

(2001) 02 GAU CK 0002

In the Gauhati High Court

Case No : Civil Miscellaneous Application No. 356 of 2000 in WP (C) No. 461 of 2000

Anindya Kumar Bhattacharjee and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 16, 16(4), 16(4A), 309
Tripura Civil Services Rules, 1967 — Rule 18, 29, 3, 30, 4(2)

Citation : (2001) 1 GLT 352

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : Mr. B. Das, Ms S. Roy, Ms U. Roy and Ms S. Das, for the Appellant;
Ms U.B. Saha and Mr. T.D. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

1. By the writ petition as many as three T.C.S. Grade-II officers challenged the proposed amendment of Tripura Civil Services (Eighteenth) Amendment Rules, 2000 issued vide notification No. F.23(10)-GA/98 dated 23rd December, 2000. In the interim, the petitioners prayed for an interim direction staying the operation of the aforesaid notification dated 23.12.2000, the court is now concerned relating to the interim matter pending disposal of the writ petition.

By the aforesaid notification, the Government proposed to earmark some duty posts to be manned by T.C.S. Grade-I and T.C.S. Grade-II respectively. The petitioners' grievance, in short, is that Tripura Civil Service is a consolidated service having single identical status of all the officers irrespective of Grades. Though mention is there as to Grade-I with a particular pay scale and Grade-II with a higher pay scale of the officers under Tripura Civil Service Rules, 1967 (in short TCS Rules, 1967), but movement from Grade-II to Grade-I is nothing but up-gradation of the pay scale allowing selection grade scale within the same status and that cannot be treated as promotion for the purpose of applying

reservation clause and/or 100 point roster clause.

2. Mr. B. Das, learned senior counsel for the petitioners submits that while the State Government made attempt to adopt the reservation rule in the matter of movement of TCS officers from Grade-II to Grade-I treating it as a promotion post, one T.C.S. officer filed writ petition bearing No. Civil Rule 113/98 and sought for interim order in Civil Misc. Application No. 100/98 and this court passed interim order which runs as follows:-

"In the meantime, the respondents are directed not to make any reservation in case of appointment from Grade-II to Grade-I of the Tripura Civil Service."

The matter went in Writ Appeal No. 37/98 and the impugned order so passed in Civil Misc. Application No. 100/98, was modified by the Hon''ble Division Bench of this court directing all appointments to Grade-I would be subject to decision of the writ appeal. According to the petitioners, the aforesaid writ appeal is still pending.

3. Mr. U.B. Sah, learned Senior Govt. advocate, assisted by Mr. T.D. Majumder, learned counsel for the respondents orally submits that the Government has competence to frame and/or amend Recruitment Rules in exercise of power delegated to it by the proviso to Article 309 of the Constitution of India and the Govt. contemplated to amend the Tripura Civil Service Rules, 1967 in conformity with the provision of Article 16, particularly 16(4) and 16(4A) of the Constitution of India and in doing so the Government has neither violated the provision of constitutional mandate nor any other provision of any mandatory law nor it violated the doctrine of reasonableness.

4. The entire matter depends on the interpretation of related provisions of TCS Rules, 1967 and the related constitutional provisions.

5. Mr. Das, the learned senior counsel for the petitioners submits that allowing an officer the Selection Grade scale is nothing but a movement from Grade-II to Grade-I and in no way it could be treated as promotion from one post to other. Learned Senior counsel further submits that Selection Grade scale and Selection Grade post are not synonymous. Mr. Saha, the learned Senior Govt. Advocate also admitted the said position, but he adds that Selection Post is also not synonymous with Selection Grade scale. From the rival contention on that score it requires to discuss and to conclude what are the meaning and significance of Selection Grade Post and Selection Grade Scale. In this respect, the learned counsel for the parties relied upon the following case laws :-

- (1) Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others,
- (ii) AIR 2000 SCW 1651 (State of Punjab, appellant v. Surjit Singh, respondent)
- (iii) State of Rajasthan Vs. Fateh Chand Soni,
- (iv) Shri Ram Prasad Etc. Etc. Vs. Shri D.K. Vijay and Others Etc. Etc.,

6. Before considering the aforesaid citations of the Hon''ble Apex Court, let us see the textual position of the related Rules/Laws.

7. Tripura Civil Service Rules, 1967 was made/formulated by the Government in exercise of power conferred by the proviso to Article 309 of the Constitution of India. Under Rule 3 of the said Rules of 1967, the service (Tripura Civil Service) consists of two Grades, namely, Grade-I (Selection Grade) and Grade-II. While Grade-I is made Class-I Gazetted post, Grade-II is made Class-11 Gazetted post. Pay scale is provided under Rule 29 allowing Rs. 1175 (fixed) for Grade-I and Rs. 325-1000 for Grade-II at the initial constitution. The scales have been time to time amended pursuant to the revised Pay Rules and with effect from 1.1.1996, the said pay scale of the members of the Tripura Civil Services stands at Rs. 7800-15100 for Grade-II officers for the first four years and thereafter. Rs. 10000-15100 on completion of four years, while the pay scale of Grade-I officers stands at Rs. 12000-18400 with a remark that the said scale would be allowed to Grade-I officers "on promotion".

Rule 30 of the TCS Rules, 1967 prescribes that on completion of 12 years service in Grade-I, one would become eligible for being considered for appointment to Selection Grade.

Rule 4(2) of the TCS Rules, 1967 prescribes that the total number of posts in Selection Grade would be 5% of the authorised permanent strength of the service.

In view of Rules 5 and 18 of the TCS Rules, 1967, all appointments to the service must be against either Grade-I or Grade-II, but not against any specific post described in the Schedule.

8. In view of Rule 30 of the TCS Rules, 1967, it appears that there is no scope/provision for direct recruitment to Grade-I post of Tripura Civil Services, only members having completed 12 years service in Grade-II would come within the eligibility of consideration for being appointed to Selection Grade while appointment to Grade-II of the service are to be made, nor more than 50% of the substantive vacancies by direct recruitment according to the procedure prescribed therein and the remaining vacancies shall be filled up by selection from among some posts appended to the Rules.

9. In service appointment to a higher Grade or post normally termed as "promotion", but the learned Sr. counsel for the petitioners submits that in case of movement from Grade-II to Grade-I of Tripura Civil Service it cannot be termed as a "promotion", but a movement simpliciter and as such no reservation rule meant for reservation of posts for the Scheduled Castes and Scheduled Tribes is applicable. To appreciate the aforesaid submission, the related provisions of Article 16(4) and 16(4A) of the Constitution of India require to be carefully attended to. These are quoted below:-

"16(1)

(2)

(3)

(4) Nothing in this article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the state from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State."

10. From the aforesaid constitutional provisions it appears that the State Governments (including the Central Government) are authorised to make provision for reservation in the matter of promotion also to the posts and services for the members of Scheduled Castes and Scheduled Tribes, if in the opinion of the Government they are not adequately represented in the posts or services under the Government and thus to make provision for reservation in any service or post for the benefit of Scheduled Castes and Scheduled Tribes is constitutionally permissible.

11. Mr. Das, the learned senior counsel for the petitioner submits that the question relating to reservation in promotion in view of Article 16(4A) of the Constitution is pending under challenge before the Hon'ble Apex Court, but it is a fact that the Hon'ble Apex Court has not passed any interim order staying the operation of the aforesaid provision and as such the aforesaid provision of Article 16(4A) of the Constitution to be treated is in force. The present case is to be decided assuming the constitutional validity of provision of Article 16(4A) of the Constitution of India so long it holds the field.

12. The learned senior counsel for the petitioners having referred the case of Lalit Mohan Deb (supra) contends that the Hon'ble Apex Court in that case held that Selection Grade posts are not promotional posts. In para 7 of the Lalit Mohan's case, the Hon'ble Apex Court held that two scales would be provided in the "same category of posts" with a view to provide incentive to employees who had no outlets or very limited outlets for promotion to higher posts. It is also held in that case that a promotion post is a higher post with higher pay and Selection Grade has higher pay, but in the same post. Having regard to the facts and circumstances of the case, the Hon'ble Apex Court held that a Selection Grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grades. The learned senior counsel for the petitioners having referred Surjit Singh 's case (supra) submits that selection posts and selection grades are not synonymous. Selection Grade is provided to avoid stagnation at the highest slab in the Grade, but to allow one to go to Selection

Grade is not equivalent to promotion to a higher post. In the case of Surjit Singh (supra), the Hon''ble Apex Court never dealt with Selection Grade posts. The point fell before the Hon''ble Supreme Court is to distinguish between Selection Grade and higher post and the Hon''ble Supreme Court rightly held that in order to give incentive while Govt. provides for Selection grade it cannot be termed as a "promotion" to higher post and as such no reservation rule would be applicable so far as granting of Selection Grade is concerned.

To refute the same, the learned senior Govt. Advocate referred the decision rendered by the Hon''ble Apex Court in the case of Fateh Chand Soni (supra). In para 8 of that reported case, the Hon''ble Supreme Court interpreted the word "promote" and answered that the word "promote" means "to advance to a higher position, grade, or honour". "Promotion" means "advancement or preferment in honour, dignity, rank, or grade" and the Hon''ble Supreme Court concludes that promotion can be either to higher pay scale or to a higher post. The Hon''ble Supreme in Fateh Chand's case also considered the Lalit Mohan's case (supra) and quoted the relevant portion from Lalit Mohan's case (supra) where the Hon''ble Apex Court in Lalit Mohan's case (supra) observed that "provision of a selection grade in the same category of posts is not a new thing". Having explained the ratio of Lalit Mohan's case (supra), the Hon''ble Government in Fateh Chand Soni (supra) interpreted the terminology and consequence of promotion holding that advancement to a higher post or to a higher position, both constitute promotion.

13. The Fateh Chand Soni (supra) arose out of a decision of Hon''ble Rajasthan High Court. The Rajasthan High Court held that "promotion can only be to a higher post in the service and appointment to a higher scale of an officer holding the same post does not constitute promotion". That finding of the Hon''ble Rajasthan High Court held to be not right by the Hon''ble Apex Court in Fateh Chand Soni (supra). The consolidated finding emerged from paragraph 8 of the decision rendered in Fateh Chand Soni (supra) is that promotion can be to a higher post with higher responsibility in the same pay scale and also can be to a higher pay scale in the same grade.

The ratio of Fateh Chand Soni (supra) was affirmed by the Constitutional Bench consisting as many as five Lordships of the Hon''ble Supreme Court in Ram Prasad's case (supra).

14. The learned senior Govt. Advocate also referred the related provisions of "Tripura State Civil Services (Revised Pay) Rules, 1999". This revised pay rules has been done in exercise of constitutional power as embodied under the proviso to Article 309 of the Constitution of India having the force of law. Under Annexure-B appended to the aforesaid Revised Pay Rules, 1999 in Item 8, Tripura Civil Service remains quoted showing two Grades with different pay scales. For Grade-II two different scales are provided, one is Rs. 7800-15100 and after completion of four years it would be Rs. 10000-15100, while the Grade-I officers are given only one pay scale that is Rs. 12000-18400 and that is on

promotion from Grade-II officer. The aforesaid provision of ROP Rules, 1999 appears to be in conformity and in consonance with Rules 3, 29 and 30 of the Tripura Civil Service Rules, 1967.

15. Under the aforesaid discussion and analysis of the legal position having regard to the dictums of the Hon"ble Apex Court, I am of the considered opinion that appointment to Grade-I of the Tripura Civil Service from Grade-II of the service is a promotion and not a movement simpliciter and thus all provisions made under Article 16(4) or 16(4A) of the Constitution of India are very much applicable in the matter of appointment to the posts in Grade-I of the Tripura Civil Service.

16. In view of the above, I find no justification to interfere with the matter by issuing any interim order/direction. Accordingly, the Misc. application stands dismissed with no order as to costs.