
(1997) 06 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule No. 216 of 1993

Ardhendu Bikash Chakraborty

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 11-06-1997

Acts Referred:

Citation : (1998) 1 GLT 226

Hon'ble Judges : H.K.K. Singh, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee, for the Appellant; A. Chakraborty, A.G., for the Respondent

Judgement

H.K.K. Singh, J.—Petitioner's grievance in this case is that he has been denied the benefit that was given to his equal the Respondent No. 3.

2. Heard Mr. K.N. Bhattacharjee, learned Sr. counsel for the Petitioner and also Mr. A. Chakraborty, learned Advocate General for the Respondents.

3. Both the Petitioner and the Respondent No. 3 were working as LDC under the Live Stock Census Operation, Tripura. The Petitioner was appointed on 1.4.1961. There appointments were for fixed period which were extended from time to time continuously till 31.8.61. Thereafter the Petitioner was taken back to the Animal Husbandry Department with effect from 14.12.1961 and the Respondent No. 3 was also taken back in the same department with effect from 15.9.1961, so there was a break of service of 104 days in respect of the Petitioner and 14 days in respect of the Respondent No. 3. Subsequently, Respondent No. 3 approached the High Court and as per direction of the High Court in Civil Rule No. 76 of 1981 (Annexure-6) the break of service benefits as accorded by the said order. The Petitioner also approached the government by making representations (Annexures - 4, 5, & 10) and subsequently the government after Cabinet decision passed the order dated 20.5.1992 (Annexure-11) thereby condoning the break in service of the Petitioner and according service benefits, namely,

seniority, leave, pension, promotion etc. though it was ordered that his pay was to be fixed notionally and no arrear of pay might be given to him. The aforesaid order is extracted below:

GOVERNMENT OF TRIPURA ANIMAL HUSBANDRY DEPARTMENT: GORKHABASTI AGARTALA. No. F.9.(B-18)-AHD/ESTT/61 Dated Agartala, the 20th May 1992.

ORDER

In pursuance of the Govt. decision, the undersigned is directed to condone the break of service of Sri Ardhendu Bikash Chakraborty L.D.Clerk (Now Acctt.) for the period of 104 days w.e.f. 1.9.61 to 13.12.61 between the date of termination of his post service as L.D.Clerk in the livestock census operation 1961 and the date of appointment as L.D.Clerk in the A.H. Department by granting him terminal leave. Such interruption in the service will not entail forfeiture of his aforesaid service and he will have the continuity of his previous service.

Necessary entries in this regards may be made in the service book of Sri Chakraborty under proper attestation and he may be given benefits whatsoever (Seniority, Leave, pension, promotion etc.) due to him from 1.9.61 (the date of first joining in the livestock Census, 1961). His pay shall be fixed notionally. No arrears of pay may be given to him.

This is issued with the approval of the Govt. of Tripura, Confidential and Cabinet Department Communicated vide Memo No. F.1 (38)-CRA/91 dated 30.11.91.

(K. ARYA) COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF TRIPURA.

4. Submission of Mr. K.N.Bhattacharjee, is that the case of the Petitioner and that of Respondent No. 3 are exactly similarly situated. Sri Bhattacharjee also submits that the Petitioner was senior in the post of LDC as he was appointed on 1.4.1961 whereas the Respondent No. 3 was appointed on 7.4.1961 and services of both the Petitioner and the Respondent No. 3 were discontinued with effect from the same date but they were taken back on different dates i.e. Respondent No. 3 was taken back on 15.9.61 whereas the Petitioner was taken back on 14.12.61. According to Mr. Bhattacharjee this is discriminatory as both of them should have been taken back with effect from the same day. The submission of the learned Counsel on this petition has force. Equals are to be treated equally. There should be no discrimination among the equals. Equal treatment has to be given in matters relating to public appointment. In present case both the Petitioner and Respondent No. 3 were working in the same grade i.e. L.D.C. in the same department, services of both were discontinued with effect from same date but they were taken back in different dates. The Respondent has not been able to show any valid ground or reason justifying the aforesaid unequal treatment.

5. The further submission of Mr. Bhattacharjee is that the break of service of 104 days in respect of the Petitioner was caused due to the fact that he was taken back to the service after the Respondent No. 3 was taken back as stated above.

This submission of learned Counsel for the Petitioner has also force.

6. Mr. Bhattacharjee has also drawn my attention to the Govt. of India Finance Memo dated 17th September, 1963 at paragraph 3 under Article 176 - page 308 of Choudhury's compilation of Civil Services Regulation Vol-1-79 Edn. and submitted that decision for condoning the break in service of government employee was to be made by the Finance Ministry and in the our present case also the order at Annexure-11 to the writ petition was issued as per the decision of the Cabinet as indicated in the order itself.

7. Learned Advocate General also admitted the factual position of the case though he has submitted that the government has given effect to the order in Annexure-11 to the writ petition giving him all the benefits except arrears of pay as the same was not given by the said order.

8. Considering the circumstances of the case I am of the opinion that the case of the Petitioner and that of Respondent No. 3 can be taken as similarly situated and they should be given equal treatment for the reason here-in-before state above and the Petitioner has all along been making representations and as such his rightful claim cannot be refused on the ground of delay. There is no inaction on the part of the Petitioner and the Petitioner should be given all the benefits which were given to Respondent No. 3 at Annexure-7 in compliance with the order of Court (Annexure-6).

9. Accordingly, it is ordered and directed that the Petitioner be given all the service benefits mentioned in Annexure-11 to the writ petition including all the back wages, i.e. the arrears of pay and allowances. It is also clarified that in case of supersession also the case of the Petitioner should be considered for retrospective promotion with effect from the date when his junior was promoted.

10. Furnish a copy of this judgment to the learned Advocate General, Government of Tripura forthwith.