(2001) 06 GAU CK 0003

In the Gauhati High Court

Case No : WP (C) No''s. 224, 226, 228, 302 and 338 of 1999

Babul Dey and Others APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 11-06-2001

Acts Referred:

Constitution of India, 1950 — Article 309
Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 13

Citation : (2001) 2 GLT 254

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

Bench : Single Bench

Advocate : A. Ghosh and A. Bhattacharjee, for the Appellant; U.B. Saha, T.D. Majumder and S. Talpatra, for the Respondent

Final Decision : Allowed

Judgement

B.B. Deb, J.—In the aforesaid five cases common questions arise for decision and the factual matrix of the aforesaid five cases are virtually identical and as such all the cases are taken together, being agreed by the learned counsel for the parties, for hearing and final disposal.

2. The petitioners of the aforesaid cases have been appointed on different dates to the post of Co-operative Auditor by the Registrar of Co-operative Societies in the Directorate of Co-operation, Government of Tripura. The pay scale of the Auditor under Co-operative Department has been revised time to time and by virtue of the Revision of Pay Rules, 1982, the pay scale of all the petitioners, holders of the posts of Auditor, had been revised to Rs. 550-1245. The dispute virtually arose due to commencement of Tripura State Civil Services (Revised Pay) Rules, 1988" (hereinafter referred as "ROP, 1988"). The ROP, 1988 has been issued by the Govt. of Tripura in exercise of power under proviso to Article 309 of the Constitution of India w.e.f. 1.1.1986. The pay scales of the employees under the State Government in different departments have been revised as per Part B Schedule-Ill of the ROP, 1988 and the revised pay scales have been shown in a

tabulation form departmentwise. So far the petitioners'' cases are concerned, the ROP, 1988 prescribes as follows:-

Sl No. Name of the post Present Scale Re -designation of the post, if any Modified scale. if any. Revised scale Remarks

1. 2. 3. 4. 5. 6. 7.

9. CO-OPERATIVE DEPARTMENT

1. Registrar of Coop. Societies I.A.S - - I.A.S. I.A.S.

2. ....

3. ....

4. ....

5. ....

6. ....

7. ....

8. ....

9. Cooperative Auditor 550-1245 Auditor (Co-operative) vide scale graded No.1 -

10. ....

3. There are as many as 29 graded scales have been introduced by the ROP, 1988 as available in Part-C (Schedule-III). IN part-C (Schedule-III) it is stated that the Govt. employees shall move from the lowest grade-scale to the successive higher post/grade-scale according to the prescription given thereunder which runs as follows: -

"(a) Subject to seniority and fitness a Government servant holding a post in the lowest post/grade shall be allowed to move -

(i) to the first higher post/grade on completion of 10 years of service in the lowest post/grade; and

(ii) to the second higher post/grade on completion of 8 years of service in the first higher post/grade."

4. The ROP, 1988 clubbed together all the pre-revised pay scales enjoyed by the Auditors with various designation in different departments showing the old pay scales and the modified pay scales for the purpose of working out the pay revision and the revised pay scales. So far the Auditors in different departments are concerned, there were different pay scales prevalent prior to ROP, 1988. These are shown as Rs. 600-1440, 470-1025, 550-1245, 560-1300 and 430-850. In ROP, 1988 the post of Auditor in the pre-revised pay scale of Rs. 600-1400 has been re-designated as Senior Auditor with a modified pre-revised pay scale

of Rs. 650-1595 and thereafter, the revised pay scale has been shown to be Rs. 1450-3710 while the posts of Auditor in the pre-revised pay scale of Rs. 470-1025, 550-1245 and Rs. 560-1300 have been re-designated as Auditor and the pre-revised pay scales have been modified to Rs. 600-1440 and thereafter, revised pay scale has been shown as Rs. 1300-3220 while the post of Auditor having pre-revised pay scale of Rs. 430-850 has been re-designated as Junior Auditor with modified pre-revised pay scale of Rs. 550-1245 and thereafter, the revised pay scale has been shown as Rs. 1250-2890 and in view of the prescription given in Part-C (Schedule-III), the Auditor having revised pay scale of Rs. 1250-2890 would move to higher pay scale of Rs. 1300-3220 on completion of 10 years of service in the grade and thereafter, on completion of further 8 years of service would move to the next higher graded pay scale of Rs. 1450-3710.

5. The petitioners of all the cases have been holding the posts of Auditor with the pre-revised pay scale of Rs. 550-1245 and according to the graded scale No. 1 their pre-revised pay scale had been modified for the purpose of revision of pay to Rs. 600-1440 and thereafter, their pay scale has been revised to Rs. 1300-3220 w.e.f. 1.1.1986. The petitioners claimed that on completion of 10 years of service, they earned the eligibility to move to the higher graded scale of Rs. 1450-3710, which has been denied by the Government.

6. While the petitioners had been moving the Government suddenly they came across an unpublished Office Memorandum bearing No.F.4(6)-FIN(PC)/88/P-I dated 22nd June, 1990 (Annexure-4) issued under the signature of Finance Officer & Deputy Secretary to the Government of Tripura and this Office Memorandum infringed the petitioners'' acquired right of getting the graded pay scale and as such they challenged the said Office Memorandum in their respective cases.

7. The Govt. respondents filed counter-affidavit contesting the claim of the petitioners. The main crux of the counter-affidavit is that the incumbents like the petitioners whose pre-revised pay scale had been modified and fitted to intermediary revised pay scale, they would move to the next higher graded pay scale on completion of 18 years of service and as such the petitioners cannot claim to have been entitled to the next graded pay scale on completion of 10 years of service.

8. Upon hearing the learned counsel for the parties it appears that the said Office Memorandum became necessary to have been issued to remove the confusion created due fitment of a scale in the modified pre-revised pay scale at an intermediary stage while the prescribed movement from one grade to another grade as available in Part-C (Schedule-III) of ROP, 1988 there is no prescription at all regulating movement to the highest graded scale from intermediary graded scale. What the Rules prescribe is that one who is allowed the lowest graded scale would move to the intermediary graded scale on completion of 10 years of service and thereafter, would move to the highest graded scale on completion of

further 8 years of service, but in case an employee is fitted to the intermediary revised graded scale, how he would move to the next graded scale, means the highest graded scale, the Rules remain silent. In the same manner, where there are only two graded scales, one fitted to the lower grade how he would move to the higher graded scale, the Rule is also silent. In this respect, graded scale Nos.17 and 24 have been conveniently referred to. In Graded Scale No. 17, the pre-revised scales were Rs. 600-1440 and Rs. 560-1300 and those scales had been modified in the pre-revised scales of Rs. 650-1595 and Rs. 600-1440 and thereafter, revised to Rs. 1450-3710 and Rs. 1300-3220. So, the said graded scales only prescribed two grades without any intermediary graded scale, in such a situation, the incumbent fitted to the revised pay scale of Rs. 1300-3220 when would earn the eligibility to move the next higher grade in the pay scale of Rs. 1450-1710, the Rule remains silent. In the same manner, the Graded Scale No. 24 having pre-revised pay scales of Rs. 600-1440 and 650-1595 have been modified in the pre-revised pay scales of Rs. 650-1595 and Rs. 750-1750 and thereafter, revised to Rs. 1450-3710 and Rs. 1700-3980 respectively. There are also two graded scales without any intermediary graded scale and as such movement from one to another cannot be worked out in accordance with the prescription given in Part-C (Schedule-III) of ROP, 1988.

9. Mr. A. Ghosh, learned counsel appearing on behalf of the petitioners submits that the impugned Office Memorandum dated 22.6.1990 has not been published either in Govt. Gazette or in public print media apprising all concerned as to the said Office Memorandum and as such the said Office Memorandum is not enforceable in law.

10. It is admitted that the ROP, 1988 has been issued by the State Government in exercise of its power under the proviso to Article 309 of the Constitution of India and as such it is legislative in nature. The said ROP, 1988 is nothing but a delegated legislation as has been delegated by the Constitution of India pursuant to the proviso to Article 309 of the Constitution of India. Rule 13 of the ROP, 1988 runs as follows:-

"13. If any question arises relating to the interpretation of any of the provisions of these rules, it shall be referred to the Government of Tripura in the Finance Department."

11. Mr.T.D. Majumder, learned counsel appearing on behalf of the State respondents having referred to the interpretation clause as quoted above submits that the said Office Memorandum dated 22.6.1990 has been issued by the Finance Officer & Deputy Secretary to the Govt. of Tripura rightly having been vested with the power under Rule 13 of the ROP, 1988 and as such it has the force of law and is executable/enforceable.

12. Mr. Ghosh, learned counsel for the petitioners, on the contrary, submits that since the Finance Department issued the impugned Office Memorandum having been delegated with the power given under Rule 13 of the ROP, 1988 as has

been claimed by Mr. Majumder, learned counsel for the State respondents, the same cannot take effect unless it is notified in Official Gazette.

13. From the impugned Office Memorandum, it appears that the same has been issued pursuant to the power delegated under Rule 13 of the ROP, 1988. The ROP, 1988 itself is a delegated legislation as has been authorised by the proviso to Article 309 of the Constitution of India and the delegated authority, the Governor again delegated the power relating to interpretation of any Rule to the Fiancee Department and as such the Finance Department, Govt. of Tripura is placed in the footing of having the power of sub-delegated legislation. Now, the question possess whether the sub-delegated legislation requires notification in the manner the delegated legislation has been done.

14. Admittedly, the ROP, 1988 has been published in the Official Gazette vide Extraordinary Issue of Tripura Gazette dated September 16, 1988 A.D. corresponding to Bhadra 25, 1910 S.E., but the impugned Office Memorandum has yet to be published in the Official Gazette of the State Government.

15. Mr. Ghosh, learned counsel for the petitioners having referred a decision of the Hon''ble Apex Court in Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., submits that any notification or memorandum issued under any statute unless notified through Official Gazette has no effective force. The new rate of excise duty was issued vide notification No. 284/82-C dated 30th November, 1982 effective form 8th December, 1982. The question arose whether the company liable to pay excise duty had been apprised of the revised rate till 8th December, 1982. The Hon''ble Apex Court in para 12 of the aforecited decision held that "a Central Excise Notification can be said to have been published, except when it is provided otherwise, when it is so issued -as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published."

16. Mr. Majumder, learned counsel for the State respondents having referred a decision rendered by the Constitution Bench of the Hon''ble Apex Court in State of Maharashtra Vs. Hans George, submits that any sorts of notification apprising the person aggrieved would be sufficient for its commencement.

17. On perusal of the aforecited decision, it appears that the Hon''ble Apex Court held that in absence of any statutory requirement as to the mode of publication of a notification under a statutory provision, publication in Official Gazette of India is effective to give notice of it to the person concerned.

18. In the ROP. 1988 there is no prescription given how any interpretation given by the Finance Department, Government of Tripura pursuant to Rule 13 of the ROP, 1988 is to be brought to the notice of the person concerned and as such

having regard to the aforesaid decisions of the Hon''ble Apex Court, I am of the considered opinion that unless the mode of notification is otherwise prescribed under the principal Act or in the delegated legislation the notification under the said statutory provision, be it primary legislation or delegated legislation, is to be published in the Official Gazette apprising all concerned and unless it is so done any notification, memorandum, interpretation or clarification issued under any delegated legislation would be of no consequence.

19. Having applied the aforesaid, in my considered opinion the impugned Memorandum dated 22nd June, 1990 has not yet been made effective due to non-publication in the Official Gazette.

20. Part-C (Schedule-III) of the ROP, 1988 undoubtedly provided that an incumbent holding the lowest graded scale in the revised pay having three graded scale would move to the Intermediary graded revised scale on completion of 10 years of service and thereafter, to the highest graded scale on completion of another 8 years of service, but while there are only two graded scales in a post as available in Graded Scale Nos. 17 and 24 or where there are three graded scales but a particular incumbent has been fitted against the intermediary graded revised scale how he or they would move to the next higher graded scale, the provision of Part-C (Schedule-III) of ROP, 1988 appears to be ambiguous. Any law or Rule if found to be ambiguous should be given the purposive meaning having reference to the context in which the Rule aims to work. A mere perusal of Part-C (Schedule-III) of ROP, 1988 it reveals that the Rule making authority was very much anxious to give graded scales to some of the employees whose pay Instead of general revision provided in the graded scale allowing one or more upgradation. So, the incumbents whose pay scales have been referred to the graded scales must have the right to move to one or more graded scale, but unfortunately the Part-C (Schedule-III) of ROP, 1988 escaped the consequences where there are only two graded scales or where there are three graded scales, but an incumbent has been provided the intermediary graded scale.

21. It is clear from the Part-C (Schedule-III) of the ROP, 1988 that one would get the first graded scale on completion of 10 years of service in the same Grade, of course subject to suitability and fitness and thus I am of the considered opinion that the vacuum created due to accidental omission of the Rule making authority can be supplemented by borrowing the highest period of qualifying service for movement from one graded scale to another, that is 10 years and having regard to the factual and legal position discussed above, in my considered opinion the incumbents provided with the intermediary graded revised pay scale are/would be entitled to move to the highest graded revised scale on completion of 10 years of service and also while only two graded scales are prescribed, the incumbents would move from the lower one to the higher one on completion of 10 years of service.

22. In the result, the writ petitions are allowed. The petitioners holding the posts for 10 years or more who fitted with the intermediary revised graded scales earn

eligibility to move to the highest graded scales on completion of 10 years of service and the impugned notification dated 22nd June, 1990 is hereby declared to be of non-consequential.

However, there is no order as to costs.