

(2005) 05 GAU CK 0067
In the Gauhati High Court
Case No : Case No. C.R. 282 of 1995

Ajit Kumar Majumdar

APPELLANT

Vs

Tripura Co-operative Milk Producers Union Ltd. and Others

RESPONDENT

Date of Decision : 24-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32

Citation : (2005) GLT 20 Supp

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : S. Talapatra and B. Bhattacharjee, for the Appellant; U.B. Saha and S. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. S. Talapatra, learned senior advocate assisted by Mr. B. Bhattacharjee, advocate for the Petitioner and Mr. U.B. Saha, learned senior advocate assisted by Mr. S. Chakraborty, learned advocate for the Respondents.

2. In this writ petition a prayer has been made for issuance of appropriate order to grant the pay scale of Rs. 800-1780/- (from the date he joined service under Respondent No. 1 as had been granted to the Respondent Nos. 2 and 3 and to give subsequent pay revisional benefits as made available/granted to the Respondent Nos. 2 and 3 from time to time and also to treat the Petitioner as senior to Respondent Nos. 2 and 3 and to cancel all the subsequent appointments issued in favour of the Respondent Nos. 2 and 3.

3. The Respondent No. 1, the Tripura Co-operative Milk Producers' Union Limited (hereinafter referred to as "Co-operative Society") is a Co-operative Society registered under the provisions of Tripura Co-operative Societies Act, 1974. The norms and criteria of the State Government is not automatically applicable to the said "Co-operative Society" unless the Board of Directors of the said "Co-operative Society" adopts the same. It appears that the Petitioner was initially

appointed on ad hoc basis as Animal Husbandry Extension Officer under the State Government of Tripura, Department of Animal Husbandry in the pay scale of Rs. 325-665/-. An advertisement was issued initially on 28-4-1982 for filling up various posts, namely, (a) one post of Veterinary Officer, (b) two posts of Assistant Milk Procurement Officer, (c) three posts of Procurement Assistant (Milk), (d) one post of Office Asstt. (Accounts) with further indications in the advertisement dated 28-4-1982 as below:

(a) Veterinary Officer: One post, Pay scale Rs. 650-30-800-EB-40-1200/-. Educational qualification Degree in Veterinary Science and Animal Husbandry (i) One year experience in Veterinary Treatment and preventive works.

(b) Asstt. Milk Procurement Officer: Two posts, Pay scale Rs. 500-25-750-EB-30-1050/-. Educational qualification Degree in Dairying/Diploma in Dairying with 2 years experience in Milk Procurement works.

4. The Petitioner applied to the post of Asstt. Milk Procurement Officer (for short "AMPO") in reference to first advertisement in the pay scale of Rs. 500-1050/-; since no selection and appointment was made in reference to first advertisement dated 28.4.1982, therefore an another advertisement dated 16.7.1982 was published with indication that the candidates already applied in response to the first advertisement need not apply again but should intimate their willingness only for the post applied for. However, the Petitioner's case was considered for the post of "AMPO" as direct recruit as he had already resigned from the post of Animal Husbandry Extension Officer (Dairy), Department of Animal Husbandry, Government of Tripura. The second advertisement indicates as below:

(i) Veterinary Officer 1 (One post) Age: Below 28 years preferred. Consolidated stipend of Rs. 1200/- p.m. for one year. After being found successful, the candidate will be given pay scale of Rs. 800-40-1200-50-1600/- Degree in Veterinary Science and Animal Husbandry, having about 3 years experience in the field of Animal treatment

(ii) Asstt. Milk Procurement Officer 1 (One Post) Age: 28 years preferred, Consolidated stipend for one year @ Rs. 900 p.m. After being found successful, the candidate will be given pay scale of Rs. 700-1300/- Diploma in Dairying having at least two years experience in milk

The Petitioner was appointed as "AMPO" in the pay scale of Rs. 700-1300/- and in the same selection the Respondent Nos. 2 and 3 were appointed as Veterinary Officer in a higher pay scale of Rs. 800-40-1200-50-1600/-. Keeping in view the work and responsibility, an allowance of Rs. 200/- per month was allowed to Respondent Nos. 2 and 3. It is evident from the second advertisement that requirement for Veterinary Officer is degree in Veterinary and Animal Husbandry, having about 3 years experience in the field of Animal treatment and for the post of Assistant Milk Procurement Officer the educational qualification is Diploma in Dairying having at least two years experience in milk procurement work.

5. According to the learned Counsel for the Petitioner, in initial advertisement since the minimum educational qualification for recruitment to the post of "AMPO" was Degree in Dairying/Diploma in Dairying with 2 years experience in Milk Procurement works and even after the Petitioner had left the Department of Animal Husbandry, any enhancement in the pay scale to the post held by him earlier under State Government should also be provided to him in "Co-operative Society". According to the Petitioner, the Petitioner was not given the higher responsibility and special allowance therefore, keeping in view the grievance, the demand of Petitioner for the same salary as payable to the Respondent Nos. 2 and 3 was accepted by the Board of Directors on 21-6-1983. However, this contention of the Petitioner has been denied in para 9 of the counter affidavit of Respondent No. 1 by saying that such resolution was neither passed nor any decision of revision of pay scale for the Petitioner was ever taken. According to the Respondent No. 1 right from the day of his initial appointment, the Petitioner was kept in different pay scale, work and post of responsibility vis-a-vis Respondent Nos. 2 and 3. According to Respondent No. 1, as indicated in para 11 of the counter-affidavit the Respondent Nos. 2 and 3 were gazetted officers in the department of Animal Husbandry, Government of Tripura working as Veterinary Assistant Surgeon prior to their appointment as Veterinary Officer in the scale of Rs. 800-1780/- in "Co-operative Society" whereas, the Petitioner was holding the post of "Animal Husbandry Extension Officer" only a non gazetted post in the Department of Animal Husbandry, Government of Tripura. According to the Respondents, once after tendering resignation by the Petitioner and Respondent Nos. 2 and 3 from the State Government and after their joining to the respective new above posts as direct recruits in "Co-operative Society," the enhanced pay scale, if any, to their respective posts held by them in the State Government cannot be taken into consideration. this Court finds force in the contentions of the Respondents.

6. In reference to the averments made by the Petitioner in para 14-A of the writ petition it has been submitted on behalf of the Respondents that the Board of Directors of "Co-operative Society" in its meeting dated 11-6-2001 has, in fact, resolved that the Respondent No. 2 would be given the post of Managing Director on purely ad hoc basis for a period of six months with an honorarium of Rs. 200/- per month. The post of Manager works was elevated to Additional Managing Director without financial benefit and in reference to resolution of Board of Directors more responsibilities were assigned to the Additional Managing Director and the Respondent No. 3 was designated as Additional Managing Director with effect from 1-7-2001 without any extra remuneration. The post of Manager (Operation) and Manager works was abolished with effect from 1-7-2001. The Additional Managing Director was Drawing and Disbursing Officer having facilities to deal cheques upto Rs. 2 lacs but approval and sanction of Managing Director was required in all cases. In reference to response of averments made in para 14-B of the amendment writ petition, it has been indicated by the Respondents that when the post of Managing Director was

advertised, the Petitioner at his own sweet will did not participate to the selection for the post of Managing Director was not by way of promotion from any feeder post, however, when the Respondent No. 2 was appointed as a Managing Director, the Petitioner should not have any grudge as the said selection of Managing Director was finalized after considering the candidature as many as of nine persons from open market keeping in view their qualification, experience and work performance by the Selection Committee comprising of the expert in the line. According to the Respondents, the Petitioner has since accepted the appointment to the post of Dairy Officer from "AMPO" on 3-2-1995 and from Dairy Officer to Manager (Dairy) on 28-4-2003 without any objection, as such no legal right or claim of Petitioner survives at present.

7. I have heard the learned Counsel for the parties. I have also perused the records. I find that initially the Petitioner in reference to the advertisement had participated along with Respondent Nos. 2 and 3 and was selected as "AMPO" in the pay scale of Rs. 700-1300/- whereas the Respondent Nos. 2 and 3 being selected as "Veterinary Officer" through the same selection in a different pay scale i.e. Rs. 800-1600/- altogether were discharging different function, work and were assigned different superior responsibility and when subsequently in their own right they have also been selected to the higher post, therefore, the grievances of Petitioner cannot survive. The Petitioner is also not a "Degree Holder," unlike, the Respondent Nos. 2 and 3 and they were appointed altogether in different pay scale. Their responsibilities and works were different since beginning, there was no common channel of promotion or point of merger at subsequent stage. The Board of "Directors of Co-operative Society" has neither adopted any resolution nor accepted the pay scale prescribed applicable and prevalent in the State of Tripura for the government officials. The Petitioner has not been discriminated as such provisions of Article 14 of Constitution is not infringed. Article 14 could be invoked when equals and similarly situated persons are being treated unequally or differently Unequal and different treatment could be given to those who are unequals and situated differently. Unequals are not only permitted to be treated unequally but also they have to be so treated in view of the decision of Supreme Court in St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., . Treating unequals unequally does not violate the provisions of Article 14 of the Constitution in view of M.P. Oil Extraction and Another Vs. State of M.P. and Others, .

8. Granting of special pay-scale and up-gradation of particular cadre pertain to the economic aspects and policy decision of State and organisation and scope of judicial review is limited and circumscribed unless the policy decision is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is violative of any constitutional or statutory mandate, the Court's interference is not called for as observed by the Supreme Court in M.P. Oil Extraction and Another Vs. State of M.P. and Others, . The relevant extract of Para-41 reads as below:

...The Executive Authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded or mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the policy is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

9. The Supreme Court following *Tata Cellular Vs. Union of India*, , has observed in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, , in respect of exercise of power under Article 226 by the High Court and under Article 32 by the Supreme Court that the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made, particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The duty of the Court is to confine itself to the question of legality. Its concern should be (i) whether the decision-making authority exceeded its power; (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached a decision which no reasonable Tribunal would have reached; or (v) abused its power.

10. In view of the above observations, the Petitioner has no case. Therefore, the writ petition is dismissed.