
(2014) 01 TP CK 0027

In the Tripura High Court

Case No : Writ Petition (C) No. 307 of 2004

Sri Biplab Kumar Barua VsThe State of Tripura

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2014) 01 TP CK 0027

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; A.S. Lodh,A.G.A., for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Addl. Govt. Advocate appearing for the state. The grievance of the petitioner is confined to two aspects, namely (i) reversion of the petitioner from the post of U.D. Clerk to the post of L.D. Clerk by the Office Order No. 13261-64/PF/BB/SP(N)/02, dated 27.10.2003 (Annexure-7 to the writ petition) on the premises that the petitioner was entertained in the post of U.D. Clerk by way of promotion against the Scheduled Tribe (ST) vacancy, but the petitioner does not belong to the ST community as recognised by the Presidential Order and (ii) the petitioner's seniority in the grade of U.D. Clerk is liable to be reckoned from the day when he was promoted i.e. 07.07.1997.

2. For purpose of determining the controversy, the pivot lies in the status of the petitioner. The "Barua community" is not recognised as the sub-tribe of the "Magh community" or a part of the "Magh community", which is recognised as the Scheduled Tribe by the Constitution (Scheduled Tribes) Order, 1950.

3. In this regard, Mr. Sinha, learned counsel appearing for the petitioner, on acceding to that status of the petitioner, has placed reliance on a decision of the Gauhati High Court in All Tripura Buddhist Association (Barua Mogh Community) v. The State of Tripura & Ors., decided on 05.10.2005 in Writ Appeal No. 123/2002, where the Gauhati High Court has held as under:

19. Notwithstanding our observations about the inability of this court to assume jurisdiction and enter into enquiry to determine whether the term "Magh" indicated in the said Presidential Orders covers Barua community for enabling the latter to claim the status of Scheduled Tribe within the meaning of Article 342 of the Constitution, we nevertheless deem it appropriate to commend to the respondent that they re-examine the claim of the appellant representing the Barua community to be covered by Magh community for their recognition as Scheduled Tribe and, if their claim is found to be genuine, make appropriate recommendation to Parliament for amendment of the Presidential Order to that effect.

20. For the reasons stated in the foregoing, this Writ Appeal is dismissed subject to the observations indicated above. It is made clear that the impugned letter dated 17.07.1987 and the related provisions of Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Service and Posts) Rules, 1992 shall hereafter be read down consistent with the law laid down by the Apex Court in Milind Case (Supra) in this regard. To avoid administrative chaos and to prevent unsettling the settled positions resulting from some of the observations made by us elsewhere in this judgment, it is further directed that the members of Barua community, who have been issued Scheduled Tribes Certificate and already availing of the benefits of reservation in terms of such Certificates, shall not be affected by this judgment. Order accordingly. The parties are, however, directed to bear their own costs.

4. It has been succinctly provided in the said judgment dated 05.10.2005 passed in W.A. No. 123/2002 that the members of the "Barua community", who have been issued Scheduled Tribe Certificate and have been availing the benefits of reservation in terms of such Certificates, shall not be affected by that judgment.

5. Mr. Sinha, learned counsel has further placed the order dated 24.08.2011 passed by the apex court in Civil Appeal No. 640/2006, whereby the appeal filed by the State has been dismissed. Thus the said judgment of the Gauhati High Court has reached its finality.

6. Ms. A.S. Lodh, learned Addl. Govt. Advocate has acceded to that development by the judgment of the Gauhati High Court in All Tripura Buddhist Association (supra) and has fairly submitted that the petitioner shall also be entitled to get the benefit of that judgment.

7. In view of this and that it is undisputed that the petitioner has been favoured with the S.T. Certificate even though he is a member of the "Barua community", the impugned order of reversion dated 27.10.2003 (Annexure-7 to the writ petition) is quashed and the respondents are directed to restore the promotion of the petitioner in the post of U.D. Clerk in the office of the Superintendent of Police, North Tripura, Kailashahar w.e.f. 07.07.1997.

The petitioner will be entitled to the pecuniary benefits for the period from 07.07.1997 till the petitioner's position as the U.D. Clerk is restored. It is made

clear that only the difference between the pay and allowance of the U.D. Clerk and that of the L.D. Clerk be paid to the petitioner.

In the result, this petition stands allowed. However, there shall be no order as to costs in the circumstances of the case.