
(2006) 11 GAU CK 0054
In the Gauhati High Court

Barindra Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 2 GLT 370

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.B. Pal, J.—Heard Mr. A. Lodh, learned Counsel for the petitioner and Mr. T.D. Majumder, learned Counsel for the respondents.

2. The petitioner Barindra Ghosh was initially appointed as work charged Jogali on 06.12.73 in the Public Works Department, Government of Tripura. After the continuous service since then for a period of 4 years 11 months and 20 days, he was appointed on 22.11.78 as Lower Division Clerk in the office of the Chief Engineer, PWD. Thus, he came to be an employee under the regular establishment. On 20.10.81, the State respondents in the Public Works Department framed rules with a view to transfer all the existing work charged employees of that department to the regular establishment. As per the said rules, 1049 number of work charged employees shown in the schedule attached to the said rules were transferred to the regular establishment with regular scale of pay. Regarding the period of service they rendered as work charged employee it has been provided in Rule 5(2) of the said rules that such period shall count to the same extent as regular service for the purpose of pension, gratuity or other retiral benefits. The grievance of the petitioner is that he has been denied the benefits available under the above rules only on the ground that he was brought to the regular establishment before the said rules came into force and that the benefits of the said rules were intended only for those existing 1049 work charged employees who were in position on the date of coming into force of the

said rules. By means of this writ petition, the petitioner has sought a direction to the respondents concerned to extend the benefit of the said rules to him also.

3. In the counter affidavit, the respondents admitted that the petitioner was appointed as work charged employee in 1973 and he was brought to the regular establishment by appointing him as Lower Division Clerk on 22.11.78. It has also been admitted that he could not be given the retiral benefit of period he spent in the work charged establishment, as given to those came to be brought to the regular establishment later by means of the rules of 1981. In view of the limited scope of the said rules, it is contended that the benefit of the same could not be extended to the petitioner and others who were brought to the regular establishment before that date.

4. Mr. Lodh has drawn my attention to Annexure-8 A which is an office order issued from the office of the Chief Engineer, I & FC on 17.12.85. This order issued in the name of Governor would go to show that certain work charged employees who were transferred to the regular establishment in the year 1978 as Lower Division Clerk, before the rules of 1981 came into force, have been given the pensionary benefits in the form of pension and gratuity for the entire period served in the work charged establishment. By the memorandum dated 16.06.95 (Annexure-9), the issue was under examination by the said respondents as to whether the persons who were brought to the regular establishment through interview in the year 1978 are entitled to the pensionary benefit for the period served by them in the work charged establishment. The petitioner made a representation on 23.02.98 to the Chief Engineer, Public Works Department to extend the pensionary benefit by counting the service served in the work charged establishment, but no favourable response was forthcoming from them. Aggrieved, by means of this writ petition, the directions as aforesaid have been sought.

The only submission of Mr. T.D. Majumder, learned Counsel for the respondents is that the benefit of the rules 1981 ipso facto cannot be pressed into service for work charged employees other than those who were specifically covered by the said rules. As there is nothing to show that any of the work charged employees who were brought to the regular establishment before the rules of 1981 was given the benefit of memorandum of 1981, the petitioner's claim is misconceived and misplaced. Mr. Lodh, on the other hand, would argue that the very purpose of framing the rules of 1981 is to ensure that the work charged employees who have rendered the services in the work charged establishment should not be deprived of the pensionary benefits and, therefore, it cannot be argued that the State Government being a benevolent employer would make discrimination between the same set of employees who served in the work charged establishment only because some of them were brought into regular establishment before the rules of regularization came into force in 1981. It is his further submission that any view that the benefit of the service rendered in worked charged establishment should be limited to a particular group of

employees who were regularized in 1981 would lead to discrimination among the persons similarly situated violating the equality clause of the Constitution enshrined in Article 14 .

5. After carefully taking into consideration respective pleadings and the submissions advanced, the admitted position that has emerged is that the State Government issued the memorandum for framing the rules to regularize all the work charged employees numbering 1049 in one go, obviously, in order to put an end to the practice of appointing employees in work charged establishment. It was specifically mentioned that after the issue of the said memorandum, no fresh appointment for the work charged establishment would be made. While transferring the work charged employees to the regular establishment, the rules have taken care of the period the employees have rendered in the work charged establishment so that for the purpose of pensionary benefit the said period is also counted. True it is that a strict and narrow interpretation of the said rules would mean that the benefits would confine to the work charged employees specified in the schedule, but the question that remains, as rightly pointed out by Mr. Lodh, why similar benefits should not be given to the work charged employees who were earlier brought to the regular establishment as otherwise such action would amount to hostile discrimination between the employees similarly situated. This argument of Mr. Lodh derives its strength from the office order issued on 17.12.85 (Annexure-8A) whereby the pensionary benefits for the period of service in the work charged establishment rendered by Sri Netai Majumder, Sri Debabrata Das and Sri Jogesh Chandra Roy were given though they were brought to the regular establishment in the year 1978 long before the memorandum of 1981 (Annexure-7) was issued. Proceeding from the above premises that the work charged employees who were brought to the regular establishment before 1981 were also given the pensionary benefits for the period rendered by them in work charged establishment, I find no reason to deny the same benefit to the petitioner who was also brought to the regular establishment in the year 1978.

6. In view of the above, this writ petition has merit and accordingly the same is allowed. The respondents are directed to extend the pensionary benefits to the petitioner counting the period of service rendered by him in the work charged establishment.