

**(1998) 08 GAU CK 0032**

**In the Gauhati High Court**

**Case No :** Civil Rule No's. 397 and 540 of 1996

Badal Debbarma and Others

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

**Date of Decision :** 11-08-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1998) 3 GLT 457

**Hon'ble Judges :** B. Biswas, J

**Bench :** Single Bench

**Advocate :** A.M. Lodh and S. Bhowmik, for the Appellant; S. Chakraborty, for the Respondent

## Judgement

D. Biswas, J.—By this judgment it is proposed to dispose of Civil Rule No. 397/1996 and Civil Rule No. 540/1996 since a common question of law is involved in both the cases.

2. The Petitioners case is that some of the Asstt. Teachers who were juniors to them were promoted to the post of Asstt. Headmasters/Asstt. Headmistresses of different High Schools with effect from 5th day of November, 1992. The said batch of Assistant Teachers were again promoted to the post of Headmasters/Headmistresses in the pay scale of Rs. 2100-4530/- with effect from 29.11.95. Thus the Petitioners were ignored and superseded. On representation submitted by the Petitioners, the Respondents vide Notification No. F.2A (10-17)-DSE/83(L-III), dated 19th February, 1996 (Annexure-I) promoted the Petitioners to the post of Assistant Headmasters/Assistant Headmistresses with retrospective effect from 5th November, 1992, that is, the day when their Juniors were promoted. By the same notification, the Petitioners along with others were also promoted on ad-hoc basis to the post of Headmaster/Headmistresses for a period of six (6) months with effect from 29.11.95. that is the day on which their juniors were promoted.

3. Accordingly, the Petitioners joined their new assignments. The Petitioners were

also allowed to get their pay fixed with effect from 5th February, 1992 in the scale of Rs. 2000-4410/- and, thereafter, with effect from 29.11.95 in the scale of Rs. 2100-4530/-. But soon thereafter, the Respondents issued Anr. notification No. F 2A (10-17)-DSE/83 (L-III), dated 24th July, 1996 clarifying that the promotion of the Petitioners to the post of Assistant Headmasters/Asstt. Headmistresses with effect from 5.11.92 and as Headmasters/Headmistresses with effect from 29.11.95 shall be notional and the financial benefit by way of fixation of pay in the higher grades was allowed from the date of assumption of charge in such grades. Thus, the financial benefits given earlier was withdrawn. This notification dated 24.7.1996 has been challenged on the ground that it is violative of the provisions of Articles 14 and 16 of the Constitution.

4. The Respondents in their affidavit-in-opposition raised the question of maintainability of the writ petitions and blamed the Petitioners for their commission to produce necessary documents in time to show that they have successfully completed the P.G. Training (B.Ed. degree), which is essential for promotion to the posts of Assistant Headmasters/Headmasters. Relying on the provisions of F.R. 17 it is pleaded that the pay in the higher grade is payable from the date of assumption of charge.

5. What is apparent on the face of records is that the Petitioners were left out and their juniors were promoted to the post of Assistant Headmasters and, thereafter, some of them were further promoted to the post of Headmasters. On consideration of the representations submitted by the Petitioners, the State Government by notification dated 19th February, 1996 promoted them with retrospective effect from 5th November, 1992 (Annexure I) From the Annexure-I, it would appear that the Petitioners were given all consequential benefits i.e. fixation of seniority and pay with effect from 5.11.1992. After having given this, the Government issued Anr. notification on 24th July, 1996 clarifying that the promotion given to the Petitioners shall be treated as notional allowing fixation of seniority from 5.11.1992 while benefit of higher pay was allowed only from the date of assumption of charge. On this back-Ground, the propriety and legality of the impugned notification dated 24.7.96 is to be examined.

6. It is pleaded in affidavit-in-opposition that the fact regarding completion of Post Graduate Training was not brought to the notice of the authority for which the Petitioners could not be promoted along with their juniors. The financial benefit i.e. arrear pay and allowances given to them was withdrawn as the Petitioners did not discharge higher responsibility during the period between the date of promotion and the date of assumption of charge.

7. In Civil Rule No. 379/1996, the Petitioner Shri Badal Debbarma submitted that he was made in-charge Headmaster of the School where he is serving from 1991, and he has been discharging the duties of the Headmaster all along till he was appointed as Headmaster vide notification dated 19th February, 1996. The re-joinders filed by the Petitioners further show that there are averments that they have informed the authority about their successful completion of Post

## Graduate Training.

8. It would, therefore, appear that there is a dispute relating to the question as to whether the Petitioners had within reasonable time informed the authority that they had qualified in the B Ed. examination. There is no document on record to show whether this vital information was actually brought to the notice of the authority in time or not. Neither the Petitioners nor the Respondents have produced any document for perusal by this Court. But the fact remains that they were in service of the Government during the time when they had undergone the course and, this cannot be done unless they were deputed by the authority. This casts an obligation on the part of the authority to take precaution to obtain necessary information before they were denied promotion. In view of this position, it cannot be concluded that the fault was exclusively with the Petitioners. Negligence on the part of the authority is also apparent.

9. However, the law as on today is clear so far the withdrawal of financial benefits once given is concerned. An employee retrospectively promoted after acceptance of his representation is entitled to arrear pay and allowances due to him from the date when he should have been promoted. In this connection, we may refer to a decision in *Shaikh Mehaboob, Petitioner v. the Railway Board, New Delhi and Ors.* reported in 1982 Lab. I.C. 92 (Kant) wherein it has been held that denial of arrear pay and allowances on the ground that an employee did not shoulder the responsibility of higher grade is wrong. In (1990) 12 ATC 192 (*Jaya Krushna Behera, applicant v. Union of India and Ors.*) a similar view was taken by the Central Administrative Tribunal, Cuttack. The Punjab and Haryana High Court in *K.N. Chhibar, Ex.E.T.O. Petitioner v. State of Haryana and Anr. Respondent* 1990 (2) SLR 299 while dealing with a similar situation observed:

In nutshell, in the first instance the State Government committed a mistake by not promoting the Petitioner even though he was due for promotion. Later on when his representation was accepted and he was in fact found fit to be promoted from that date, he was actually promoted and the benefit of seniority etc. was given to him in the higher rank. In this situation the order denying the payment of arrears of pay and allowances to the Petitioner with effect from the date his promotion was actually made, is wholly without any legal justification. Resultantly, the direction issued in the impugned order dated 2nd February, 1985 (Annexure-P.2) to this extent is struck down.

10. The law, therefore, is clear. An employee who has been denied promotion due to fault not on his part, and given retrospective promotion subsequently on consideration of his representation, cannot be denied the benefits of arrear pay and allowances.

11. In the instant case, the Government of Tripura, on consideration of representations submitted by the Petitioners, promoted them with retrospective effect from 5th November, 1992 with all corresponding benefits. These benefits once given cannot be withdrawn by the Government subsequently without

affording an opportunity to the Petitioners of being heard. In the instant case, the authorities also did not exercise due diligence in updating the service books. Considering these circumstances and the law as discussed above, the impugned notification dated 24th July, 1996 cannot but be set aside.

12. In the result, both the writ petitions are allowed. The impugned notification dated 24th July, 1996 is hereby set aside. No order as to costs.