

THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 99 of 2011

Shri Bidhu Bhusan Das
S/O. Late Siddhiram Das,
Assistant Teacher,
Subhashnagar H.S. School (Pr. Section),
P.O. Subhashnagar, Bishalgarh, West Tripura,
(Now removed from service)

..... *Petitioner*

- Vs. -

1. The State of Tripura,
Represented by the Secretary and Commissioner,
Department of School Education,
Government of Tripura,
Capital Complex, Agartala – 799006.
2. The Principal Secretary to the
Government of Tripura (Education Department),
New Capital Complex,
Agartala – 799006, West Tripura.
3. The Director of School Education,
Government of Tripura,
Agartala – 799001.

..... *Respondents*

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

For the Petitioner	: Mr. S.M. Chakraborty, Sr. Advocate. Ms. P. Sen, Advocate.
For the respondents	: Ms. A.S. Lodh, Addl. GA.
Date of hearing & delivery of Judgment & order	: 07.04.2015.
Whether fit for reporting	: No

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has challenged the order dated 26.11.2007 whereby the petitioner is removed from service as well as the order of the appellate authority dated 27.01.2011 rejecting his appeal.

2. The facts of this case are very interesting. The petitioner indisputably is one Shri Bidhu Bhusan Das, Son of Late Siddhiram Das. He on the basis of his education qualifications was appointed to the post of Assistant Teacher on 19.06.1978. It is also not disputed that in February, 1985, the younger brother of the petitioner namely, Shri Jagadish Chandra Das secured employment in the Education Department as a Lower Division Clerk. Interestingly, Jagadish Chandra Das got appointment not in his own name, but impersonating himself to be Bidhu Bhusan Das and he also produced the educational qualification certificates of Bidhu Bhusan Das while obtaining the job.

3. It appears that some complaint was made and a notice was issued to the petitioner to produce his original certificates and thereafter, the petitioner filed a criminal complaint on 05.02.1987 against his brother that his brother had stolen his educational qualification certificates. On the basis of the criminal complaint, criminal proceedings were initiated against the brother, but finally,

the brother Jagadish Chandra Das was acquitted in those proceedings on 29.12.1995.

4. Thereafter, in the year 1999, disciplinary proceedings were initiated against both the brothers. The charge framed against the petitioner reads as follows:-

"Article-I

That Sarvasree Bidhu Bhusan Das secured job under Education Department in the post of Assistant Teacher on 19-6-78 and posted to Kamalpur J.B. School under Inspector of Schools, Belonia, South Tripura (now at Subhasnagar High School (pry. Section) and his younger brother Sri Jagadish Chandra Das also secured job as Lower Division Clerk Madhuban(Dukli) H.S. School under this department in the same name of Sri Bidhu Bhusan Das on 23.2.85 on the strength of the same Educational Certificates. This undoubtedly indicates a very desperate and deceiving role played by them in the connivance of both the brothers. These two brothers have possessed the same name and by way of impersonation they achieved their unlawful goal."

5. This inquiry was decided in favour of the present petitioner and the inquiry officer held as follows:-

"The D.Ws also deposed that they did not hear that the A.O. helped his younger brother by handing over his educational certificates and other documents to secure govt. job. So suspicion can not take place of proof. As soon as the A.O. came to know about the matter, he at once filed F.I.R. in P/S and intimated his department."

6. It appears that there was another inquiry against the other brother also, but the record of that is not available before us.

7. On 2nd November, 2004, a fresh inquiry was initiated against the petitioner Bidhu Bhusan Das and the charge against

the petitioner was that he was not the actual owner of the educational certificates on the basis of which he had obtained employment as Assistant Teacher and the crux of the charge was that it was the petitioner who had impersonated and misused the educational qualifications of his brother. Before the inquiry officer the petitioner raised a plea that the second inquiry was not maintainable and this plea has been brushed aside on the ground that the previous inquiry was on a different point. We are not at all in agreement with this finding. Basically, the issue even in the first inquiry was whether the petitioner had connived with his brother to get his employment for his brother. In the second inquiry the only difference is that now it is alleged that the petitioner misused the certificates. The factual background with regard to both the inquiries is the same. Merely because out of the same facts another charge is being developed does not permit second inquiry to be held. A second inquiry must be based on fresh set of circumstances or some fresh material brought on record. The only fresh material brought on record is that the brother whose service was ordered to be terminated was ordered to be reinstated by the judgment of this Court.

8. In 2003 the services of the brother of the petitioner were terminated by passing an order of termination simpliciter and thereafter, inquiry proceedings were initiated against the petitioner in the year 2004. The order of the learned Single Judge of the

Gauhati High Court is dated 05.12.2007 after the inquiry proceedings were initiated and cannot be made the basis of initiating inquiry proceedings. This Judgment was never challenged by the State in any proceedings. In an event in W.P.(C) No.381 of 2003 filed by the brother the same has been allowed not on the merits, but only on the ground that though the order of termination appeared to be an order of termination simpliciter, it was a stigmatic in nature and therefore, could not have been passed without holding inquiry against the brother. This is not an order on the merits of the case.

9. The inquiry officer in the inquiry proceedings out of which this petition arises has clearly held as follows:-

"In the result, I can come to a conclusion that A.O. is the actual owner of the certificates, in question. Since it has not been contradicted from any other corner on a solid basis. As such, I find force to give the answer on this point against the prosecution."

He therefore decided this issue against the department and held that the petitioner was the owner of the documents. This means that the petitioner had rightly obtained the job.

10. Despite holding so, the learned Commissioner, Departmental inquiries held as follows:-

"Though it appears that A.O. came to know about the theft of his educational testimonials in September/October, 1985, he did not lodge FIR at that time. A.O. lodged FIR about the theft on 5.2.1987 i.e. after one and half year and he did this when I/S Belonia asked him to submit his

educational testimonials vide letter dated 22.1.1987 (Ex.P.3).

By this it is proved that A.O. consciously kept silent leading to the conclusion that A.O. was directly associated with the offence. Even A.O. did not inform his higher authority being a govt. servant immediately after his knowledge about the incident of theft of his educational testimonials. It indicates that both of them i.e. A.O. and his younger brother played a deceiving role in the matter of securing job as A.T. and LDC respectively under Education Department."

He therefore, held that the petitioner had deceived the Government by enabling his brother Jagadish Chandra Das to secure Government job as LDC in the name of the petitioner i.e. Bidhu Bhusan Das.

11. It is, thus, clear that what the inquiry officer has held that the certificates are those of the petitioner. The charge against the petitioner in the present inquiry was only that he had misused the certificates of his brother, but that charge was not proved. How could the inquiry officer have created another charge which was not there on record? Furthermore, as held by us above, the charge of the petitioner conniving with his brother had already been decided in favour of the petitioner in the previous inquiry and the second inquiry officer had no business of entertaining this dispute for the second time. Even the conclusion arrived at by the inquiry officer that there was connivance between the two brothers is based on no evidence whatsoever. It is based only on a surmise that without such connivance the second brother could not have

got a job. The inquiry officer has not even dealt with the defence raised by the petitioner that his brother had stolen his certificate.

12. Therefore, we are clearly of the view that the orders under challenge are wholly illegal and are liable to be set aside. They are accordingly, set aside. The petitioner is ordered to be reinstated in service.

13. It is stated that in the mean time the petitioner has attained the age of superannuation. Therefore, we direct that petitioner shall be paid 50% of his wages till the date of his retirement. This entire period shall be counted towards pension and grant of other retiral benefits and with effect from the date of his retirement he shall be entitled to full pension and other retiral benefits. The entire amount due and payable to the petitioner on account of arrears of 50% both wages, pension and other retiral benefits be paid to the petitioner by 30th September, 2015 failing which the State shall be liable to pay interest @ 12% per annum from the date of retirement of the petitioner till payment of the amount.

JUDGE

CHIEF JUSTICE

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