
(2006) 06 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 319 of 1997

Anil Chandra Kar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Citation : (2006) GLT 346 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; S. Chakraborty, for the Respondent

Judgement

A.B. Pal, J.—I have heard Mr. C.S. Sinha, learned Counsel for the Petitioner and Mr. S. Chakraborty, learned Counsel for the State Respondents.

2. The short fact giving rise to the present proceeding is that the Petitioner herein was appointed to the post of Lower Division Clerk on 30.04.1973 and promoted to the post of Upper Division Clerk on 30.11.1981 in the Education Department, under the Govt. of Tripura. the fourth Respondent, Smti Prava Biswas was appointed to the post of Lower Division Clerk on 04.01.1974 and promoted to the post of Upper Division Clerk on 26.08.1987 in the same Department. Admittedly, she was junior to the Petitioner, the pay scale of Lower Division Clerk at the time the Petitioner and the fourth Respondent were appointed was Rs. 125-200/-, which was revised to Rs. 240-440/- in 1975. The pay scale of the Upper Division Clerk was Rs. 330-580/-, which was revised to Rs. 550-1245/- in the Pay Revision of 1982. The subsequent pay revision of 1988, which was given effect from 01.01.1986, further revised the pay scale of the Upper Division Clerk to Rs. 1250-2890/-. On 26.08.1987 when the fourth Respondent was promoted, her pay was fixed at Rs. 775/- in the un-revised pay scale of Rs. 550-1245/- under FR 22 (a) (i), as she opted for the promotional benefit under FR 22C on 04.01.1988, when she would be entitled to one increment in the post of Lower Division Clerk. Thus, on 04.01.1988 her pay was re-fixed by adding the benefit of FR 22C to Rs. 825/-. On 26.08.1987, the date

when the fourth Respondent was promoted, with her pay fixed at Rs. 775/-, the Petitioner, who is admittedly senior to the said Respondent was getting the same pay of Rs. 775/- in the same un-revised pay scale of Rs. 550-1245/- of the Upper Division Clerk. He had no grievance on 26.08.1987, as on that date both of them were getting same pay of Rs. 775/- in the pay scale of Rs. 550-1245/-. But on 04.01.1988 when the fourth Respondent, though a junior to the Petitioner was given the benefit of FR 22C, with her pay fixed at Rs. 825/-, leaving the Petitioner at Rs. 775/- only, there lay his grievances. According to the Petitioner, as per provision contained in the Memorandum No. F. 19(1)-FIN(G) 83, dated 23rd August, 1986 (Annexure-6), he is entitled to get his pay stepped up, equal to the pay of his junior Respondent herein, as aforesaid. He made several approaches to the official Respondents for redressal by way of stepping up of his pay in terms of the said memorandum, but all his approaches having proved futile, he has instituted this writ proceeding for a direction in terms of his prayer as aforementioned.

3. The official Respondents in their counter-affidavit admitted the seniority position of the Petitioner and the fourth Respondent and also the fact that by application of FR 22C on 04.01.1988 as per option of the fourth Respondent, her pay became higher to that of the Petitioner. But then, it has been contended inter alia that by virtue of the provisions of Revision of Pay Rules, 1988 (for short "ROP of 1988"), which came into force with retrospective effect from 01.01.1986, before promotion of the fourth Respondent, she was given the higher scale of pay of Rs. 1020-2620/- in the grade of Lower Division Clerk on completion of 10 years of service in the same grade without a promotion. Thus, her pay was fixed at Rs. 1770/- in the grade of Lower Division Clerk in the said pay scale of Rs. 1020-2620/-. This benefit of scale advancement on completion of 10 years of service without a promotion was not available to the Petitioner herein, who was promoted to the grade of Upper Division Clerk before complaint of 10 years of service. The position that has emerged is that before her promotion the fourth Respondent was in a higher scale of pay in the grade of Lower Division Clerk and, therefore, it cannot be said that before their promotion both the Petitioner and the fourth Respondent were in the same scale of pay. According to the official Respondents, the anomaly has arisen not because of the application under FR 22C but because of her getting a scale advancement on completion of 10 years service in the grade of Lower Division Clerk. In the Office Order dated 17.01.1996, the Director of School Education, the second Respondent herein, disposed of the application of the Petitioner claiming stepping up of his pay on the ground that the anomaly in the pay of the Petitioner and the fourth Respondent did not arise due to application of FR 22C.

4. Mr. Sinha, learned Counsel for the Petitioner made a submission that though the second condition contained in the Memorandum dated 23th August, 1986 (Annexure-6) provides that the un-revised and the revised scales of pay of the lower and the higher posts to which they were entitled to draw pay should be identical, it has to be appreciated that in the case at hand the substantive scale

of pay of the Petitioner and the junior-Respondent in the grade of Lower Division Clerk and the Upper Division Clerk were same though the fourth Respondent was provided with a scale advancement after completion of 10 years of service. According to him, such personal, benefit of scale advancement does not alter the provisions contained in the second condition of the aforesaid memorandum.

5. To appreciate the above controversy, which has to be examined in light of the aforesaid Memorandum, it may be apposite to re-produce below para-2 of the same, which reads as follows:

2. The Governor has been pleased to decide that in order to remove the aforesaid anomaly the Government of India decision contained in the Ministry of Finance Memorandum No. F. 1(35)-E-III(A)/74 dated 18.07.74 shall stand adopted by the State Govt. with effect from 1st January, 1982. Accordingly, the pay of a senior Government servant in the revised scale in the higher post should be stepped up to a figure equal to the pay fixed for the junior Government servant in the identical higher post on his promotion on or after 01.01.82. The stepping up should be done with effect from the date of promotion of the junior officer and should be subject to the following conditions:

(a) Both the junior and the senior Officer should belong to the same cadre and the posts to which they have been promoted should be identical in the same cadre;

(b) The un-revised and the revised scales of pay of the lower and the higher posts to which they were entitled to draw pay should be identical; and

(c) The anomaly should be directly as a result of the application of the provisions of F.R. 22C in the revised scale of pay. For example, if even in the lower post, the junior Government servant by drawing more pay in the un-revised scale than the senior by virtue of fixation of pay under the normal rules or any advance incidents granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior Government servant.

Admittedly, the Petitioner and fourth Respondent while serving under the same Department were in the identical lower and higher posts in the same cadre and the pay scales of the posts were also identical. As has been noticed above, the fourth Respondent has received certain benefit of FR 22C when her pay was re-fixed on 04.01.1988 in terms of her option. On 04.01.1988 the ROP of 1988 was yet to be published and if on that day the Petitioner was given the benefit of the memorandum dated 23rd August, 1986, his pay would have been fixed at Rs. 825/- on 04.01.1988. The situation has undergone a change when subsequently the ROP of 1988 was published giving retrospective effect from 01.01.1986. In para 3(vi) of the counter affidavit, the official Respondents tried to make out a case that by virtue of the ROP of 1988 the fourth Respondent was granted a scale advancement changing thereby the pay structure in the grade of Lower Division Clerk. In other words, as the fourth Respondent was given higher scale of pay, the anomaly had originated not for the application of FR 22C. This

position has not been made clear in the counter-affidavit, particularly in the aforesaid paragraph, inasmuch as in para 3(v) it has specifically admitted that the benefit of FR 22C was granted to the fourth Respondent on 04.01.1988. That being so, on that date the Petitioner was entitled to the stepping up of pay in terms of the Memorandum dated 23th August, 1986. The correct position is not, therefore, very clear as to when she was later given the benefit of scale advancement after the ROP of 1988 came into force with effect from 01.01.1986, whether the promotional benefit of FR 22C already given to her on 04.01.1988 before publication of the ROP Rules stood obliterated and the pay difference is attributable to her getting a scale advancement only in the lower grade. It is, therefore, difficult to say from the incomplete facts pleaded whether the benefit already accrued to her on 04.01.1988 by application of FR 22C disappeared the ROP of 1988 came into force giving her the scale advancement or what position would have emerged in case of Petitioner after the said ROP Rules came into force had he been given the benefit of stepping up on 04.01.1988. In such a situation, it is difficult to take a view, without an exercise for the respective position in the above view, that the anomaly that had surfaced between the pay scale of the Petitioner and the fourth Respondent had originated due to the application of FR 22C only.

6. The contention in para 3(vi) of the counter-affidavit notwithstanding, I have no doubt in my mind that when on 04.01.1988 the pay of the fourth Respondent in the un-revised scale of pay of the Upper Division Clerk was fixed at Rs. 825/- after giving her the benefit of FR 22C and on that date the pay of the Petitioner remained at Rs. 775/-, he was entitled to get his pay stepped up to Rs. 825/- in terms of the Memorandum dated 23rd August, 1986. The consequence of the application of ROP of 1988, which was published much later than 04.01.1988, but given retrospective effect from 01.01.1986, on the pay of the Petitioner after notionally stepping up his pay to Rs. 825/- should have been taken into account to see whether the pay difference still subsists and then only it would be discerned whether such difference is attributable to the pay advancement only of that Respondent due to completion of 10 years in the grade of Lower Division Clerk without a promotion.

7. Mr. Sinha has brought to my notice a decision of Single Bench of this Court in *Dhirendra Lal Singh v. The State of Tripura and Ors.* in Civil Rule No. 205/1992, which was affirmed by the Division Bench of this Court in Writ Appeal No. 29/1997. In that case, a similar situation had arisen when the pay of the Petitioner being senior in the grade of Head Clerk/Accountant was fixed at Rs. 2660/- on 04.02.1988 in the pay scale of Rs. 1450-3710/-. The 6th Respondent being junior to the Petitioner was promoted to the same grade in the same scale of pay on 30.10.1987 when his basic pay was fixed at Rs. 2590/- under FR 22(a) (i). But on 04.02.1988 the pay of the junior Respondent was re-fixed at Rs. 2730/- by applying the provision of FR 22C. As a result, the anomaly between the pay of the Petitioner and the 6th Respondent has surfaced by application of FR 22C, and for that reason this Court directed to remove that anomaly by

stepping up the pay of the Petitioner equal to that of the said Respondent.

In the case at hand, apparently a similar situation exists, with a difference that the fourth Respondent was provided with a scale advancement on completion of 10 years of service before her promotion to the grade of Upper Division Clerk. The question that falls for consideration is whether after such scale advancement it can be said that the pay anomaly, if any, between the Petitioner and the fourth Respondent subsisted due to application of FR 22C, which benefit she had already received on 04.01.1988 or whether the anomaly still remained or the anomaly had arisen later due to scale advancement she had received after the ROP of 1988 came into force from 01.01.1986.

8. From the rival positions pleaded in the petition as well as in the counter-affidavit, it is not possible for this Court to take a clear view in this matter.

9. Accordingly, this writ petition is closed, providing that if after the exercise to be undertaken by the official Respondent as indicated in para 5, it is seen that the benefit of FR 22C given to the fourth Respondent on 04.01.1988 subsists after the benefit of scale advancement in Lower Division Clerk grade is given to her in terms of ROP of 1988, the Petitioner shall certainly be entitled to stepping up of his pay equal to that of the fourth Respondent in terms of the provision contained in Memorandum dated 23rd August, 1986. However, if after a careful examination it is found that the anomaly, if any, between the pay scale of the Petitioner and the fourth Respondent had arisen because of grant of scale advancement to the fourth Respondent, as aforesaid, not because of the benefit of FR 22C given to her on 04.01.1988, then the Petitioner shall not be entitled to the benefit of stepping up of his pay in terms of the memorandum aforementioned. To put it differently, the official Respondents shall do the exercise only to see whether the pay anomaly is attributable to application of FR 22C or granted of scale advancement in the grade of Lower Division Clerk. The exercise as indicated above, shall be completed by the official Respondents within a period of 3 (three) months from the date of passing of this judgment. There shall be no order as to cost.