

THE HIGH COURT OF TRIPURA AGARTALA

WA 42 of 2014

Sri Paritosh Patari,

Son of Late Nabadwip Patari,
resident of village-South
Takmacharra, District-West
Tripura and presently residing
at C/O Smt. Supriti Sen at
Dhaleswar Road No. 1, PO-
Dhaleswar, P.S. East Agartala,
District-West Tripura.

..... Petitioner-Appellant

Versus

1. The State of Tripura,

represented by the Secretary-cum-
Commissioner, Education
Department, Government of Tripura,
New Secretariat Complex, PO & PS
Kunjaban, Agartala, West Tripura.

2. The Chairman,

Special Secretary, S.C. and O.B.C.,
Welfare Department, Government of
Tripura, Civil Secretariat, New
Secretariat Complex, P.O. & P.S.-
Kunjaban, Agartala, West Tripura.

3. The Director,

S.C. and O.B.C., Welfare Department,
Government of Tripura, Gurkhabasti,
P.O. & P.S.-Kunjaban, Agartala, West
Tripura.

4. The Director of Higher Education,

Government of Tripura, P.O. & P.S.-
Agartala, District-West Tripura.

5. The Sub-Divisional Magistrate,

P.O. P.S. and Sub-Division-Belonia,
South Tripura District.

..... Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE UB SAHA

For the petitioner : Mr. Somik Deb, Advocate
For the respondents : Mr. S Chakraborty, Addl. GA
Date of hearing : 30.07.2015.
Date of delivery of
judgment & Order : **01.10.2015.**
Whether fit for reporting : **Yes.**

JUDGMENT AND ORDER

(*Saha J.*)

This intra court appeal is directed against the judgment and order of the learned Single Judge dated 28.11.2013 in WP(C)271/2011 wherein the learned Single Judge dismissed the writ petition holding that there is no infirmity in the procedure adopted by the State Level Scrutiny Committee (**for short, 'SLSC'**) in canceling the Scheduled Caste (SC) certificate held by the petitioner-appellant (**hereinafter referred to as 'writ petitioner'**) and also did not interfere with the order of termination.

2. Heard Mr. Somik Deb, learned counsel for the appellant-writ petitioner as well as Mr. S Chakraborty, learned Addl. GA appearing for the respondents.

3. Facts required to be discussed for disposal of the instant appeal are as follows:

The writ petitioner being a member of the 'Mahisya Das' Community applied for a Scheduled Caste certificate to the Sub-Divisional Officer, Belonia, South Tripura and consequent thereto, a

Scheduled Caste certificate was issued in favour of the petitioner on 23.12.1981. On the basis of the aforesaid SC certificate, the petitioner got appointed to the post of Lower Division Clerk (LDC) by the Director of School Education against SC quota. Thereafter, he was promoted to Upper Division Clerk (UDC) and while he was functioning as UDC, the Director for Welfare of Scheduled Castes and OBCs, Tripura, Agartala issued a show cause notice on 22.11.2005 directing him to represent his case in writing in connection with the report of the Vigilance Cell wherein it was mentioned that the petitioner did not belong to the SC community. On 01.09.2010 the petitioner stating all the aforesaid facts filed a writ petition being WP(C)386/2010 challenging the show cause notice dated 22.11.2005 and the said writ petition was disposed of at the motion stage with a direction to the petitioner to file the appropriate application before the SLSC (Director for Welfare of SC and OBCs) stating his grievances as stated in the writ petition and deciding the issue in accordance with law. Thereafter, the petitioner filed a petition before the SLSC and the SLSC after taking evidence of the witnesses of both sides vide order dated 21.05.2011 canceled the SC Certificate issued in favour of the petitioner on 23.12.1981 and also directed him to return the original SC certificate to the Director for Welfare of SCs and OBCs.

4. After cancellation of the SC certificate, the Director of Higher Education, Govt. of Tripura, vide memorandum dated 16.06.2011 (Anenxure-4 to the writ petition) asked the petitioner to

show cause, as to why disciplinary proceedings shall not be initiated as per provisions of the CCS(CCA) Rules, 1965 within 15 days from the date of receipt of the memorandum. In the aforesaid memorandum, the petitioner was also cautioned that in case of failure to reply, *ex-parte* decision would be taken against the petitioner. Later on, without initiating any disciplinary proceeding and taking resort to sub-rule (9) of Rule 7A of the of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992 (**for short, "Rules"**) which provides that when the Scrutiny Committee holds that the certificate obtained was not genuine, the appointing authority may cancel the appointment without any further notice to the certificate holder, the said appointing authority has terminated the service of the petitioner vide order dated 02.07.2011 (Annexure-H to the writ petition).

5. Being aggrieved by the order of cancellation of the SC certificate by the SLSC and the order of termination, the petitioner preferred a writ petition which was registered as WP(C)271/2014. The case of the petitioner before the learned Single Judge was that the Sub-Inspector of Police, who acted as the Vigilance Officer cannot be treated as a competent person for making the vigilance inquiry in terms of the guidelines and further that without making any inquiry as contemplated by the notice dated 16.06.2011 (Annexure-G to the writ petition) to its logical end, the respondents

have committed serious illegality by terminating the service of the petitioner vide Annexure-H to the writ petition.

6. It is further contended that the SLSC examined five witnesses and out of those five witnesses three witnesses specifically stated that the petitioner belonged to Mahisya Das Community which is recognized as SC community under the Constitution (Scheduled Castes Order, 1950). It is also contended that the petitioner also examined three witnesses who are the blood relations of him and all those witnesses specifically stated that the petitioner belonged to the Mahisya Das Community.

7. The respondents by way of filing counter affidavit have contended that Area Supervisor had included the name of the petitioner in the survey report on the basis of his SC certificate and the said report is subject to the certificate which had been cancelled. It is also the case of the respondents that a complaint was received against the petitioner that he did not belong to the SC community and the officials of the Vigilance Cell had ascertained the caste status of the petitioner and that report of the Cell disclosed that the petitioner did not belong to the SC community. It was further contended that before taking any decision, the petitioner was given opportunity to make representation in his support and time was also allowed to him to produce the records. Finally the respondents have contended that since the petitioner had failed to lay any cogent material to substantiate his claim for SC status, his certificate was cancelled

and thus no illegality can be attributed. Learned Single Judge after hearing the parties passed the impugned order dismissing the writ petition, as stated supra. Hence this writ appeal.

8. Mr. Deb, learned counsel for the petitioner while urging for setting aside the judgment of the learned Single Judge would contend that the offer of appointment dated 29.04.1985 (Annexure-A to the writ petition) does not in any manner disclose as to whether the initial appointment of the petitioner to the temporary post of LDC was against the vacancy earmarked for SC community. He further submits that in the offer of appointment though it is stated that the petitioner belonged to SC community but that did not mean that the petitioner was appointed against the SC vacancy. Thus, the finding of the learned Single Judge that the initial appointment of the petitioner was against the SC vacancy is unsustainable.

9. He further submits that though the petitioner has challenged both the cancellation of SC certificate by the SLSC as well as the termination order by the Director of Higher of Education, but the learned Single Judge has held that the finding of the SLSC has reached its finality having not been challenged which is contrary to the record.

10. He has further contended that the petitioner by way of adducing evidence before the SLSC proved that he belongs to Mahisya Das Community which is a SC community in the State of Tripura. He has taken us to the writ petition to show that the

petitioner has challenged the order of the SLSC and referred to the contention made in the petition, inter alia “.....1..... *And also the legality, validity and propriety of the Order dated 21.05.2011 passed by Chairman, Special Secretary, SC & OBC Welfare whereby the SC Certificate bearing No. 364/SDO/BLN/CTZN/81 dated 23.12.1981 issued by the Sub-Divisional Officer, Belonia, South Tripura, was cancelled.*”

11. He has also contended that the show cause notice was issued on 22.11.2005 whereas Rule 7A has been inserted in the Rules w.e.f. 02.04.2007 and the said Rules have not been ascribed any retrospective effect. Thus, the said Rule has no application so far the case of the petitioner is concerned. The proceedings initiated against the petitioner ought to have proceeded and concluded without taking the aid of said Rule 7A.

12. He also submits that if there is conflicting evidence before a Tribunal or Administrative authority then the authority must assign reason for not accepting the views favourable to the delinquent. In support of his aforesaid contention, he has relied upon the decision of the Apex Court in ***Jamaat-E-Islami Hind Vs. Union of India, (1995)1 SCC 428***, particularly paragraph Nos. 11, 12 and 20, which are as follows:

“11. Section 4 deals with reference to the tribunal. Ss. (1) requires the central government to refer the notification issued under sub-section (1) of Section 3 to the tribunal "for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful". The purpose of making the reference to the tribunal is an adjudication by the tribunal of the existence of sufficient cause for making the declaration. The words 'adjudicating' and

"sufficient cause" in the context are of significance. Ss. (2) requires the tribunal, on receipt of the reference, to call upon the association affected "by notice in writing to show cause" why the association should not be declared unlawful. This requirement would be meaningless unless there is effective notice of the basis on which the declaration is made and a reasonable opportunity to show cause against the same. Ss. (3) prescribes an inquiry by the tribunal, in the manner specified, after considering the cause shown to the said notice. The tribunal may also call for such other information as it may consider necessary from the central government or the association to decide whether or not there is sufficient cause for declaring the association to be unlawful. The tribunal is required to make an order which it may deem fit "either confirming the declaration made in the notification or cancelling the same". The nature of inquiry contemplated by the tribunal requires it to weigh the material on which the notification under Ss. (1) of Section 3 is issued by the central government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the Association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context.

12. Section 5 relates to constitution of the tribunal and its powers. Sub-section (1) of Section 5 clearly provides that no person would be appointed "unless he is a Judge of a High court". Requirement of a sitting Judge of a High court to constitute the tribunal also suggests that the function is judicial in nature. Ss. (7) says that any proceeding before the tribunal shall be

deemed to be a "judicial proceeding" and the tribunal shall be deemed to be a "Civil court" for the purposes specified. Section 6 deals with the period of operation and cancellation of notification. Section 8 has some significance in this context. Ss. (8) of Section 8 provides the remedy to any person aggrieved by a notification issued in respect of a place under Ss. (1 or by an order made under Ss. (3) or sub-section 4, by an application made to the District Judge who is required to decide the same after giving the parties an opportunity of being heard. This also indicates the judicial character of the proceeding even under Section 8. Section 9 prescribes the procedure to be followed in the disposal of applications under the Act. Provisions of Section 9 of the Act lay down that the procedure to be followed by the tribunal in holding an inquiry under Ss. (3) of Section 4 or by the District Judge under Section 8 shall, so far as may be, be the procedure prescribed by the Code of Civil Procedure for the investigation of claims. S. 10 to 14 in Ch. III relate to "offences and penalties" which indicate the drastic consequences of the action taken under the Act including a declaration made that an association is unlawful. The penal consequences provided are another reason to support the view that the inquiry contemplated by the tribunal under Section 4 of the Act is judicial in character since the adjudication made by the tribunal is visited with such drastic consequences.

.....

20. As earlier mentioned, the requirement of specifying the grounds together with the disclosure of the facts on which they are based and an adjudication of the existence of sufficient cause for declaring the association to be unlawful in the form of decision after considering the cause, if any, shown by the association in response to the show-cause notice issued to it, are all consistent only with an objective determination of the points in controversy in a judicial scrutiny conducted by a tribunal constituted by a sitting High court Judge, which distinguishes the scheme under this Act with the requirement under the preventive detention laws to justify the anticipatory action of preventive detention based on suspicion reached by a process of subjective satisfaction. The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice must

be satisfied, to make the adjudication meaningful. No doubt, the requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. This is also evident from the fact that the proviso to Ss. (2) of Section 3 of the Act itself permits the central government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the government considers against the public interest to disclose. Thus, subject to the non-disclosure of information which the central government considers to be against the public interest to disclose, all information and evidence relied on by the central government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. Rule 3 also indicates that as far as practicable the rules of evidence laid down in the Indian Evidence Act, 1872 must be followed. A departure has to be made only when the public interest so requires. Thus, subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the tribunal in making the adjudication under the Act.”

He finally contended that the SLSC misread the evidence on record and came to a wrong finding. Thus, it would be proper for the Court to look into the evidence to do effective justice.

13. Mr. Charkaborty, learned Addl. GA submits that the traditional approach of placing the burden of proof on the person who pleads the case has been consciously given a go by for shifting such burden on the person against whom the case is pleaded. In support of his aforesaid submission, he has placed reliance on the decision of the Apex Court in **Director of Tribal Welfare, Government**

of Andhra Pradesh Vs. Laveti Giri, (1995)4 SCC 32. According to him, after comprehensive investigation, scrutiny and affording all reasonable opportunities to the petitioner, the SLSC cancelled the SC certificate and it is the petitioner who failed to prove that he belongs to the SC community.

14. We can take judicial notice of the fact that in the State of Tripura there are abnormally large number of cases where the persons who did not belong to the SC or ST community had obtained such certificate and for which the State of Tripura has made stringent provisions for cancellation of SC and ST certificates and also incorporated deterrent punishment and penalties against those persons who had obtained false certificates.

15. Section 8 of The Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Act, 1991 (**for short, “Act”**) prescribes the offences and penalties for obtaining a false certificate, particularly, sub-section (11) of Section 8 which reads as follows:

“(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;

(b) Whoever not being a person belonging to the Scheduled Castes or the Scheduled Tribes secures or has secured any admission or selection for admission to any educational institution for any study or training against a seat reserved for the Scheduled Castes or the

Scheduled Tribes or enjoys any benefit or concession of the Scheduled Castes or the Scheduled Tribes shall, on cancellation of his community certificate, be forthwith debarred from the educational institution and any other benefit or concession being enjoyed by him as aforesaid shall forthwith be withdrawn. Any amount paid to such person by way of stipend, scholarship, grant, allowance, educational loan etc. on the basis of the false community certificate shall also be recovered from him as arrears of land revenue;

(c) Any degree or diploma or any other educational qualification acquired by such person on the basis of a false community certificate, shall, on cancellation of the false community certificate obtained by him, also stand cancelled;”

From the aforesaid provisions it is crystal clear that when any proceeding under the Act regarding the correctness of caste/tribe certificate is pending the onus of proving that such person belongs to SC or ST shall lie with him and he must discharge this onus which lies on him.

16. Normally, in a criminal case, burden lies on the prosecution to prove the charge but there are some statutes where the burden gets shifted to the accused like the Narcotic Drugs and Psychotropic Substances Act, 1985 where if a person is found to be in possession of contraband substances then the burden shifts on him and he has to explain how he was in possession of the contraband substances.

17. Section 11 of the Act discusses regarding onus of proof and states, inter alia, that *“When in any proceeding under this Act or the rules made there under the question is whether a person belongs to the Scheduled Caste or Scheduled Tribe, the onus of proof shall be on the*

person who claims himself to be member of the Scheduled Castes or the Scheduled Tribes, as the case may be.”

18. The aforesaid provision is not under challenge before this Court. In view of the above, there is no doubt that the burden of proving that the petitioner belongs to SC Community as claimed lies with him. Now question is whether he has discharged his onus or not?

19. This Court in WA 09 of 2014, in which both of us were party, noted as under:

“This Court is not oblivious to the fact that in criminal or quasicriminal proceedings even if the onus shifts, it is the prosecution which must prove its case. The findings of the State Level Scrutiny Committee have very wide ranging effect and can be used in criminal proceedings and in fact a finding given by it could entail a person losing his job. Therefore, the proceedings must be conducted according to the rules of natural justice. Reference in this behalf may be made to Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 as amended up to May, 2007. Under Rule 7A, the State government has constituted two ‘Scrutiny Committees’. The Director of Vigilance has been directed to constitute a vigilance cell in this regard. The Investigating Officer who is dealing with an investigation in relation to the correctness or otherwise of a certificate issued in favour of a person claiming to belong to the Scheduled Caste or Scheduled Tribe at the stage of inspection is expected to go to the place where such person normally resides or in case such person has migrated to the town, to the rural areas to which he originally belongs.”

20. Sub-rule (3) of Rule 7A reads as follows :

“(3) The Investigating Officer would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place

from which he originally hailed. He should personally verify and collect all the facts of the social status claimed by the certificate holder or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the certificate holder in relation to their caste etc. or such other persons who have knowledge of the community status of the certificate holder and submit a report to the Director of Vigilance who will verify the correctness of the report and transmit it to the Member-Secretary of the Scrutiny Committee concerned together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.”

21. From the aforesaid rule, it is evident that the Investigating Officer before submitting his report to the SLSC has not only to visit the place from which the concerned person originally hails but he is also required to examine the school records, birth registration certificate and other documents. He is also required to examine the parents, guardian or other relatives of the certificate holder and after conducting these exercises and keeping into consideration their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc., he will give a prima facie report as to whether such person belongs to the Scheduled Caste or Scheduled Tribe or not.

22. One of us (Deepak Gupta, CJ) considered the provisions of sub-rule (4) of Rule 7A of the Rules in CRP 42/2015 and held as follows:

*“10. ***** A bare reading of this provision makes it absolutely clear that after report is submitted by the Director of Vigilance and in such report if it is reported that the community status as claimed by the person is not genuine or doubtful or spurious or false or wrongly claimed, the Member Secretary of the State Level Scrutiny Committee shall issue show cause notice to the said person. Along with the said show cause notice, the Member Secretary must send a copy of the report of the Vigilance Officer. The notice should indicate that the representation or reply, if any, should be made within two weeks from the date of receipt of the notice. If the person whose certificate is under dispute seeks an opportunity of hearing and seeks inquiry in the matter, then the matter has to be placed before the State Level Scrutiny Committee and the Chairperson of the Committee must give the certificate holder a reasonable opportunity of putting forth his case. He should also be given a right to lead and produce such evidence as he may desire. The last portion of the sub-rule is very crucial. It lays down that after such opportunity in person or through counsel has been given, the Committee may inquire as it deems expedient and consider the claims vis-à-vis the objections raised by the certificate holder or opponent and pass an appropriate order with brief reasons in support thereof. *****.”*

11. Though I am not in agreement with the submission of the petitioner that the petitioner cannot be asked to lead evidence at the first stage, as has already been discussed hereinabove, I am clearly of the view that the opportunity given to the person should be an opportunity which is just and reasonable, an opportunity which gives him reasonable chance to rebut the case of the State, an opportunity which does not deprive him of his right to lead evidence and an opportunity which is consistent with the rules of natural justice.

12. The Rule is not clear and only directs that the copy of the report of the Vigilance Officer should be made available to the person whose certificate is under challenge. In case, the burden is to shift to the person whose certificate is under challenge, then not only a copy of the report but the entire

evidence collected by the Investigating Officer must be supplied to the said person otherwise such person will not know what is the case which he has to answer. The person whose certificate is under challenge must know what is the exact material which the Vigilance Officer relied upon. Therefore, not only the report of the Vigilance Officer but the entire record including the statements of the witnesses if any recorded, the documentary evidence, if any collected, must be handed over to such person. If that is done then I see no harm if such person is asked to lead his evidence first because such person is in knowledge of the entire material on which the department relies.

13. This Court would also like to make it clear that if this procedure is followed and the person leads his evidence, even if the evidence of the State is led at a later stage the evidence must be confined only to the material which has been relied upon by the Vigilance Officer and which has been supplied to the person whose certificate is under challenge. In case any fresh material is sought to be brought in by the Vigilance Officer or the department concerned against the person, then that material cannot be used against him unless he is supplied that material in advance and is given a fresh opportunity to rebut the said material. The inquiry should normally be confined to the material which has been placed on record by the Vigilance Officer because that is what contemplated under sub-rule (4) of Rule 7A. However, in certain cases if some very relevant evidence comes to the knowledge of the Scrutiny Committee even during the course of the inquiry, it can use the same but the same can only be used after giving notice to the person whose certificate is under challenge that this is the fresh material which has been collected. The fresh material should be supplied to the person and he should be given reasonable opportunity of rebutting the same by adducing evidence. Rebutting this additional material means that he will be given a chance not only to reply to the application for leading such evidence but also be given a chance to rebut such evidence if such evidence is produced.

14. The Scrutiny Committee must realize that it is dealing with the future of the person. It is dealing with issues which not only entail civil consequences inasmuch as such person may lose his job but it also entails criminal consequences where such person can go behind bars. Therefore, the Scrutiny Committee must ensure that in each and every case, the procedural laws are followed in letter and

spirit and the rules of natural justice are not violated. It is also made clear that though the onus of proving the caste may shift on to the person claiming his caste, the burden in such cases never shifts. The State will have to prove that the certificate is false. In all cases the SLSC must pass a detailed reasoned order in support of its findings."

23. We have also gone through the judgment in **Jamaat-E-Islami Hind** (*supra*) relied upon by Mr. Deb. There is no quarrel with the proposition laid down by the Apex Court in that case. The aforesaid decision has no direct bearing with the case in hand.

24. Rule 7A including sub-rule (9) of the Rules is relating to procedure and when a procedural law is inserted by way of amendment subsequently in the statute without giving retrospective effect then also the same has retrospective effect being procedural law. Thus, we are unable to accept the contention of Mr. Deb that sub-rule (9) has no application in case of the petitioner.

25. As directed by this Court, Mr. Chakraborty, learned Addl. GA produced the record of the SLSC and we have perused the same. From the record it appears that out of 8 witnesses, 6 witnesses specifically stated, that the petitioner belongs to Mahisya Das community. One of the witnesses, Babul Ch. Sarkar has not only stated that the petitioner is his neighbor but also stated that he knew him as a member of Mahisya Das Community and the report of the Vigilance authority is not correct. Another witness, namely, Sanjit Patari has deposed that in the Vigilance Report it was mentioned that he belongs to Kayastha community which is not

correct as he belongs to the Mahisya Das Community, which is a SC community in the State of Tripura. He also stated that the Vigilance Officer took his signature on a blank paper. The petitioner, Paritosh Patari is the younger brother of his father and in relation is his Uncle. He also belongs to the Mahisya Das Community. Another witness, Biswajit Patari also made similar statement like Sanjit Patari. Even the sister and brother of the petitioner in their deposition specifically stated that they belong to the Mahisya Das community and allegation against Paritosh Patari is false. It is also stated by Rabindra Kr. Patari, the brother of the petitioner, that he also has a SC certificate.

26. From the order of the SLSC it appears that the SLSC though recorded the statement of these witnesses but did not discuss why these witnesses should not be believed when they are the persons who can say whether the petitioner belongs to SC community or not. Learned Single Judge in his judgment only considered the procedural aspect but did not discuss anything regarding the impugned order passed by the SLSC though the same was under challenge. We are unable to agree with the finding of the learned Single Judge that *"the petitioner did not challenge the order of the SLSC and thus the same has become final"*.

27. From a bare reading of the writ petition it appears that there are two prayers made in the writ petition. The first one relates to quashing of the termination order dated 02.07.2011 passed by

the respondent No.4, Director of Higher Education, Tripura and the second one relates to setting aside the order dated 21.05.2011 passed by the Chairman, Special Secretary, SC and OBC Welfare Department against the cancellation of the SC certificate dated 23.12.1981 issued by the Sub-Divisional Officer, Belonia and further to reinstate the petitioner in service w.e.f. 02.07.2011. Even if for argument sake it is admitted that the petitioner did not challenge the order of the SLSC in the prayer portion but if it appears from the body of the writ petition or from the grounds and the averments made in the petition that the petitioner challenged the order of the SLSC then the Court cannot throw away the petition only on the ground that the petitioner did not challenge the order of the SLSC in the prayer. The power of the Writ Court is wide enough to do justice even from the contention or averments deducible from the body of the writ petition.

28. There is no doubt that after cancellation of the SC Certificate the appointing authority is not required to initiate any separate disciplinary proceeding. But the question remains if the order of the SLSC is not in accordance with law then what would happen? According to us, in the instant case, the SLSC failed to properly appreciate the evidence on record and came to a wrong finding. Thus, the order of the State Level Scrutiny Committee is required to be interfered with. Resultantly, the cancellation of the SC certificate of the petitioner vide impugned order dated 21.05.2011 is hereby set aside. Consequent thereto, the

order of termination of the petitioner is also set aside. The respondent-State is directed to reinstate the petitioner in his service. However, the petitioner will be entitled to 50% of the back wages as he was deprived from discharging his duties due to the action of the respondents.

29. In the result, the order of the learned Singe is set aside and the appeal is allowed. No costs.

JUDGE

CHIEF JUSTICE

lodh