

State Of Tripura vs Tripura Bar Association And Ors. on 16 April, 1998

Equivalent citations: AIR1999SC1494, JT1998(6)SC601, (1998)5SCC637, AIR 1999 SUPREME COURT 1494, 1998 (5) SCC 637, 1998 AIR SCW 3840, (1998) 6 JT 601 (SC), 1998 (6) JT 601, (1998) ILR (KANT) 3847, (1999) 1 SCT 272, 1998 SCC (L&S) 1426, (1999) 2 CURLJ(CCR) 226

Bench: S.C. Agrawal, S.P. Bharucha, M.K. Mukherjee

ORDER

1. Respondents 6 and 7 are common in all the appeals. The learned counsel representing them has made a prayer by circulating a letter for the deletion of their names. We allow the said prayer.

2. These appeals are directed against the judgment of the Gauhati High Court, Agartala Bench, dated 11-4-1991 in Civil Rule No. 144 of 1986. The said civil rule was a writ petition filed under Article 226 of the Constitution of India by the Tripura Bar Association and a member of the said Bar Association. The grievance of the petitioners in that writ petition was that the proviso to Rule 6(3)(b) of the Tripura Judicial Service Rules, 1974 which provided for reservation of 25% applicants to the posts in Grade I for direct recruitment from amongst members of the Bar was not being implemented. By notification dated 23-12-1986 Rule 6(3)(b) was amended and the provision regarding reservation for direct recruitment was deleted. By separate notification dated 21-5-1988 the amendment made by the earlier notification dated 23-12-1986 was repealed. The said amendment was, however, not made with retrospective effect. Thereafter, another notification has been issued on 18-11-1995 whereby the Judicial Service (Eighth Amendment) Rules, 1995 have been promulgated and Clause (6) has been inserted in Sub-rule (3) of Rule 6 of the Tripura Judicial Service Rules and it has been given retrospective effect from 23-12-1986. By the said amendment, the reservation of 25% posts for direct recruits from the Bar has been introduced with effect from 23-12-1986. As a result of the aforesaid amendment which has been made in the Rules vide notification dated 18-11-1995, the grievance raised by the petitioners in the writ petition no longer survives and has been removed.

3. In the impugned judgment, the High Court has, however, gone into the question of inter se seniority of the Judicial Officers who were impleaded as respondents in the writ petition. The said matter of inter se seniority had earlier been considered by a Division Bench of the same High Court in the case of Durgadas Purkayastha v. Hon'ble Gauhati High Court, (1988) 1 Gau LR 6 in respect of the same officers which judgment has become final. In the impugned judgment the Division Bench of the High Court has taken a view different from that taken in the earlier judgment in the case of Durgadas Purkayasiha.

4. We are of the view that the Division Bench of the High Court which has delivered the impugned

judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of Durgadas Purkayastha (Supra). If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se seniority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent Judicial Officers is set aside. The appeals are disposed of accordingly. No costs.