

(2011) 07 CAL CK 0103

Calcutta High Court

Case No: Writ Petition 690 (W) 2010

Manoj Chowdhury

APPELLANT

Vs

The District Judge Malda and
OthersRESPONDENT

Date of Decision: July 27, 2011**Hon'ble Judges:** Sambuddha Chakrabarti, J**Bench:** Single Bench**Advocate:** Kamalesh Bhattacharjee and Indranil Nandy, for the Appellant; Protik Dhar and Rittwik Pattanayak, for the Respondent

Judgement

Sambuddha Chakrabarti, J.

The writ Petitioner claimed that he belongs to the Schedule Caste community and he obtained a Certificate to that effect in 1997. In 1992 he was appointed as a Lower Division Clerk under the District Judgeship of Malda. The Petitioner says that since he did not have his caste certificate at the time of joining the said post he could not mention the same in his application.

2. In the year 2002 a gradation list was published to which the writ Petitioner raised objection but the list as already published was not interfered with.

Then on November 13, 2009 another gradation list was published by which 12 Lower Division clerks were promoted temporarily to the post of the Upper Division clerks. Under the said gradation list the writ Petitioner was given the first vacancy as a Schedule Caste candidate with effect from 1st February 2008. The Petitioner was promoted to the post of Upper Division clerk, worked for sometime and got his salary admissible to the post promoted.

3. On November 25, 2009 the Petitioner requested the learned District Judge, Malda, to pass an order so that he could get his promotion from a retrospective date which was forwarded by the Chief Judicial Magistrate, Malda, to the learned District Judge, Malda.

4. It seems, by the said request the Petitioner had invited his own trouble. By a memo, dated December 7, 2009, the learned Chief Judicial Magistrate, Malda, in view of the learned District Judge's memo, dated December 4, 2009, directed him to submit his reply to three queries by December 11, 2009. The queries were: 1) whether his father was an employee of the general category; 2) whether the Petitioner was appointed against the same category; and 3) whether he claimed himself as a Schedule Caste during the submission of papers to prepare his Service Book in the year 1992.

5. The Petitioner's reply is Annexure P-8 to the writ petition. There he inter alia mentioned that he was not in a position to say whether his father was an employee of the general category as relevant papers and documents were not in his hand. As to the second query his answer was that it was not mentioned in his appointment letter whether he was appointed in service as a general category candidate or one belonging to the Schedule Caste category. In 1992 he had no document in his hand to show that he was a Schedule Caste candidate and as such as he could not claim himself to be so. But the most striking part of the reply was when he proceeded to write that on November 6, 1997 he was issued the Schedule Caste certificate and on that date he "came to know" that he was a Schedule Caste.

6. This part of the reply was relay very strange. A candidate is may not have a caste certificate on a certain date in hand; but it is really surprising that only after a certificate had been issued he came to know that he belonged to the Schedule Caste community. He must have applied before that for issuing the caste certificate. He must have had his knowledge that he belongs to the Schedule Caste community, otherwise he ought to have applied. It is quite possible that since the certificate was not in his hand he could not validly claim himself as a Schedule Caste candidate. But after the certificate was issued he came to know that he belonged to the Schedule Caste community makes the whole thing a truly suspicious one.

7. On December 17, 2009 the learned District Judge sent another memo to the writ Petitioner stating inter alia that he himself had made declaration that he did not belong to the Schedule Caste community. The writ Petitioner was further informed that his Schedule Caste certificate which was submitted long before his date of appointment has not been accepted by the learned District Judge, Malda at any point of time. But somehow he managed to procure the benefit of 1: 1 policy though he was appointed as a "C" grade General Category staff. The writ Petitioner was directed to give his explanation by December 21, 2009 failing which the matter would be sent to the concerned police authorities for necessary enquiry. On December 19, 2009 the writ Petitioner gave his reply which was in line with his earlier reply, dated December 11, 2009. In this letter he said that subsequent to his police verification he had applied to the competent authority for issuing a Schedule Caste certificate to which he originally belonged. He denied the allegation that he somehow managed to procure the benefit of 1: 1 policy for he was never in a

position to handle the service records.

8. Annexure- P 12 is the order impugned in this writ petition and is dated December 19, 2009. This was issued by the learned District Judge, Malda. This order was in the form of a corrigendum of the earlier order, dated November 13, 2009. This order said that it was detected after cross verification of office records that the writ Petitioner did not belong to the Schedule Caste community. As such the order dated November 13, 2009 was corrected in so far as the writ Petitioner's caste was concerned. From Schedule Caste it was corrected as general category and the vacancy position was also altered. Now after correction the Petitioner was placed in the third vacancy under the unreserved category with effect from May 1, 2008. This lowering of the Petitioner in the vacancy from 1st (Schedule Caste) to 3rd (unreserved) has been challenged by the Petitioner in this writ petition.

9. The writ Petitioner subsequently affirmed a Supplementary Affidavit wherefrom it appears that by order dated February 2, 2010 he was transferred and appointed as Forms and Stationary Clerk-cum-Miscellaneous Clerk of Civil Judge, Junior Division, 1st Court, Malda. From the documents annexed to the Supplementary Affidavit it also appears that a memo, dated March 29, 2010 was issued by the learned District Judge, Malda, wherein it was specifically written that, "this order is passed specially for searching out malpractice made by the present two staff for placing them as members of Schedule Caste community". "The two staff" mentioned above are the writ Petitioner and one Shri Dipak Chowdhury who happens to be the cousin of the writ Petitioner. In this detailed office order the learned District Judge has narrated certain facts: the writ Petitioner at the time of joining claimed himself as a general category candidate and everywhere he has written that he did not belong to Schedule Caste or Schedule Tribe community. In his Service Book only a xerox copy of the Schedule Caste certificate was pasted without any attestation and acceptance by the appointing authority of the Petitioner and he did not make any prayer for acceptance of that certificate to the learned District Judge at any point of time. The Service Book of his retired father was consulted which revealed that he never belonged to the Schedule Caste category, but belonged to the general category. The learned District Judge had also drawn a genealogical table to prove the malpractice, practiced by the writ Petitioner and his cousin. The father and the two uncles of the writ Petitioner were employees of the judgeship of Malda. While narrating the service history of the writ Petitioner's father and two uncles, the learned District Judge, Malda, consulted their service records and came to the specific conclusion that the Petitioner belonged to the Baisya Banik sect of the Hindu community, as his father and uncles and cousins belonged to the said community and never belonged to the Suri sect which was certified by the S.D.O. while issuing the Schedule Caste certificate. He referred to a memo of the District Magistrate wherefrom it was found that Baisya Banik caste was not recognized as belonging to Schedule Caste community in West Bengal and he further directed the writ Petitioner and the other staff mentioned in the order to be treated as General category candidates and not

as members of the Schedule Caste community. He directed the matter to be sent to the District Magistrate, Malda, for starting an inquiry about how and under what circumstances the Sub-divisional Officer, Malda, had issued the Schedule Caste certificate and to determine under what circumstances the writ Petitioner and the other staff mentioned therein managed to procure the fictitious Schedule Caste certificate from the office of the S.D.O., Malda. By an office memo, dated June 15, 2010, the District Magistrate, Malda, gave a cryptic inquiry report wherein it was merely mentioned that the Schedule Caste certificates were issued from his end.

10. By a letter dated July 12, 2010 to the learned District Judge, Malda, the Petitioner requested for certain documents and to pass necessary orders for reinstating him to his original position in service and then to pass a further order for his promotion as per 50 point roster as a Schedule Caste candidate.

11. It appears from an office order dated July 29, 2010, that the learned District Judge-in-Charge had brought him back to the post of the Bench Clerk -II of the court of Chief Judicial Magistrate, Malda, which was to take effect from July 13, 2010.

12. It appears from the order dated August 24, 2010, that the learned Advocate appearing for the state Respondents had submitted that the writ Petitioner had practiced serious fraud by portraying himself as belonging to the Schedule Caste community whereas he belonged to the general category. This Court directed the Respondents to file a short affidavit by September 8, 2010. Reply, if any, was to be filed by December 15, 2010. On December 7, 2010, the learned Advocate for the State prayed for extension of time to file affidavit-in-opposition. The same was granted and the time to file an affidavit was extended till one week after the reopening of the Court after the Christmas vacation. On February 11, 2011, the learned Advocate for the State again prayed for extension of time to file affidavit-in-opposition and the same was once again extended by seven days as a last chance.

13. On March 18, 2011, when the matter was taken up, none appeared on behalf of the Respondent and no accommodation was prayed for. The learned Advocate for the Petitioner submitted that no copy of affidavit-in -opposition was served upon him. No Affidavit on behalf of the Respondents was filed in court either. In such view of the matter and since none appeared for the Respondents to pray for an adjournment, the matter was taken up for hearing. Thus, it appears that inspite of repeated opportunities the State Respondents did not file any affidavit nor did they contest the case.

14. Thus, the allegations in the writ petition have not been controverted by the Respondents. It is, however, no good denying the fact that the order impugned in the writ petition leaves much to be desired. The learned District Judge, Malda, while issuing the order impugned had merely stated, "it is detected after cross verification of the office records that Shri Manoj Kr. Chowdhry, does not belonged to

the S.C. community" and on the basis of such "detection" the placement in the gradation list was altered. This order is dated December 19, 2009. If we look at the sequence of the events it appears that on December 17, 2009 the learned District Judge directed the writ Petitioner to explain the confusion and doubt emerging from his belated submission of the Caste certificate by December 21, 2009, failing which the matter was to be sent to the Superintendent of Police (I.B.), Malda, for inquiry. This office memo has been annexed to the writ petition as Annexure P-9. By another office memo of the even date the learned Chief Judicial Magistrate further directed the writ Petitioner to submit his explanation to him by December 21, 2009. Therefore, the outer time limit of giving reply to these office memos were fixed by concerned Respondents on December 21, 2009.

15. Annexure P-11 is the reply of the writ Petitioner to the learned District Judge and the said letter was dated December 19, 2009 wherein the writ Petitioner had given his own explanation.

16. The order impugned never refers to this explanation. It is not possible to gather from this order whether this had reached the learned District Judge before he issued the impugned order or whether he had at all considered it. If it had not reached him before he issued the order he could have waited for two more days, as that was the outer time limit fixed by him. And if it had reached him the learned District Judge should have considered his explanation. The writ Petitioner was directed to give his explanation which he had done in his own way. This explanation was worth considering, because, if the learned District Judge wanted to draw his conclusion that the writ Petitioner did not belong to the S.C. community on the basis of cross verification of the office records only then perhaps there was no need to give him an opportunity to explain the doubtful factual situation. Moreover, if the explanation sought from him was by way of giving him an opportunity of being heard, then it was practically rendered into an empty formality by not considering the answer given by the writ Petitioner. From part of the Annexure P- 13, annexed to the Supplementary Affidavit, it appears that the learned District Judge by an order dated March 29, 2010, had given a detailed report expressing why the writ Petitioner should not be considered as belonging to the Schedule Caste community. While doing so he had cross verified the service records of the father, uncles and cousins of the Petitioner, given a history of the retired persons and came to the conclusion that it was proved beyond any manner of doubt that the writ Petitioner belonged to Baisya Banik sect and not to the Suri sect and as such he could not claim the status of a Schedule Caste candidate.

17. This subsequent order was passed more than three months after the order impugned in the writ petition was issued. This subsequent order, dated March 29, 2010, relied on the verification of office records and the authorities concerned could have done it at the very outset.

18. This subsequent order also suffers from a major infirmity. If the office records had indicated something contrary to the claim of the writ Petitioner the Respondents ought to have given him an opportunity of being heard. His attention ought to have drawn to the facts emerging from verification of various records. This is all the more important because the Petitioner in his reply had stated that the service records of his father was not available with him and he prayed for supply of the service records of his father. The authorities had asked him by an office memo, dated December 7, 2009 whether his father was employed as a General Category employee. To this he replied that he did not have his father's office records. No question was put to him about his uncle or cousins. But their office records were also consulted and the Respondents had unilaterally come to the conclusion that the writ Petitioner did not belong to the Schedule Caste community.

19. In all fairness, if the Respondents had intended to rely on any office record of anybody else they should have given the writ Petitioner an opportunity of being heard. They should have drawn his attention to the alleged factual situations emerging from the office records of other persons and should have given him an opportunity to explain the same. This, however, was not done. On the other hand, even in the subsequent detailed order, dated March 29, 2010, the learned District Judge, Malda, did not even refer to, let alone consider, the explanation given by the writ Petitioner by his letter dated December 19, 2009.

20. Moreover, before issuing the detailed order the concerned Respondents had already come to a conclusion that the writ Petitioner did not belong to the Schedule Caste community as it appears from the order of the learned District Judge dated December 19, 2009.

21. The authorities concerned thus by not affording an opportunity of being heard to the writ Petitioner and by not considering the explanation given by him have violated the basic principles of Natural Justice. Merely giving an employee an opportunity to explain certain things and then not considering the same and relying on some documents which are not available to an employee without giving him an opportunity to inspect and an opportunity of being heard is not the proper compliance with the requirements of the principles of Natural Justice. Principles of Natural Justice require that every point which the authorities consider might go against an employee should be specifically mentioned to him and he should be given an adequate opportunity to explain the same. The concerned Respondents in this case failed to discharge their duties as was expected of them.

22. Such being the position the order impugned is hereby set aside and quashed. The matter is remanded back to the learned District Judge, Malda, for a fresh consideration after complying with the principles of Natural Justice. The learned District Judge, Malda, shall allow the Petitioner to inspect the service records of his relations as relied on by him in his order, dated March 29, 2010 and annexed to the supplementary Affidavit as part of Annexure P- 13 and shall give him a hearing.

23. It is made clear that I have not gone into the merits of the case which is to be decided by the learned District Judge and he shall pass a reasoned order within a period of two months from the date of the communication of the order without in any way being influenced by any observation made in this order which is solely restricted to the decision making process and non-compliance of the principles of natural justice. If the Petitioner is found to belong to the Schedule Caste community he shall get his service benefits according to law. If, however, it is found that he does not belong to the Schedule Caste community and has knowingly made a false claim the authority may initiate appropriate action against the Petitioner and may also refer the matter to the police for investigation and appropriate action.

24. The writ petition is thus disposed of. There shall, however, be no order as to costs.

25. Urgent Xerox certified copy, if applied for, will be supplied within seven days from the date of the application.