

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.66 of 2014

Dr. Bishnupada Biswas,
Son of Late Chandramoni Biswas,
Resident of village Kismatkuri,
P.S. Amtali, District West Tripura,
at present residing at Dashamighat,
Joynagar, P.O. Agartala, West Tripura.

..... *Petitioner.*

- Vs -

- 1. The State of Tripura**
Represented by the Principal Secretary
to the Government of Tripura,
Health and Family Welfare Department, Civil Secretariat,
Capital Complex, P.O. Kunjaban, P.S. East Agartala,
District - West Tripura.
- 2. Principal Secretary to the Government of Tripura,**
General Administration (Administrative Reforms) Department,
Civil Secretariat, Capital Complex, P.O. Kunjaban,
P.S. East Agartala, District West Tripura, Pin- 799006.
- 3. Secretary to the Government of Tripura,**
Welfare for SC and OBCs, Civil Secretariat, Capital Complex,
P.O. Kunjaban, P.S. East Agartala, District West Tripura,
Pin - 799006.
- 4. Director of Health Services, Government of Tripura,**
Gurkhabasti, Agartala, P.O Kunjaban 799006.

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S C DAS

For the petitioner	: Mr. A K Bhowmik, Sr. Advocate, Ms. A Banik, Advocate.
For the respondents	: Mr. S M Chakraborty, Sr. Advocate, Ms. D Das, Advocate.
Date of hearing	: 04.02.2015.
Date of judgment	: 25.02.2015.
Whether fit for reporting	: No.

JUDGMENT & ORDER

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has prayed that he be granted back wages for the period of service from 20th May, 1999 till his superannuation on 31st March, 2011 when he was illegally prevented from carrying on his duties.

2. The petitioner is a doctor. He had obtained a certificate whereby he had shown to be a member of the Scheduled Caste belonging to the '*Namasudra community*' which was recognized as Scheduled Caste in Tripura. On the basis of this certificate he obtained employment in the Government department.

3. There were a large number of cases of fake Scheduled Caste certificates in Tripura and the Department of Information, Cultural Affairs & Tourism, Government of Tripura issued a note on 8th July, 1991 wherein it was stated that 250 cases of fake Scheduled Caste certificates had been investigated till then. The Hon'ble Minister for Scheduled Caste Welfare had made a statement that if the persons who had obtained false Scheduled Caste certificates deposit the said certificates of their own with the Government, a lenient view would be taken in the matter. On the other hand, if such persons did not deposit the Scheduled Caste certificates and after inquiry it was found that the certificate was false, serious action would be taken. Thereafter, the Government issued a

notification on 14th December, 1999 relevant portion of which reads as follows :

“2. The State Govt. at present considering in all matters has decided to give an opportunity to the holder of false Scheduled Caste Certificate. As per the decision, the Govt. will take lenient views on these false certificate holders, who will return such certificate to the Government within 45 days from the date of issue of this notification i.e. within 27th Jan, 2000. These false certificates should be returned to the area concerned B.D.O/S.D.O/D.M. along with application in plain paper. A severe disciplinary action, after completion of enquiries, will be taken against the false certificate holders, who will not return the same, within the said stipulated date. Beside this, other disciplinary actions, including termination from services will also be taken against the Govt. employees.

3. The stipulated time bound period, mentioned in the press-release issued on 8th July, 1991, by the ICAT Deptt. of the State Govt. regarding return of false scheduled Caste Certificate, will be over with the time bound limit mentioned in this notification.

Under the said press – release of 8th July, 1991 who have, willingly and keeping in knowledge, not returned the false certificate and whose certificate have, after completion of enquiry already been declared as cancelled and various disciplinary actions against whom, have been or going to be taken, will not be taken in lenient views by the Govt. Order this notification.”

4. The petitioner thereafter deposited his Scheduled Caste certificate and admitted that he did not belong to the *Namasudra* community. He was expecting that lenient view would be taken but penalty of removal from service was imposed upon him whereas either no action was taken against various other doctors who were similarly situated or minor penalty was imposed upon them. The petitioner gave the names of a large number of doctors and prayed that he had been discriminated against. He, thereafter, filed WP(C)

346 of 2000 in the Agartala Bench of the Gauhati High Court and a learned single Judge allowed this petition directing the petitioner to make a representation and further directing the Government of Tripura to take a decision on the representation in accordance with the policy decision of the Government and the Government was also directed to treat the case of the petitioner similarly with the other doctors.

5. The decision of the learned single Judge was challenged by the State of Tripura before a Division Bench which was dismissed on 25th January, 2012. In the meantime, the petitioner retired from service on 31st March, 2011. Thereafter, the petitioner made a representation and the same was disposed of vide order dated 7th March, 2012 and the operative portion reads as follows :

“Now, therefore, in compliance with the direction passed by the Hon’ble Guwahati High Court, the Governor is pleased to set aside the penalty imposed upon the Dr. Bishnupada Biswas vide Order No.F.11(129)-GA(AR)/93/1046-49, dated 20/05/1999, without prejudice to the fact that Dr. Bishnupada Biswas had obtained false Scheduled Caste certificate, by which he had enjoyed/availed benefits as was entitled to a bonafide certificate holder, before cancellation of such certificate held by Dr. Bishnupada Biswas, by the appropriate authority”

Subsequently, another order was passed on 29th December, 2012 relevant portion of which reads as follows :

“WHEREAS, the GA(AR) Department has issued another letter vide No.F.11(129)-GA(AR)/93, dated 15-12-2012 enclosing the decision of

the Law Department by which, it is instructed the period from 20-05-1999 to 31-03-2011 may be treated as qualifying service for the purpose of counting pensions and pensionary benefits only. The pay of Dr. Biswas for the aforesaid period may be fixed notionally. Dr. Biswas is entitled to get pension on the following date of his superannuation.

NOW, THEREFORE, after careful consideration of all aspects of the case, the Governor, Tripura is pleased to order that Dr. Bishnupada Biswas is entitled to get his pension & pensionary benefits following date of his superannuation. The period from 20-05-1999 to 31-03-2011 i.e. from the date of removal from the Service to the date of his superannuation may be treated as qualifying service for the purpose of counting pension only, The pay of Dr. Biswas for the aforesaid period may be fixed notionally.”

It is the subsequent decision which is under challenge.

6. Mr. A K Bhowmik, learned senior counsel appearing for the petitioner, contends that the disciplinary authority did not take any decision to forfeit the pay of the petitioner. The earlier order imposing penalty upon him on 20th May, 1999 was set aside and, therefore, no penalty was imposed upon the petitioner. He submits that after this order had been passed, the State had no jurisdiction to pass the second order on 29th December, 2012 and that too without issuing notice to the petitioner. On the other hand, it is contended by Mr. S M Chakraborty, learned senior counsel appearing on behalf of the State that the petitioner did not serve the State Government for more than 12 years and he cannot be granted any salary for this period by applying the principle of no work no pay.

7. We are of the considered view that at the time when the representation of the petitioner was considered, the appellate authority which decided the representation was entitled to take any view of the matter. The appeal of the petitioner could have been dismissed or it could have been partly allowed. A perusal of the order of the appellate authority dated 7th March, 2012 clearly shows that the penalty imposed was set aside and the authority did not deem it fit to impose any penalty on the petitioner. No decision was conveyed that what should be done with the period of service between the earlier order of dismissal i.e. 20th May, 1999 and the date of passing of the second order.

8. We are also of the considered view that after this order had been passed, the State had no right or authority to pass the second order because that amounts to imposing a penalty on the petitioner which was not earlier imposed upon him. We may also add that in the earlier petition, the petitioner had pointed out the names of various doctors who had also obtained employment by giving false Scheduled Caste certificates but against whom no action was taken. Some of them were only warned and some who had obtained the benefit of promotion were reverted to the lower posts. As far as the absence of the petitioner is concerned, that is not due to any fault of his but due to the fact that his services were terminated. The Government itself on reconsideration of the matter has set aside the

order terminating his services. Therefore, the natural consequence of payment of back wages should follow.

9. Having held so, we cannot lose sight of the fact that the petitioner for 12 long years was not engaged in his work. He filed the first writ petition in the year 2000 which was decided 11 years later. This is not the fault of the petitioner. Even after the petition was decided, the State challenged the order of the learned single Judge before the Division Bench and as such, we feel that the petitioner should not be denied the benefit of some portion of the back wages. The petitioner is a doctor and we are of the view that he might have practiced during this period and therefore, we feel that the ends of justice shall be served in case the petitioner is granted benefit of 50% of the back wages along with interest @ 6% per annum from the date when the wages fell due till payment of the entire back wages.

10. The State is directed to ensure that the order is complied with latest by 31st May, 2015.

With the aforesaid direction the writ petition is disposed of.

JUDGE

CHIEF JUSTICE