

**THE HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 448 OF 2010**

**Shri Tapan Chandra Choudhury,**  
S/o Late Sirsh Chandra Choudhury  
Resident of village & P.O. East Gokulnagar,  
P.S. Bishalgarh, District West Tripura,  
At present residing at village, P.O. & P.S.  
Nutanbazar, District- South Tripura.

.... **Petitioner.**

- Vrs -

- 1. The State of Tripura,**  
Represented by the Secretary to the  
Government of Tripura,  
Department of Animal Resource Development,  
New Civil Secretariat Complex, P.O. Kunjaban,  
P.S. East Agartala, District West Tripura.
- 2. The Director,**  
Department of Animal Resource Development,  
Pt. Nehru Complex, Gurkhabasti,  
P.O. Kunjaban, P.S. West Agartala,  
District- West Tripura.

.... **Respondents.**

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

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|----------------------------------------------------------------------|---------------------------------------------------------------------|
| <b>For the Petitioner</b>                                            | <b>: Mr. A.K.Bhowmik, Sr. Advocate.<br/>Mr. R. Dutta, Advocate.</b> |
| <b>For the respondents</b>                                           | <b>: Ms. A.S.Lodh,<br/>Addl. G.A.</b>                               |
| <b>Date of hearing &amp;<br/>Delivery of judgment<br/>and order.</b> | <b>: 18.02.2015.</b>                                                |
| <b>Whether fit for<br/>Reporting</b>                                 | <b>: NO</b>                                                         |

**JUDGMENT & ORDER (ORAL)**

**(Deepak Gupta, C.J.)**

By means of this petition, the petitioner has challenged  
the order dated 3<sup>rd</sup> July, 2010 whereby the services of the petitioner

as ARD Assistant have been terminated in exercise of the powers vested in the State under Section 11 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991.

**2.** The main contention of the petitioner is that he never sought or secured appointment by showing himself to be a person belonged to the Scheduled Tribe community and therefore, Section 11 is wholly applicable in his case.

**3.** The undisputed facts are that the petitioner belongs to the 'Laskar' community which prior to 1990 used to be treated as Scheduled Tribe forming part of 'Desi Tripuri' community. The Supreme Court delivered a judgment in the case of **Srish Kumar Choudhury V. State of Tripura & Ors.** reported in **AIR 1990 SC 991**, wherein it was held that the 'Laskar' community is not a Scheduled Tribe community. It is not disputed that prior to that the State of Tripura itself was treating this community to be a part of the Scheduled Tribe belonged to the 'Tripuri' or 'Desi Tripuri' Tribes. The Scheduled Tribe certificate issued in favour of the petitioner is of a date prior to the judgment delivered by the Apex Court.

**4.** The whole question is whether the petitioner applied for training for the post of ARD Assistant in the Animal Husbandry Department or appointment to the post by showing himself to be a member of the Scheduled Tribe or not. If he has projected himself to be a member of the Scheduled Tribe, then the State would be justified in passing the impugned order. On various dates we had asked the State to produce the entire record. The record which has been produced before us shows that on 23<sup>rd</sup> March, 1991 a note was put up by the In-charge, Planning Section to the Deputy Director of

the Department in which it was stated that the Minister had desired that 10 persons including the petitioner be selected to undergo training in Animal Husbandry as Junior Assistant for the Junior Assistant Course for the year 1991-1992. It is urged on behalf of the State that there was no application filed by the present petitioner. We may point out that out of the 10 names so recommended by the Minister, the word 'ST' is written against the person whose name finds mention at Sl. No.1 and the word 'SC' finds mention against the person whose name is at Sl.No.6. The name of the petitioner has been mentioned at Sl. No.3 and he has not shown as ST or SC.

**5.** It appears that the stand of the State that no application was filed by the applicant is not correct. Why we are saying so is that the petitioner in his writ petition has specifically made an averment that an advertisement was issued, applications were called for and he had applied for training to the post of ARD Assistant and there is no specific denial to his allegation that advertisement was issued and applications were called for. The State along with its reply has annexed a Memo dated 6<sup>th</sup> August, 1991 whereby the name of the petitioner has been recommended for training and in that memo also the words ST or SC are not mentioned against his name though these words are listed against the names of three other candidates. Furthermore, from the files produced before us it is apparent that it is not only 14 candidates who have been selected for training but the total number of candidates were about 79 who were selected in first and second lots, out of which 60 nos. of trainees had already reported for training and more trainees were to join. It, therefore, appears that the petitioner was amongst those people who were not in the first 60

lot of trainees but was in the subsequent lot of trainees recommended for selection to undergo training.

**6.** This again shows that before the recommendation was made by the Hon'ble Minister, some selection process had started and 79 persons have been selected to undergo training in first and second lots out of whom 60 trainees had already joined till 26.03.1991 and more were expected to join till 31.03.1991 and therefore the department had proposed that it may not be possible to accommodate the persons recommended by the Minister since there was shortage of accommodation.

**7.** It may also be pertinent to mention that the next note makes reference to the decision of the cabinet of ministers in which it has been pointed out that candidates should be sent for training after they have been appointed. Again the department raised an objection that the accommodation of the hostel was not sufficient to accommodate all the trainees.

**8.** It is obvious that the trainees had been selected on the basis of some applications. That application has not been produced before us and it is urged that the petitioner has been recommended for training only on the basis of the note of the In-charge, Planning Section based on the oral observation of the Minister. When we read the entire note it makes reference to the number of posts available, the number of people selected and the number of people sent for training and the number of people who could be effectively trained. This obviously means that the training was to be imparted after some selection was conducted. Despite three opportunities having been granted, no record in this regard has been produced though

we had specifically asked the State to produce before us the record wherein the applicant had submitted his application to undergo training. If such record has been produced and in that record the petitioner had himself claimed to be a member of a Scheduled Tribe, we would have obviously dismissed the petition. However, that record has not been produced.

**9.** The other material which is on record including the recommendation made by the In-charge, Planning, Annexure R/1, the memorandum dated 6<sup>th</sup> August, 1991, do not reflect that the petitioner belongs to the Scheduled Tribe and do not reflect that he sought employment as a Scheduled Tribe candidate. Right from 1991 till 1995 till the formal offer of appointment was issued to the petitioner, there is not a single document on record to show that he is shown to be a Scheduled Tribe candidate in any of the record. After the letter of appointment was issued to him, he has filled in his attestation form giving his details and along with that attestation form he has no doubt enclosed a certificate showing himself to be a member of the Scheduled Tribe. The question that arises is whether Section 8 of the Tripura Scheduled Castes & Scheduled Tribes Reservation Act, 1991 is applicable in such circumstances or not.

**10.** Section 8(11)(a) with which we are concerned reads as follows:-

*8(11)(a) Notwithstanding anything contained in any other law or service rules, whoever, not being a person belonging to the Scheduled Castes or the Scheduled Tribes, secures or has secured any appointment to any service or post on the basis of false certificate in any establishment under the State shall, on*

*cancellation of the community certificate, be forthwith terminated from the service or post;*

**11.** A bare perusal of the Section shows that whenever any person not belonging to the Scheduled Castes or the Scheduled Tribes secures appointment to any service or post on the basis of a false certificate under the State he shall on cancellation of the community certificate, be forthwith terminated from the service or post. Therefore, the first ingredient of the Section is that the person must have secured employment on the basis of a false certificate. The certificate which was annexed along with the attestation form is a certificate post-selection, post-appointment. There is no material on record to show that prior to being sent on training or prior to the issuance of the order of appointment, the petitioner had ever submitted this false certificate to the department.

**12.** It has been urged by Ms. Lodh that the petitioner was sent for training by treating him to be a Scheduled Tribe candidate because he was over aged and if he had not been granted relaxation of 5 years, he would not have been selected for training. That may be true but the question that arises is did the petitioner ever claim to be a member of the Scheduled Tribe before the attestation certificate was issued and before he got employment. Section 8(11)(a) will come into play only when a person secures appointment on the basis of a false certificate. If a person secures appointment as a general category candidate but later gives a Scheduled Tribe certificate he probably would not be covered under Section 11 unless he secures a promotion on the basis of the ST certificate. Here we have been told that the petitioner has not derived any

benefit whatsoever of belonging to the Scheduled Tribe throughout his service.

**13.** As far as Ms. Lodh's argument is concerned, we cannot accept the same because despite all our efforts, the State has been unable to produce before us a single noting on the file showing that relaxation in age has been given to the petitioner because he is a Scheduled Tribe candidate. If the department itself gives this relaxation without anybody claiming it then also Section 11 may not apply. There has to be some overt act on the part of the person who has taken the job which will show that he has either applied against a post reserved for Scheduled Castes and Scheduled Tribes or has before his appointment posed to be a member of the reserved category which he is not and then Section 11 will definitely be applicable. In case the person applies for the job without claiming to be the member of Scheduled Castes or Scheduled Tribes but the department in its wisdom treats him as a Scheduled Caste or Scheduled Tribe then the fault is not of that person but of the department.

**14.** We have gone through the entire records and we asked Ms. Lodh to show us the record prior to 1995 where the petitioner has claimed to be a member of the Scheduled Tribe except for making reference to the relaxation in the age. Ms. Lodh has made reference to the letter allegedly signed by the petitioner on 7<sup>th</sup> November, 1992 including therewith a Scheduled Tribe certificate. We had on two occasions asked the department to produce the original record but till date that original record has not been produced. Even if that has been produced, it does not in any way show that the petitioner has applied against the post meant for

Scheduled Tribe or Scheduled Caste category. The records are with the State. Even if the records be with the scrutiny committee or with any other authority, when the Court directs that records be produced, that should be produced or adverse inference will have to be drawn against the State.

**15.** On 10<sup>th</sup> December, 2014 we had issued the following order:-

*“The main dispute in this case is whether the petitioner applied for the job of Animal Husbandry Assistant as a Scheduled Tribes candidate or not.*

*The respondent-State is directed to produce the original record including the application form of the petitioner.*

*List on 07.01.2015.”*

Thereafter on 7<sup>th</sup> January, 2015 when the record was produced, this application was not produced. Then we have passed the following order:-

*“On 10<sup>th</sup> December, 2014 we had directed the State to produce the original record including the application form of the petitioner applying for the job. The said application form has not been produced.*

*List the matter on 18<sup>th</sup> February, 2015.*

*The original record including the application form be positively produced on the said date, failing which we may be forced to take action against the officials who do not produce the record.”*

**16.** That original application has not been produced till date. The only explanation given is that no application was there because it was on the recommendation of the Minister. We have already held above that the recommendation of the Minister was not with regard to people who had not been selected in the first batch

and he had made some recommendation about people who were lower down in the list.

**17.** Therefore, the order terminating the services of the petitioner has to be quashed. This brings us to the question as to what relief should be granted to the petitioner. The services of the petitioner were terminated in the year 2010 and we have been informed that he would have superannuated on 31<sup>st</sup> January, 2015 therefore, he cannot be reinstated in service. We, therefore, grant the following reliefs:-

- i. The order dated 3<sup>rd</sup> July, 2010 terminating the services of the petitioner is quashed.
- ii. The petitioner shall be treated to be in service upto 31<sup>st</sup> January, 2015 but shall only be entitled to 50% of the back wages.
- iii. The services of the petitioner from 3<sup>rd</sup> July, 2010 to 31<sup>st</sup> January, 2015 shall however be reckoned in full for computation of pension and other retiral benefits.
- iv. The entire monetary and retiral benefits be paid to the petitioner latest by 30<sup>th</sup> June, 2015 failing which the State shall be liable to pay interest @ 9% per annum, from today.

**18.** The writ petition accordingly stands disposed of in the aforesaid terms.

**JUDGE**

**CHIEF JUSTICE**