

(2013) 03 TP CK 0001

In the Tripura High Court

Case No : Writ Petition (C) 332 of 2002

Anil Debbarma and Others Vs State of Tripura and Others

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 03 TP CK 0001

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee, R. Debnath, J. Debnath and S. Acharjee, for the Appellant; A.S. Lodh, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—The writ petitioners having superseded by the respondent Nos. 4 to 7 in the matter of promotion to the post of Assistant Headmaster/ Headmaster (High School) approached this Court by filing these writ petitions being W.P. (C) 332 of 2002 and W.P. (C) 193 of 2003 for redress. Both the writ petitions having situated in the homogenous fact attended by the identical question of law are tied up for disposal by a common judgment. The essential fact related to these writ petitions may briefly be introduced at the outset for unfolding the nature of the challenge.

W.P. (C) 332 of 2002

2. 6 (six) writ petitions namely, Anil Debbarma, Dhananjay Debbarma, Bipin Debbarma, Gautam Debbarma, Jugal Charan Jamatia, Subodh Debbarma who were admittedly senior to the respondent Nos. 4, 5 & 6. Ms. A.S. Lodh, learned Addl. Government Advocate has furnished the data as regards the seniority position as updated in the grade of Assistant Teacher. The seniority positions of the petitioners as per the seniority list vide No. F. 2C(3-3)-DSE/95 dated 25-04-2000 covering up to 18-01-2000 are shown in the table followed by another table for the seniority positions of the respondent Nos. 4-7.

TABLE For the petitioners

TABLE For the respondents

* Seniority list Sl. Nos. 614(B), 615(B) & 615(A) vide addendum list No. F. 3(3-4)-SE-E (GL)/05 dated 17.03.2009 covering till 31.12.2004.

** Seniority list No. 325 vide list No. F. 2C (3-3)-DSE/95 dated 25.04.2000 covering up to 18-01-2000.

3. It transpires from the said tables that save the respondent No. 7, the respondent Nos. 4-6 were junior to the petitioners in the grade of Assistant Teacher. But while the respondent Nos. 4-6 were considered for promotion to the post of Assistant Headmaster (AHM/High)/Headmaster (Senior Basic School) and thereafter to the post of Headmaster (High School) the petitioners were not considered at all. Thus the State-respondents by their impugned action caused supersession in flagrant violation of the equality clause and the respective rules. It would be apparent from the Paragraph-3 of the writ petition that the respondent Nos. 4, 5 & 6 respectively got the promotion in the post of Assistant Headmaster (High School)/Head Master (Senior Basic) on 05-11-1992 and thereafter they got the promotion to the post of Headmaster on 29-11-1995. Even the respondent No. 7 who did not obtain the degree of bachelor of education was promoted to the post of Assistant Headmaster and thereafter to the post of Headmaster (High School) without the requisite qualification and as such even if he was senior to the petitioners but since he did not have the requisite qualification for the promotional post he ought to have been left out from the zone of consideration. On the contrary, the petitioners were left out from the zone of consideration while their juniors were considered as stated.

4. The writ petitioners, however, stated in Para-6 of their petition that:

the Government fairly decided to remove the supersession without waiting for the superseded teachers to approach the Hon"ble Court and therefore, the Notification dated 19-02-1996 was issued. In this notification it has been clearly mentioned that the persons promoted to the post of Asst. Headmaster, etc. were superseded by their juniors and therefore, the Governor has been pleased to order that such superseded Asst. Teachers as mentioned at Annexure-A of the said notification be deemed to have been promoted to the post of Asstt. Headmaster (High Schools) etc. with retrospective effect from 05.11.1992. the date on and from which their juniors were promoted subject to regularization of their service through Class-III DPC (Non-gazetted).

5. It has been further asserted that the Notification dated 19-02-1996 (Annexure-2 to this writ petition) which according to the petitioners was a remedial measure, provides further that:

3. The Governor has further been pleased to order that the 86 (eighty six) officers who have been given promotion as above are appointed on promotion on ad hoc basis to the post of Headmaster/Headmistress of High Schools in the scale of pay of Rs. 2100-75-2700-80-3340-85-4530/- per month plus allowances

as admissible from time to time, for a period of 6(six) months with retrospective effect from 29-11-1995 i.e. the date of and from which the officers Junior to them were promoted to the post of Headmaster/Headmistress, High Schools subject to regularization of their services through D.P.C. (Class-II Gazetted) in consultation with the T.P.S.C. and post them to the Institution as indicated against the name of each in Annexure.

But by the said notification the writ petitioner's cases were not attended to. As a result they had to approach the appropriate authority by way of representation, however, without any response. Finally they had filed this writ petition to have the similar benefits in terms of the Annexure-2 to this writ petition.

6. The grievance as laid by the petitioners in their petition, has been traversed by way of a counter-affidavit. The State-respondents stated in the Para-10 of the counter-affidavit as follows:--

The answering respondent Nos. 1, 2 & 3 submit that 86 Nos. of trained assistant teachers were promoted to the post of Assistant Headmaster High School/ Headmaster S.B. School/Jr. High School on ad hoc basis w.e.f. 05-11-1992 and simultaneously to the post of H/M (High) School w.e.f. 29-11-95 and the petitioners name were not considered due to non-availability of their service particulars. Subsequently the petitioners have been promoted to the post of Assistant Headmaster S.B /Assistant Headmaster (High)/Deputy Inspector of Schools on regular basis through D.P.C. in order of their seniority position to the feeder post of Assistant Teacher, As such seniority position of the petitioner(s) has/have not been disturbed in any way.

7. It has been further contended in the Para-14 of the counter-affidavit that:

it is stated here that it is never ignored by the respondents, rather the petitioners have been promoted to the identical post of HM (SB)/AHM (High)/ Deputy Inspector of Schools on 22-03-2002 on regular basis through DPC in order of his/their seniority position to the feeder post of Asstt. Teacher. But the respondents No. 4 have not been regularized to the identical post due to the point of seniority position of the petitioner(s) has/have not been disturbed in any way. They have stated that 86 incumbent allowed fixation of pay for promotion to the post of AHM, High School etc. and thereafter to the post of H.M. High School in reference to the memo No. F. 4(6)-FIN(PC)/88(L-I) dated 30-08-1996. It is stated here that by the above noted memo the Finance Department has instructed the method of fixation of pay only in respect teachers who have qualified themselves to allow the trained scale from untrained scale.

8. The said respondents further reiterated in the Para-16 of the counter-affidavit that:

the seniority position of the petitioner have not been disturbed and as such there is no question of supersession. Hence the writ petition is not maintainable.

W.P. (C) 193 of 2003

9. Having similarly situated with the writ petitioners in W.P. (C) No. 332 of 2002, the petitioners in this writ petition namely, Rabindra Debbarma and Dayananda Debbarma filed the writ petition against the same set of respondents as arraigned in the W.P. (C) No. 332 of 2002. It is admitted that the writ petitioners are senior to the respondent Nos. 4, 5, & 6 but the respondent No. 7 is admittedly senior in the grade of Assistant Teacher. However, for consideration for promotion to the post of AHM (High)/HM (Senior Basic) the respondent No. 7 did not have the requisite qualification at the relevant point of time, however this contention has been disputed by the respondents.

10. For purpose of appreciating the seniority positions of the writ petitioners vis-a-vis the respondents the top-bottom tables are laid below on information furnished by the respondents in the seniority list vide No. F. 2C(3-3)-DSE/95 dated 25-04-2000 covering up to 8-01-2000 and the seniority list vide No. F. 3(3-4)-SE-E(GL)/05 dated 26-11-2005 covering till 31-12-2004:

TABLE For the petitioners

Note: Seniority Sl. Nos. 393, 387, 397, 400, 380, 384 & 383(A) vide list No. F. 2C(3-3) DSE/95 dated 25-04-2000 covering up to 18-01-2000.

Seniority Sl. No. 467 vide list No. F. 3(3-4)-SE-E(GL)/05 dated 26-11-2005 covering till 31-12-2004.

TABLE For the respondents

* Seniority list Sl. Nos. 614(B), 615(B) & 615(A) vide addendum list No. F. 3(3-4)-SE-E (GL)/05 dated 17-03-2009 covering till 31-12-2004.

** Seniority list No. 325 vide list No. F. 2C(3-3)-DSE/95 dated 25-04-2000 covering up to 18-01-2000.

11. The petitioners in this case were also left out from the consideration while the notification dated 19-02-1996 issued giving promotion to the post of Assistant Headmaster (High School) etc. with retrospective effect from 05-11-1992, the day when the respondent Nos. 4, 5 & 6 were promoted to that post. The said notification is available at Annexure-5 to the writ petition. It is the same notification as annexed in the W.P. (C) 332 of 2002 as the Annexure-2. As the petitioners' voice for justice did not bring any positive yield, they approached this Court for remedy and due justice.

12. The respondent Nos. 1 to 3 by filing the counter-affidavit replicated their stand as they had taken in W.P. (C) 332 of 2002. In the counter-affidavit it has been stated in the Para-2 as under:--

The petitioner Nos. 1 and 2 filed the instant writ petition on the ground that the petitioners were superseded by their juniors and claiming promotion with retrospective effect to the post of Headmaster (S.B. School)/Asstt. H.M. (High School) for 05-11-1992 and to the post of H/M (High School) from 29-11-1995. The answering respondent submitted that 86 graduate trained teachers were

promoted to the post of Asstt. Headmaster, Headmaster (S.B. School). Deputy Inspector of Schools only on ad hoc basis w.e.f. 05-11-1992 and to the post of Headmaster (High School) w.e.f. 29-11-1995 on ad hoc basis too. As such it is not true that the petitioners were superseded by their juniors.

However, in the Para-11 of the counter-affidavit they additionally stated that the respondent No. 7 was a trained teacher at the time of consideration and a copy of his B.Ed. degree certificate has been annexed to the counter-affidavit as the Annexure-R/2.

13. Mr. K.N. Bhattacharjee, learned senior counsel appearing for the petitioners submitted that the said action of the respondents is poised in conflict with the provision of Article 14 of the Constitution of India. As per the rule, the senior incumbents in the feeder post unless they are excluded for any specific reason have right to consideration for the promotional post and that right cannot be curtailed arbitrarily. To this aspect of the matter, the respondents did not extend any explanation at all. Moreover, in response to the Paragraphs-10 & 11 what they stated can hardly shed any light on the question why the similar treatment was not afforded "to the" writ petitioners in terms of the Notification No. F. 2A(10-17)-DSE/83(I-III) dated 19.02:1996 (Annexure-2 to the writ petition being W.P. (C) 332 of 2002 and Annexure-5 to the writ petition being W.P. (C) 193 of 2003) whereby the similarly situated persons were provided with the benefits of retrospective promotion from the date when their juniors were appointed in the promotional posts.

14. The plea of non-availability of the post as assigned by the respondent Nos. 1, 2 & 3 in their counter-affidavit cannot sustain for obvious reason. Similarly, their another plea that since in terms of date of regularization there had been no supersession and for that reason the writ petition is not maintainable cannot be sustained. It is the admitted position that the ad hoc appointments were given to the respondent Nos. 4, 5, 6 & 7 from 05-11-1992 in the post of Assistant Headmaster (High School)/Headmaster (Senior Basic School) etc. and from 29-11-1995 to the post of Headmaster/Headmistress, High School. The said appointments of the respondent Nos. 4, 5, 6, & 7 were regularized subsequently by a competent DPC. Without delving into further details, it transpires that the writ petitioners were treated with discrimination and in violation of the equality clause as engrafted in Articles 14 and 16 of the Constitution of India. Hence the impugned action of the respondents warrants interference by this Court. On considering the change in the situation as caused by efflux of time this Court is not inclined to unsettle the settled position as this Court considers that if the respondents are directed to give all the benefits as contained in the Notification No. F. 2A(10-17)-DSE/83(I-III) dated 19-02-1996 (Annexure-2 to the writ petition being W.P. (C) 332 of 2002 and Annexure-5 to the writ petition being W.P. (C) 193 of 2003) to the petitioners in both the writ petitions that would meet the ends of justice.

15. It is to be noted that the grant of ad hoc promotion is also extending the

benefits of higher responsibility and higher pay. Thus while appointing even on ad hoc basis in the promotional posts the senior incumbents in the feeder post cannot be discarded unceremoniously unless they are excluded for specific reason as permissible in law.

16. Accordingly the respondent Nos. 1, 2 & 3 are directed to extend the benefits as contained in the said Notification dated 19-02-1996 (Annexure-2 to the writ petition being W.P. (C) 332 of 2002 and Annexure-5 to the writ petition being W.P. (C) 193 of 2003) with all pecuniary and service benefits in terms thereof to the writ petitioners. The respondents shall invariably release those benefits within a period of 3(three) months from today. The writ petitions are accordingly allowed.

No order as to costs.