
(1999) 04 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 43 of 1992 (Agt.)

Akshay Kr. Sharma

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Road Transport Corporations Act, 1950 — Section 10, 14, 14(2), 14(3), 19
Tripura Road Transport Corporation (Officers and Other Employees) Recruitment
Regulation, 1986 — Regulation 1

Citation : (1999) 2 GLT 378

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee, S. Bhattacharjee, B. Bhattacharjee, A.M. Mazumdar, S.S. Dey and M. Nath, for the Appellant; U.B. Saha and A.C. Deb Nath, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the orders dated 5.3.90, 8.3.90 and 8.3.90 issued by the Officer on Special Duty, Transport Department, Government of Tripura to the Managing Director, Tripura Road Transport Corporation to cancel the appointment of the Petitioner as P.A. to Chairman of the said Corporation on ad hoc basis and to quash the communication dated 21st March '90 of the Secretary, Govt., of Tripura to the Managing Director of the Corporation to place the appointment of the Petitioner as P.A. to the Chairman of the Corporation in the next meeting of the Board of Directors of the Corporation. The Petitioner has also prayed for a direction on the Respondents to regularise the services of the Petitioner and not to cancel his appointment.

2. The facts briefly are that the Petitioner was appointed as U.D.C. in the Tripura Road Transport Corporation (for short "the Corporation") and he joined in the said post as U.D.C. on 1.4.74. Thereafter by order dated 23rd April 77 of the General

Manager of the Corporation the Petitioner was asked to take over formal charge of the P.A. to General Manager and to perform the duties of the P.A. to General Manager of the Corporation in addition to his duties without any extra remuneration. Pursuant to the said order dated 23rd April '77, the Petitioner took over charge of P.A. to General Manager of the Corporation and performed the duties of P.A. in addition to his duties as U.D.C. without any extra remuneration. On 19th and 20th of June, 1978, the Board of Directors of the Corporation in its 54 meeting approved the proposal for recruitment to the vacant post of P.A. to General Manager by inviting applications from eligible candidates through the Employment Exchange subject to requisite qualifications and experiences in the line. The Petitioner and other candidates sponsored by the Employment Exchange appeared in an interview for selection to the said post of P.A. to General Manager and a panel of selected candidates was prepared by the Selection Board and sent to the then Chairman of the Corporation for his approval, but the then Chairman of the Corporation did not take any decision on the said recommendation of the Selection Board. As a result the post of P.A. to General Manager could not be filled up. In 1986, Tripura Road Transport Corporation (Officers and Other Employees) Recruitment Regulations, 1986 were made by the Corporation with the previous sanction of the State Govt, u/s 45 of the Road Transport Corporation Act, 1950 (for short the "1950 Act"). In the schedule to Tripura Road Transport Corporation (Officers and Other Employees) Recruitment Regulation, 1986 (for short the 1986 Regulations), the post of P.A. to Managing Director of the Corporation was included and it was stipulated therein that the post will be filled up by promotion from the post of Stenographer having 5 years experience in the grade under the corporation failing which by direct recruitment. No one was however promoted to the said post of P.A. to Managing Director and instead by order dated 6th November '86, the Managing Director of the Corporation while promoting the Petitioner to the post of Head Clerk asked him to continue to function as P.A. to Managing Director and report for duty accordingly. In compliance with the said order, the Petitioner joined the said post of Head Clerk, but reserved his right to be appointed to the post of P.A. to Managing Director of the Corporation on the basis of selection held in the year, 1978. Thereafter by order dated 28th May '88 the Petitioner was appointed to the post of P.A. to Chairman on ad-hoc basis which had been created by the Board of Directors of the Corporation in its 83rd meeting held on 29.4.88. After the Petitioner had joined the said post of P.A. to Chairman on ad hoc basis and had worked for almost 2 years, the officer on Special Duty, Government of Tripura issued the impugned letters dated 5.3.90 and 8.3.90 to the Managing Director of the Corporation stating therein that after careful consideration the Government had decided that the ad hoc appointment order issued on 28.5.88 in favour of the Petitioner as P.A. to Chairman should be cancelled forthwith. These communications of the Officer on Special Duty, Govt, of Tripura were followed by a confidential letter dated 21.3.90 of the Secretary to the Government of Tripura to the Managing Director of the Corporation requesting him to place the order of the Government regarding cancellation of the appointment of the Petitioner

before the Board of Directors of the Corporation in the next meeting and to communicate the views of the Board to the Government forthwith. Aggrieved, the Petitioner has filed this writ petition for appropriate relief.

3. When the writ petition was moved before this Court on 6.4.90, this Court while issuing Rule passed an interim order directing that pending hearing of the writ petition the Corporation will not comply with the impugned orders/requests contained in the letters dated 5.3.90 and 8.3.90 of the Officer on Special Duty, Govt. of Tripura, Transport Department and the letter dated 21.3.90 of the Secretary to the Government of Tripura to the Managing Director of the Corporation.

4. Mr K.N. Bhattachaijee, learned Counsel for the Petitioner, submitted that u/s 34 of the 1950 Act, the State Govt, can issue to the Corporation only general instructions including instructions relating to the recruitment, conditions of service and training of its employees and wages to be paid to the employees, but no specific instruction can be issued by the State Government to cancel the appointment of a particular employee. Hence, the impugned communications dated 5.3.90, 8.3.90 and 21.3.90 containing the decision of the Government to cancel the appointment of the Petitioner as P.A. to the Chairman of the Corporation was without jurisdiction and the said communications on behalf of the State Government to the Managing Director of the Corporation are liable to be quashed. He further submitted that law is well settled by the Supreme Court that Recruitment Rules will not apply retrospectively for recruitment to a post for which the selection process and already been initiated and that a person had a vested right to be considered in accordance with the rules as were in force at the time applications were invited for in the post. Thus the 1986 Regulations will not apply to the selection for the post of P.A. to General Manager that was held in the year 1978 and in which the Petitioner had been selected by the Selection Board on the basis of interview held on 20.11.78. Mr Bhattachaijee explained that the said post of RA. to General Manager thereafter became the post of P.A. to Managing Director of the Corporation and in fact the Petitioner functioned as P.A. to General Manager and thereafter as P.A. to Managing Director of the Corporation and that the General Manager and Managing Director of the Corporation have found the Petitioner efficient and suitable for the said post of P.A. It will, therefore, be unfair and arbitrary on the part of the authorities to refuse to regularise the services of the Petitioner as P.A. to Managing Director of the Corporation and to pay him the higher scale of pay for the post of P.A. to Managing Director after taking the work of the P.A. to General Manager and P.A. to Managing Director from the Petitioner for more than 10 years. He cited the unreported judgment of a Division Bench of this Court in *Sri Brajagopal Chakraborty v. The State of Tripura and Ors.* passed in Civil Rule No. 50/ 80 and other connected cases delivered on 24.9.88 in which directions were given to the State-Respondents to pay to some teachers the pay scale applicable to lecturers in Degree Colleges as they had been discharging the very functions of such lecturers of Degree Colleges enjoying higher pay scale.

5. Mr U.B. Saha, learned Government Advocate appearing for the Respondent Nos. 1 and 2 and Mr A.C. Deb Nath, learned Counsel appearing for the Respondent Nos. 3 and 4, on the other hand, submitted that the powers of the Corporation to appoint any employee is subject to provisions of Section 34 of the 1950 Act as well as the 1986 Regulations. For this submission, they referred to Sub-Section 3 of Section 14 of the 1950 Act to show that the conditions of appointment in service and scale of pay of the other officers and employees of a Corporation shall as respect other officers and employees be such as may, subject to the provisions of Section 34, be determined by regulations made under the Act. They also referred to Section 45 of the 1950 Act which provides that a Corporation may, with the previous sanction of the State Government, make regulations and in particular regulations providing for the conditions of appointment and service and the scales of pay of officers and employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser, or as the case may be, the Chief Accounts Officer-cum-Financial Adviser. According to Mr Saha and Mr Deb Nath, therefore, the power of the Corporation to make appointment is subject to the power of the State Government u/s 34 to issue instruction and the power of the State Government u/s 45 to grant previous sanction to make regulations. They further pointed out that under the 1986 Regulations, there was no post of R.A. to Chairman of the Corporation. Hence the impugned communications dated 5.3.90, 8.3.90 and 21.3.90 on behalf of the State Government to the Managing Director of the Corporation to cancel the ad hoc appointment of the Petitioner as RA. to Chairman were within the powers of the State Government under Sections 14(3), 34 and 45 of the 1950 Act. Regarding the claim of the Petitioner for regularisation in the post of RA. to Managing Director of the Corporation, Mr Saha and Mr Deb Nath submitted that the 1986 Regulations stipulated that the post can be filled up by promotion from amongst the post of Stenographers having 5 years experience in the grade of the Corporation and since the Petitioner was not a Stenographer, he was not eligible to be considered for appointment to the post of RA. to Managing Director and his case for regularisation to the said post cannot be considered.

6. Sections 14,34 and 45 of the 1950 Act are quoted herein below:

14. officers and servants of the Corporation:

(1) Every Corporation shall have a Managing Director, a Chief Accounts Officer and a Financial Adviser, appointed by the State Government:

Provided that the same person may be appointed as the Chief Accounts Officer and the Financial Adviser.

(2) A corporation may appoint a Secretary and such other officers and employees as it considers necessary for the efficient performance of its functions.

(3) The conditions of appointment and service and the scales of pay of the officers and employees of a Corporation shall-

(a) as respect the Managing Director, the Chief Accounts Officer and the Financial Adviser, or as the case may be, the Chief Accounts Officer-cum-Financial Adviser, be such, as may be prescribed and

(b) as respects the other officers and employees, be such, as may, subject to the provisions of Section 34, be determined by regulations made under this Act.

34. Directions by the State Government:

(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under Sub-section (1) except with the previous permission of the State Govt.

45. Power to make regulations:

(1) A corporation may with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) the manner in which and the purposes for which, persons may be associated with the Board u/s 10.

(b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or as the case may be, the Chief Accounts Officer-cum- Financial Adviser.

(d) the issue of passes of the employees of the Corporation and other persons u/s 19;

(e) the grant of refund in respect of unused tickets and concessional passes u/s 19.

7. Sub-section (1) of Section 14 of the 1950 Act quoted above would make it clear that it is the State Government which has the power to appoint the Managing Director, Chief Accounts Officer and the Financial Adviser of the Corporation or as the case may be the Chief Accounts Officer-cum-Financial Adviser. But under Sub-section (2) of Section 14, the Corporation has the power

to appoint the Secretary and such other officers and employees as it considered necessary for the efficient performance of its functions. It is thus for the Corporation to decide as and when it considered necessary for the efficient performance of its functions to appoint officers and employees other than the Managing Director, Chief Accounts Officer and Financial Adviser or as the case may be the Chief Accounts Officer-cum-Financial Adviser. Thus where the Corporation is of the view that it is necessary for the efficient performance of its functions to appoint a person as P.A. to Chairman of the Corporation on ad hoc basis, the State Government cannot interfere with the said decision of the Corporation, because the power to make such appointment is vested under Sub-section (2) of Section 14 on the Corporation and not on the State Government.

8. Sub-section (3) of Section 14, however, provides that the conditions of appointment and service and the scales of pay of the officers and employees of a Corporation shall as respect such other officers and employees be such as may, subject to the provisions of Section 34, be determined by regulations made under the Act. Section 34(1) vests the powers on the State Government to give to the Corporation after consultation with the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to recruitment, conditions of service and training of its employees, and wages to be paid to the employees. But such powers of the State Government u/s 34 to issue general instructions to the Corporation does not include the power to issue instructions of a specific nature to the Corporation to cancel the appointment of a particular person to a particular post under the Corporation. Further, u/s 45 and in particular under Clause (C) of Sub-section (2) of Section 45 read with Sub-section (3) of Section 14, the conditions of appointment and service and scales of pay of officers and employees of the Corporation other than the Managing Director, Chief Accounts Officer and the Financial Adviser or as the case may be of the Chief Accounts Officer-cum-Financial Adviser are to be prescribed by regulations to be made by the Corporation with the previous sanction of the State Government. But the said provisions in Section 45 and Sub-section (3) of Section 14 do not provide that the State Government can issue an instruction to cancel the appointment of a particular person to a particular post under the Corporation.

9. The case of the Respondents, however, is that the 1986 Regulations made by the Corporation with the previous sanction of the State Government u/s 45 read with Section 14(3) of the 1950 Act does not provide for any post of P.A. to Chairman of the Corporation though it provides for a post of P.A. to Managing Director of the Corporation. Hence the appointment of the Petitioner as P.A. to Chairman on ad hoc basis of the Corporation by the order dated 28th May '88 was contrary to the 1986 Regulations. But on a reading of the 1986 Regulations, I do not find any provision which prohibits the Corporation to appoint a person on ad hoc basis to a post not specified in the 1986 Regulations. No general instructions issued by the State Government u/s 34 of the 1950 Act have also been brought to notice of the Court which prohibited the Corporation to make

any appointment to a post not specified in the 1986 Regulations even on ad hoc basis. As discussed above, the power to make appointment of officers and employees other than Managing Director, Chief Accounts Officer and Financial Adviser, or as the case may be, the Chief Accounts Officer-cum-Financial Adviser, is vested in the Corporation under Sub-section (2) of Section 14 of the 1950 Act and where the Corporation considered it necessary for the efficient performance of its function to appoint any person as P.A. to the Chairman of the Corporation on ad hoc basis, the State Government cannot issue an instruction of a specific nature to cancel such appointment u/s 34 of the said Act. The impugned communications dated 5.3.90, 8.3.90 and 21.3.90 conveying the decision of the State Govt, to cancel the appointment of the Petitioner as P.A. to the Chairman of the Corporation and requesting the Managing Director of the Corporation to comply with the said decision of the State Government are therefore beyond the jurisdiction of the State Government and are liable to be quashed.

10. Coming to the claim of the Petitioner for regularisation, there is a post of P.A. to Managing Director provided in the schedule to the 1986 Regulations, but the schedule stipulates that appointment to the said post of P.A. to Managing Director will be by promotion failing which by direct recruitment and that promotion will be from the post of Stenographer having 5 years experience in the grade under the Corporation. The case of the Respondents is that, since the Petitioner is not a Stenographer with 5 years experience under the Corporation and was a U.D.C. and thereafter a Head Clerk, he cannot be considered for promotion to the said post of P.A. to Managing Director specified in the scheduled to the 1986 Regulations. The case of the Petitioner, on the other hand, is that prior to the 1986 Regulations, a recruitment process was initiated in the year 1978 for appointment to the post of P.A. to General Manager now designated as Managing Director of the Corporation and as per the law laid down by the Supreme Court, the eligibility conditions stipulated in the 1986 Regulations will not apply to the said pending recruitment process and the Petitioner has die vested right to be considered for appointment to the said post of P.A. to Managing Director on the basis of selection held in the year, 1978.

11. In N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, the Supreme Court held:

Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however, he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of die Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were

in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant Rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

(emphasis supplied)

It is thus clear from the law as laid down by the Apex Court in the aforesaid case that where a candidate makes an application for a post pursuant to an advertisement, he does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement and he cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amendment rules are retrospective in nature. The 1986 Regulations and in particular Regulation-1 thereof states that they shall come into force on the date of their publication in the official gazette. Thus the 1986 Regulations have no retrospective effect and did not apply to any selection that was pending at the time when the 1986 Regulations were published. In Para-9 of the counter-affidavits it has been stated that a proposal for recruitment to the vacant post of P.A. to General Manager was approved by the Board of the Corporation in its 54th meeting held on 19th/20th of June '78 and according to that proposal applications were invited from the eligible candidates through Employment Exchange subject to requisite qualifications and experiences in the line and the Petitioner and other candidates sponsored by the Employment Exchange appeared and a panel was prepared by the Selection Board and sent to the then Chairman of the Corporation for his approval but due to some administrative reasons the then Chairman did not give any approval to the said panel and as such the post of P.A. to General Manager could not be filled up. It has been further stated at the end of the said Para-9 of the counter affidavits of Respondent Nos. 1, 2, 3 and 4 that:

The Petitioner could not be absorbed on regular basis in the post of P.A. to Managing Director of the Corporation as no decision was taken by the then Chairman of the Corporation regarding filling up of the post and meanwhile the Recruitment Rules of the employee of the Corporation came into force in the year. 1986. It is a fact that the Petitioner was allowed to continue to discharge additional duties as P.A. to Managing Director as stop-gap arrangement and also

appeared in the interview held in the year, 1978.

It is thus clear that no final decision has been taken as yet by the Chairman of the Corporation regarding filling up of the post of P.A. to Managing Director of the Corporation pursuant to the selection made in the year, 1978 for appointment to the post of P.A. to Managing Director of the Corporation and during the pendency of the selection to the said post the 1986 Regulations came into force and in the meanwhile the Petitioner was allowed to continue to discharge additional duties as RA. to Managing Director as a stop-gap arrangement. This was, therefore, a case where recruitment to the post of P.A. to Managing Director to the Corporation though initiated and a selection was actually held in the year, 1978 had not been finalised when the 1986 Regulations came into force. Since the 1986 Regulations were not retrospective in nature, the Petitioner who had applied to the said post and was in fact interviewed in the year 1978 for the said post has a vested right to be considered for the post of P.A. to Managing Director of the Corporation in accordance with the rules as they existed prior to the 1986 Regulations and in accordance with the terms stipulated in the notice inviting the applications from the eligible candidate through the Employment Exchange. The Petitioner is, therefore, entitled to a direction on the Respondent 2 and 3 to consider his case for appointment to the post of P.A. to General Manager or Managing Director of the Corporation on the basis of selection for the said post held in the year 1978 in accordance with the rules, if any, existing prior to the 1986 Regulations and the terms of the notice inviting applications for the said post issued in the year 1978.

12. For the reasons stated above, this writ petition is allowed and the impugned communications dated 5.3.90, 8.3.90 and 21.3.90 on behalf of the State Government to the Managing Director of the Corporation (Annexures 5, 6, 7 and 8) are quashed and Respondent Nos. 3 and 4 are directed to consider the case of the Petitioner for regular appointment to the post of P.A. to Managing Director of the Corporation in accordance with the rules, if any, existing prior to the 1986 Regulations and in accordance with the terms and conditions in the notice inviting applications for appointment to the post of RA. to General Manager issued pursuant to the decision of the Board of Directors of the Corporation in its 54th meeting held on 19th/20th of June, 1988. The aforesaid consideration of the case of the Petitioner for appointment to the post of RA. to Managing Director of the Corporation will be completed by the Respondent No. 3 and 4 within 2 months from the date of receipt of the certified copy of this order from the Petitioner.

13. Considering the facts and circumstances of the case, however, the parties shall bear their own costs.