
(2004) 04 GAU CK 0017
In the Gauhati High Court
Case No : Writ Appeal No. 38 of 1998

Bijay Kr. Chowdhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLR 326 : (2005) GLT 661 Supp

Hon'ble Judges : T. Vaiphei, J; P.G. Agarwal, J

Bench : Division Bench

Advocate : A.M. Lodh and A. Lodh, for the Appellant; T.D. Majumder, for the Respondent

Judgement

P.G. Agarwal, J.—This writ appeal is directed against the judgment and order dated 24.4.1998 passed by the learned Single Judge in Civil Rule No. 129 of 1991.

2. The appellant before us had joined the Tripura P.W.D. Service on 11.7.1973 and while he was so serving, he applied for the post of Assistant Manager (Civil) under the N.H.E.P.C., a Govt. of India Corporation and accordingly the petitioner had joined there on 17.11.1981. The petitioner was allowed to retain lien for two years and thereafter he was absorbed in the said Corporation with effect from 18.11.1983. The petitioner on his completion of service under the Corporation retired.

3. On 14.11.1988 the State of Tripura issued a Memo granting pro rata retirement benefits to its employees who are subsequently absorbed under the Government of India or any Corporate body under the Union of India and in the said annexure a cut off date was provided as on 9.1.1984. The petitioner applied for pro rata retirement benefit on the basis of the said annexure, annexure-24 and the State Government initially approved the matter, but on the objection raised by the Accountant General the petitioner was informed that he is not entitled to the above benefits as he was absorbed under the Corporation on or

before the cut-off date of 9.1.1984.

4. The petitioner filed Civil Rule No. 129 of 1991 praying for the following reliefs :-

"(i) Memo dt. 14.1.88 fixing the date as on 9.1.84, for granting pro rata retirement benefits (Annexure-24) is arbitrary, discriminatory and violative of the Articles 14 and 16 of the Constitution of India,

(ii) To grant pro rata retirement benefits including pension with full commutation as calculated on 19.11.83 including gratuity and leave salary on credit.

(iii) To make payment of the balance amount of provident fund.

(iv) To grant 18% interest per annum on the aforesaid amount with effect from 19.11.83 till realisation."

5. The respondents-State filed a counter-affidavit stating, inter alia, that in view of the Memo dated 14.1.1988 Annexure-24 the petitioner is not entitled to pro rata retiral benefits. The relevant portion of the impugned Memo reads as follows :-

"The Government of India order circulated under this department Memorandum dated 10.2.84, as referred to in the first paragraph, had taken effect from 9.1.84. As such, the State Government order shall also be applicable in cases where a State Government employee has been permanently absorbed in Central Government Public Undertakings Autonomous bodies, etc. on or after that date."

6. Mr. A.M. Lodh, the learned senior counsel appearing on behalf of the appellant has submitted that the rights vested to the appellant-petitioner cannot be taken away by fixing a cut off date and hence, the above cut off date is arbitrary and discriminatory. In support of his submission the learned counsel has placed reliance upon a decision of the Apex Court in the case of Govind Prasad Vs. R.G. Parsad and Others, are altogether different. Here the Recruitment Rules regarding promotion were amended with retrospective effect thereby affecting the petitioner and this was held to be bad in law.

7. The other decision relied upon by the learned counsel for the appellant is the case of AIR 1997 3127 (SC) . In the above case the Apex Court held as follows :-

"The power to make a law includes the power to give it retrospective effect subject to the restriction imposed by Article 20(1) that a Legislature cannot make retrospective penal laws. It would be valid for the Legislature to make any other enactment with retrospective effect provided no fundamental right is infringed by reasons of its taking away the vested right."

8. It is submitted by Mr. Lodh that the impugned Memo has affected the vested right of the appellant-petitioner in the matter of getting pro rata pension under the Central Civil service (Pension) Rules, 1972 which was adopted by the State of Tripura. The appellant before us was not entitled to any pro rata pension. Rule 37

was very specifically provided for absorption of the Govt. employee to any Corporation under the Govt. and the word "Government" as defined is the Government of Tripura. Thus, a Tripura Government employee getting absorption under the Union of India or any Corporate body of the Govt. of India was not entitled to the benefits under the Rule 37 or Rule 37(a). This reciprocal arrangement was provided for vide impugned notification dated 14.1.1988 fixing a cut off date on 9.1.1984. The petitioner before us had joined the Corporation NHEPC on 18.11.1981 and he was absorbed there with effect from 18.11.1983. Thus, on the date of his absorption the petitioner had no vested right of getting pro rata pensionary benefit. We, therefore, find that this is not a case where the vested right of the petitioner has been infringed by the impugned notification.

9. Mr. T. D. Majumder, the learned Govt. advocate on the other hand, has placed reliance on a decision of the Apex Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, wherein it was held that right to pension follows from rules and not the order granting the pension.

10. As regards the fixation of cut off date, in the case of State of West Bengal and Others Vs. Ratan Behari Dey and Others, the Apex Court held :

"Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf."

The matter was again considered by the Apex Court in the case of Union of India Vs. P.N. Menon and others, and the Apex Court observed :

"Whenever the Govt. of an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for person who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all irrespective of dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat, as was said by this court in the case of D.R. Nim, I.P.S. Vs. Union of India (UOI), in connection with fixation of seniority. Whenever a revision takes place, a cut off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

11. The above decisions were approved in the case of State of Rajasthan and

anothers etc. Vs. Amrit Lal Gandhi and others etc.,

12. In the present case, we find that the appellant-petitioner had no vested right of getting pro rata pension till 14.1.1988 the date on which the impugned notification was published and in the impugned notification the cut off date was fixed as 9.1.1984. As the petitioner was absorbed in the Corporation prior to that date the benefits were not available to him. There is no question of discrimination and the High Court while exercising jurisdiction under Article 226 of the Constitution cannot substitute another cut off date giving more retrospective date. Such an action was held to be improper in Amrit Lal Gandhi (Supra).

13. In view of the above, we held that there is no illegality in fixing a cut off date on 9.1.1984 vide impugned Memo dated 14.1.1988 and the petitioner is not eligible to pro rata pension in terms of the said notification.

14. It is further submitted by Mr. Lodh that the petitioner has not been paid the provident fund and other retiral benefits available to him and he had joined other service of the Corporation as he was given assurance in writing by the state Government that the terminal benefits shall be available to him. The learned Govt. Advocate on the other hand has submitted that as per his instruction the provident fund etc. has already been released to the appellant. There cannot be any dispute that the terminal benefits available to the petitioner as on 17.11.1981 shall have to be paid by the respondents as per the then existing rules and regulation. We therefore, direct that the respondents-State shall examine the matter and see that all terminal benefits available to the petitioner for rendering his service from 1971 to 1981 are paid to him, if not already paid. This shall be done within a period of three months.

15. The writ appeal stands disposed of accordingly.