Professor in General Medicine depriving him and, therefore, he applied for the select list through RTI by filing an application before the SPIO on 25.09.2006 (Annexure-5 to the writ petition). Pursuant to that approach, the SPIO supplied a copy of the select list along with a letter dated 22.11.2006 (Annexure-6 and Annexure-7 to the writ petition) and on going through the select list (Annexure-7) the petitioner was surprised to see that in item No. 10, i.e. the select list of candidates for general medicine, his name was placed at Sl. No. 3 and the name of respondent No. 3 was placed at Sl. No. 4 but while giving appointment, the State respondents, depriving the petitioner appointed respondent No. 3 to the post of Assistant Professor in General Medicine.

1.1. It is contended by the petitioner that since the Medical College was newly established the State Government took a conscious decision that there should be relaxation of reservation for SC/ST candidates for a period of next five years and so the provisions of the Tripura Scheduled Castes and Scheduled Tribe Reservation Act, 1991 was not applicable to give any sort of privilege or priority to respondent No. 3. In the advertisement (Annexure-1) there was no stipulation that reservation law shall apply. In the Notification dated 26.05.2005 (Annexure-4), i.e. the Notification appointing respondent No. 3 and others to the post of Assistant Professor also shows nothing that respondent No. 3 was considered as against a reserved post of ST category. The petitioner, therefore contended that there was no justified or reasonable ground for depriving him and that the respondents illegally and wrongly by giving goodbye to their own decision appointed respondent No. 3 to the post of Assistant Professor in General Medicine though the petitioner was above in the merit list prepared by the selection board.

1.2. It is further contended by the petitioner that it was a clear case of discrimination and deprivation from his legitimate right and, therefore the petitioner submitted his representation (Annexure-9 to the writ petition) but received no favourable response. Subsequent thereto, he found an advertisement in the "Dainik Sambad" dated 07.02.2007 inviting applications for different posts including Assistant Professor in General Medicine and challenging that advertisement he filed WP(C) No. 45 of 2007 but that was withdrawn on 26.02.2007 with a liberty to file a fresh writ petition.

1.3. The petitioner has contended that the respondents violated the mandate of Articles 14 and 16 of the Constitution of India and that he has been discriminated

and deprived of his legitimate right and therefore, prayed for quashing Notification dated 26.05.2005 (Annexure-4) so far the appointment of respondent No. 3 is concerned to the post of Assistant Professor in General Medicine and further prayed for directing the respondents to appoint him to the post of Assistant Professor in General Medicine with effect from the date on which respondent No. 3 was appointed, i.e. 26.05.2005 with seniority position and financial benefits, etc.

2. Respondent Nos. 1 and 2, i.e. the State respondents contested the case by filing counter to the writ petition, inter alia, stating that respondent No. 3 belonged to ST category and though in the select list his position was at Sl. No. 4 he was given priority and was appointed as Assistant Professor in General Medicine following the reservation policy of the Government and the petitioner was appointed as a Senior Resident in the AGMC & GBP Hospital. It is also contended by respondent Nos. 1 and 2 that relaxation was given in respect of reservation policy in case sufficient number of candidate is not available in view of the shortage of candidates as the State Government was going to start a new medical college and that does not mean that if a reserved category candidate is available he should not be given appointment. Since reserved category candidate was available in the merit list, respondent No. 3 was given priority and he was appointed. It is further admitted that relaxation for a period of five years was given but that relaxation was subject to condition that priority should be given to ST category candidates if available. There was no hostile discrimination and the petitioner was not deprived from his legitimate right and so the writ petition is liable to be dismissed.

3. Respondent No. 3 also contested the case by filing written statement, inter alia, contending that the petitioner based on misconception and wrong interpretation of law filed the writ petition challenging the appointment of respondent No. 3. It is further contended that the appointment of respondent No. 3 was to ensure adequate representation of the Tribal community and it was the subjective satisfaction of the appropriate Government that respondent No. 3 was appointed as Assistant Professor in General Medicine, being a Scheduled Tribe candidate. It is also contended that respondent No. 3 was selected as a candidate belonging to ST category and, therefore there was nothing wrong in his appointment as an Assistant Professor in General Medicine.

4. Admittedly, advertisements were made for different category of posts and there was no stipulation that reservation law shall apply. In the advertisement, i.e. Annexure. 1 there is also no mention of the number of posts to be filled up. It is also an undisputed fact that the petitioner and respondent No. 3 and some others applied for the post of Assistant Professor in General Medicine. It is also an undisputed fact that the petitioner secured 3rd position in the select list of the candidates of General Medicine discipline and respondent No. 3 secured 4th position in the list (Annexure-7).

5. It is contended by learned senior counsel, Mr. Chakraborty that the reservation

law was relaxed and it was not applicable for the medical college since started newly and the Government took conscious decision to that effect. While the reservation law was not applicable, the State respondents were bound to appoint the petitioner to the post of Assistant Professor in General Medicine but depriving him they have appointed respondent No. 3 as an Assistant Professor in General Medicine and, thereby deprived the petitioner from his legitimate right.

6. Learned Addl. G.A., on the other hand, has submitted that the reservation law was not totally dispensed with but it was relaxed to the extent that if candidates belonging to reserved category are available they should be given priority and on that consideration only respondent No. 3 was appointed though his name appeared in Sl. No. 4 of the merit list.

7. If reservation law was applicable then appointment of respondent No. 3 as Assistant Professor in General Medicine was justified. If reservation law was relaxed and not applicable in view of the decision taken by the Government, the State respondents would appoint the petitioner as an Assistant Professor before appointment of respondent No. 3 in view of the merit position in Annexure-7.

8. Annexure-7 is the recommendation of the Selection Committee set up for recruitment of faculty members for AGMC & GBP Hospital. The document shows that the Selection Committee consists of eight members. The relevant observation of the Selection Committee as reflected in Annexure-7 reads as follows:

.....The Health and Family Welfare Department informed the Selection Committee that there would be no age limit for selecting a candidate and that there would be relaxation of reservations for SCs and STs for the next five years. The Committee interviewed all the prospective candidates who applied and appeared for interview on the 4th and the 5th April, 2005 in the Conference Hall of the Circuit House, Agartala. The Commissioner & Secretary TW Deptt. could not attend because of preoccupations. On the first day i.e. on the 4th April, 05 candidates were interviewed for the posts of Professor, Associate Professors and Assistant Professors for all Specialties. No candidate appeared for interview for the posts of Professors and Associate Professors. A total of 160 candidates (136 from THS and 24 others) appeared for interview for the posts of Assistant Professor. On the basis of the performances of the candidates during interview and their academic achievements, the Selection Committee, having due regard to the MCI guidelines, recommends the following panel prepared on the basis of merit of candidates discipline-wise for appointment to the posts of Assistant Professor, G.B. Pant Govt. Medical College. It may be mentioned here that in some of the disciplines SC/ST candidates were found eligible for inclusion in the panel.

8.1. The above observation makes it abundantly clear that there was no age limit for selection of a candidate and also there was relaxation of reservation for SCs/STs in the next five years. Annexure-7 has not been disputed. It is, therefore

clear that selection of candidates was not based on any reservation policy.

9. Article 16(1) of the Constitution of India prescribes that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 further prescribes that the Parliament or a State Legislature may make law prescribing reservation for any class or classes in respect of employment or appointment to an office under the Government, etc.

9.1. Equal opportunity in respect of public employment is a fundamental principle of our constitutional law. Departure from it is an exception. The rule of reservation is a departure from fundamental principles of the rule of equality, subject to making of law by Parliament or State Legislature. Benefit of reservation is a legal right and not a fundamental right. Once the Parliament or State Legislature makes a law giving benefit to a class or classes in respect of employment or appointment that is to be strictly followed.

9.2. The State Legislature has made the law of reservation, namely the Tripura Scheduled Caste and Scheduled Tribes Reservation Act, 1991 and thereby ensured reservation in respect of public employment to candidates belonging to SCs and STs. Section 6 of the said Act vested the power of exemption on the State Government. Section 6 of the said Act reads thus:

6. Power to exempt.

(1) If the State Government is of opinion that the reservation for members of the Scheduled Castes or the Scheduled Tribes shall not be applied to any specialised serviced or post in view of the specialised qualification or experience necessary and in absence of such qualified candidates from amongst the Scheduled Castes and the Scheduled Tribes the State Government may, by notification published in the official gazette, exempt such service or post, from the operation of this Act.

(2) Every notification under Sub-Section(1) shall be laid, as soon as it is published, before the Tripura Legislative Assembly.

9.3. As per the above provision, the State Government can relax or exempt reservation in a given case. Admittedly, reservation was relaxed in respect of appointment of the faculty member at the time of establishment of the Medical College for a period of five years. The law prescribed that such relaxation should be notified by publishing in the official gazette. While the respondents admitted that there was relaxation of reservation it was the duty of the respondents to place on record the notification issued relaxing reservation.

9.4. In paras 18 and 19 of their counter affidavit the State respondents stated:

18. That in regard to the averments and/or contention and/or statements made in Paragraphs 10 and 11 of the instant writ petition, it is stated by the answering respondents that the relaxation was given in respect of reservation policy in case of sufficient number of candidates is not available in view of the shortage of candidates as the State Government going to start Medical College, it does not

mean that if reserved candidate is available he would not be given appointment. In the process of selection a reserved candidates was available in merit list i.e. the respondent No. 3. So he was given appointment.

19. That in regard to the averments and/or contentions and/or statements made in Paragraph-12 of the instant writ petition, it is stated by the answering respondents that it is true the relaxation for 5 years is given in respect of filling up of post in consultation with the Tribal Welfare Department, Government of Tripura since it is new college, but it does not mean that if a reserve candidate is available the reserved candidate would not be selected. After the Interview, the respondent No. 3 was available in the merit list, so he was given appointment. The decision of the Tribal Welfare Department is that the relaxation is given subject to condition that priority should be given to S.T. candidate if available.

10. In view of the above statements of the State respondents, it was their duty to place on record that the relaxation was made subject to certain limitations. As already reproduced above, the content of Annexure-7 shows that there was complete relaxation of reservation. No limitation or condition stipulated in Annexure-7. Therefore, I find no basis in the submission of learned Addl. G.A. that relaxation was subject to certain conditions and limitation that if a reserved category candidate is available he should be given priority. If the reservation was not applicable and it was relaxed for a period of five years, the petitioner, being above in the merit list of the selected candidates for the post of Assistant Professor in General Medicine, was entitled to be appointed in the post of Assistant Professor in General Medicine over and above respondent No. 3. He was, however appointed as a Senior Resident vide notification dated 26.05.2005 (Annexure-3 to the writ petition). The notification does not reflect that it was pursuant to the selection made by the Selection Committee (Annexure-7). Even without any selection process the authority was competent to appoint the petitioner in any post in which the petitioner's service can be best utilized. The petitioner, since accepted the posting as a Senior Resident he cannot question it now saying that taking his interview for the post of Assistant Professor he has been appointed as a Senior Resident, since there is nothing to indicate that pursuant to the interview taken, he was appointed to the post of Senior Resident for which he did never applied for. The petitioner challenged notification dated 26.05.2005 (Annexure-4) so far as the appointment of respondent No. 3 to the post of Assistant Professor in General Medicine and prayed for quashing that notification to the extent of appointment of respondent No. 3 is concerned. The advertisement does not reflect the number of posts of Assistant Professor in General Medicine. Annexure-7, the select list shows that for the post of Assistant Professor in General Medicine, eight candidates were enlisted in which the petitioner secured 3rd position and the respondent No. 3 secured 4th position. The State respondents appointed respondent No. 3 who secured 4th position but did not appoint the petitioner who secured 3rd position. The State respondents utterly failed to justify the appointment of respondent No. 3 depriving the petitioner who secured 3rd position. The petitioner who secured 3rd position was

entitled to be appointed as Assistant Professor in General Medicine by notification dated 26.05.2005(Annexure-4). Since number of posts has not been indicated neither by the petitioner nor by the respondents and also not indicated in the advertisement or any other documents, I find no justification to cancel or set aside the appointment of respondent No. 3 is concerned but I find it appropriate to direct the State respondents to appoint the petitioner to the post of Assistant Professor in General Medicine with effect from the date respondent No. 3 was appointed, i.e. pursuant to Annexure-4 to the writ petition and to place the petitioner in the position above the respondent No. 3. Since the petitioner did not serve in the post of Assistant Professor, he cannot claim the financial benefits available to the post.

11. Accordingly, the writ petition is disposed of with a direction to the State respondents to appoint the petitioner to the post of Assistant Professor in General Medicine with effect from the date of appointing respondent No. 3 (Annexure-4 to the writ petition) and to put the petitioner in the position above respondent No. 3 in the post of Assistant Professor in General Medicine. The petitioner is not entitled to get financial benefits as claimed since he did not serve in the post of Assistant Professor in the meantime.

12. The writ petition accordingly stands disposed of. Parties are to bear their own costs.