

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.P.(C) No.428 of 2014**

Sri Nitai Chandra Roy,  
son of late Ambika Charan Roy,  
resident of Village : Matabari, P.O. Matabari  
P.S. R.K. Pur, District : Gomati Tripura,  
at present residing at College Tilla,  
P.O. Agartala College, P.S. East Agartala,  
District : West Tripura, PIN - 799004

..... Petitioner

-Vs-

1. The State of Tripura,  
represented by the Secretary,  
Health and Family Welfare Department,  
Govt. of Tripura, Agartala
2. The Director,  
Family Welfare and Preventive Medicine Department,  
Govt. of Tripura, Gurkhabasti, P.O. Kunjaban,  
P.S. West Agartala, District : West Tripura
3. The Director,  
Health Services, Govt. of Tripura,  
Gurkhabasti, P.O. Kunjaban,  
P.S. West Agartala, District : West Tripura.

..... Respondents

**B E F O R E**  
**THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate  
Mr. R. Datta, Advocate  
Ms. A. Banik, Advocate

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

Date of hearing : 07.04.2015

Date of judgment & order : 30.04.2015

Whether fit for reporting : 

Yes	No
✓	

### **JUDGMENT & ORDER**

*(Talapatra J.)*

By means of this petition, the Memorandum No.F.7(179)-FWPM/ESTT/LAW/2013, dated 26.09.2014, Annexure-13 to the writ petition, has been challenged.

2. The 2(two) important questions that arise for determination in this petition are :

(i) whether the petitioner has suffered double jeopardy by the impugned Memorandum in view of the Order No.F.2(6-215)MS/LC/2001/7511(V-1), dated 28.09.2007, Annexure-8 to the writ petition? and

(ii) whether the provisions of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992, read with the Second Amendment Rules, 2007, has been applied retrospectively or, whether the said rule can have any retroactive enforceability or not?

3. There is hardly any dispute as regards the factual aspects. The petitioner was appointed in the post of Chemist

w.e.f. 25.10.1988 following the due recruitment process against a vacancy earmarked for Scheduled Caste person. The status of the petitioner as a member of the Scheduled Caste category, had been recognized by the Scheduled Caste Certificate dated 25.06.1981, Annexure-2 to the writ petition. The petitioner was promoted to the post of the Senior Chemist, by the Notification dated 12.06.1998, Annexure-3 to the writ petition. Immediately thereafter, the Sub-Divisional Officer, Udaipur, South Tripura, the issuing authority, had cancelled the said Scheduled Caste Certificate by the Memorandum dated 23.09.1998, Annexure-4 to the writ petition. As consequence of such cancellation, the respondent No.1 cancelled the order of promotion, by the order dated 26.12.1998, Annexure-5 to the writ petition. Consequently, the petitioner was reverted to the original post of Chemist.

4. The respondent No.3 initiated a proceeding by the Memorandum dated 27.06.2001, Annexure-6 to the writ petition, on the allegation that the petitioner has violated Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988 by making misrepresentation of facts for obtaining the said status certificate.

5. There is no dispute that the said certificate was cancelled under Rule 6 of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992. After the departmental inquiry, it has been held that the charge against the petitioner has been proved. The report of

the departmental inquiry dated 28.07.2005 is available at Annexure-7 to the writ petition. Relying on the said inquiry report, the order of reversion on cancellation of promotion to the post of Senior Chemist has been ratified as penalty by the Order dated 28.09.2007, Annexure-8 to the writ petition. As the petitioner was reverted, it has been noted that no further penalty is warranted.

6. The petitioner had challenged the order of cancellation of his Scheduled Caste Certificate dated 23.09.1998 by filing a writ petition before the Gauhati High Court, being Civil Rule No.477/1998. The said writ petition, alongwith some other writ petitions, was allowed by a common judgment dated 04.01.2006, Annexure-9 to the writ petition. By the said common judgment, the cases of the petitioner and others were referred to the State Level Scrutiny Committee for re-enquiry. The State Level Scrutiny Committee, by the Order dated 02.07.2008, Annexure-10 to the writ petition, held that the petitioner does not belong to the Scheduled Caste community and accordingly, his Scheduled Caste Certificate dated 25.06.1981 was cancelled.

7. The petitioner has admitted in para 11 of the writ petition that he did not challenge the said order dated 02.07.2008 passed by the State Level Scrutiny Committee as well as he has accepted the order dated 28.09.2007 issued by the respondent No.3, reverting the petitioner from the post of Senior

Chemist to the entry post of Chemist. However, the petitioner has asserted that the order of reversion dated 28.09.2007 has become final and now the petitioner is to be treated as holding the post of Chemist in the Un Reserved category.

The appointing authority has also recognised the said status by incorporating the name of the petitioner at Sl.No.1 of the seniority list of the Chemist, dated 29.08.2012, Annexure-12 to the writ petition. After a period of six years from the order dated 02.07.2008 passed by the State Level Scrutiny Committee, the respondent No.2 issued the Memorandum dated 26.09.2014, cancelling the initial appointment of the petitioner dated 15.10.1988 as Chemist and debarring him from further continuation in service with immediate effect.

8. The petitioner has asserted that the said Memorandum dated 26.09.2014, hereinafter 'the impugned memorandum, has been issued in terms of the provisions of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992, as amended from time to time. The petitioner has contended that, after the order dated 28.09.2007 issued by the respondent No.3, the impugned memorandum dated 26.09.2014, Annexure-13 to the writ petition, is wholly illegal, even not issued by the competent authority. It is not clear, who is the competent disciplinary authority, is it the respondent No.2 or the respondent No.3,

cannot be ascertained from the various Office orders. Thus, exercise of the disciplinary power by the respondent No.3 cannot be sustained in the context of the case. Similarly, for the same cause of action, the respondent No.2 cannot be permitted to take any punitive action for the second time without interfering, rescinding, reviewing the earlier proceeding and action taken thereupon nor can he be permitted to launch any further proceeding. It has been further asserted that even the said order cannot be reviewed. There is no valid reason for review. The petitioner has categorically asserted that the disciplinary proceeding against the petitioner started on 27.06.2001 and the final order has been passed on 28.09.2007 and hence the respondent No.2 cannot now take the aid of sub-rule (9) of Rule 7A of the said Reservation Rules for purpose of inflicting higher punishment. The petitioner cannot be subjected to the provisions of sub-rule (9) of Rule 7A of the Reservation Rules retroactively for a misconduct which has been taken notice of by the Memorandum dated 27.06.2001.

9. The respondents by filing the affidavit-in-opposition, has not disputed the factual aspects as narrated by the petitioner. They have only stated that the petitioner was appointed and promoted against the vacancy earmarked for the Scheduled Caste person. They have admitted that when a reference was made to the appointing authority under Rule 4 of the Tripura

Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992, the said departmental proceeding had been initiated and on culmination of the said departmental proceeding the petitioner was given the penalty of reversion "from the promotional post to its original post", holding that no further penalty is warranted.

10. At the instance of the petitioner, the writ petition, being Civil Rule No.477/1998 was filed and it was directed that a fresh inquiry be done by the State Level Scrutiny Committee to ascertain whether the status certificate as obtained by the petitioner is genuine or it has been obtained by misrepresentation of facts. The State Level Scrutiny Committee enquired into the matter and cancelled the status certificate by the order dated 02.07.2008, holding that the petitioner does not belong to the Scheduled Caste community. Thereafter, in terms of the provisions of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992, as amended, the respondent No.2 has cancelled the appointment of the petitioner with immediate effect, by the impugned Memorandum dated 26.09.2014. As such, there is no illegality. On the question of competence, the respondents have stated in para 10 of their affidavit-in-opposition that, by the Memorandum dated 20.01.1999 and the corrigendum dated 27.01.1999, the Director of Family Welfare and Preventive

Medicines has been declared as the appointing authority of the petitioner. Accordingly, the respondent No.2 has got the competence to pass the impugned memorandum.

11. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner, has submitted that there had been no review, rescission and alteration in the order dated 28.09.2007 either by the Director of Health Services, the respondent No.3 or by the respondent No.2 at any point of time and the said order, by efflux of time, has reached its finality. On the face of such finality, whether the respondents on the basis of the order of the State Level Scrutiny Committee dated 02.07.2008, Annexure-10 to the writ petition, can pass the impugned memorandum giving retroactive operation of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992, as amended. He has strongly contended that, that would amount to giving a penal provision retroactive operation. In addition thereto, he has pointed out that the petitioner has been reverted by the order dated 26.12.1998 and that order has been ratified by the order dated 28.09.2007. Thus the penalty imposed by the impugned memorandum has caused double jeopardy.

12. From the other side, Ms. A.S. Lodh, learned Addl. Govt. Advocate appearing for the respondents, has submitted that the new provision as inserted by the (Second Amendment)

Rules, 2007 has provided that the finding recorded by the Scrutiny Committee holding that the status certificate obtained was false and the certificate is cancelled and confiscated, shall be communicated to the appointing authority with a request to cancel the appointment. The appointing authority shall cancel the appointment without any further notice to the certificate holder and debar him from continuing in office in a post. According to Ms. Lodh, learned Addl. Govt. Advocate, when the appointing authority, the respondent No.2 received the communication from the State Level Scrutiny Committee, the said provision has come into effect, inasmuch as the (Second Amendment) Rules, 2007, has been given effect from 02.04.2007. Thus there is no illegality in passing the impugned memorandum. However, she has clearly admitted that the order dated 28.09.2007 has neither been revoked, reviewed nor altered otherwise.

13. It is not in dispute that the inquiry against the petitioner by the Sub-Divisional Officer was taken up before 23.09.1998 as it is evident from the order dated 23.09.1998, Annexure-4 to the writ petition that the status certificate of the petitioner was cancelled by the Sub-Divisional Officer, Udaipur, South Tripura, in exercise of the powers conferred by Rule 6 of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992.

14. As per the extant Rules, a Disciplinary Proceeding for taking appropriate action against the petitioner was initiated by the memorandum dated 27.06.2001 on the following article of charges :

### **Article-1**

**That the said Sri Nitai Chandra Roy, S/O Sri Ambika Charan Roy, Village and Post office Matarbari, Udaipur, District South Tripura was appointed to the post of Chemist with effect from 25-10-1988 on ad-hoc basis for a period of 1(one) year and subsequently his service has been extended until further order on the same terms and conditions as laid down in the offer of his appointment considering him belonging to Scheduled Caste community and against only 1(one) vacancy reserved for S.C. candidate at the relevant time.**

**That the said Sri Nitai Chandra Roy has submitted his declaration in attestation form on 11-10-88 stating him as a member of S.C. Community. He had obtained a Scheduled Caste certificate bearing No. F.6(5)-SDO/CTZN/UDP/81/836 dated 25-06-1981 from the Sub-divisional Officer, Udaipur, South Tripura by misrepresentation of fact. Subsequently on enquiry made by the competent authority on the basis of a complaint dated 02-02-1992, it revealed that Sri Nitai Chandra Roy does not belong to any Scheduled Caste community. As such the said Scheduled caste certificate of Sri Nitai Chandra Roy has been cancelled by the Sub-Divisional Officer, Udaipur, South Tripura vide his office Memo. No.F.6(4)/SDO/UDP/SC/Vol-3/5747-61 dated 23-09-98 under Rule 6 of the Tripura Scheduled Caste and Scheduled Tribe (Reservation of Vacancies in service and posts) rules, 1992.**

**Thus Sri Nitai Chandra Roy by his above acts and its consequence has violated Rule 3 of the Tripura Civil Services (Conduct) Rules, 1988 which is most unbecoming on the part of a Govt. Employee.”**

15. As the charge against the petitioner was held to have been established by the report dated 28.07.2005, Annexure-7 to the writ petition, the Disciplinary Authority, in accordance with the said finding of the Inquiring Authority, passed the final order dated 28.09.2007, Annexure-8 to the writ petition. The petitioner did not challenge that final order dated 28.09.2007 and accepted the same. But, as the petitioner challenged the cancellation of his status certificate issued vide Memorandum dated 23.09.1998, by filing the writ petition, being Civil Rule No.477/1998 and, in that writ petition, a re-enquiry was directed by the common judgment and order dated 04.01.2006. Hence, there had been re-inquiry by the State Level Scrutiny Committee. The State Level Scrutiny Committee, by the order dated 02.07.2008 on culmination of the re-inquiry, cancelled the said status certificate of the petitioner and ordered for confiscation of the said certificate. The due communication was made to the appointing authority for action. Thereafter, by the impugned Memorandum dated 26.09.2014, Annexure-13 to the writ petition, the appointment of the petitioner has been cancelled and he has been debarred from continuing his office in the post with immediate effect.

16. The misconduct of the petitioner was formally noticed and recorded by the Memorandum dated 27.06.2001. The contemporaneous rule for imposing penalty for similar misconduct is available in the un-amended Rule 4 of the Tripura

Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992 as incorporated by the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) (First Amendment) Rules, 2000, which reads as under :

**"Notwithstanding anything contained in any other service rules, if verification reveals that a person holding a post or service has preferred a false claim to be a member of the Scheduled Caste or Scheduled Tribe, his Disciplinary authority shall draw up a disciplinary proceeding against him irrespective of whether he has been appointed or promoted to any reserved post or not and impose on him any of the following penalties according to the gravity of the offence :-**

- (i) Termination from service;**
- (ii) Reservation to the original post to which he was initially appointed;**
- (iii) Reservation to the next lower post or grade;**
- (iv) Withholding of not less than two annual increments with cumulative effect.**
- (b) In drawing up disciplinary proceedings and imposing penalty under clause(a) above the disciplinary authority shall follow the procedure laid down in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as in force in the state.**
- (c) All appeals, except revisions and reviews, against orders made by the disciplinary authorities under clause(a) shall be governed by the relevant provisions contained in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as in force in the State."**

17. The other clauses under Rule 4 of the said Rules provide other provisions which are not very relevant in appreciation of the controversy in hand. It is to be noted that the pre-amended provision of Rule 4 was as follows :

**"If after appointment of anyone to any post or service a verification reveals that the candidate's claim to belong to Scheduled Caste or Scheduled Tribe was false, his/her service shall be terminated forthwith. Action taken under this rule shall be intimated to the Director of Welfare for Scheduled Castes in case of Scheduled Caste candidates and to the Director to Welfare for Scheduled Tribes in the case of Scheduled Tribe candidates."**

Comparison of the pre-amended provision and the amended provision as incorporated by the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) (First Amendment) Rules, 2000, would show that by the pre-amended provision, only penalty provided in sub-rule (3) and (4) was "termination", but in the amended provision, besides termination from service, there are three other types of penalties, namely reversion to the original post to which he was initially appointed, reversion to the next lower post or grade and withholding of not less than two annual increments with cumulative effect.

18. For purpose of recording the legislative change, it can only be noted that by the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts)

(Second Amendment) Rules, 2007, again in the provisions for imposing penalty, a substantial change has been made after deletion of sub-rule (3) and (4) of Rule 4 of the Principal Rules. Now, by Rule 7A(9), it has been provided as under :

**"As soon as the findings is recorded by the Scrutiny Committee holding that the certificate obtained was false and the certificate is cancelled and confiscated, it shall be communicated to the head of the Educational Institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The head of the educational institution responsible for making the admission or the appointing authority, shall cancel the admission or appointment as the case may be without any further notice to the certificate holder and debar him from further study or continue in office in a post."**

In view of the (Second Amendment) Rules, 2007 now the penalty, for obtaining the false certificate in respect of the status is only termination from the service and that too without any further departmental proceeding.

19. In the case in hand, the departmental proceeding was initiated by the Memorandum dated 27.06.2001 on the charge as reproduced hereinbefore. On completion of the inquiry as instituted for denial of the charge by the petitioner, the enquiry report was submitted to the disciplinary authority, holding the petitioner guilty of charges. On observing the due process, the petitioner was given the penalty of reversion from the promotional post to its original post. Thus it is apparent that Rule

4(A)(3) was observed by the disciplinary authority as the misconduct was noticed and recorded by the Memorandum dated 27.06.2001. The disciplinary authority, while issuing the final order dated 28.09.2007, did not apply the provisions of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992 retroactively. But, subsequently on the basis of the order dated 02.07.2008 issued by the State Level Scrutiny Committee (Annexure-10 to the writ petition), without cancelling or even referring to the said final order dated 28.09.2007, the petitioner has been debarred from his services by the impugned Memorandum dated 26.09.2014, Annexure-13 to the writ petition. Now, this court has to consider that whether the petitioner has suffered double jeopardy for the said action of the respondents or whether the respondents can give retroactive operation of sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992, to punish the petitioner when the misconduct has been noticed and recorded by the Memorandum dated 27.06.2001.

20. The principles of double jeopardy has been accommodated in Article 20(2) of the Constitution of India, which provides as under :

**"No person shall be prosecuted and punished for the same offence more than once."**

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It is a common knowledge that from the common law tradition, the said principle has been borrowed. The roots of the principle, which has been accommodated in Article 20(2) of the Constitution, are to be found in the well-established rule of English Law, which finds expression in the maxim "*nemo debet bis vexari*", meaning a man must not be put twice in peril for the same offence. If a man is indicated again for the same offence in an English Court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, takes the plea of "*autrefois acquit*" or "*autrefois convict*".

21. Whether the same principle can be applied between the co-lateral or the bilateral proceedings based on the same set of allegations or whether such principle can be applied in the matter of inquiry, need to be surveyed. The apex court in **S.A. Venkataraman vs. Union of India & Anr.**, reported in **AIR 1954 SC 375**, has observed that :

**"In an enquiry under the Public Servants (Inquiries) Act of 1850, there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force, nor is there any question of imposing punishment prescribed by the law which makes that act or omission an offence."**

But, at the same time, it has been also observed that:

**"In order to enable a citizen to invoke the protection of clause (2) of article 20 of the**

**Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted and punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted. The position is also different under the American Constitution. There the prohibition is not against a second punishment but against the peril in which a person may be placed by reason of a valid indictment being presented against him, before a competent court, followed by proper arraignment and plea and a lawful panelling of the jury. It is not necessary to have a verdict at all."**

[Emphasis supplied]

22. What has been underlying in **S.A. Venkataraman vs. Union of India**, is that the attributes of Article 20(2) of the Constitution cannot have any bearing as such on the departmental enquiry. In that case, the plea that had been raised before the apex court is that when someone is being prosecuted on the criminal charge, he cannot be proceeded departmentally on the same set of charge. That plea was discarded by the court.

23. The Delhi High Court, in **R.N. Atri Vs. Union of India & Anr.**, reported in **1979 (1) SLR 527**, has held that :

**"The bar is to the prosecution for the same offence more than once. If therefore a person has been prosecuted for the same offence previously he cannot be prosecuted for it again, irrespective of whether he was acquitted or convicted in the earlier enquiry. Constitution forbids double jeopardy. Thus if a proper enquiry has been held, and finding given in that enquiry whether of guilt or innocence, no power is left with the Government to hold again a second enquiry on the same charges. If that power was to be conceded**

**to the Government, the whole object for which rules provide for an enquiry namely for administrative rectitude would be frustrated and enquiry may be held for the purposes collateral to the very object for which this power has been given to the Government."**

24. Again in **Dr. P. Kumari vs. The State of Punjab & Anr.**, reported in **1982 (1) SLR 241**, it has been held by the Punjab and Haryana High Court as under :

**After hearing the learned counsel for the parties, I do not find any merit in the stand taken by the respondent authorities. As per Rule 4(1) of the Punjab Civil Service Punishment and Appeal Rules, 1952, which undisputedly were in operation at the time the order Annexure 'B' was passed on April 7, 1967, 'warning' was one of the punishments prescribed therein, though a minor one. So far as the question of not holding a formal enquiry prior to the awarding of this punishment is concerned, it may be that the enquiry held against the petitioner was not a regular one; but it is not disputed that the charges or the statement of allegations which resulted in infliction of punishment of warning vide order Annexure 'B' was on the basis of the same facts which are now contained in Annexure 'C'. If that is so as already indicated, it is not disputed-then obviously the petitioner cannot be punished for the second time for the same lapse or on the same charges. In this view of the matter the charge-sheet Annexure 'C' and any proceedings taken on the basis of the same are hereby quashed.** [Emphasis supplied]

25. The apex court in a decision in **Lt. Governor, Delhi & Ors. Vs. HC Narinder Singh**, reported in **(2004) 13 SCC 342**, has held that :

**"Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was**

**the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule."**

[Emphasis supplied]

26. In this case, a unique feature has been noticed by this court that, at the instance of the petitioner, a writ petition, being Civil Rule 477/1998 was filed and while disposing of the said writ petition, by a common judgment dated 04.01.2006, it has been directed that the State Level Scrutiny Committee should enquire whether the petitioner's status certificate is genuine or not. The State Level Scrutiny Committee, by the order dated 02.07.2008, has cancelled the Scheduled Caste Certificate dated 25.06.1981, Annexure-2 to the writ petition, holding that the petitioner does not belong to the Scheduled Caste Community. The petitioner did not challenge the said order dated 02.07.2008 till the impugned Memorandum dated 26.09.2014 has been passed.

27. There is no dispute that the inquiry conducted by the Sub-Divisional Officer and subsequently, by the State Level Scrutiny Committee was on the same conduct of the petitioner. As is evident from the records, the petitioner did not challenge the departmental proceeding which was drawn up against him. Based on the Memorandum dated 23.09.1998, cancelling the

Scheduled Caste Certificate of the petitioner, the disciplinary proceeding was initiated. The said disciplinary proceeding had culminated in the order 28.09.2007, whereby the petitioner was reverted to his original post of Chemist. It is an admitted position that the petitioner did not challenge or question the said order dated 28.09.2007 and he continued in the service till the impugned Memorandum dated 26.09.2014 was issued. Since the disciplinary authority did not recall or cancel the order dated 28.09.2007, in the considered opinion of this court, the petitioner suffered double jeopardy for the same misconduct for the penalty awarded by the impugned Memorandum dated 26.09.2014. Apart that, we are of the view that a misconduct has to be construed within the framework of law. In the instant case, it is admitted position that when the misconduct was noticed and recorded, by the Memorandum dated 27.06.2001, the penal provision contained in sub-rule (9) of Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) Rules, 1992 was not in force in the statute nor the said rule had been incorporated by the Tripura Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) (Second Amendment) Rules, 2007 with effect from 02.04.2007. The said penal provision cannot have any retroactive operation and the disciplinary authority, while passing the final order dated 28.09.2017, has correctly followed the provisions of Rule 4(A)(3) as incorporated by the Tripura Scheduled Castes and

Scheduled Tribes (Reservation of vacancies in services and posts) (First Amendment) Rules, 2000, having regards to the other circumstances.

28. Having held thus, we are of the view of that the impugned Memorandum dated 26.09.2014, Annexure-13 to the writ petition, cannot be sustained and, accordingly the same is set aside. As consequence thereof, the respondents are directed to reinstate the petitioner in service in the post of Chemist, but we decline to give him the arrear of salary in the context of the case. Such reinstatement shall be done within a period of 2(two) months from today.

29. In the result, this writ petition is allowed. There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

ROY