

THE HIGH COURT OF TRIPURA _A_G_A_R_T_A_L_A_

Writ Appeal No.51 of 2013

Sri Dibakar Das,
S/o Late Dharendra Das,
Resident of village - Thakurpally road,
Krishnanagar, P.O - Agartala,
P.S. - West Agartala, Sub-Division - Sadar,
District - West Tripura, Pin - 799001.

..... *Appellant.*

- Vs -

1. **The State of Tripura,**
Represented by the Chief Secretary,
Government of Tripura,
Having his office at New Secretariat Complex,
Gorkhabasti, P.O - Kunjaban,
PS - East Agartala, Sub-Division - Sadar,
District - West Tripura, Pin - 799006.
2. **The Secretary, Transport Department,**
Government of Tripura, having his office at New Secretariat
Complex, Gorkhabasti, P.O - Kunjaban, PS - East Agartala,
Sub-Division - Sadar, District - West Tripura, Pin - 79006.
3. **The Director, For Welfare of Scheduled Caste's,**
Government of Tripura, having his office at Agartala,
P.O - Agartala, P.S - West Agartala, Sub-Division - Sadar,
District - West Tripura, Pin - 799001.
4. **The Director, For Welfare of Scheduled Tribes,**
Government of Tripura, having his office at Lake
Chowmuhani, P.O - Agartala, P.S - West Agartala,
Sub-Division - Sadar, District - West Tripura, Pin - 799001.
5. **Tripura Public Service Commission,**
Represented by its Secretary, having his office at Agartala,
near Old Secretariat Building, P.O - Agartala, P.S - West
Agartala, Sub-Division - Sadar, District - West Tripura,
Pin - 799001.
6. **Sri Ashim Saha,**
S/o. Lt. Lalit Mohan Saha,
Resident of Sankar Chowmohani, P.O - Agartala,

P.S - West Agartala, Sub-Division - Sadar,
District - West Tripura, Pin - 799001.

7. Sri Bijoy Debbarma,
S/o. Lt. Shib Charan Debbarma,
Resident of North Banamalipur, Near Young's Corner Club,
P.O - Agartala, P.S - West Agartala, Sub-Division - Sadar,
District - West Tripura, Pin - 799001.

..... *Respondents.*

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

For the appellant : Mr. Somik Deb, Advocate,
Mr. A Pal, Advocate.
For the respondents : Mr. S Chakraborty, Addl. Govt. Advocate,
Mr. C S Sinha, Advocate.
Date of hearing and
Delivery of judgment : **28.11.2013.**
Whether fit for reporting : **No.**

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, CJ)

This writ appeal is directed against the order, dated 27.09.2013, passed by a learned single Judge of this Court in CM Appl. Nos.248 and 335 of 2013 in WP(C) No.18 of 2013 whereby he rejected the prayer of the writ petitioner for grant of interim relief claimed by him to stay the operation of the seniority list in which he is shown junior to respondents 6 and 7 herein.

2. Briefly stated the facts of the case are that the petitioner as well as respondents 6 and 7 were working as Motor Vehicle Inspectors in the Transport Department in the State of Tripura. In the year 1997 the petitioner filed a writ petition which was registered as

Civil Rule No.126 of 1997 claiming that since he belonged to the Scheduled Caste category he should be considered for filling up the post of Senior Motor Vehicle Inspector and not respondent no.2 in the said petition(Sri Ashim Saha) who is respondent no.6 herein. It would be pertinent to mention that at that time Sri Bijoy Debbarma had already been promoted as Senior Motor Vehicle Inspector but no challenge was laid to the promotion of Sri Bijoy Debbarma as Senior Motor Vehicle Inspector. The writ petition was disposed of by a learned single Judge of the Agartala Bench of the Gauhati High Court in the following terms :

“6. ** Shri Shyamalendu Dutta, a general category candidate was appointed against roster point No. 1 which was meant for reserved category. If that be so, then the first of the two vacancies now available will have to be filled up by a Scheduled Tribes candidate. The second vacancy will have to be filled up by a candidate from unreserved category against the unreserved category at roster point No. 3. That being the position, the appointment of Shri Bijoy Deb Barma who belongs to Scheduled Tribes category stands duly adjusted against the quota meant for Scheduled Tribes candidates with adjustment against roster point No.2. Therefore, the appointment of the respondent No. 2, who was senior to Mr. Deb Barma as well as the writ petitioner has been correctly made from the category of unreserved candidate in adjustment of the vacancies against roster point No. 3. The claim of the writ petitioner that this second vacancy ought not have been adjusted against roster point No.4 meant for Scheduled Castes candidate is, therefore, not tenable in law.***

7. It would appear from the appointment letter that Shri Deb Barma and the respondent No. 2 have been promoted on ad-hoc basis. Regular appointment could not be made because of a stay order granted by this court.

8. In view of the above findings, the writ petition stands dismissed. However, the State authorities are directed to complete the process of regular appointment in accordance with the provisions of law expeditiously. The authorities are further directed to maintain separately registers for different categories of candidates, if not already maintained.”

Thereafter the petitioner filed a writ appeal being Writ Appeal No.111 of 2000. During the pendency of this writ appeal an interim order was passed staying the operation of the judgment of the learned single Judge. The petitioner withdrew the writ appeal filed by him and thereafter, on 3rd June 2004, he was also promoted as Senior Motor Vehicle Inspector and the promotion of respondents 6 and 7 were also regularized. In the seniority list issued thereafter the respondents 6 and 7 were always shown senior to the writ petitioner.

3. In the year 2013 a post of Chief Motor Vehicle Inspector was created and now the petitioner wants to rake up the issue of seniority once more by means of the writ appeal. Along with the appeal he filed an application for grant of stay praying that the promotion to the post of Chief Motor Vehicles Inspector be not made on the basis of the seniority list showing respondents 6 and 7 senior to him. The learned single Judge has rejected this application and hence this appeal.

4. We have heard Sri Somik Deb, learned counsel for the appellant. Also heard Mr. S Chakraborty, learned Additional Government Advocate for the State as well as Mr. C S Sinha, learned counsel for the respondents 6 and 7.

5. Since we are only dealing with the issue at the stage of grant of interim relief we may make it clear that any observation made by us herein will have no effect on the decision of the writ

petition on merits. Having said so in view of the directions issued by the learned single Judge in Civil Rule No.126 of 1997 quoted hereinabove, which judgment has attained finality, it is apparent that the learned single Judge held that respondent No.6 Ashim Saha was senior to the petitioner as well as to Sri Debbarma. Furthermore, the learned single Judge held that respondent no.7, Sri Bijoy Debbarma, who belongs to the Scheduled Tribe category stand adjusted against the quota meant for Scheduled Tribes against roster point No.2. It is urged that these observations of the learned single Judge were uncalled for since Sri Bijoy Debbarma was not a party to the writ petition. It is further urged that it was not brought to the notice of the learned single Court at that time that Sri Nripendra Nath Bhattacharjee, an unreserved category candidate, was already occupying that post and therefore, one post of Scheduled Caste should have fallen to the share of the present writ petition.

6. We are clearly of the view that whether a pronouncement made by a judicial authority is right or wrong cannot be decided in collateral proceedings and it must be challenged either by way of an appeal or by seeking review before the same learned single Judge. In the present case an appeal was filed but withdrawn. We also find that from the year 2004 when the petitioner was promoted till 2013 he did not care to challenge the seniority of respondents 6 and 7 only on the ground that there was no promotional avenue and, therefore, it did not affect the rights of the

petitioner. We, therefore, feel that at this stage when we are only concerned with the grant of interim relief the well-settled position in the seniority list cannot be set at naught by issuing mandatory interim directions. This would virtually amount to allowing the petition at the stage of admission itself which is normally not possible. Therefore we find no merit in this appeal which is accordingly rejected.

JUDGE

CHIEF JUSTICE

Sukhendu