
(2015) 12 TP CK 0003
In the Tripura High Court
Case No : W.P.(C) No. 421 of 2011

Amulya Debbarma

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 12 TP CK 0003

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : A. Pal, Advocate, for the Appellant; J. Majumder, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioner who is an Assistant Teacher under the Directorate of the School Education, has challenged the show cause notice dated 05.05.2011(Annexure-P/6 to the writ petition), the memorandum dated 18.07.2011 (Annexure-P/8 to the writ petition), the memorandum dated 10.08.2011 (Annexure-P/9 to the writ petition) and the office memorandum dated 07.12.1992 (Annexure-P/10 to the writ petition).

2. The facts are mostly undisputed.

The petitioner was initially appointed as the Assistant Teacher (Primary) on 22.03.1986. During his incumbency as the Assistant Teacher (Primary), he acquired the degree of Bachelor of Arts on 31.12.1992 and for that acquisition he was given one advance increment in terms of the office memorandum dated 07.12.1992.

3. On the basis of the information furnished by the Headmaster, Bachaibari High School, Khowai, the name of the petitioner was recorded at Sl. No. 5463 in the final interse seniority list of the Graduate Assistant Teacher, Classical Teacher, Hindi Teacher, Hindi Pracharak, Headmaster (Primary), who are enjoying the

graduate pay scale and that seniority list was published by the memorandum No. F.3(S-2)SE/E(GL)/06 dated 25.08.2007 showing him as having B.A. 1992, B.Ed. 1998 and the date of allowing graduate pay scale w.e.f. 31.12.1992. It is admitted position that even after publication of the said seniority list, the petitioner did not communicate to the Department that he was not getting the graduate pay scale nor was he the Headmaster (Primary) school and as such he could not have been accommodated in the said inter se seniority list of Graduate Assistant Teacher, Classical Teacher, Hindi Teacher, Hindi Pracharak, Headmaster (Primary), who were enjoying the graduate pay scale.

4. On the basis of that seniority list, the petitioner was promoted to the post of Deputy Inspector of Schools and he was posted to Gandachara Circle, Dhalai by the memorandum No. F.1(1-123)/DSE/2002 dated 25.10.2008 (Annexure-P/5 to the writ petition). After further examination of the service book of the petitioner, when it was found that the petitioner was appointed as the Assistant Teacher (Primary) on 22.03.1986 and he acquired the degree of Bachelor (Arts) only on 31.12.1992 and he was never allowed the graduate pay scale in terms of the Government policy, by the memorandum dated 05.05.2011 the petitioner was asked to explain why the promotion order to the post of Deputy Inspector of Schools, which was issued in his favour by the memorandum dated 25.10.2008 shall not be cancelled and he will not be reverted to the post the Assistant Teacher (Primary). In this regard, it is to be noted that in the show cause notice, the relevant provision of the recruitment rules has been narrated. The recruitment rules provides that the post of Headmaster, Headmistress, Senior Basic School School/Junior High School, Assistant Headmaster/Assistant Headmistress, High School and Deputy Inspector of Schools are to be filled up by promotion on the basis of combined seniority list from Graduate Assistant Teacher/Classical Teacher/Hindi Teacher/Hindi Pracharak drawing pay scale prescribed for Graduate incumbents and Graduate Headmaster (Primary)/Junior Basic school. The petitioner since was never allowed the pay scale for the graduate teachers w.e.f. 31.12.1992 as recorded in the said seniority list, he was wrongly promoted to the post of the Deputy Inspector of Schools.

5. In reply, the petitioner by the representation dated 08.06.2011 (Annexure-P/7 to the writ petition), has asserted that on 31.12.1992 he had completed his degree of Bachelor of Arts and completed his B.Ed. training in the year 1998, the result of which was published on 07.02.1998. The acquisitions of those higher qualifications were duly recorded in his service book. The petitioner has further asserted that he has passed the Master of Arts (Education) by Distance Education system under the Tripura University in the year 2010. Those higher qualifications are recorded in his service book. The petitioner has also admitted that he was allowed to draw one advance increment in the scale of pay of Rs. 1,250-2890/- w.e.f. 01.01.1993 as per the office memorandum No. F.4(62)-FIN(PC)/92 dated 07.12.1992. He has also admitted that he has not given any other benefit for his acquiring the higher qualifications. According to him, the final seniority list of the Graduate Assistant Teachers etc. was finalised after

hearing the claims and objections of the concerned persons. From the memorandum dated 05.05.2011, he came to know that his name has been deleted from the final seniority list of Graduate Assistant Teachers etc. without affording him any opportunity of being heard. Finally, he has stated that he has been rightly appointed as the Deputy Inspector of Schools. So the question of cancelling the promotion order and reverting him to the Assistant Teacher (Primary) may not arise. But, his assertions were discarded by the memorandum dated 18.07.2011 (Annexure-P/8 to the writ petition) and the promotion order to the post of Deputy Inspector of Schools issued in favour of the petitioner by the memorandum dated 25.10.2008 was cancelled and he had been reverted to the post of Assistant Teacher (Primary) w.e.f. 01.08.2011 and the petitioner, as corollary, was posted to Gopalnagar High School (Primary Section) under the Education Inspectorate, Khowai. The matter did not stop there. The consequential order in the form of Memorandum No. F.2(24)/IS-KH/2009/1035 dated 10.08.2011 was passed, which reads as under:

"The In-charge Account(Pay bill) Section of Education Inspectorate Khowai is hereby instructed to recovery an amounting to Rs. 99,353/-(Rupees Ninety nine thousand three hundred fifty three only) made as over drawn statement with effect from 31-10-2008 to 31.5.2009 & 1.1.09 to 31.7.2011, due to wrong fixation on promotion to the post of Dy. I/S to Asstt. Teacher(Pry.) in favour of Sri Amulya Debbarma, A/T of Gopalnagar High (Pry) School, under Education Inspectorate, Khowai will be recovered @ Rs. 1,000/- p.m. in 99th instalments commencing from the salary month September, 2011 payable October, 2011 and last instalment @Rs. 353/- vide DSE's Memo Memo No. F.1(1-68)-SE/E(NG/09(Vol-IV) dated 18.7.2011."

6. The petitioner has raised the question of validity of the cut-off date as laid in the office memorandum dated 07.12.1992 (Annexure-P/10 to the writ petition). By the said memorandum, the following provisions has been made :

"FOR THE SCHOOL THEACHERS AND SIMILAR OTHER EMPLOYEES (SUCH AS, PHYSICAL INSTRUCTOR, LIBTARIAN, COACH, CLASSICAL TEACHER, HINDI TEACHER, VERNACULAR TEACHER, DRAWING TEACHER, CRAFT INSTRUCTOR/TEACHER ETC, WHO ACQUIRED HIGHER ACCADEMIC QUALIFICATION IN THEIR RESPECTIVE TRADE/SUBJECT TO WHICH THEY ARE ATTACHED, ON OR AFTER (24.4.1982.).

They shall be granted higher pay scales according to their qualification w.e.f. 1.1.88 or the date of publication of result, whichever is later.

The benefit shall be admissible only for those incumbents who acquired higher qualification upto the period of 31.12.19 (date of publication of result).

Pay shall be notionally fixed under the provision of F.R.22(a) (I) upto 31.12.91, with actual Financial benefit from 1.1.1992.

However, after fixation of pay under F.R.22(a) (I) date of next incumbent of the

concerned employees shall fall due on the date of their earning of periodical increment as usual.

Such benefit admissible on the even of acquiring higher qualification shall be restricted only for the Graduation/Graduation with Honours/Post Graduation Degree (Not Diploma/Certificate) in the particular trade/subject to which the particular incumbent belongs to.

Pay scales for the posts of "Librarian" and Physical Instructor" on acquiring higher qualification, shall be determined in accordance to Sl. Nos. 1 and 2 as shown under (D) above.

Pay scales for the posts of "Coach and "Senior Coach" on acquiring higher qualification, shall be determined in accordance to Sl/Nos. 3 and 4 as shown under (D) above.

Benefit of movement from lower grade to higher on highest grade under Part-B or Part-C or Notes at P/59 (for School Teacher) under Schedule-III of are R.O.P. Rules 1988 shall be allowed after calculating the period of service from the dated of enjoying such higher pay scales pay scales in such cases shall be determined in the light of scales at (B) and (D) above.

The aforesaid benefits shall also be admissible in respect of such categories of employees who acquired higher qualification in the respective trade/subject prior to 24.4.82, but were not granted the appropriate scale accordingly to their qualification."

7. Mr. A. Pal, learned counsel appearing for the petitioner has submitted that the cut-off date as set up is wholly unreasonable and it confronts the provisions of Article 14 and 16 of the Constitution of India as it create a class within a class. The object sought to be achieved by the Government was not to create a class within a class, but to ensure that the benefits are available to all persons of the same class equally. It is, according to Mr. Pal, learned counsel is violation to the provisions of Article 14 of the Constitution of India. If this cut-off date is removed from the said memorandum dated 07.12.1992 the petitioner is no doubt entitled to get the graduate scale w.e.f. 01.01.1993 and in that event neither the petitioner's inclusion in the final seniority list of Graduate Assistant Teacher etc. nor his promotion to the post of Deputy Inspector of Schools could have been questioned. To buttress his submission, Mr. Pal, learned counsel has relied on a decision of the apex court in Kallakkurichi Taluk Retired Official Association, Tamilnadu and Others etc. etc Vs. State of Tamilnadu and Others etc. etc, , where the apex court has held as under :

"32. First and foremost, it needs to be understood that the quantum of discrimination, is irrelevant to a challenge based on a plea of arbitrariness, under Article 14 of the Constitution of India. Article 14 of the Constitution of India ensures to all, equality before the law and equal protection of the laws. The question is of arbitrariness and discrimination. These rights flow to an individual

under Articles 14 and 16 of the Constitution of India. The extent of benefit or loss in such a determination is irrelevant and inconsequential. The extent to which a benefit or loss actually affects the person concerned, cannot ever be a valid justification for a court in either granting or denying the claim raised on these counts. The rejection of the claim of the appellants by the High Court, merely on account of the belief that the carry home pension for employees who would retire after 1.6.1988, would be trivially lower than those retiring prior thereto, amounts to bagging the issue pressed before the High Court. The solitary instance referred to above, which is not a matter of dispute even at the hands of the first respondent, clearly demonstrates, that in a given situation, an employee retiring on or after 1.6.1988 could suffer a substantial loss, in comparison to an employee retiring before 1.6.1988. We are, therefore satisfied, that the High Court clearly erred while determining the issue projected before it.

33. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (*State of Kerala and Another Vs. N.M. Thomas and Others*,). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.

34. xxxxxx xxxxxx xxxxxx

35. xxxxxx xxxxxx xxxxxx

36. xxxxxx xxxxxx xxxxxx

37. xxxxxx xxxxxx xxxxxx

38. xxxxxx xxxxxx xxxxxx

39. Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to have classified pensioners similarly situated as the appellants herein (who had retired after 1.6.1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1.6.1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of "dearness pay" to wages for calculating pension is to offset the effect of inflation.

In our considered view, therefore, the instant classification made by the State Government in the impugned Government order dated 9.8.1989 placing employees who had retired after 1.6.1988 at a disadvantage, vis-?-vis the employees who retired prior thereto, by allowing them a lower component of "dearness pay", is clearly arbitrary and discriminatory, and as such, is liable to be set aside, as violative of Articles 14 and 16 of the Constitution of India."

[Emphasis supplied]

8. For the same purpose, Mr. Pal, learned counsel has also referred Union of India (UOI) and Another Vs. SPS Vains (Retd.) and Others, and D.S. Nakara and Others Vs. Union of India (UOI), . He has further submitted that the object of the scheme has to be read as the assurance to the teachers or other categories of teachers that if they acquired higher qualification, they would be provided the higher pay scale in consonance with their higher qualification. Thus, the State cannot create another class within that class of equals who will get the benefit for acquisition of the higher qualification, while the others will not get. The further object is to auger the capacity of the teachers and other categories of employees by encouraging them to acquire higher qualification. Ancillary to his submission, Mr. Pal, learned counsel has also contended that even though a particular pay scale has been provided in the recruitment rules that cannot be said to be essential requirement for purpose of promotion and for lack of enjoyment of that particular pay scale someone can be deprived of the promotion. He has further submitted that the formulation of the final seniority list, consideration of the petitioner by a regular Departmental Promotion Committee and thereafter issuing the promotion order in favour of the petitioner should estop the respondents from taking the impugned action. He has also submitted that the right to get the appropriate pay scale is also a fundamental right, particularly when the petitioner has altered his position and studied to acquire higher qualification. On such acquisition he cannot be deprived of any benefit he was supposed to get. As such, Mr. Pal, learned counsel has strenuously argued that the impugned memoranda are all required to be interfered with and set aside.

9. From the other side, Mr. J. Majumder, learned counsel appearing for the respondents has categorically submitted that there is no irrationality in fixing the cut-off date by way of the office memorandum dated 07.12.1992. When the Government found that there is lot of highly qualified teachers working in the lower post not commensurating to their educational qualification and there was dearth of graduate teachers and teachers with post-graduate degree (Honours/ Master Degree) in the High/Higher Secondary School, considering that situation, the Government decided to utilise their services in High/Higher Secondary school instead of going for fresh recruitment. The State took a policy decision that those incumbents who have acquired higher qualification, meaning the graduation and/or post-graduation shall be given the benefits in the manner as declared by the said office memorandum dated 07.12.1992. Mr. Majumder, learned counsel

therefore has asserted that there is no irregularity, to say least of illegality, and as such this writ petition does not deserve any further consideration and that may be dismissed. Mr. Majumder, learned counsel has submitted that no person can be permitted to be unjustly enriched for the wrong committed by the State or any officer/s working under it. As such, by the impugned memorandum dated 18.07.2011 (Annexure P/8 to the writ petition), the Director of School Education has rightly cancelled the promotion order dated 25.10.2008 w.e.f. 01.08.2011 and the petitioner has been reverted to the post of Assistant Teacher (Primary).

10. From the rival contentions as projected during the hearing of this petition, the pertinent questions those emerged are that-

"(i) whether the petitioner has got any right to continue in the post of Deputy Inspector of Schools by virtue of the memorandum dated 25.10.2008 notwithstanding the fact that he never had the graduate pay scale nor had he ever occupied the post of Headmaster (Primary)? and

(ii) whether the cut-off date as 31.12.1991 fixed by the memorandum dated 07.12.1992 (Annexure-P/10 to the writ petition) is unreasonable or creating a class within class of equals, in contrast to the constitutional principle as enshrined in Articles 14 and 16 of the Constitution of India?"

11. These questions are formulated by discarding the plea of estoppel inasmuch as the estoppel cannot be pleaded against the existing law. There is no dispute that the recruitment rules as published by the notification dated 31.10.2006 (Annexure-R/1 to the counter-affidavit filed by the respondents) provides that the post of Deputy Inspector of Schools and other equated posts can only be filled up by promotion, failing which by direct recruitment. For the promotion, the educational qualification is same as that of the direct recruitment. It provides that, for promotion, an incumbent in the feeder post should have the graduation with seven years experience in teaching/inspection with B.T./B.Ed./Post Graduate Basic Training from a recognised University/T.Ed. (six months abridge course certified by Tripura University)/CETE from IGNOU (six months certificate course) and knowledge of Bengali or Kok-barak. But, in the case of recruitment by promotion that will be on the basis of the combined seniority list of Graduate Assistant Teacher, Classical Teacher/Hindi Teacher/Hindi Pracharak drawing pay scale prescribed for Graduate incumbents and Graduate Headmaster (Primary)/Junior Basic school. It is admitted position that the petitioner is not borne in the post of Graduate Assistant Teacher in the pay scale prescribed for the graduate incumbents or the Graduate Headmaster (Primary)/Junior Basic school. Thus, the petitioner's acquisition of the degree of Bachelor of Arts will not include him in the zone of consideration, for lack of incumbency in the post of Graduate Assistant Teacher and for not being borne in the pay scale for Graduate incumbents and Graduate Headmaster (Primary)/Junior Basic school. As such, there is no infirmity in cancellation of the promotion order dated 25.10.2008 or his reversion to the Assistant Teacher (Primary) w.e.f. 01.08.2011.

12. The next question which requires some response from this court is that whether by setting up the cut-off date as 31.12.1991 by the office memorandum dated 07.12.1992 (Annexure-P/10 to the writ petition) a class within a class of equals has been created?

The purpose of setting up of the cut-off date has been described by the respondents in their counter-affidavit. To address an emergent situation, the said policy was temporarily adopted by the State and the policy is well designed. It did not extend any sort of promise or assurance for the people who would be acquiring the higher education after the cut-off date. The office memorandum dated 07.12.1992 has given such benefit till 31.12.1991 and all incumbents who acquired the higher education (graduation and post-graduation degree) were accommodated with the higher pay scale. Such movement to higher scale was not on the basis of any promise or assurance. The promise is only related to those who would acquire the higher qualification after 01.01.1992 that they would get one advance increment. Later on, the said system of releasing one advance increment for acquiring higher qualification has also been abolished. On the basis of that assurance when the petitioner acquired the graduation degree on 31.12.1992, he was given one advance increment. As such, there is no issue of creating class within the class of equals and accordingly the plea that has been raised that the office memorandum dated 07.12.1992 is itself in violation to the provision of Article 14 and 16 of the Constitution of India, is not only untenable but the petitioner himself has acceded to that notification by accepting the release of one advance increment w.e.f. 01.01.1993, whereas he has filed this writ petition in 2011 without making any averment why he had not approached this court earlier or before his acceptance of the said advance increment. As such, the entire plea of unreasonableness to challenge the cut-off date and that of the promissory estoppel fail.

13. It is apparent now on the face of records that the petitioner had no qualification to be promoted to the post of Deputy Inspector of Schools and his appointment as such by the memorandum dated 25.10.2008 was wholly illegal and irregular. The petitioner's promotion to the said post of Deputy Inspector of Schools was solely for suppression of the true facts from the competent authority. Even the petitioner did not communicate to the competent authority when the final interse seniority list of the Graduate Assistant Teacher, Classical Teacher/Hindi Teacher/Hindi Pracharak was published by the memorandum dated 25.08.2007. On the basis of the said final interse seniority list dated 25.08.2007, the DPC recommended his promotion. It is the admitted position that the petitioner was never Graduate Assistant Teacher, even he was not getting the pay scale for the graduate teacher at any point of time and as such in that combined seniority list for whatsoever reason he could not have been accommodated. But for suppression of true facts, the petitioner's name entered in the said final seniority list.

14. The additional plea that has been raised is that the petitioner has not been

given the show cause notice to defend his case, cannot survive the test of prejudice inasmuch as in the whole body of the writ petition, the petitioner has failed to provide any reason how he has been prejudiced, when it is the admitted fact that it does not come under the category of Graduate Assistant Teachers who are having the prescribed scale for the Graduate Teachers, neither he was the Graduate Headmaster (Primary) or the Junior Basic school. Thus, that plea also does not hold any substance and accordingly is rejected.

15. The final question is about the order of recovery as contained in the memorandum dated 10.08.2011 (Annexure-P/9 to the writ petition). The said memorandum dated 10.08.2011 has been issued by the Inspector of Schools, who has no authority to direct recovery of any amount shown to be overdrawn by the petitioner. Only the appointing authority who functions as the disciplinary authority, has got that right. It has been adverted that the said memorandum dated 10.08.2011 has been issued pursuant to the memorandum dated 18.07.2011 (Annexure-P/8 to the writ petition). But, in Annexure-P/8, there is no order of making any recovery from the petitioner. As such, the order dated 10.08.2011 (Annexure-P/9 to the writ petition) directing recovery from the petitioner cannot be sustained.

16. It is apposite to note that the competent authority has taken a decision to revert the petitioner not retrospectively, but prospectively w.e.f. 01.08.2011. As such, the pay and allowances, the petitioner had drawn for his incumbency in the post of Deputy Inspector of Schools cannot be recovered. In the result, the memorandum No. F.2(24)IS-KH/2009/1035 dated 10.08.2011 (Annexure-P/9 to the writ petition) is set aside and quashed.

17. Accordingly, the writ petition stands partly allowed to the extent as indicated above, however, on rejecting the prayers of the petitioner that he is entitled to get the graduate scale or that the cut-off date as set up by the memorandum dated 07.12.1992 (Annexure-P/10 to the writ petition) is unconstitutional or that the memorandum dated 18.07.2011 (Annexure-P/8 to the writ petition) is unsustainable.

There shall be no order as to costs.