

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P. (C) No.274 of 2012

Shri Pabitra Chandra Majumder,
Graduate Teacher,
Akshoymani Dhanichera High School,
Kanchanpur, North Tripura.

At present Residing at:
Shri Pabitra Chandra Majumder,
Son of Shri Pirtu Chandra Majumder
Village and P.O. - Machmara,
P.S. Pecharthal, District North Tripura.

.....**Petitioner**

- V E R S U S -

1. ***The State of Tripura,***
Represented by the Chief Secretary
Government of Tripura, New Secretariat Complex,
P.O. Kunjaban, Agartala, West Tripura
2. ***The Secretary,***
School Education, Government of Tripura,
New Secretariat Complex,
P.O. Kunjaban, Agartala, West Tripura
3. ***The Director of School Education***
Government of Tripura, Agartala, Tripura
4. ***The Headmaster***
Akshoymani Dhanichera High School,
Kanchanpur, North Tripura, P.O.-Dhanichera.

.....**Respondents.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA**

For the petitioner	: Mr. A. Dasgupta, Advocate.
For the respondents	: Mr. S. Chakraborty, Addl. G.A
Date of hearing & delivery of judgment and order	: 01.10.2015
Whether fit for reporting	: Yes

Judgment and Order (Oral)

The short question which arises in this writ petition is whether the services of an employee who has obtained a false Scheduled Caste (*hereinafter referred to as, "SC"*) or Scheduled Tribe (*hereinafter referred to as "ST"*) certificate can be terminated even if he has obtained service without taking benefit of that false certificate.

2. The admitted facts are that in the year 1982 the petitioner obtained a certificate showing that he belongs to the 'Namasudra' community which is a SC community. It would be pertinent to mention that the petitioner himself has clearly admitted that he does not belong to the 'Namasudra' community and according to him, he had obtained this certificate "out of curiosity". We do not understand what is the meaning of the phrase, "out of curiosity" in respect of obtaining a false SC certificate.

3. However, the allegation of the petitioner is that though he had obtained a false SC certificate he never obtained employment on the basis of the false SC certificate. The case of the petitioner as set out in the petition is that he was appointed as Assistant Teacher under the general category and he has always been treated to be a member of the general category. According to the allegation made in the petition and supported by the documents, the case of the petitioner is that neither did

he obtain the initial appointment by showing himself to be a member of the SC community nor did he get any benefit thereafter of being a member of the SC community. Along with the petition the petitioner has attached a copy of the order of the State Level Scrutiny Committee (*hereinafter referred to as "the SLSC"*) and in para 2 of the order, it has been held as follows:

"2.Sri Pabitra Ch. Majumder is now working as Asstt. Teacher under Education Deptt. Govt. of Tripura and was appointed against un reserved post."

5. Even before the authorities and the SLSC the petitioner had not denied the fact that the certificate issued in his favour was wrong. His case throughout has been that he had never taken any advantage of that false certificate. The SLSC on the basis of the admission of the petitioner ordered cancellation of the SC certificate issued in favour of the petitioner. This order of the SLSC was passed on 12.03.2007. Thereafter, on 24.08.2011, a memo was issued to the petitioner asking him to show cause why his services should not be terminated in view of the false SC certificate. The petitioner filed reply to the memo and again reiterated that though the SC certificate may be false and incorrect; he has never obtained any benefit of the same either at the time of his initial appointment or at any later stage of his service.

6. Finally, an order was passed on 15.09.2011 terminating him from service in exercise of power vested under Section 8(11)(a) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (*hereinafter referred to as "the Act"*). It would be pertinent to mention that in the order though the word 'Rule' is mentioned, it is apparent that the reference is to the provisions of the Act and not to the provisions of the Rules.

7. The State has filed counter affidavit to the petition and there is no specific denial to the allegation of the petitioner that he was appointed against an unreserved post. However, what has been stated in the reply is that in the service record of the petitioner he is shown to be a member of the SC community.

Relevant portion of the reply reads as follows:

"15. That in regard to the statement made in paragraph 13 of the writ petition it is stated that as per record available to this Department its proved that Sri Majumder, G.T. had managed to secure the job of Graduate Teacher under the Directorate of School Education in the year 1990 on the strength of his false S.C. Certificate from the Reserved Post of S.C. category by misleading the Appointing Authority and accordingly as per the guide line contained in sub-rule 11(a) rule 8 of the Tripura Scheduled Caste and Scheduled Tribes Reservation Act, 1991 and also in exercise of power conferred by sub-rule 9 of Rule 7(A) of the Tripura Scheduled Caste and Scheduled Tribes Reservation Rules, 1992 and finally on application of mind service of the petitioner was terminated."

8. We had called upon the State to produce the original record which has not been produced. Other than relying upon the Service Book the State has not been able to produce any record to show that the petitioner had obtained service on the basis of the false SC Certificate. The respondents have relied upon some offer of appointment and posting thereof, dated 05.11.1990, which is after the original offer of appointment dated 28.04.2000. This appears to be a joint letter. No doubt, in this letter the petitioner is shown to be belonged to the SC community but no material has been placed on record to show that the petitioner obtained appointment as a member of SC community.

9. Section 8 (11) (a) of the Act reads as follows:

“8. Offences and Penalties:

.....

(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;”

The Section clearly lays down that whoever obtains any appointment to any service or post on the basis of a false SC or ST certificate shall on cancellation of that certificate be

forthwith terminated from the service or post. Therefore, the *sine qua non* is that firstly, the person whose services are sought to be terminated must be shown to have obtained appointment as a reserved category candidate. Secondly, it must be shown that his certificate is false and he does not belong to the SC or ST community and lastly, it will have to be shown that his certificate has been canceled. In case these three conditions are met then alone can sub-section 11(a) be resorted to.

10. In the present case, the State has failed to prove before us that the petitioner had obtained appointment under the reserved category and therefore, we are clearly of the view that sub-section 11(a) would not be applicable in the facts and circumstances of the present case. Even the Scrutiny Committee, which is finally arbiter in the matter, has relied upon the report of the Vigilance Cell in which it has been clearly stated that the initial appointment was not against the reserved category. Therefore, we are of the considered view, that sub-section 11(a) was inapplicable in the facts and circumstances of the present case.

11. Consequently, the impugned order is totally without jurisdiction and is liable to be set aside and the order is accordingly set aside. The petitioner is directed to be reinstated in service with 50% back wages. The order of reinstatement be passed latest by 31st December, 2015 and the wages be also

paid by this date failing which the State shall be liable to pay interest @ 12% per annum from today till payment of the amount.

12. Though the petitioner has been awarded 50% back wages only for this intervening period, the petitioner shall be deemed to be in service for all other purposes such as seniority, promotion, fixation of pay, calculation of retiral benefits, etc.

With the aforesaid observations and directions, the writ petition stands disposed of. No costs.

JUDGE

CHIEF JUSTICE

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