
(2015) 07 TP CK 0039
In the Tripura High Court
Case No : Writ Petition (C) No. 466 of 2011

Bhabatosh Roy

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Citation : (2015) 07 TP CK 0039

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; S. Chakraborty, Addl. G.A., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J—A short and very interesting point is involved in this writ petition. The facts involved in this writ petition are mostly undisputed. The petitioner was initially engaged as the helper in the Department of Science, Technology and Environment on 13.12.1989.

2. The petitioner has been regularized or appointed in the regular establishment w.e.f. 01.06.1992 without giving any benefit of his past service. At the relevant point of time the Helpers, working under the Government Department were allowed graded scale No. 12, consisting of 3 grades under Part-C (Sch.III) of the TSCS (RP) Rules, 1988. The grade-wise revised pay scale was as follows:

3. As per the said Rules, the person serving as the Helper in Grade-II would move to the Helper Grade-I on completion of 10 years of service and the Helper Grade-I would move to the Grade of Sr. Helper on completion of 7 years service as per Finance Department clarification given under the Office Memorandum being FD's OM. No. F. 4(6)- FIN(PC)/88/P-1, dated 22.06.1990. Those movements are to be treated as promotion for the concerned employee. For such movement to the higher grade, the concerned employee would be entitled to the benefit of fixation of pay under FR 22(C).

4. It is also not in dispute that the petitioner was appointed as the helper in the scale of pay of Rs. 800-1520/- which is the intermediate scale in the graded scale No. 12. It is also not in dispute that by the subsequent pay revision by the TSCS (RP) Rules, 1999, the Government of Tripura introduced Career Advancement Scheme (CAS) by Rule 10, which provides that the helpers for their being in the Group-D are entitled to get 4(four) scale advancement on completion of 10, 7, further 7 years and thereafter 8 years of continuous and satisfactory service in the respective grade.

5. Since the petitioner was regularly appointed in the pay scale of Rs. 800-1520/- corresponding to the revised pay scale of Rs. 2650-4350/- in terms of the TSCS (RP) Rules, 1999 on 01.06.2002, he was given the grade movement on his completion of 10 years of his service w.e.f. 01.06.2002 to the scale of Rs. 2750-4925/-.

6. Thereafter, after completion of 17 years of service he was given benefit of the second Assured Career Progression (ACP-2) w.e.f. 01.06.2009, in the Pay Band (PB) No. 1 of Rs. 4,530-13,000/- with grade pay of Rs. 1,400/- by the Office Memorandum dated 30.10.2010 (Annexure- P-2 to the writ petition).

7. By the Office Memorandum dated 30.10.2010 the petitioner along with other helpers were asked to exercise their option on accepting the proposed day of releasing the ACP-2 on completion of 17 years of service w.e.f. 01.06.1992 within one month. Thereafter, again by the Office Memorandum dated 30.12.2010 the petitioner was asked to exercise the said option within one month. But the petitioner did not exercise any option apprehending that if he exercised the option, he would face detriment to his interest as, according to the revised initiative, it would appear that he has drawn excess amount and therefore, the order of recovery would entail.

8. From the Office Memorandum dated 29.07.2002 (Annexure-P-1), it can clearly be gathered that the petitioner had completed 10 years of service on 31.05.2002 in the same post without getting any promotion. From the Office Memorandum dated 31.10.2010 it can further be gathered that the petitioner had completed 17 years of service on 31.05.2009 and was entitled to second ACP w.e.f. 01.06.2009 in the Pay Band of Rs. 4,530-13,000/- (PB-1) with grade pay of Rs. 1,400/-. Hence, the petitioner has challenged the office order dated 29.07.2002 (Annexure- P-1) and the Office Memorandum No. 30.10.2010 on the ground that those have recorded wrongly the date on which benefit under CAS-1 or ACP-2 as would have been entitled to the petitioner.

9. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that the impugned office order dated 30.10.2010, where it has been recorded that the petitioner has completed 17 years of service on 31.05.2009. According to him, the petitioner has completed 17 years of service on 13.12.2006 as the petitioner is entitled to get the benefit of his service he rendered as the fixed pay helper w.e.f. 31.12.1989.

10. Further, he has submitted that if over-drawal be recorded by the respondents that was entirely for the wrong action of the respondents and as such if any over-payment is for any reasons recorded, the petitioner cannot be held liable for recovery, inasmuch as there had been no misrepresentation on the part of the petitioner.

11. Mr. Deb, learned counsel appearing for the petitioner has further submitted that the respondent should not be allowed to compel the petitioner to exercise the option as required by the office orders dated 30.10.2010 and 30.12.2010. While summing up his submission Mr. Deb, learned counsel has submitted that the petitioner is entitled to get CAS-1 in the scale of pay of Rs. 4,530-13,000/- under the TSCS (RP) Rules, 1999 w.e.f. 19.12.1999, the second ACP under the TSCS (RP) Rules, 2009 w.e.f. 13.12.2006 in the pay scale of Rs. 4,530-13,000/- (PB-1) with grade pay of Rs. 1,400/- per month and annual increments in the said scale of pay scale w.e.f. 13.12.2006. Further that the respondents should not be allowed to recover any amount from the salary of the petitioner on the purported ground of over-drawal of salary.

12. From the other side, Mr. Chakraborty, learned Addl. G.A. has submitted that the entry post in the grade of Helpers is Jr. Helper as evident from the graded pay scale No. 12 as provided under Part-C Sch.III of the TSCS (RP) Rules, 1988 but the petitioner was appointed in the intermediate scale of Rs. 800-1,520/- and as such, the respondents have adjusted his scale of pay with the CAS-1 on 01.06.1992, else there would be an anomalous situation.

13. Thereafter, Mr. Chakraborty, learned Addl. G.A. has referred to the averments of the respondents in paragraph 23 which reads as follows:

"The post of Helper was allowed graded Scale No. 12 consisting of 3 Grades under Part-C (Sch-III) of the TSCS (RP) Rules, 1988. The grade-wise revised pay scales were as follows:

As per the Part-C (Sch-III) of the TSCS (ROP) Rules, 1988, a person serving as helper in Grade II Category post would move to the intermediate Helper Grade-I post of the revised pay scale of Rs. 800-1,520/- on completion of 10 years of service in the lowest grade and to the above mentioned highest grade revised scale of pay of Rs. 850-2130/- on completion of service as pre FD's clarification given vide FD's OM No. F.4(6)-FIN (PC)/88/P-I dated 22.06.1990, so these movements shall be treated to be promotion for the concerned petitioners. And accordingly, the benefits of pay fixation vide FR-22 C are allowed to the petitioners at the time of movement of higher/next higher pay scale under Part-C (Sch-III) of the TSCS (RP) Rules, 1988.

And accordingly the intervening period the TSCS (RP) Rules, 1999 was introduced by the Government and as per Rule-10 of the said provision an integrated Carrier Advancement Scheme (modified CAS) was introduced which provides that a Helper (Group-D) is entitled to get 4 (four) scale advancement on completion of respectively 10, 7, further 7 years and further 8 years of

continuous and satisfactory service at respective stages. This advancement is inclusive of promotion. It is also confirmed that if any concerned employee after entry into service has already been provided or availed of the prescribed no of scale advancement by way of promotion or gradation under Part-B or Part-C of TSCS (RP) Rules, 1999, it is further clarified in determining admissible prescribed number of scale advancements in case of a particular employee under CAS (modified) that if any employee is appointed directly to the highest/intermediate Grade post pay scale consisting of 3 (three) grades/posts under Part-C (Sch-III) of the TSCS (RP) Rules, 1988 he/she would be considered to have availed of 2 (two) 1 (one) scale advancements, as the case may be on completion of respectively 17/10 years of service as per the modified CAS of the TSCS (RP) Rules, 1999.

In the instant case, the petitioner, was appointed on fixed pay basis in the post of "Helper" vide order dated 13.12.1989 and he was appointed afresh directly on 01.06.1992 in the aforesaid intermediate grade, pre-revised pay scale of Rs. 800-1520 under Part-C (Sch-III) of the TSCS (RP) Rules, 1988, vide Order dated 19.05.1992. So direct appointment of the petitioner on 01.06.1992 in the intermediate grade pay scale of Rs. 800-1,520/- Rs. 2,650-4,350/- (revised) would be treated to be promoted as well as CAS-I as per relevant proviso of TSCS (RP) Rules, 1988, hence the benefits of CAS are already given to the petitioner in the highest scale of pay of "Helper" w.e.f. 01.06.2002 and the petitioner is not entitled to any further benefits as per the existing rules and the benefits are treated to have been submitted in the CAS-II as well.

Moreover, the benefits of the CAS-I of Rs. 2,750-4925/-, so extended w.e.f. 01.06.2002 to the petitioner was not considered to be in order as the highest scale of Helper would have been admissible only after 17 years of satisfactory service i.e. from 01.06.2009. Thus, ACP-II which was already allowed them w.e.f. 01.06.2009 is not admissible. It is evident from the fact stated herein above that direct appointment of all the petitioners on 01.06.1992 in the intermediate grade pay scale of Rs. 800-1520/- / Rs. 2650-4350/- (revised) would also be treated as promotion as well as CAS-I as per TSCS (RP) Rules, 1999 and revised Pay Band-I (Rs. 4530-13,000/-) with Grade Pay of Rs. 1500/- as ACP-3 on completion of further 8 (eight) years of service in CAS-III and in total 25 years of service and also subject to fulfillment of other conditions laid down in Rules 10 of TSCS (RP) Rules, 2009."

14. According to Mr. Chakraborty, learned Addl. G.A. the appointment of the petitioner w.e.f. 01.06.1992 even though made directly it has to be treated as the promotion to the Helper (Grade-II) in the scale of pay of Rs. 800-1520/- (pre-revised) and as such the petitioner will not get any benefit after 10 years of service in terms of TSCS(RP) Rules, 1999. But wrongly such benefit was provided to the petitioner w.e.f. 01.06.2002 by movement to the scale of pay of Rs. 2,750-4,925/-.

15. Since the petitioner was not entitled to the CAS-I as had been adjusted when

he was appointed in the scale of pay of Rs. 800-1520, corresponding revised scale of pay of Rs. 2,650-4,350/-. Next movement as such would be after completion of 17 years of service, meaning w.e.f. from 01.06.2009 in terms of TSCS(RP) Rules, 2009.

16. Mr. Chakraborty, learned Addl. G.A. has thus contended that it has been decided by the respondents to allow the petitioner ACP-2 in PB-1, Rs. 4,530-13,000/- with grade pay of Rs. 1,400/- after his completion of 17 years of service. The petitioner would further be entitled to the ACP-3 on his completion of further 8 years of service, subject to fulfillment of the other conditions as laid down in Rule 10 of the TSCS(RP) Rules, 2009.

17. Having appreciated the averments and the submission of the petitioner and the respondents the following questions fall for consideration of this Court:

"(I) Whether the petitioner is entitled to the benefit of the past service he rendered as the Helper on fixed pay basis by virtue of the Office Order dated 13.12.1989 for the purpose of having the benefit under the CAS-I or the ACP?

(II) Whether the scale allowed to the petitioner w.e.f. 01.06.1992 on a fresh appointment can be treated as the scale for promotion to adjust the (CAS-I) in terms of Rule 10 of the TSCS(RP) Rules, 1999?

(III) If it is found that for wrong fixation the petitioner has overdrawn any amount as salary, whether that can be recovered from the petitioner in the given circumstances?"

18. Before we respond to the questions as formulated, it is to be noted that by the order dated 18.06.2015 the respondents were asked to produce the background files recording the appointment and fixation of pay scale of the petitioner in the scale of pay of Rs. 800-1500/-.

19. Mr. Chakraborty, learned Addl. G.A. has produced that record and it appears therefrom that in terms of the direction of the High Court for consideration and regularization of Helpers, a proposal was moved on 13.02.1987 by the Secretary of the Department for creation of 5 posts of Helpers.

20. The Finance Department by their note dated 17.03.1992, created 2(two) numbers of supernumerary posts of Helpers to be adjusted against the future vacancies of the regular posts. It is also not in dispute that the post of Helper used to carry the common scale of pay being Rs. 370-650/- before introduction of TSCS(RP) Rules, 1988 and it is also an admitted position that the corresponding revised pay scale of that pay scale is Rs. 800-1520/-.

21. It appears from the note dated 30.03.1992 that 5 posts of helpers were proposed to be created adjusting 5 posts of the Technicians under Rule 77 of the GFR and that proposal got approval from the competent authority on 21.04.1992. From the note dated 26.08.1991 it is rather clear that these posts of Helpers in the Department of Science, Technology and Environment was created

in the scale of pay of Rs. 800-1520/-. For the purpose of reference, the relevant part of the note is extracted hereunder:

"3. To start with the district level set-up, it is felt that Helpers (Class-IV) appointed so far under the Department are quite inadequate to meet the requirement. The existing sanctioned strength of Helper is 22 against which 21 Helpers have so far been appointed. One vacant post is reserved for Ex-Servicemen. Of the sanctioned post, 6 (six) posts were created under "Tripura State Science Center, Agartala". The helpers appointed against these 6 sanctioned posts were engaged for effective implementation of program under NCES as 15 Helpers in position could not cope with the work load despite their best effort. This stop-gap arrangement was made pending commencement of functioning of the Science Centre. The Science Centre is likely to start functioning within a few months and as such 6 Helpers will have to go back to the Centre. As the implementation of NCES program throughout the State by deployment of remaining 16 Helpers will be quite difficult, the Deptt., is in urgent need of creation of 5 (five) new posts of Helpers in the scale of pay of Rs. 800-1,520/- (Revised)".

22. It appears from the note No. 32 dated 18.06.1993 that the referred decision of the Council of Ministers was taken for regularization of the persons engaged by way of stop-gap arrangement. That was an informed decision of the department and in compliance of the order of the High Court. In this context, the relevant paragraph No. 4 of the Note No. 28 is reproduced hereunder:

"At the appropriate time, a proposal was initiated for fresh appointment on regular basis of all the 12 Nos. Fixed pay appointees. But a daily Rated Worker of this Department, whose name was in the selection panel, filed a suit in Guwahati High Court, Agartala Branch soliciting justice for non-consideration of DRWs interviewed for appointment to the post of Help "....At the appropriate time, a proposal was initiated for fresh appointment on regular basis of all the 12 Nos. Fixed pay appointees. But a daily Rated Worker of this Department, whose name was in the selection panel, filed a suit in Guwahati High Court, Agartala Branch soliciting justice for non-consideration of DRWs interviewed for appointment to the post of Helper. Hence, the Department had to wait for the verdict of the High Court. The Hon"ble High Court issued a verdict to the effect that the cases of DRWs whose names were in the merit list should also be considered, as per prescribed procedure of the Government in regard to direct recruitment, based on their standing in the selection panel. Accordingly, on review of entire process in this respect, the competent authority". "At the appropriate time, a proposal was initiated for fresh appointment on regular basis of all the 12 Nos. Fixed pay appointees. But a daily Rated Worker of this Department, whose name was in the selection panel, filed a suit in Guwahati High Court, Agartala Branch soliciting justice for non-consideration of DRWs interviewed for appointment to the post of Help. At the appropriate time, a proposal was initiated for fresh appointment on regular basis of all the 12 Nos. Fixed pay appointees. But a daily Rated Worker of

this Department, whose name was in the selection panel, filed a suit in Guwahati High Court, Agartala Branch soliciting justice for non-consideration of DRWs interviewed for appointment to the post of Helper accorded approval for regular appointment of the 9 Nos. DRWs of the Department along with the above 12 Nos. fixed pay appointees".

23. From the office order dated 29.07.2002 (Annexure P-1), it appears that after completion of 10 years of continuous service in the same post without getting any promotion the petitioner has been allowed movement to the next higher scale of pay i.e. Rs. 2750-4925. But from the impugned office order dated 30.10.2010, the petitioner has been allowed second ACP in the scale of pay Rs. 4530-13,000/- (PB-1) with grade pay of Rs. 1400- after completion of 17 years of continuous service in the same post without getting any promotion. The petitioner was directed to exercise the option to accept that movement. But without exercising that option, the petitioner has challenged the said office order dated 30.10.2010, Annexure P-2 to the writ petition.

Whether the petitioner is entitled to the benefit of the past service he rendered as the Helper on fixed pay basis by virtue of the Office Order dated 13.12.1989 for the purpose of having the benefit under the CAS-I or the ACP?

24. There is no dispute that the petitioner was appointed on 13.12.1989 without any recruitment process and merely on stop-gap arrangement. From the office order dated 13.12.1989, Annexure R-1 to the counter affidavit filed by the respondents, it clearly transpires that the engagement was purely on temporary basis without conferring any right to regular appointment. The petitioner had accepted the said terms before the formal engagement.

25. Unless recognized by the employer as the beneficial measure the petitioner cannot claim any benefit for the said past service in view of the law enunciated by the apex court. In the *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, AIR 1990 SC 1607 : (1990) 60 FLR 918 : (1990) 2 JT 264 : (1990) 1 SCALE 839 : (1990) 2 SCC 715 : (1990) 2 SCR 900 : (1990) 2 SLJ 40 : (1990) 2 UJ 314 , the apex court has held that "where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiating in such post cannot be taken into account for considering the seniority".

26. Hence the claim of the petitioner for counting the past service for purpose of the continuous service for movement to the next higher scale in terms of Career Advancement Scheme (CAS) as provided by Rule 10 of the TSCS(RP) Rules, 1999 or Assured Career Progression (ACP) in terms of TSCS(RP) Rules, 1999 cannot be allowed. The substantive service of the petitioner has to be counted from 01.06.1992 when the petitioner has been appointed as Helper in the regular establishment in the scale of pay of Rs. 800-1,520/-.

Whether the scale allowed to the petitioner w.e.f. 01.06.1992 on a fresh appointment can be treated as the scale for promotion to adjust the (CAS-I) in

terms of Rule 10 of the Revision of pay Rules, 1999 or revision of pay Rules, 2009?

27. There is no dispute that the petitioner was engaged without any selection process and merely as stop-gap arrangement in the Department of Science, Technology & Environment. Hence, the petitioner cannot claim for any benefit of the said service inasmuch as only the service under the substantive appointment can be counted for, toward any benefit under the TSCS(RP) Rules, 1999. It becomes clear from reading of Rule 10 of TSCS(RP) Rules, 1999:

"10. Career Advancement Scheme (Modified) with effect from 01.01.1999. it provides that the State Government employees will have scale advancement by way of promotion, failing which by time bound movement in a higher scale as per table in Annexure-A after entry into service in the whole service life.

(a) The employees entering by direct recruitment in scale No. 1 as per statement at Annexure-A or corresponding scale earlier will have 3 scale advancement at the end of 10, 7 and 7 years of continuous and satisfactory service in the scale 1,2 &3 to the scale 2,3 and 4 respectively unless they get promoted to a post of higher scale before the period at each stage.

(b) The employees entering by direct recruitment in the existing scales no 4 to 10 or revised scale No. 5 to 11 or corresponding earlier scale will have 2 scale advancement in next higher scales as per table in Annexure "A" at the end of 10 and 7 years of continuous & satisfactory service in the entry scale and higher scale of promotion/gradation or advancement respectively, as the case may be, to the higher scale unless they get promoted to higher scale before the prescribed period at each stage.

(c) The employees entering by direct recruitment in the scale above 5500-10700 (pre-1996 scale of 1700-3980 or pre-1986 scale of 780-1780 or corresponding earlier scale) will have one scale advancement in the next higher scale as per table in Annexure "A" at the end of 10 years of continuous & satisfactory service in the entry scale unless they get promoted to higher scale before the prescribed period.

(d) The employees of Cadre service will have scale advance as prescribed in the Annexure-B. This will also be effective from 01.01.1999.

(e) In the case of time bound advancement to higher scale pay will be fixed under FR-22 (a)(i)."

The illustrations are provided below the rule for further clarity.

28. The said rule lays down the principles of eligibility to the higher scale. The period from the entry to the prescribed length of service is relevant. The pay-scale is relevant for selecting the next pay scale or whether the movement can at all be made.

29. It has been provided that if the scale has been upgraded or modified after

entry in the service, it will not be treated as the scale advancement. The period of service in the pre-gradation service scale will be taken into account with the period under the modified and up-graded scale, corresponding to the pre-gradation or modified scale under the TSCS (RP) Rules, 1999.

30. It is therefore, clear from the keen reading of Rule 10 of the TSCS(RP) Rules, 1999 that there is no such provision to treat the entry scale as the CAS-I under whatsoever circumstances. Sine qua non is absence of promotion.

31. TSCS(RP) Rules, 2009 has modified the Career Advancement Scheme (CAS). New scheme titled as the Assured Career Progression (ACP) w.e.f. 1st January 2006, has been introduced under the TSCS(RP) Rules, 2009. Rule 10 of 2009 provides that while determining eligibility of the Government employees under the ACP, it should be considered how many times the concerned employee got the benefit of the scale up-gradation including promotion after his direct entry in the service in the State Government or, as the case may be, after his direct entry into the cadre service of the State Government, in which he is presently serving. Each case of promotion or scale up-gradation availed by him after his direct entry into cadre where he is presently serving or, as the case may be, in the post/service of a Department will be treated as consumption of one ACP. This will mean that for those employees who entered the cadre service through promotion, the benefit of this promotion along with promotion/scale up-gradation availed by him before entry into the cadre service will also be counted as consumption of ACP.

32. Clause 1 of Rule 10 of TSCS (RP) Rules, 2009 has illustrated how the scheme would operate: the first after 10 years of service under the regular scale, the second after another 7 years of service (total 17 years) and the third after further 8 years of service (total 25 years), provided the concerned employee had not received benefits of the scale up-gradation including promotion.

33. In the case in hand, it is admitted position that the petitioner was directly recruited in the scale of pay of Rs. 800-1520/- and he did not get any scale up-gradation thereafter, nor had he been promoted to the post of senior Helper carrying the pay scale of Rs. 850-2130/- (pre-revised). As a result the very basis of treating the intermediary scale of pay of Rs. 800-1520/- as the CAS-I by the respondents is wholly illegal, arbitrary and cannot be accepted. Accordingly, the said decision is interfered with. As consequence, the impugned order dated 30.10.2010, Annexure P-2 and the subsequent office order dated 30.12.2010 are quashed.

34. The respondents are directed not to disturb the office order dated 29.07.2002 granting the petitioner's first CAS-I by allowing the movement of scale to the next higher scale of Rs. 2750-4925/-. On completion of 7 years thereafter, in total 17 years, counting from 01.06.1992 the petitioner shall be brought to the next higher pay scale i.e. to the next higher scale of PB-I of Rs. 4530-13,000/- with grade pay of Rs. 1500/-. The petitioner shall be entitled to

further movement under the ACP after 8 years therefrom on completion of total 25 years of service, if not promoted by that time.

If it is found that for wrong fixation the petitioner has overdrawn any amount as salary whether that can be recovered from the petitioner in the given circumstances?

35. In view of what has been observed, this question does not require any further answer. In the process, the petitioner is not supposed to over draw any amount.

36. Mr. Chakraborty, learned Addl. G.A. appearing for the respondents has placed two decisions of this High Court in WP(C) No. 24 of 2006 (by the judgment and order dated 10.12.2013) and WP(C) No. 66 of 2011 (by the judgment and order dated 11.03.2015) where the similar observations have been returned.

37. Those judgments cannot be of any benefit to the respondents inasmuch as this Court has observed that the petitioner shall not get the benefit of the past service he rendered before 01.06.1992, when he was inducted in the regular establishment.

38. Having held thus, this writ petition is partly allowed to the extent as indicated above. There shall be no order as to costs. The records produced by Mr. Chakraborty, learned Addl. G.A. be returned in a sealed cover.