

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.293 of 2008

Sri Jayanta Kumar Bhattacharjee,
son of late Jitendra Kumar Bhattacharjee,
Resident of Village – Kacharghat South, Kailashahar,
District – North Tripura, at present posted as Tehsilder under
the Sub-Divisional Magistrate, Amarpur, South Tripura.

.....**Petitioner**

- Vs -

1. The State of Tripura,
Represented by the Secretary,
to the Government of Tripura,
Revenue Department,
Agartala
2. The District Magistrate and Collector,
South Tripura, Udaipur
3. The District Magistrate and Collector,
West Tripura, Agartala

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	:	Mr. R. Dutta, Advocate
For the respondents	:	Mr. B. Dutta, Advocate
Date of hearing and Delivery Judgment and order	:	17.01.2015
Whether fit for reporting	:	NO

Judgment and Order (Oral)

Heard Mr. R. Dutta, learned counsel appearing for the petitioner as well as Mr. B. Dutta, learned counsel appearing for the respondents.

02. By means of this petition, the petitioner has challenged the final seniority list dated 17.08.2007 where one Sri Chitta Ranjan Das has been shown at seniority position No.116 with his

date of appointment as 16.04.1997 whereas the petitioner's name appears as seniority position No.159 with date of appointment as 23.05.2001 and one Sri Rajib Bhattaharjee at seniority position No.164 with date of appointment as 24.05.2001. The petitioner has prayed that the respondents be commanded to comply the direction contained in the common judgment dated 19.12.2000 delivered in Civil Rule No.375 of 1998 and 377 of 1998 by the Gauhati High Court and to place the petitioner's seniority position "between serial 102 and 103 by way of publication of a fresh seniority list or modification of the list" dated 17.08.2007, Annexure-3 to the writ petition.

03. There is no dispute that the offer of appointment in the post of Tehsildar in favour of the petitioner was issued on 05.01.1993 by the District Magistrate and Collector, South Tripura but for certain reasons the said offer of appointment was not acted upon till the decision delivered in the said common judgment. In compliance to the direction contained in the said common judgment the letter of appointment was issued under No.6.2(DM/Estt/4228-39 dated 14.05.2001 by the District Magistrate and Collector, South Tripura along with two others namely Sri Rajib Bhattacharjee and Sri Amitava Endow in the post of the Tehsildar. For reference, the operative part of the common judgment is reproduced hereunder inasmuch as the petitioner's claim is set up on that direction.

"The writ petitions succeed. The respondent No.2 is directed to issue letter of appointments to the petitioners of both the cases pursuant to the offer of

appointments issued and accepted as discussed above and that must be done within a period of three months from this day. If any appointment made in the mean time pursuant to the advertisement so mentioned, the seniority of the petitioners shall be counted on and from the date of any such appointment without any financial benefits."

04. Mr. R. Dutta, learned counsel appearing for the petitioner has submitted that Sri Chitta Ranjan Das who was given the offer of appointment on 05.01.1993 was appointed on 15.04.1997, even-though such offer was issued to the petitioner in the same exercise. As such, in terms of the direction of the common judgment the petitioner is entitled to have his seniority w.e.f. 15.04.1997. But strangely despite repeated representations, made by the petitioner, the respondents have not modified or corrected the seniority position showing the date of appointment of the petitioner w.e.f. 15.04.1997. Mr. Dutta, learned counsel appearing for the petitioner having made a reference to the communication dated 07.08.2006, Annexure-8 to the writ petition has contended that the similar benefit has been granted to Sri Rajib Bhattacharjee who is similarly circumstanced. Relevant part of the said communication dated 22.08.2006 is extracted hereunder:

"DPC has considered the case of fixation of seniority of Sri Rajib Bhattacharjee, Tehsilder, now working in SDM's Office, Kailashahar, with effect from the date of joining of Sri Chitta Ranjan Das, Tehsilder, now working under the control of D.M. & Collector, South Tripura in terms of Court's Order in Civil Rule No.375/1998."

05. Mr. Dutta, learned counsel has further submitted that Sri Amitava Endow was a co-petitioner in the writ petition being

Civil Rule No.375 of 1998 and in pursuance to the said common judgment he was also appointed but he has been shown to have been appointed w.e.f. 24.09.1993. Mr. Dutta, learned counsel has referred the entry as regards Sri Amitava Endow at the seniority position No.160 of the impugned finally published seniority list, Annexure-3 of the writ petition.

06. In reply to the allegation made in the writ petition, Mr. B. Dutta, learned counsel appearing for the respondents has submitted that the case of Sri Chitta Ranjan Das is differently circumstanced as Sri Chitta Ranjan Das has been appointed in the post of Tehsildar in the special drive for SC/ST candidate and his appointment was given even before the common judgment was passed. Even that fact was considered by the Gauhati High Court while passing the said common judgment and for buttressing such contention he has referred a part of the para 3 of the said common judgment dated 19.12.2000. For reference, that paragraph is entirety extracted as under:

"In Civil Rule No.375/1998, there are as many as three petitioners, who unfolded their grievances as follows:-

That the petitioner Nos.1 and 2 are Graduates and the petitioner No.3 is not Graduate and have been looking for suitable job. The respondent-State Government through several Departments issued Job Forms inviting the eligible candidates to fill up the Job Forms for being considered for appointment to the respective posts/jobs in accordance with their eligibility and qualification. The Job Forms so submitted by the candidates had gone through proper scrutiny and test by the competent authority and having found the petitioners suitable for the posts of Tahesilder, the competent appointing authority, i.e. the respondent No.2, the District Magistrate and Collector, South Tripura issued offer of appointment in favour of the

petitioners for the posts of Tahesilder in the scale of pay of Rs.970-2,400/- plus usual other admissible allowances. The petitioner No.1 received the said offer of appointment issued by the respondent No.2 vide Memo No.F.1(79)-DM/S/ESTT.61 Udaipur, dated 5.1.1993, the petitioner No.2 received the offer of appointment vide Memo No.F.1(79)-DM/S/ESTT.3, Udaipur, dated 5.1.1993 and the petitioner No.3 received the offer of appointment vide Memo No.F.1(79)-DM/S/ESTT.62, Udaipur, dated 5.1.1993. The petitioners were asked to communicate their acceptance to the said offer of appointment by 20th January, 1993 along with the documents required to be furnished as asked for in the said offer of appointment. The petitioners within the stipulated time communicated their acceptance along with the documents so required. The petitioners were residents of Kailashahar, North Tripura District and being unemployed person they were not in a position to pursue the matter regularly from such a long distance. On 19.9.97, the petitioners found an advertisement issued by the respondent No.2, published in the daily newspaper 'Daily Desher Katha' inviting application for 43 posts of Tahesilder and as such the petitioners became astonished to know how the respondent No.2 made an exercise to fill up the posts of Tahesilder despite the petitioners had been offered with the said posts. Thereafter, the petitioners started inquiry U/S. 76 Act 1 of 1872 and they were told that along with the new recruitment pursuant to the aforesaid advertisement the formal letter of appointment would be issued. In course of inquiry, the petitioner came to know that in the year 1993 as many as 16 unemployed persons were offered with the same posts of Tahesilder including one Shri Chitta Ranjan Das. Despite their selection, none was appointed and the respondents kept the matter pending and being compelled the said Chitta Ranjan Das filed a writ petition bearing No. Civil Rule 227/1997 before this Court and during the pendency of the said writ petition the respondents appointed said Chitta Ranjan das and five others. Having learnt the same, the petitioners promptly approached this Court with this petition seeking a direction to be issued commanding the respondents to issue formal letter of appointment to the petitioners pursuant to the offer of appointment already issued and accepted. "

07. Mr. Dutta, learned counsel has submitted that while passing the direction the court did not refer the appointment of Sri Chitta Ranjan Das on due consideration and having referred to an advertisement which was published on 19.09.1997 the respondents

have been directed to fix the seniority from the date of appointment if someone is appointed in pursuance to that advertisement till the appointments of the petitioners are made. According to Mr. Dutta, learned counsel none has been appointed in pursuance to the said advertisement prior to the appointment of the petitioner and as such there is no non-compliance of the said direction as embodied in the common judgment. Mr. Dutta, learned counsel thereafter has submitted that the contention of the petitioner that Sri Rajib Bhattacharjee has been given the seniority w.e.f. 15.04.1997 is unsustainable inasmuch as the recommendation of the DPC as contained in the communication dated 22.08.2006, Annexure-8 to the affidavit in reply filed by the petitioner has not been acted upon. For that purpose, he has referred the communication dated 09.08.2007, Annexure P/2 to their additional affidavit, the communication dated 14.09.2007, Annexure P/3 to their affidavit, the communication dated 15.05.2008, Annexure P/4 of the additional affidavit and also the minutes of the DPC held on 10.12.2009, Annexure P/8 of their counter affidavit where it has been categorically asserted that:

"7. COUNTING OF SENIORITY OF EMPLOYEES:

The matter regarding counting of seniority of Shri Rajib Bhattacharjee, Tehasilder is pending for some time. A good numbers of correspondences were made between DM (N) and DM (S) from this end. The views of Law Department were also obtained. Recently the matter is pending with the Hon'ble High Court as two of the incumbents, who were connected with the case, went to the Hon'ble High Court vide WP(C) 292/08 and WP(C) 293/08.

Since, the matter is under sub-judice, the DPC proposes to wait for the verdict of the Hon'ble High Court."

08. At the fag end of his submission, Mr. Dutta, learned counsel has submitted that in the impugned seniority list dated 17.08.2007, Annexure-3 to the writ petition, there is a clerical mistake in the date of appointment of Sri Amitabha Endow, whose seniority position has been shown at 160. Subsequently, that mistake has been corrected in the final seniority list published by the Memorandum No.9(1)/DM/W/Estt/4027 dated 25.06.2007. He has further submitted that if that entry was correct then the seniority position of Sri Amitabha Endow would have been much above.

09. After examining the records and on appreciating the submission of the learned counsel for the petitioner and the respondents this Court is of the opinion that by the common judgment and order dated 19.12.2000 no reference has been made to the date of appointment of Sri Chitta Ranjan Das even though the appointment of Sri Chitta Ranjan Das has elaborately been dealt with by the court while passing the common judgment. It appears that the reference of the advertisement as has been made in the direction is of the advertisement dated 19.09.1997 published by the respondent No.2 of this writ petition in the daily newspaper Daily Desher Katha and the petitioner has not produced any record to show that in terms of the said advertisement someone has been appointed prior to the appointment of the petitioner. As such, on the face of such direction, the petitioner cannot derive any additional benefit. However, it appears that the fixing of the seniority position of Sri Rajib Bhattacharjee on the

recommendation of the DPC yet to be decided by the respondents. If the recommendation of the DPC for fixing the seniority position of Sri Rajib Bhattacharjee w.e.f. the date of joining of Shri Chitta Ranjan Das as Tehsildar is implemented, the petitioner shall also be granted the similar benefit.

10. With this observation and direction this petition stands disposed of. However, there shall be no order as to costs.

JUDGE

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