

(2010) 07 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 01 of 2008

Ashutosh Saha and Another

APPELLANT

Vs

Tripura Khadi and Village Industries Board and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Citation : (2011) 5 GLR 604 : (2011) 1 GLT 367

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S. Talapatra and P. Sarkar, for the Appellant; T.D. Majumder, A.G.A. and N. Majumder, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The two Petitioners involved in this proceeding are aggrieved by denial of the revised pay scale applicable to their posts. The posts being held by the Petitioners are that of Supervisor and Designer-cum-Modeler respectively. In this connection, the prayer of the Petitioner is to implement the Annexure-3, letter dated 05.07.1999 by which, the Government of Tripura in the Finance Department issued direction to the Executive Officer, Tripura Khadi & Village Industries Board to revise the pay of the employees of the Board with effect from 01.01.1996 in accordance with the provisions laid down in Para-9 of the terms and conditions of pay revision (Annexure-D to the said Annexure-3) letter dated 05.07.1999.

2. The pre-revised pay scales attached to the posts being held by the Petitioners are Rs. 1020/- 2620/- and Rs. 970/- 2400/- respectively. The said pay scales have been revised to Rs. 3300/- 7100/- and Rs. 3200/- 6030/- respectively. The Petitioners having not been extended with the benefit of the revised pay scales have approached this Court by filing the instant writ petition.

3. At this stage, a reference to an earlier proceeding stood concluded by judgment & Order, dated 13.12.2004 passed in 7 writ petitions will be necessary.

In two of the writ petitions, out of the said 7 writ petitions, the present two Petitioners were the writ Petitioners. The said two writ petitions are Civil Rule No. 448 of 1993 and Civil Rule No. 440 of 1993. The writ petitions were filed by the employees of the Respondent-Board involved therein including the present two Petitioners making grievance against down gradation of their pay scales. While the pay scale of the Petitioner No. 1 was fixed at Rs. 1450/-3710/-, that of the Petitioner No. 2 was fixed at Rs. 1300/- 3220/- and such fixation was by way of revision of their pay scales. It was contended that in fact, the Petitioners were entitled to get the revised pay scale of Rs. 1020/- 2620/- and Rs. 970/-2400/- respectively. According to Respondents, the revision of pay of the Petitioners in the aforementioned pay scales i.e. Rs. 1450/-3710 and Rs. 1300/- 3220/- was erroneous and consequently, apart from the order for stepping down their pay to that of Rs. 1020/- 2620/- and Rs. 970/- 2400/-, there was also order for recovery of the excess amount drawn by the Petitioners.

4. The aforesaid writ petitions have been answered by the judgment & Order, dated 13.12.2004 upholding the decision of the authority regarding wrong fixation of pay of the Petitioners. However, so far as the recovery part is concerned, same has been interfered with directing the authorities not to make any recovery in respect of the excess payment made to the Petitioners on account of wrong fixation of pay.

5. Pursuant to the aforesaid judgment & Order, the Respondent-Board has issued the Annexure-2, Memo, dated 07.06.2005 indicating the pay scales to be followed in respect of the Petitioners and others. For a ready reference, the order is quoted below:

MEMO

Consequent upon the verdict dated 13.12.04 passed by the Hon''ble Guwahati High Court, Agartala Bench in case No. C.R. Nos. 440/93 and 448/93 followed by Law Dept. observation communicated by Administrative Dept. vide their letter No. F.DI/ESTT/12(92)/99/6535-36 dated 08.04.2005 and keeping in view the Administrative Departments direction vide their letter No. F.IV-8(10)/PLG/D1/99/Part-IV/17142 dated 27-12-99 the Hon''ble Chairman TKVIB has been pleased to order that pay and allowances in respect of Sri Subal Rudra Paul, (P)2. Sri Bidyut Das, Sri Nandalal Das and Sri Ashutosh Sana, of the Board should be fixed notationally as on stepped down scale from the date of joining in the regular post with usual allowances as applicable in the following manner:

SL. No. Category of Employees Pay Scale followed

- (1) Sri Subal Rudra Rs. 970/-2400/-
- (2) Sri Bidyut Das, Rs. 970/-2400/-
- (3) Sri Nandalal Das, Rs. 970/-2400/-
- (4) Sri Ashutosh Saha Rs. 1020/-2620/-

As per verdict of the Hon''ble Guwahati High Court, Agartala Bench the excess amount drawn by the incumbent shall be recovered w.e.f. 14.12.04 in equal two installment.

6. Pursuant to the said order, dated 07.06.2004, the Petitioners are receiving their salary in the pay scale of Rs. 1020/- - 2620/ - and Rs. 970/- - 2400/- respectively. Consequent upon revision of the pay scales effected by the Government of Tripura in respect of the employees including the employees of the organizations under its deep and pervasive control, the Annexure-3, letter, dated 05.07.1999 was addressed to the authority of the Respondent-Board by the Principal Secretary, Government of Tripura in the Finance Department about which mention has been made above. In terms of the said revision of pay, the Petitioners are now entitled to get their pay in the revised pay scales of Rs. 3300/- -7100/- and Rs. 3200/- - 6030/- respectively.

7. In the counter affidavits filed by the State Government and the Respondent-Board, it has been contended that since the Petitioners were not validly appointed in their initial appointment way back in 1990, they are not entitled to get the benefit of revised pay scales. In the counter affidavit filed by the Respondent-Board, although it has been stated that the Petitioners were regularly appointed in the post of designer-cum-modeler and supervisor respectively with effect from 27.08.1990, but at the same time, it has also been contended that their such appointments were not with the concurrence of the State Government as required under the provisions of Tripura Khadi & Village Industries Board Act, 1966. In the said affidavit, it has been stated that the revised pay scale under Tripura State Civil Services (Revised Pay) Rules, 1999 could not be implemented by the Respondent-Board there being no specific sanction towards that end of the State Government. In this connection, the Respondent-Board has referred to the Annexure-A communication, dated 27.12.1999 made to the authority of the Respondent-Board by the Government of Tripura in the Department of Industries and Commerce. Clause 5g of the said communication reads as follows:

(g) For 47 remaining posts included in the proposal of TKVIB under {20 designations including 23 posts which have been excluded from the Finance Department communication vide their Letter No. F.6(6)-FIN(PC)/99 dated 5th of July, 1999; 10 posts where post creation formalities are found to be not followed and Anr. 14 posts where post creation formalities are found to be not followed as well as effect of ROP 1988 is disputed}, EO TK VIB should put up self contained proposal with proper justification for obtaining approvals/ concurrence duly. Till the communication of such concurrence of the Finance Department and the approval of the Administrative Department in this regard, revision of pay scales shall not be effected in case of incumbents holding posts in these 20 designations. The particulars of these are listed in Annexure-III hereto for reference.

8. In the counter affidavit filed by the State-Respondents, same is the stand. The

basic contention of the State-Respondents is that since the Petitioners were appointed illegally and without the concurrence of the State Government, they are not entitled to receive the benefit of revised pay scale.

9. I have heard Mr. S. Talapatra, learned senior counsel assisted by Mr. P. Sarkar, learned Counsel for the Petitioners as well as Mr. T.D. Majumder, learned Additional Government Advocate, Tripura. I have also heard Mr. N. Majumder, learned Counsel representing the Respondent-Board.

10. While Mr. Talapatra, learned senior counsel for the Petitioners upon a reference to the materials on record, more particularly, the Annexures-2 and 3, communications dated 07.06.2005 and 05.07.1999 submits that the ground on which the Petitioners have been deprived of the benefit of the revised pay scale is not sustainable in law, Mr. T.D. Majumder, learned State counsel submits that since, Petitioners are not the appointees pursuant to any approval accorded by the State Government, which is the requirement of law, they cannot claim the benefit of revised pay scales. Placing reliance on two decisions of this Court reported in *Sudhendu Mohan Talukdar Vs. State of Assam and Others*, and (2008) 4 GLR 602: *Kshitish Chandra Sarkar v. Tripura Small Industries Corporation Ltd. and Ors.*, he submits that the Petitioners having been appointed illegally by the Respondent-Board and without any concurrence of the State Government, they are not entitled to get the benefit of revised pay scales, meant for the regular employees. Mr. N. Majumder, learned Counsel representing the Respondent-Board adopting the argument advanced by Mr. T.D. Majumder, learned State counsel, submits that in absence of any concurrence accorded by the State Government, the Board is not empowered to give the benefit of revised pay scales to the Petitioners.

11. I have carefully considered the submissions made by the learned Counsel for the parties and the materials on record. As will be evident from the pleadings, the Petitioners were initially appointed as contingent workers under the Respondent-Board and thereafter, they were appointed to the regular posts of designer-cum-modeler and supervisor respectively way back in 1990, to be precise on 27.08.1990. At no point of time, their appointments were called in question by any authorities. They continued in their services all throughout and the occasion for them to approach this Court by filing the aforementioned writ petitions came when they were allegedly sought to be deprived of their pay scales by down grading the same. It was never the plea of the Respondents that the Petitioners were not entitled to receive the particular pay scales on account of their irregular appointment. What was contended was that the pay of the Petitioners was erroneously fixed in the particular pay scale.

12. As noted above, as against the fixation of pay of the Petitioners in the revised pay scales of Rs. 1450/- - 3710/- and Rs. 1300/- 3220/-, it was the contention of the Respondents that they were entitled to get their pay fixed in the pat scales of Rs. 1020/- -2620/- and Rs. 970/- - 2400/- respectively. True it is that, the Respondents had also contended that there was deviation in the

matter of appointment of the Petitioners inasmuch as the required concurrence and/or approval towards their appointments was not obtained from the State Government. At the same time, it cannot be lost sight of the fact that it was not on account of the purported irregular appointment of the Petitioners, their pay scales had been downgraded. The reason for down gradation of their pay was erroneous fixation of their pay in a higher pay scale to which they were not entitled to. Accordingly, necessary correction to that effect was made by the Respondents with the further stipulation that there would be recovery in respect of the excess payment made to them. This Court by the aforesaid judgment & Order, dated 13.12.2004 while not interfering with the decision of the authority to step down the pay of the Petitioners, however, interfered with the decision towards recovery of the excess payment drawn by the Petitioners.

13. Pursuant to the aforesaid judgment & Order, the authority of the Respondent-Board passed the Annexure-2 order, dated 07.06.2005, which has been quoted above. The Memo itself speaks of joining of the Petitioners in the regular post. That apart, the memo was issued with the approval of the Law Department and Administrative Department. The order was so passed pursuant to the aforesaid judgment & Order stepping down the pay of the Petitioners, which according to the Respondents were the pay scales to which the Petitioners were entitled to.

14. All throughout the service career of the Petitioners for the last more than 20 years, neither the Respondent-Board nor the State Government has raised any objection to their appointments and the continuation in service, except contending that their appointments were irregular. The Petitioners having been appointed way back in 1990 and by now long 20 years having gone by, it now cannot lie on the mouth of the Respondents that their appointment way back in 1990 was illegal so as to deprive them of the pay scales attached to their respective posts. There is no explanation from the State-Respondents as to what action it had taken against the author of the purported illegal appointments. To a specific query made to Mr. T.D. Majumder, learned State counsel as to whether any action has been taken against the Chairman of the Respondent-Board, who had made the appointments, he submitted that he has not been furnished any instruction in this regard. Be it stated here that the appointment of the Petitioners in the time scale and pay was precluded by appointments as contingent workers and instances are at galore of regularization of such services by the State Government.

15. The Petitioners having continued for long 20 years and this Court having passed the aforesaid judgment & Order, dated 13.12.2004, limiting the interference of the Respondents only to the extent of stepping down of their pay, it cannot lie on the mouth of the Respondents to contend after so many years of appointment of the Petitioners that their appointment being illegal/irregular, they will not be entitled to get their salary in the revised scale of pay. The Respondents were never opposed to give the particular pay scales, which is Rs. 1020/- - 2620/- and Rs. 970/- - 2400/- to the Petitioners, which according to

them, the Petitioners were entitled to in their respective posts. It was the only contention of the Respondents that the Petitioners have been provided with higher pay scales than that of their entitlement and accordingly, order for down gradation of their pay placing them in the appropriate scales of pay was passed. This Court while upholding the said decision of the Respondents, however, interfered with the proposal for recovery of the excess amount. This aspect of the matter has been discussed above.

16. As per Annexure-3, letter, dated 05.07.1999, the employees of the Respondent-Board are entitled to get the revised pay scale as indicated in the letter and its Annexures enclosed along with the said letter. As per the Annexure-D terms and conditions, the pay revision shall come into force from the First day of January, 1996 and shall apply to persons appointed in the regular scale of pay, but shall not apply to following categories of persons:

- (a) Persons not in whole-time employment;
- (b) Persons in contingent employment;
- (c) Persons paid otherwise than on a monthly basis including those paid on only on piece-rate basis;
- (d) Persons employed on contract basis except where the terms of contract provide otherwise;
- (e) Persons re-employed in the service after retirement;
- (f) Any other class or category of persons whom the aforementioned organizations with the approval of the State Government in Finance Department may, by order, specifically exclude from the operation of all or any of the provisions herein contained.

17. Mr. Majumder, learned State counsel upon a reference to the aforementioned clauses submits that the Petitioners having not been appointed regularly, they do not come within the purview of the Annexure-3 sanctioned letter, dated 05.07.1999. I have carefully considered the said submission made by Mr. Majumder. The terms and conditions speak of persons appointed in the regular scale of pay. There is no dispute that the Petitioners have been appointed in the regular scale of pay. In my considered opinion, none of the clauses referred to above is applicable to the case of the Petitioners. Although Mr. Majumder, learned State counsel has also referred to Clause (f) of the aforesaid clauses so as to contend that the Petitioners will come under the purview of the said clause. a careful perusal of the said clause. it cannot be said to be a case in which the State Government in Finance Department has by order specifically excluded any class or category of employees from the purview of the provisions of revised pay so as to exclude the Petitioners.

18. Although the learned State counsel has referred to the Annexure-B communication, dated 16.10.2007 addressed to the authority of the Respondent-

Board by the Government of Tripura in the Directorate of Industries & Commerce conveying that the Finance Department has recorded its inability to concur the proposal of the department, but in my considered opinion, such disagreement of the Finance Department does not conform to the requirement of Clause (f). No reason has been assigned as to why the Finance Department did not concur with the proposal made by the department. Apart from that, the subject contained in the said letter is that of regularization of post appointed by the Board and not on the subject of providing the benefit of revised pay scales to the Petitioners, who are stated to be appointed against regular posts vide the Annexure-2, Memo, dated 07.06.2005 issued pursuant to the aforesaid judgment & Order, dated 13.12.2004.

19. The decisions on which Mr. Majumder, learned State counsel has placed reliance are on validity of appointment and in case of illegal appointment, the consequence thereof. In Kshitish Chandra Sarkar (supra), when it was found that the order of promotion was issued without the prior approval of the Administrative Department, it was held that in such circumstances, the incumbent cannot claim pay and allowances of the promotional post. In Sudhendu Mohan Talukdar (supra), it has been held that the persons whose entry into the service is through back door cannot claim salary and the Government cannot be compelled to pay salary to such persons.

20. Needless to say that ratio of any decision will have to be understood in the facts and circumstances involved in each case. In Sudhendu Mohan Talukdar (supra), when it was found that large scale illegal appointments were made dehors the recruitment rules, this Court issued direction for consideration of their cases for payment of salary by a duly constituted committee. It was in that context, the observation was made that in case of illegal appointments of such large scales appointees, no direction can be issued to the Government for payment of salary straightway.

21. In Kshitish Chandra Sarkar (supra), when it was found that the incumbent himself was the author of the promotion order and that there was no sanction behind of the Government in respect of the said order, it was held that the incumbent cannot claim salary in the promotional post.

22. Above is not the position in the instant case. Initially the Petitioners were appointed as contingent staff and thereafter, they were regularly appointed way back in 1990. The earlier proceeding was in respect of their entitlement to a particular pay scale. The particular pay scales provided to them, according to the Respondents was erroneous and that they were entitled to get their pay fixed in a lower pay scale. Accordingly, order was issued down grading their pay as per their entitlement. Direction was also issued for recovery in respect of the excess payment.

23. In the said proceeding, it was not the contention of the Respondents that since the appointments of the Petitioners were illegal, their services are liable to

be terminated. What was contended was that the pay of the Petitioners had been fixed erroneously and that they were entitled to receive their salary in a lower pay scale. After allowing the Petitioners to continue in their services without any reservation, now 20 years, it cannot be said that the Petitioners being illegal appointees are not entitled to receive their salary in the revised pay scales. If such a contention raised by the Respondents is accepted, a situation may arise in which the Respondents while extracting the services of the Petitioners and without terminating their services may also say that the Petitioners are not entitled to receive any salary.

24. If the Petitioners are working in the particular posts, certainly they cannot be deprived of the salary attached to the said posts. If the Petitioners are entitled to receive their salary in the pre-revised scale, I see no reason as to why they should be deprived of their salary in the revised scales. If the Petitioners are deprived of their due salary in the revised pay scales, that will amount to reduction in the pay scales and that too without following the procedure laid down in the service rules.

25. There is another aspect of the matter. Even if there was some irregularity in the appointment of the Petitioners, way back in 1990, now after 20 years, it does not lie on the mouth of the Respondents to say that their appointments being illegal and/or irregular, they will not be entitled to get the benefit of revised pay scale. As regards, the approval/concurrence etc., in view of the earlier round of litigation followed by the Annexure-2, order, dated 07.06.2005 quoted above, it must be held that there is implied and/or tacit approval of the authorities towards the appointment of the Petitioners.

26. For all the aforesaid reasons, this writ petition is allowed granting the prayers made in the writ petition. Consequently, the Respondents are directed to provide the Petitioners the benefit of the revised pay scales as per the Annexure-3, letter, dated 05.07.1999. The Petitioners shall be provided with the benefit of the revised pay scales as admissible under the provisions of the rules as expeditiously as possible, but any rate, not later than 30th of October, 2010.

27. Writ petition is allowed, without, however, any order as to costs.