

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.582/2019

Mrs. Sipra Debbarma,
D/o Lt. Amulya Debbarma,
W/o Sri Satyaranjan Das,
Krishna Kishore Nagar, Bishalgarh,
P.S : Bishalgarh, Dist : West Tripura.

..... *Petitioner(s)*.

Vs.

1. The State of Tripura,
(To be represented by the Principal Secretary,
Deptt. of Employment Service and Manpower Planning,
Government of Tripura), New Secretariat Complex, Kunjaban,
P.S - New Capital Complex, Agartala, West Tripura, Pin - 799006.
2. The Director, Department of Employment Services, Manpower Planning,
Govt. of Tripura, Office lane, P.O : Agartala, P.S : West Tripura,
Agartala, West Tripura, Pin - 799001.
3. The Senior Research Officer(HOO), District Employment Exchange,
Govt. of Tripura, Office lane, P.O : Agartala, P.S : West Tripura,
Agartala, Pin - 799001.
4. The Accountant General(A & E), Tripura, Bholagiri, West Tripura,
Pin : 799006.
5. The Senior Deputy Accountant General(Accounts), O/o Accountant
General (A & E) Tripura, Bholagiri, West Tripura, Pin - 799006.

..... *Respondent(s)*.

_B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Ms. A Debbarma, Advocate,
Mr. Samarjit Bhattacharjee, Advocate.
For Respondent(s) : Mr. Biswanath Majumder, CGC,
Mr. S Dey, Advocate.
Date of hearing & judgment : 29th July, 2021.
Whether fit for reporting : No.

J U D G M E N T (O R A L)

The petitioner has raised a grievance about non-payment of gratuity and pension after retirement.

[2] Brief facts are as under :

The petitioner joined the service of Government of Tripura in the year 1992 as a Lower Division Clerk on a reserved post for Scheduled Tribe. The petitioner claimed that she belongs to Laskar(Tripuri) community which was recognized as a Scheduled Tribe in Tripura. In the State of Tripura, the question of Laskar community being recognized as a Scheduled Tribe became a focal point of long legal controversy. Eventually, the Supreme Court upheld the judgment of the Tripura High Court holding that the Laskar community is not a recognized Scheduled Tribe in the State of Tripura. However, looking to the longstanding disputes, it was decided that those

belonging to Laskar community and who had been granted any benefit of reservation up to 31st March 1990, the same shall not be withdrawn.

[3] The proceedings for cancellation of the petitioner's caste certificate and consequentially, her appointment in Government service also went through several legal stages. At one stage, the Single Judge allowed the petition and set aside the order passed by the State Level Scrutiny Committee(SLSC) cancelling her caste certificate. The Division Bench, in a writ appeal by the Government, though confirmed the order of the learned Single Judge setting aside the order of the SLSC, did not approve the decision of the Single Judge even refusing the remand of the proceedings for further consideration before SLSC. The Division Bench allowed the SLSC to pass a fresh order after hearing the petitioner and other similarly situated persons. SLSC once again passed a fresh order, cancelling the caste certificate of the petitioner. The Government acting on such cancellation passed an order, on 28th March 2018, cancelling the petitioner's appointment which was based on the false claim of Scheduled Tribe status. The petitioner thereupon approached the High Court by filing WP(C) No.347/2018. The Single Judge stayed the implementation of the order and accordingly, the petitioner rejoined the duties. While this petition was pending and interim relief was operating, the petitioner crossed the age of superannuation and

retired w.e.f. 31st January 2019. Eventually, the writ petition was dismissed by a judgment dated 14th June, 2018. The petitioner challenged the judgment of the learned Single Judge by filing a writ appeal [WA No.3/2018]. Writ appeal was also dismissed by a judgment dated 6th April 2021. However, limited scope left open was for protection of the benefits already granted before 31st March 1990 as can be seen from the following portion of the judgment :

“[19] Before closing, we may take note of the fact that the Supreme Court in case of *Srish Kumar Choudhury versus State of Tripura and others* reported in *AIR 1990 SC 991* while confirming the decision of the High Court declaring that Laskar community of Tripura is not a notified Scheduled Tribe, had protected the benefits granted to the persons belonged to the said community on the basis of Scheduled Tribe certificate issued by the competent authority till a particular date. Pursuant to this judgment the State of Tripura had also issued a memorandum dated 31.03.1990 providing that the members of Laskar community henceforth will not constitute Scheduled Tribes and will not be able to draw any benefits as members of Scheduled Tribe in the State of Tripura. However, the members of the said community shall not be deprived of the benefits they have already enjoyed by virtue of having been treated as Scheduled Tribe in accordance with the orders issued by the Government of Tripura. Both or either of the petitioners if are therefore

entitled to these concessions, he or she should be granted the same despite dismissal of these appeals.”

[4] In the present petition, the petitioner has prayed for a direction for release of her gratuity and pension. It is stated that the petitioner has been paid only provisional pension post-retirement and no gratuity has been paid. Learned counsel for the petitioner submitted that the petitioner had discharged her duties without any blemish from the year 1992 till the year 2019 when she crossed the age of superannuation. The Government cannot withhold her post-retiral benefits. Counsel relied on the decisions of Supreme Court in case of *D S Nakara and Ors. Vs. Union of India* reported in (1983) 1 SCC 305 and in case of *State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr.* reported in (2013) 12 SCC 210 to contend that pension is a right of the employee and is not a bounty given by the Government.

[5] On behalf of the respondents, the Government counsel submitted that the petitioner had claimed a false caste status after following procedure. As per the rules, the caste certificate was cancelled which later on resulted into cancellation of her very appointment. Petitioner, therefore, cannot claim any post-retiral benefits.

[6] Having thus heard learned counsel for the parties and having perused documents on record what is clear is that the petitioner claimed the benefit of Scheduled Tribe claiming that she belonged to Laskar(Tripuri) community which is a recognized Scheduled Tribe within the State. SLSC however found that she belonged to Laskar community which is not recognised as ST community in the State. Her caste certificate was thereafter cancelled. Based on the cancellation of the caste certificate, her appointment also stood cancelled and these orders have achieved finality since Single Judge as well as the Division Bench have dismissed the petition challenging this order. In that view of the matter, the petitioner cannot claim post-retiral benefits of pension and gratuity. It may be that on the principles of *quantum meruit*, the salary already paid to the petitioner for the work done cannot be a subject matter of recovery. However, it is well-settled through series of judgments of Supreme Court that the benefits of Government employment, promotion or admission in educational institutions on the strength of false claim of reserved category candidate, would be withdrawn once it is proved that the caste status was falsely claimed.

In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI, CJ)