

THE HIGH COURT OF TRIPURA
AGARTALA

W. P. (C) No.539 of 2011

Shri Rabindra Biswas,
son of late Satish Chandra Biswas,
Biswas Para, P.O. & P.S. Amtail,
Bishalgarh Sub-Division,
District: West 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 to the Government of Tripura, Department of
Education (School Education), New Secretariat Complex, P. O.
Kunjaban, Agartala, West Tripura
3. The District Magistrate and Collector,
West Tripura District, Agartala, Tripura
4. The Director of School Education,
Government of Tripura, Agartala, Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A. Dasgupta, Advocate

For the respondents : Ms. A. S. Lodh, Addl. G.A.

Date of hearing & judgment
and order : **01.07.2015**

Whether fit for reporting : **No**

Judgment and Order

Heard Mr. A. Dasgupta, learned counsel appearing for the petitioner as well as Ms. A. S. Lodh, learned Additional Government Advocate, appearing for the respondents.

[2] The undisputed fact as emerged is that the petitioner obtained employment by furnishing a fake S.C. Certificate. He was appointed as the Assistant Teacher under the Directorate of School Education, Government of Tripura, by virtue of Memorandum No. F.1(1-2)-DSE/84 (L-11), dated 31.08.1989 (Annexure-1 to the writ petition).

[3] According to the petitioner, by publishing the notice No.2-150/SCW/GL/90/20052 dated 14.12.1999, the Government had asked the persons who obtained S.C. Certificate by false or incorrect representation of fact, to return those certificates within 27.01.2000 and if they returned those S.C. Certificates, the Government would take a lenient view. It had been also cautioned by the said notice that the press release dated 08.07.1991 shall cease its effect from 27.01.2000.

[4] The petitioner has asserted in the para 9 of the writ petition that having knowledge of the said Notification dated 14.12.1999 (Annexure-3 to the writ petition) he surrendered his S.C. Certificate to the competent authority through the BDO, Dukli R.D. Block on 20.12.1999, within the stipulated period of 45 days as fixed by the Government. The respondents by filing

the counter affidavit have categorically admitted that position of fact. The relevant part reads as under:

"That, in reply to the contentions/averments made in Para 9 to 10 of the writ petition it is submitted that the petitioner has surrendered his false/fake S.C. Certificate through the B.D.O., Dukli R. D. Block in reference to the Notification No. F.2-15/SCW/GL/90/2005 dated 14.12.1999 issued by the Secretary, Sch. Cast & OBC Welfare Department, Govt. of Tripura which is evident from the letter submitted by the petitioner on 20.12.1999. It is also submitted that the petitioner has submitted all documents in reference to the letter No. F.1(6-3)-SE/E(NG)/2007 (Vol-1)/2321 dated 09.06.2010 except the application dated 20.12.1999 as submitted by the petitioner to the B.D.O., Dukli R.D. Block".

[5] As such, there is no dispute regarding the surrender of his false S.C. Certificate within the stipulated time. Even though the petitioner and the similarly situated persons who had obtained false S.C. Certificates and by utilizing those certificates had secured employment in the Government were assured of lenient action, but by the Memorandum dated 04.08.2011 the petitioner was asked to show cause as to why he shall not be terminated from the service in view of cancellation of his S.C. Certificate. Thereafter, by the impugned order dated 07.09.2011 the petitioner has been terminated from his service.

[6] Mr. A. Dasgupta, learned counsel appearing for the petitioner has submitted that this case is covered by a decision of this High Court in **Dr. Bishnapada Biswas v. State of Tripura and Others** (the judgment and order dated 25.02.2015

delivered in WP(C).No. 66 of 2014), the relevant part of which reads as under:

“We may also add that in the earlier petition, the petitioner had pointed out the names of various doctors who had also obtained employment by giving false Scheduled Caste certificates but against whom no action was taken Some of them were only warned and some who had obtained the benefit of promotion were reverted to the lower posts. As far as the absence of the petitioner is concerned, that is not due to any fault of his but due to the fact that his services were terminated. The Government itself on reconsideration of the matter has set aside the order of his termination. Therefore, the natural consequence of payment of back wages should follow”.

[7] The crux of that decision is that when similarly situated persons were shown leniency by retaining them in service and extending them benefits, the other section of the similarly situated persons cannot be denied of the same leniency. Even though the said decision does not lay down any inflexible rule but having regard to the policy declared by the Notification dated 14.12.1999 (Annexure 3 to the writ petition) and the manner of its application, this Court in **Dr. Bishnupada Biswas v. State of Tripura and Others** has returned the finding against the termination and even allowed the back wages. But that direction for the back wage was in a very special circumstance.

[8] Ms. A.S. Lodh, learned Addl. G. A. appearing for the respondents has submitted that as per the Provision of Tripura Scheduled Caste and Scheduled Tribe Reservation Act and the Rules made thereunder, the consequence of cancellation of the

S.C. Certificate would irresistibly lead to the termination of the concerned employee.

[9] She has further submitted that equity would not lie against the strict prescription of the law. That submission of Ms. A.S. Lodh, learned Addl. G.A. cannot be very relevant as the Government had adopted the policy that the persons who would surrender the fake or false S.C. Certificates would be shown leniency. Such policy was declared before 7th amendment of Tripura Scheduled Caste and Scheduled Tribe Reservation Act and the Rules made thereunder.

[10] Having regard to the decision in **Dr. Bishnupada Biswas v. the State of Tripura and Others** and also the relevant Provision of Tripura Scheduled Caste and Scheduled Tribe Reservation Act and the Rules made thereunder this court is of the view that the petitioner may not be deprived of the equal treatment in view of the Government's own policy. Hence, the impugned order of termination dated 07.09.2011 (Annexure-6 to the writ petition) is interfered with and set aside. The respondents are directed to reinstate the petitioner in the post of Assistant Teacher under the un-reserved category, but it is made clear that the petitioner shall not get any promotion whatsoever in future. He will merely be allowed to continue in that post till he retires. Even the petitioner will not be entitled to get any benefit of back wages from 07.09.2011 till the date of reinstatement.

[11] The respondents are directed further to reinstate the petitioner within a period of 3 months from today without fail and shall also give him the posting within that period.

[12] With this observation and direction this petition stands allowed.

[13] This order shall not create any precedent for other cases. There shall be no order as to costs.

JUDGE

A. Ghosh