

THE HIGH COURT OF TRIPURA
AGARTALA

CONT. CAS(C) 16 of 2013

- 1) **No.97051201 Sub(GD) Shri Raju Ghosh**,
son of late Ranjit Ranjan Ghosh, of Village-
Chandrapur (Dhaleswar Road No.11), PO-
Dhaleswar, P.S.-East Agartala, Agartala, District-
West Tripura, and posted as Subedar (GD), in the
12th Battalion of TSR.
- 2) **No.97010050 Sub(GD) Sri Kamal Karmakar**,
son of Late Ramesh Chandra Karmakar, of village-
Pabia Cherra Bazar, PO & PS- Kumarghat, District-
North Tripura, PIN-799264, as posted as
Subedar(GD), in the 2nd Battalion of TSR.
- 3) **No.97010050 Sub(GD) Sri Bhanu Debnath**,
son of Late Bihari Debnath, of village- Basudebpara,
PO-Kulai Bazar, PS- Ambassa, District- Dhalai
Tripura, PIN-799204, and posted as Subedar(GD),
in the 6th Battalion of TSR.
- 4) **No.92020659 Sub(GD) Tajul Islam**,
son of Late Abdul Chattar, of village- Dudhpuskarini,
PO-Mag Pusharini, PS-RK Pur, Udaipur, District –
South Tripura, and posted as Subedar(GD), in
the 7th Battalion of TSR.
- 5) **No.97010004 Sub (GD) Sri Ranadhir Das**,
son of Late Rohini Kumar Das, of village- Ambedkar
Nagar, PO & PS- Kumarghat, District- North Tripura,
PIN- 799264, and posted as Subedar(GD), in the 7th
Battalion of TSR.
- 6) **No. 97040004 Sub(GD) Sri Kamala Kanta Sinha**,
son of Sri Barada Kanta Sinha, of village- Narayan
Khamer, PO- Surjyamaninagar, PS-Amtali, District-
West Tripura, PIN-799130, and posted as Subedar
(GD), in the 5th Battalion of TSR.

... **Petitioners**

- **Versus** -

1. **Shri Banamali Sinha, IAS**,
the Principal Secretary to the Government of
Tripura, General Administration (Personal &
Training) Department, having his office at
Secretariat Complex, P.O.- Kunjaban, Subdivision-
Agartala, District- West Tripura.

2. **Shri Y. Kumar, IAS**,
the Secretary to the Government of Tripura, Home
Department, having his office at Secretariat
Complex, P.O.- Kunjaban, P.S. West Agartala, Sub-
Division- Agartala, District- West Tripura.
3. **Shri Shantunu Das, IAS**,
the Secretary to the Government of Tripura,
S.C. Welfare Department, having his office at
Secretariat Complex, P.O.- Kunjaban, P.S. West
Agartala, Sub-Division- Agartala, District- West
Tripura.
4. **Shri Laihila Darlong, IAS**,
the Secretary to the Government of Tripura, Tribal Welfare
Department, having his office at Secretariat Complex, P.O.
Kunjaban, P.S. West Agartala, Sub Division- Agartala,
District- West Tripura.
5. **Shri Sanjoy Sinha, IPS**,
Ex-Director General of Police, Tripura, residing at
Quarter No. 6/3, Kunjaban Quarter Complex, P.O.-
Kunjaban, Agartala, District- West Tripura, PIN
799006.
At present residing at: NW-70GF, Personal Floor,
Malibu Towne, Sohna Road, Gurgaon, Haryana,
PIN 122103.
6. **Smti. Alpana Sengupta, Chairman**,
Tripura Public Service Commission, having her office at
Akhaura Road, P.O. Agartala, P.S. West Agartala, Sub
Division- Agartala, District- West Tripura.

... **Respondents**

BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioners	: Mr. Somik Deb, Advocate Mr. S. Lodh, Advocate
For the State respondent	: Ms. AS Lodh, Addl. GA
For respondent TPSC	: Mr. SK Deb, Sr. Advocate
Date of hearing & delivery of Judgment and Order	: 26.06.2015
Whether fit for reporting	: YES / NO

JUDGEMENT AND ORDER (ORAL)

Heard Mr. S.Lodh as well as Mr. Somik Deb, learned counsel appearing for the petitioners and Ms. AS Lodh, learned Additional Government Advocate appearing for respondent no.1 to 5 and Mr. SK Deb, learned senior counsel appearing for the respondent no.6.

2. The instant contempt petition is filed by the petitioners for initiating contempt proceedings against the respondents for their willful violation and deliberate disobedience of the order of this Court dated 02.03.2013 wherein this Court upheld the judgment of the learned Single Judge dated 30.11.2011 in WP(C) No. 195 of 2010 and WP(C) No. 440 of 2010. The learned Single Judge, disposed of those writ petitions with the following directions:-

“(i) Departmental Promotion Committee (DPC) is directed to first consider promotion of the writ petitioners in WP(C) 195 and 440 of 2010, to fill the vacancies of TPS Grade-II Officers;

(ii) DPC shall consider the case of the private respondents in the second round; and

(iii) Relaxation given by the government under notification dated 9th March, 2010 shall be confined to only the 51(fifty one) posts of TPS Grade-II Officers and that too after first considering eligible officers on the basis of merit prescribed in Rule 14 of the TPS Rules, i.e. prior to relaxation notification;

(iv) The relaxation notification shall not be applied in any case after filling 51 (fifty-one) posts of TPS Grade-II Officers”.

3. Before going to the merits of this contempt petition, it would be proper for this Court to discuss about the factual aspects as to how the present contempt petition came up before this Court and as such, the following factual aspects are discussed briefly,-

3.a) The petitioners are Subedars in Tripura State Rifles and they have challenged the office memorandum dated 19th February,2010 and notification dated 9th March,2010 whereby Principal Secretary to the Government of Tripura submitted a memorandum to Council of Ministers for relaxation of Tripura Police Service Rules, 1963 (TPS Rules) more particularly, Rule 14 of the Rules and on the basis of the said memorandum, impugned notification dated 9th March,2010 was published. By this notification, Government has relaxed the qualifying service, educational qualification as well as the age of the feeder cadre officers for promotion to the rank of TPS Grade-II Officers.

3.b) The grievance of the petitioners in the writ petitions was that, initially, police officers and subedars were governed by different sets of Rules. Police officers were governed by TPS Rules whereas Subedars were governed by Tripura State Rifles Act,1983 and Rules (in short TSR Rules). By way of 12th amendment in TPS Rules, made in the year 2006, Rule 5 was amended and Subedars were merged with police officers. Similarly by way of amendment of Rule 14 of TPS Rules, eligibility criteria for recruitment of Grade-II Officers were also changed. Before the amendment of TPS Rules, there was only one feeder cadre being Inspector of Police for promotion to Grade-II and the said officer in the feeder cadre were required to possess two years of continuous service. TPS Grade-II officers were recruited from two sources- 50% posts were filled by way of direct recruitment and 50% by way of promotion from amongst Inspectors of Police. Although quota for direct recruitment remained same,

however, in the feeder cadre, Subedars were also brought in at par with Inspectors of Police. After such amendment, eligibility criteria was modified to the extent that feeder cadre officers had to have five years of continuous service, graduation as minimum educational qualification and fixation of 53 years as the outer age limit for promotion to Grade-II officers. All these three basic criteria have been relaxed by the notification dated 09.03.2010. This notification has been issued in exercise of powers conferred under Rule 34 of TPS Rule, 1967, which is reproduced below:-

“ In exercise of the powers conferred by rule 34 of the Tripura Police Service Rules, 1967, the Governor, in consultation with the Tripura Public Service Commission, is pleased to order that by a one time relaxation of the eligibility criteria as prescribed in rule 14 of the Tripura Police Service Rules, 1967 for promotion of Inspectors of Police and Subedars of TSR Battalions to the rank of TPS Grade-II, 51 (fifty-one) vacant posts of TPS, Gr.II shall be filled by the eligible Inspectors of Police and Subedars of TSR Battalion according to the following eligibility criteria:

- (i) Inspectors of Police & Subedars of TSR Battalion having 3 years of service in the Grade.**
- (ii) Educational Qualification in respect of Inspectors of Police & Subedars of TSR Battalions shall be Higher Secondary (+2) passed.**
- (iii) Inspectors of Police & Subedars of TSR Battalions who have attained 53 years of age or above”.**

3.c) After such relaxation, officers from both the feeder cadres, i.e. regular police officers and Subedars became eligible for promotion only after three years of service in the feeder cadre having Higher Secondary educational qualification and there being no age limit.

3.d) The writ petitions filed by the petitioners being WP(C) No. 195 of 2010 and WP(C) No. 440 of 2010 were contested by the State respondents and after hearing the parties, the learned Single Judge passed the order, as stated supra, which was also upheld by this Court in Writ Appeal No. 23 of 2012, Writ Appeal No. 32 of 2012 and Writ Appeal No. 33 of 2012. After the order of this Court, in the writ petitions, the respondents constituted selection committee and considered the case of the petitioners by the DPC held on 30.05.2013. Thereafter, the petitioners filed a fresh writ petition being WP(C) 157 of 2013 seeking the following reliefs:-

"RELIEFS SOUGHT FOR:-

In the premises whereof, it is most humbly and respectfully submitted that Your Lordships would be graciously pleased to:-

- I) Issue Rule, calling upon the official respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for directing them, to transmit the records, relevant to the subject matter of this WP, for rendering substantive and conscionable justice to the petitioners, and for quashing/setting aside the impugned Notification dated 05.06.2013 (Annexure-P6 supra) insofar as it relates to the promotion of the private respondents, to the post of TPS Grade-II(Group-A Gazetted), by relaxing the statutory mandate, contained in Rule 14 of the Tripura Police Service Rules, 1967, without promoting the petitioners, and thereby have superseded them;
- II) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, or mandating/directing the official respondents, to promote the petitioners, to the post of TPS Grade-II (Group-A Gazetted), without relaxing the statutory mandate, contained in Rule 14 of the TPS Rules, in strict conformity with the Judgment & Orders dated 30.11.2011 and 02.03.2013 (Annexure-P4 & Annexure-P5 respectively supra);
- III) Issue Rule, calling upon the official respondents and each one of them, to show cause as to why a Writ/Direction/Order and/or in the nature thereof, shall not be issued, for mandating/directing them, to act in strict conformity with the Judgment & Orders dated 30.11.2011 and 02.03.2013 (Annexure-P4 & Annexure-P5

respectively supra), and thereby, rescind/revoke the impugned Notification dated 05.06.2013 (Annexure-P6 supra) insofar as it relates to the promotion of the private respondents, to the post of TPS Grade-II (Group-A Gazetted), by relaxing the statutory mandate, contained in Rule 14 of the Tripura Police Service Rules, 1967;

IV) Issue Rule, calling upon the official respondents and each one of them, to show cause as to why a Writ/Direction/Order and/or in the nature thereof, shall not be issued, holding them guilty of willful and deliberate violation of the Judgment & Orders dated 30.11.2011 and 02.03.2013 (Annexure-P4 & Annexure-P5 respectively supra), in exercise of the Plenary Jurisdiction, conferred upon this Hon'ble High Court, under Article 215 of the Constitution of India;

V) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not issued, for restraining/prohibiting the official respondents, from acting in any manner, in furtherance of the impugned Notification dated 05.06.2013 (Annexure-P6 supra) where through the private respondents have been promoted, to the post of TPS Grade-II (Group-A Gazetted), by relaxing the statutory mandate, contained in Rule 14 of the TPS Rules;

VI) In the Ad-interim, and thereafter, on hearing the parties, in the Interim, an Order, in terms of Prayers ii) and iii) above;

VII) Call for the records, appertaining to this petition;

VIII) After hearing the parties, be pleased to make the Rule Absolute in terms of I. ii. iii. & iv. Above;

IX) Costs of and incidental to this proceeding;

X) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;

A N D

For this gracious act of kindness the humble petitioners above named *SHALL AS IN DUTY BOUND EVER PRAY.*"

Thereafter, the petitioners filed the instant contempt petition.

4. Mr. Lodh, learned counsel while urging for initiating a contempt proceedings submitted that even from the affidavit-in-opposition of the respondents any reasonable person would come to a conclusion that the respondents have violated the Court's order with an oblique motive just to deprive the petitioners of their benefits and to frustrate the court's order. He also contended that this Court, while passing the order in the writ petition directed the respondents

to first consider the case of the petitioners and, thereafter, the DPC shall consider the case of the private respondents in the second round and the relaxation given by the government under notification dated 09.03.2010 which was impugned in the writ petition shall be confined to only 51 (fifty-one) posts of TPS Grade-II officers and that to after considering the eligible officers on the basis of Rule 34 of TPS Rule, 1967 i.e. prior to relaxation of the notification, which has been done intentionally to provide benefit to others, thus they have violated the court's order.

5. On the other hand, Ms. Lodh, learned Additional Government Advocate appearing for respondent nos. 1 to 5 submitted that the selection committee have considered 51 (fifty-one) posts first and amongst these 51 posts 18 posts (36%) were from TSR Battalion (SC 4+ ST 8+ UR 6 = 18). All the petitioners belonged to UR category. In no circumstances, the representation of UR category exceeds 12 though the petitioners were also in the zone of consideration. She, however, submits that the respondent no.2 was not present in the DPC meeting.

On the other hand, Mr. Deb, learned senior counsel appearing for respondent no.6, Chairman, Public Service Commission relied upon paragraph 15 of the affidavit of the said respondent, which is as follows:-

“15. The fact as revealed from the proceedings of the Meeting of the Review Selection Committee held on 30.05.2013 at 4.00 P.M. in the office chamber of the respondent No.6 considered the operative portion of the judgment of the Hon'ble Court in WP(C) No. 195 of 2010 and WP(C) No. 440 of 2010. The quota for representation for Inspector of police being 64% while that of Subedar of TSR is 36% and for consideration for appointment for

promotion from amongst the Subedars of TSR; inter se seniority of the Subeder of TSR was taken into consideration which reveals the inter se seniority of petitioners at Serial Nos. 30, 37, 40, 33, 34 and 39 respectively. By the judgment and order passed on 30.11.2011 as affirmed by the judgment and order passed on 02.03.2013 in Writ Appeal Nos. 23 of 2012 and 33 of 2012, even though relaxation order passed on 09.03.2010 was ordered to be applicable only to the 51 posts subject to the rider that the first exertion would be from consideration of the eligible candidates if found eligible and that being so, the Selection Committee took into consideration the respective service data and quota for UR candidates having been confined to under the Rules of 1967 read with Act of 1991 being 36% of the said 51 nos. of posts, the quota for TSR personnel fell to 36% of the said 51 nos. of posts and the roster point for appointment from amongst the UR candidates covered only upto the seniority Serial No.28. All being beyond the seniority Serial No. 28 could not be recommended for appointment to the post of TSR Grade II from the quota for appointment on promotion from amongst the Subedars of TSR. Hence no recommendation could be made in favour of the petitioners.

In the premises, the petition is liable to be dismissed.”

6. Question arises before us as to whether the respondents had willfully and deliberately flouts the court’s order passed in the writ petitions which was upheld by the Division Bench.

7. In the prayer of the writ petition being WP(C) 157 of 2013, it appears that in both the petitions, the petitioners prayed for holding the respondents guilty of willful and deliberate violation of the judgment and order dated 30.11.2011 and 02.03.2013 passed in the writ petitions and writ appeals, respectively. Admittedly, the writ petition being WP(C) 157 of 2013 was filed earlier than the instant contempt petition. It also appears from the affidavit of the respondents that they have complied with the order of this Court according to their own understanding, which will be evident from the affidavits of respondent nos. 1 to 4.

8. We have gone through the judgment of the Apex Court in ***All Bengal Excise Licensees' Association vs. Raghabendra Singh and others***, reported in ***(2007) 11 SCC 374*** as referred by Mr. Lodh. According to us the fact of the said decision is totally different then the case in hand. In that case, the alleged contemnors were provided an opportunity to consider whether they were prepared to cancel the lottery held on 20.03.2005, 21.03.2005 and 22.03.2005 but the respondents did not agree to cancel the lottery meaning thereby in that case the respondents were given a full opportunity to comply the court's order in true sense but willfully they did not comply the order. In the instant case, admittedly the respondents complied the court's order to their own understanding and, thereafter, the present petitioners also filed one writ petition before filing this contempt petition.

9. By this time, it is settled position of law that every violation of the court's order cannot be treated as contempt unless the said order is violated intentionally or with oblique motive to frustrate the the order of the court or lower down majesty of the court. The weapon of contempt is only to maintain the dignity of the majesty of law and not to execute the direction or implementing the court's order for which alternative remedy in law is prescribed. In the contempt petition, the court cannot test the correctness or otherwise of the order or give additional direction. An aggrieved party like the present petitioner has no right to insist that the court should exercise such jurisdiction of contempt, as contempt is between the contemnor and the court.

10. In ***Dr. Pradip kumar Biswas vs. Subrata Das & ors.*** reported in ***(2004) 4 SCC 573***, the Apex Court hold that “the contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the court of law. It is also settled position of law that contempt court cannot convert it as a writ court as well as the appellate authority of the said writ court and to see the correctness of the order, contempt court can only see whether the order of the court for which contempt petition has been filed has been flouted intentionally or not and the delay if any, for compliance is reasonable or not. If the non-compliance and delay for compliance are not intentional then it would not be proper for the contempt court to initiate any proceeding and punish the respondents as asked for by the petitioner.”

11 In ***J.S. Parihar vs. Ganpat Duggar and others***, reported in ***(1996) 6 SCC 291***, the Apex Court specifically held that:-

“Once there is an order passed by the government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions but that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. However, that cannot be considered to be the willful violation of the order”.

11. In the instant case, admittedly the petitioners filed a writ petition for quashing the notification dated 05.06.2013 wherein some of their junior Subedars of TSR Battalion and Inspector of Police were promoted to the Grade-II as per the decision of the DPC and not only that they have also prayed for an order for holding the respondents therein guilty of willful and deliberate violation of the judgment and order passed in the writ petition, upheld by the appellate Court.

12. The decision of **J.S. Parihar** (supra) was considered by the Apex Court in **Bihar State Government Secondary School Teachers Association vs. Ashok Kumar Sinha and others**, reported in **(2104) 7 SCC 416**, wherein the Apex Court held as follows :

“24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out.”

13. As in the instant case, according to us, the respondents have substantially complied with the order of this Court as they understood it. We are of the considered opinion that the respondents had no intention or oblique motive to flout the court's order. Thus, no case is made out for initiating any contempt proceedings against the

respondents, as from the order of the respondent. According to us, a new cause of action arises for the petitioners to avail the opportunity for filing an appropriate petition before the appropriate authority.

14. With this observation, the instant contempt petition is closed. No order as to costs.

JUDGE

JUDGE

Saikat