

(2014) 02 TP CK 0071

In the Tripura High Court

Case No : Writ Petition (C) No. 9 of 2011

Sri Nitish Ranjan Das VsThe State of Tripura and Others

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 02 TP CK 0071

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

Bench : Single Bench

Advocate : S. Seb, Mr. S.C. Das and Mr. S. Datta, for the Appellant; S. Chakraborty,A.G.A., Ms. J. Bhusan and Mr. D.C. Nath, for the Respondent

Final Decision : Allowed

Judgement

S.C. Das, J.—Bereft of unnecessary details, the case of the petitioner, in short, is that he got offer of appointment as a Graduate Assistant Teacher on 26.08.1987. On 15.10.1987 order of his posting was issued and he finally joined service on 30.10.1987. He belonged to Mahishya Das community, a community considered as Scheduled Caste in the State of Tripura and at the time of joining the service, he submitted a Certificate dated 29.02.1986 (Annexure A/1 to the writ petition) issued by his local MLA that he belonged to Scheduled Caste community being a member of "Mahisya Das" community but that Certificate was not accepted by the respondent No. 3 and therefore, his caste status was not recorded as a Scheduled Caste at the time of entering into service. Since he belonged to very poor family, having no other members in the Govt. service, immediately joined the service and since his Caste status Certificate issued by the MLA was not accepted, he was compelled to write caste status as "others" at the time of entering in the service. On 26.11.1997 Sub Divisional Officer (for short, SDO), Dharmanagar issued a caste status Certificate (Annexure A/5 to the writ petition) in the name of the petitioner and he immediately submitted it to the authority and it was accordingly accepted by the authority and was entered in the service book. Considering him as a Scheduled Caste category candidate, he was deputed for B.Ed training vide memo dated 11.06.1998 (Annexure 6 to the writ petition) and in that deputation order he was clearly shown as a person belonging to SC

community and at that time, he was posted at Paschim Panisagar High School. On 20.06.2007 respondent No. 3 directed concerned Inspector of School to record SC status of the petitioner in his service book w.e.f. 26.11.1997 i.e. the date of issuance of SC certificate by SDO, Dharmanagar.

A final interse seniority list of Graduate Assistant Teacher/Classical Teacher/Hindi Teacher/Hindi Pracharak/H.M.(Pry) was prepared and published on 25.08.2007 (Annexure 10 to the writ petition) by respondent No. 3 and in that final interse seniority list, the position of the petitioner was shown at Sl. No. 2920 but the fact that he belonged to SC community was not reflected in the said final interse seniority list (Annexure 10 to the writ petition). It is the contention of the petitioner that the respondent No. 3 was bound to record the caste status of the petitioner in the service book without mentioning any particular date thereof since a person belonged to a particular caste by birth and not by the date of issuance of certificate thereof. He has also contended that since by Memo dated 20.06.2007 (Annexure 11 to the writ petition) the respondent No. 3 directed to record caste status of the petitioner, in the interse seniority list, which was prepared on 25.08.2007, his caste status ought to have been reflected in the seniority list and for not mentioning the caste status in the seniority list, he was deprived of promotion to the superior post.

It is alleged by the petitioner that a DPC meeting was held on 23.05.2008 (Annexure 13 to the writ petition) and the DPC recommended 650 candidates of general category, 291 candidates of ST category and 199 candidates of SC category for promotion to the post of Assistant Headmaster/Headmistress of High School, Assistant Headmaster/Headmistress of Sr. Basic School and Deputy Inspector of School etc. Though respondent Nos. 4 to 76 belonging to the SC community were juniors to the petitioner but they were promoted to the promotional posts on the recommendation of the DPC held on 23.05.2008 but the petitioner's name though was above those private respondents in the interse final seniority list was not considered for promotion since his SC status was not recorded in the final seniority list. It is alleged that respondent No. 3 was heading the DPC and the respondent deliberately and intentionally did not consider the case of the petitioner for promotion to the superior post though he was senior to the private respondent Nos. 4 to 76.

His caste status was verified by State Level Scrutiny Committee and was found to be genuine. He passed B.Ed examination in first class (Annexure 7 to the writ petition). It is the case of the petitioner that though the petitioner submitted his caste status certificate in the year 1997, the respondent No. 3 did not take immediate step to record the caste status in the service book of the petitioner and so in the interse final seniority list his caste status was not shown and as a result, his promotional avenues was discarded. It so happened because of the lapses on the part of the respondent No. 3 and as a result of such lapses private respondent Nos. 4 to 76 who hails the position below the petitioner in the final seniority list were promoted and therefore, the petitioner prayed for directing the

respondents to record his caste status in the service book without mentioning the date of issuance of the caste certificates and also to give him promotion from the date on which his juniors were promoted in the promotional post. Copy of promotion orders of private respondents are annexed as Annexure 14, 14/A and 14/B to the writ petition.

Respondents, inter alia, contended that the petitioner at the time of his joining the service did not produce his caste status certificate that he belonged to SC community rather he has mentioned his community as "others". He submitted his caste status certificate issued by the competent authority dated 26.11.97 and that was verified and found to be correct and accordingly, respondent No. 3 by Memo dated 20.06.2007 (Annexure 11 to the writ petition) directed the inspector of School to incorporate his caste status. At the time of preparation of the final interse seniority list his caste status was shown as "others" in view of the entry in his service book and since he obtained the caste status only w.e.f. 26.11.1997, his promotion could not be considered by the DPC held on 23.05.2008. A corrigendum was issued on 7th March, 2009 (Annexure R/1 to the counter affidavit) to correct the entry in the seniority list and to record the caste status of the petitioner as SC. It was issued on the prayer of the petitioner since respondent No. 3 was advised by the competent authority i.e. the Law Department of the Govt. of Tripura to record his caste status from the date of issue of the caste status certificate. Since at the time of holding of DPC, the caste status of the petitioner was recorded as "others" (not belonging to SC community), his promotion to the superior post could not be considered. There was nothing wrong in the action taken by the respondents and hence, the respondents prayed for dismissal of the writ petition.

2. Heard learned counsel, Mr. S.C. Das for the petitioner and learned Addl. G.A., Mr. S. Chakraborty for the State-respondents.

3. It is an undisputed fact that the petitioner joined the service as a Graduate Asstt. Teacher on 30.10.1987. The petitioner contended that at the time of joining service he had submitted a Caste status certificate dated 28.02.1986 (Annexure 1 to the writ petition) issued by his local MLA certifying him as a SC belonging to "Mahisyadas" Community but that certificate was not accepted by the authority and since he was in extreme need of the job at that moment, he did not insist on the issue of his caste status certificate and joined the job recording his caste status as "others". Since the petitioner himself at the time of entry into service mentioned his caste status as "others" and his caste status was not recorded as belonging to SC community, he cannot claim any benefit of SC community till his caste status, as such, was recorded in his service book on his presentation of the caste status certificate issued by the competent authority. It is not disputed that the caste status certificate of the petitioner was issued on 26.11.1997 and according to him he produced it before the competent authority immediately thereafter. It is placed on record that the caste status certificate was also verified by the State Level Scrutiny Committee and it was found to be

genuine. Annexure 6 to the writ petition i.e. memo dated 11.06.1998 shows that the petitioner and others were deputed for B.Ed. training during the session 1998-1999. That was a Memo issued by the respondent No. 3. The said memo shows that as many as 19 SC category candidates were deputed for the training which consists the name of the petitioner at Sl. No. 12 as a candidate belonging to SC category. It is, therefore, evident that in the year 1998-99 the petitioner's SC status was recorded in the service book on his presentation of the SC status certificate dated 26.11.1997. Annexure 11 further shows that respondent No. 3 on 20.06.2007 directed the concerned Inspector of School of Dharmanagar, North Tripura to record SC status of the petitioner in the service book w.e.f. the date of issuance of the SC certificate. It is, therefore, evident that in the month of June, 2007 SC status of the petitioner was known to the respondent and the respondent No. 3 directed the concerned Inspector of School to record SC status of the petitioner in the service book. The final interse seniority list dated 25.08.2008 (Annexure 10 to the writ petition) was prepared and published and in that seniority list the petitioner's position was shown at Sl. No. 2920, is undisputed fact. But in the seniority list, the caste status of the petitioner as belonging to SC community was not recorded rather it was recorded as "others". Because of such non recording of the caste status in the final seniority list, as it appears, the petitioner's name was not considered for promotion in the DPC meeting held on 23.05.2008. It is also not disputed that private respondents Nos. 4 to 76 were junior to the petitioner since the name of the private respondents appeared below the name of the petitioner in the interse seniority list. But the promotion of the private respondents as a SC candidate was considered though their name appeared below the names of the petitioner whereas the petitioner's name was not considered since his SC status was not recorded in the seniority list. While Annexure-6 to the writ petition and Annexure-11 to the writ petition are clearly indicative of the knowledge and action on the part of the respondents that the petitioner belonged to SC community, at the time of preparation of final seniority list, the petitioner's name ought to have been reflected as belonging to SC community in the final interse seniority list.

4. A person belonged to a particular caste or community by birth and not by the date of issuance of certificate. Indisputably, the petitioner could not produce his caste status certificate issued by competent authority on the date of his entry into service but subsequently he obtained his caste status certificate and produced it before the competent authority and on such production of such certificate, the authority was under obligation simply to record his caste status as belonging to SC. There was no need of taking a stand that he belonged to SC community w.e.f. the date of certificate. A person belonged to a particular caste or community by birth and a caste certificate is a proof that he belonged to particular caste or community. A certificate cannot make a person to be of a particular caste or community. If he actually does not belong to a particular caste or community, whereas having such a certificate in possession, such certificate may be cancelled by the competent authority (Scrutiny Committee) in due

course of law. While the petitioner produced his caste status certificate dated 26.11.97, the official respondents i.e. respondent No. 3 was simply under obligation to record his caste status as belonging to SC community in his service book and there was no reason for particularly recording that he belonged to SC community w.e.f. the date of issuance of certificate i.e. 26.11.97.

5. The petitioner in his rejoinder affidavit contended that he has no claim of any benefit of his Caste status before the date of his submission of caste status certificate issued by the competent authority. His clear contention is that the caste status certificate dated 26.11.97 was submitted by him immediately after it was issued and in the year 1998-99 the respondents acted upon his caste status certificate being the status entered in his service book and consequence thereof he was deputed for the B.Ed. training as a SC candidate. I find force in the submission of learned counsel, Mr. Das appearing for the petitioner that the petitioner has been deprived of his legitimate promotion only because of non entry of his caste status in the interse final seniority list dated 25.08.2007. By issuing Annexure R/1 to the counter affidavit respondent No. 3 in the year 2009 directed for correction of the seniority list in respect of the caste status of the petitioner but in the meantime, the petitioner has already been deprived of his promotion. Since at the relevant time of preparation of the final interse seniority list (Annexure 10 to the writ petition), the petitioner was admittedly belonging to SC community, his caste status ought to have been recorded in the Seniority list as belonging to SC community. It was a wrong entry recorded by the official respondent and therefore, he was deprived of his promotion and the private respondents though were junior to him, the DPC considered their promotion and consequently promoted them to the superior promotional post. It was a wrong action, clearly, on behalf of the official respondent and hence, writ petition is allowed.

6. The official respondents are directed to record the caste status of the petitioner in the service book as belonging to SC community without mentioning the date of certificate. The official respondents are further directed to consider giving of promotion to the petitioner to the promotional post notionally w.e.f. the date his juniors were promoted in view of the DPC meeting dated 23.05.2008 (Annexure 13 to the writ petition). The exercise should be completed within 45 days from today.

7. With this observation and direction the writ petition stands disposed of. Parties to bear their own costs.