

**(2001) 03 GAU CK 0034**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 394 of 1994**

Bhajan Ch. Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

---

**Date of Decision :** 13-03-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Hyderabad Civil Services Regulations, 1956 — Rule 26, 40

**Citation :** (2001) 2 GLT 45

**Hon'ble Judges :** Ranjan Gogoi, J

**Bench :** Single Bench

**Advocate :** Mr. A.K. Bhowmik, for the Appellant; Mr. U.B. Shah, for the Respondent

---

## Judgement

1. Combining several distinct and separate causes of action, the writ petitioner has approached this Court seeking reliefs which ideally would have merited consideration upon a proper presentation of the claims. However, in view of the long pendency of the present writ petition, the Court is not inclined to deny to the writ petitioner the benefit of adjudication of his claims made in the present petition,

2. The essential facts required for adjudication of the issues involved are as follows:

The writ petitioner, aggrieved by the promotion of his juniors namely respondents 3 to 16 filed a suit being Title Suit No. 121/1981 in the Court of Sadar Munsiff, Agartala praying for a declaration that the seniority list published by the defendants 1 and 2, (respondents 1 and 2 herein), by Memo dated 30.8.1975 is illegal and void and that the plaintiff, (petitioner herein) is to be treated as senior to the present respondents 3 to 16. The writ petitioner also prayed for a decree declaring the promotion of the respondents 3 to 16 to the post of Upper Division Clerk (UDC) bypassing the claim of the petitioner as illegal and for further direction to the present respondents 1 and 2 to promote the

petitioner to the post of UDC with effect from a date prior to the date of promotion of his juniors in service. The petitioner also prayed for certain other reliefs which are not relevant for the purpose of the present case. By judgment and decree dated 21.9.1987 the Trial Court dismissed the suit. Being aggrieved, the writ petitioner instituted an appeal being Title Appeal No. 72 of 1987 in the Court of the learned Additional District Judge, West Tripura, Agartala and the learned Appellate Court by judgment and decree dtd. 21.5.1988 was pleased to decree the suit of the plaintiff-petitioner in so far as the relief of declaration regarding the invalidity of the seniority list is concerned. The appellate Court also directed for promotion of the writ petitioner to the post of UDC from a date prior to the date of promotion of his juniors namely respondents 3 to 16 in the instant writ petition. Two second appeals were filed before this Court. One by the writ petitioner against the judgment and decree dtd. 21.5.1988 of the appellate Court in so far as the appellate Court refused the relief of declaration of seniority of the writ petitioner over the respondents 3 to 16. The present respondents 1 and 2 also filed second appeal against the entire of the judgment and decree of the appellate Court dtd. 21.5.1988. These two appeals were numbered as Second Appeal no. 19 of 1988 and the Second Appeal No. 21 of 1988 respectively. This Court by judgment and order dtd. 20.11.1992 was pleased to dismiss the appeal filed by the State namely Second Appeal No. 21 of 1988. In so far as the appeal filed by the present writ petitioner is concerned this Court directed that the petitioner be declared as senior to the present respondents 3 to 16. Further directions were issued for preparation of the seniority list in terms of the judgment and order of this Court dated 20.11.1992. Acting on the judgment and order dtd. 20.11.1992 passed by this Court in Second Appeal No. 19 and 21 of 1988, the respondents-authorities passed an office order dtd. 28.5.1993 giving the writ petitioner the benefit of regular appointment in the post of UDC with effect from 6.4.1981.

3. The grievance of the petitioner in the present case is that though he has been appointed on a regular basis to the post of UDC with effect from 6.4.1981, the arrears of salary has not been paid to him. The writ petitioner also assails the validity and correctness of an order dtd. 24.11.1992 (Annexure-10 to the writ petition) passed by the respondents 1 and 2 seeking recovery of an amount of Rs. 6,188.40 alleged to have been over paid to the writ petitioner. The writ petitioner further contends that on 27.11.1991 the present respondents 3, 5, 6, 7, 8 and 15 were promoted to the post of Accountant which is the next higher post after UDC and thereafter, on 9.7.1998 the respondent 15 was promoted to the further higher post of Office Superintendent. The case of the writ petitioner for promotion to those higher posts was not considered by the authorities and that on due and proper consideration, the writ petitioner is entitled to be promoted to the post of Accountant with effect from a date prior to the date on which the respondents in question were so promoted. The writ petitioner has also pleaded a case for further promotion to the post of Office Superintendent with effect from a date prior to 9.7.1998, the date on which the respondent 15 was

promoted to the said post of Office Superintendent.

4. There is no dispute as to the entitlement of the petitioner to hold the post of UDC on a regular basis with effect from 6.4.1981 in view of the office order dtd. 28.5.1993. The only question for consideration is whether writ petitioner is entitled to the arrears salaries as claimed by him from 6.4.1981 with effect from which date he was regularly promoted to the post of UDC.

5. Mr. A.K. Bhowmik, learned Senior counsel for the petitioner submits that the entitlement of the writ petitioner to the arrears of salary is automatic and a natural consequence of the order dtd. 28.5.1993 by which order the writ petitioner was promoted on a regular basis to the post of UDC with effect from 6.4.1981. Mr. Bhowmik further submits that the writ petitioner has been wrongly kept away from the performance of duties in the post of UDC with effect from 6.4.1981 as held by the High Court in Second Appeal 19 & 21 of 1988 and therefore, this Court should direct the payment of his arrear salary forthwith. Mr. Bhowmik draws support for his contention on two decisions rendered by the Apex Court and reported in Union of India Vs. K.V. Jankiraman, etc. etc., ( Union of India and other v. K.V. Jankiraman and others) and State of Andhra Pradesh Vs. K.V.L. Narasimha Rao and Others, Specially, Mr Bhowmik draws support from the following observations of the Hon"ble Supreme Court in the decision reported in State of Andhra Pradesh Vs. K.V.L. Narasimha Rao and Others,

"5. In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganisation of States a large number of officers stood allotted from different States to the newly formed State and their services had to be integrated on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Government and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to an extraordinary situation. It is in those circumstances that the rules contained in Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of the erstwhile State regarding seniority are not applicable in the new State as the allottees are governed by the Act and seniority is finalised therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of service of such allottees but in conformity with the Act. Surely new rules cannot be brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are framed in contravention of the Act. In this background, we fail to see as to why the rules are not applicable to the respondents as held by the High Court ."

6. Mr. U.S. Saha, learned Govt. Advocate appearing on behalf of the State

respondents presses into service the concept "no work no pay" to counter the claims made on behalf of the petitioner and for that purpose, he relies on a decision reported in AIR 1999 SCW 4873 ( Union of India and others v. Rajinder Singh Rawat) also reported in Union of India and Ors. vs. Rajinder Singh Rawat, 1999 19 SCC 173 From the above decision of the Apex Court it is possible to cull out the proposition that grant of arrears salary in case of retrospective appointment/promotion is a matter to be considered and adjudicated by the Court exercising power under Article 226 in the totality of the facts and circumstances of each case and other relevant factors and that it is not a rigid and inflexible rule of law that in all cases of retrospective promotion, arrears of salary should be refused. The facts of the case relied upon by Mr. Saha reveals that in that case the authority initially refused to appoint the petitioner on the ground that he did not fulfil the mandatory physical requirements necessary for the post, subsequently the authority by relaxing the said condition appointed the incumbent with an express condition that though appointment was made retrospectively, the retrospectivity will be confined only to claim of seniority etc. and no arrear salary will be payable to him. The High Court stepped in to confer the benefit of arrear salary and the Apex Court considering the peculiar facts and circumstances of the case took the view that in the teeth of the expressed order of the appointment, the award of arrear salary by the High Court was not correct. Mr. Saha's contention that the principle of "no work no pay" is an absolute principle of law and therefore should be applied to the instant case is therefore difficult to accept.

7. Mr. Saha further contends that the decree passed by the Appellate Court was put into execution and the execution case was closed upon full and complete satisfaction of the decree passed by the Appellate Court and, therefore, the claim of the arrear salary made in the instant case by the writ petitioner is not tenable. I have duly considered the submissions of Mr. Saha and find the same to be unacceptable. The writ petition has been filed for the relief of arrear salary which was not the subject matter of the suit between the parties. The plea raised regarding the points urged in the execution case and the order passed therein are technical pleas which cannot be raised to defeat the just and legitimate entitlement of the writ petitioner. It is expected that the authorities in a welfare state would confer the benefits to the citizens in accordance with law instead of creating obstruction to defeat the just and legitimate grievances of citizens. It is not understood as to why the State authorities in the instant case after giving the benefit of regular promotion to the writ petition with effect from 6.4.1981 did not grant the consequential benefit of arrear salary. After all the State had acknowledged the culpability of its actions in denying the writ petitioner the benefit of promotion with effect from 6.4.1981 as held by this Court in the proceedings in second appeal to remedy which wrong to cause restitution, the order dated 28.5.1993 of retrospective promotion was issued in favour of the petitioner. That apart, the records of the case would go to show that the claim made by the writ petitioner on account of arrear salary is a paltry sum of Rs.

17,000 and odd.

8. Considering the facts and circumstances of the case I direct the authorities of the State will forthwith and in any case within a period of 45 days from today, pay to the writ petitioner the arrear salary to be computed by the said authorities in accordance with the provisions of the relevant Rules in this regard. If the payment is withheld beyond fortyfive days, the same shall carry interest @ 9% per annum thereafter.

9. In so far as the relief of interference with the order of recovery (Annexure-10 to the writ petition) is concerned, I direct the State authorities to compute the fixation of pay in accordance with the provisions and rules and if any amount is legitimately found due, the same shall be deducted from the amount made payable in terms of this judgment.

10. Mr. Bhowmik prays for further relief of promotion to the post of Accountant and Office Superintendent on the ground that his juniors have been so promoted. From the averment made in the affidavit-in-opposition filed by the State authorities, it is evident that the said promotion has been withheld on the ground that a departmental proceeding against the petitioner is pending and the State authorities are awaiting the final outcome of the said proceeding and the interest of the writ petitioner is being fully protected by keeping one post vacant.

11. In another petition namely C.R. 90/93, this Court by a separate judgment delivered today has directed completion the departmental enquiry against the writ petitioner within a period of four months. At the conclusion of the said departmental proceeding, if the petitioner stands exonerated, the authority will consider the case of the petitioner for promotion to the rank of Accountant and Office Superintendent and if found suitable for promotion, the State authorities will pass necessary orders promoting the petitioner to the said posts from such date when his juniors so promoted and grant all such consequential benefits to which the petitioner may be found entitled to, in law. The authority shall complete the exercise within a period of fortyfive days from the date of conclusion of the departmental proceeding.

12. Mr. Bhowmik submits that apart from the proceedings which were the subject matter of C.R. 90/93 , there may be some other proceedings pending against the writ petitioner. As the said proceedings are not in issue in the present writ petition, no order-can be naturally passed directing the Govt. to dispose of the said proceedings. However, it is hoped and expected that if any such proceeding is pending, the respondent-authorities will not spare any effort to bring the same to an early conclusion.

13. The writ petition is disposed of in the above terms. No cost.