

**HIGH COURT OF TRIPURA
AGARTALA**

Cont. Cas(C) 138/2022

Sri Bijoy Debbarma and ors.

----Petitioner(s)

Versus

Sri Ajay Kumar Bhalla and ors

---Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate
Ms. R. Chakraborty, Advocate

For Respondent(s) : Mr. D. Bhattacharjee, Sr. Advocate
Mr. PK Biswas, Sr. Advocate
Mr. B. Majumder, Deputy SGI
Mr. S. Saha, Advocate
Mr. Pujan Biswas, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH
Order

10/07/2023

Heard Mr. Somik Deb, learned senior counsel assisted by Ms. R. Chakraborty, learned counsel for the petitioners. Also heard Mr. D. Bhattacharjee, learned senior counsel assisted by Mr. S. Saha, learned counsel appearing for the respondent-contemnors no. 2 and 3, Mr. PK Biswas, learned senior counsel assisted by Mr. P. Biswas, learned counsel appearing for the respondent-contemnors no. 5 and Mr. B. Majumder, learned Deputy SGI appearing for the respondent-contemnors no. 1 and 4.

Mr. Somik Deb, learned senior counsel appearing on behalf of the petitioners made a submission before this court on 07.07.2023 that while transmitting the files containing reports relating to the promotion of the petitioners in the IPS cadre, the State Government might have made certain remarks in respect of 4 petitioners, which may affect the promotional prospects of some of the petitioners. It was submitted that, the promotions of

the petitioners were considered on the basis of an order dated 18.07.2022 passed by this court. The contemnors had complied with the order, and accordingly, a Departmental Promotion Committee (“DPC”) meeting was held for consideration of the promotion of the petitioners. As per law, during DPC, it is the obligation of the employer to produce all the relevant records relating to the honesty, integrity and performance of the employees. Keeping in view this principle, the respondent-contemnors had produced all the relevant records which were required to be considered by the DPC for the purpose of promotion to the post of Indian Police Service (“IPS”, for short). The DPC had considered the case of the petitioners and recommended the names of the petitioners for promotion, being found them fit and suitable for promotion in the cadre of IPS. Thereafter, there were series of communications exchanged between the respondents wherein clarifications were given as regards the queries made by UPSC and MHA, which are evident from the earlier orders passed in this contempt application. Ultimately, the contemnors had sent the files of the petitioners for issuance of appointment letters.

Furthermore, Union Public Service Commission (“UPSC”, for short) had also verified the records relating to the petitioners and Mr. PK Biswas, learned senior counsel submits that while verifying the records relating to the petitioners, the UPSC have not found any adverse remarks against none of the petitioners.

On one occasion, this contempt matter came up before the Lok Adalat when the contemnors appeared and in presence of the petitioners had given an undertaking that they would complete the process of appointment of the petitioners within a period of 2 weeks. During the process of conciliation, the following observations were made by the Lok Adalat, which is reflected in the order dated 13.05.2023:

“The matter is taken up before the Lok Adalat. Both the parties have entered their appearance. Out of them learned counsel appearing on behalf of respondent-contemnor no.5 i.e. UPSC has informed that they have completed the meeting of selection process and also communicated the result of minutes of the meeting of the selection process to the State Government as well only on 10th May, but, learned GA appearing for the respondent no.2 and 3 has informed that they did not receive the copy of result of selection process till date. Hence, they sought for 2 weeks time to complete the proceeding on their part. The representative of Ministry of Home Affairs, Govt. of India has also sought for 2 weeks time to complete their part after receiving the report from State Government. Hence, considering the submission of all the parties to this proceeding as well as the petitioner no.1, 4 weeks time may be allowed to complete the entire selection process as prayed for by the parties and to file affidavit for compliance of the same”.

The above order shows that the UPSC and MHA were the parties to the undertaking. It is pertinent to mention herein that it is the settled proposition of law that violation of the undertaking itself amounts to commit contempt of Court's order.

Thereafter, it was informed to this court that, after accepting the recommendation of the Selection Committee Meeting (“SCM”, for short), the same had been communicated to the Secretary, UPSC with a copy to the Secretary, Government of India, MHA on 27.06.2023.

So, it is clear that the State Government on principle had accepted the recommendation made by the DPC.

This Court vide order dated 07.07.2023 without going into the merits of the submissions of learned counsel appearing for the parties requested learned senior counsel appearing on behalf of the Contemnors no. 2 and 3 to produce all the relevant records relating to the promotion of the petitioners to verify the submissions made by learned senior counsel appearing on behalf of the petitioners where apprehensions had been made that while communicating the files of the petitioners, some adverse remarks had been passed by the State Government. But today, when the matter came up, learned senior counsel appearing for the respondent-contemnors no. 2 and 3 has placed a note prepared by him whereby and whereunder he requested the contemnors to comply the Court's order and to ensure the production of relevant records relating to the petitioners. But, in spite of such request, the respondent-contemnors have not produced the records for the reasons best known to them.

In the opinion of this court, the conduct of the contemnors no. 2 and 3 is not acceptable at all and amounts to contempt of the Court's order. This court is not at all satisfied to the acts and conducts of the contemnors. Non-compliance of the order and the attitude of the State officers/respondents here-in, forced this Court to comprehend that there is some foundation in the submissions of learned senior counsel appearing on behalf of the petitioners that certain adverse remarks are unnecessarily made by the State authorities

against some of the petitioners. If that be so, then, this Court has no hesitation to hold that remarks, if any must be influenced by some extraneous reasons, which would be the clear manifestation of bias, and are actuated by malice. Once recommendation is made by the duly constituted DPC, there is no justification to withhold the consideration of issuance of appointment order in favour of the recommended. In the circumstances, this Court has been forced to pass following directions upon the respondent-contemnors:-

(i) If any adverse remark is passed by the State Government relating to any of the Officers who are under recommendation for promotion to the post of IPS, such remark would mean as to an act of bias and liable to be rejected in limine being un-authoritative, arbitrary, and non est.

(ii) The competent authorities of UPSC and Ministry of Home Affairs, Government of India, are directed not to take into consideration the remarks, if any, adverse to the petitioners, which may come in the way of issuance of appointment letters in favour of the petitioners promoting them to the post of IPS. The Ministry of Home Affairs, Government of India is directed to issue the appointment letter as per their undertaking dated 13.05.2023 within a period of 2 (two) weeks from today.

(iii) The competent authorities of UPSC are directed to take necessary steps for consideration of the matter by MHA, within a period of 7 (seven) days from today.

(iv) It is made clear that after accepting the recommendation made by DPC and cleared by UPSC, the State Government has no right to pass

any adverse remark against any of the petitioners who are waiting for issuance of appointment letters in their favour.

Mr. B. Majumder, learned Deputy SGI appearing for the respondent-contemnors no. 1 and 4, and Mr. PK Biswas, learned senior counsel appearing on behalf of respondent-contemnor no. 5, are hereby requested to communicate a copy of this order to the respective authorities in course of the day by e-mail or through FAX or even through whatsapp.

At this stage, I refrain myself to initiate contempt of courts proceeding against the respondent-contemnors.

List the matter on **31.07.2023**.

JUDGE