

(2015) 11 TP CK 0014
In the Tripura High Court
Case No : WP(C) No. 588 of 2010

Bijay Krishna Das and Others

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Citation : (2015) 11 TP CK 0014

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : P. Roy Barman, Advocate, for the Appellant; D.C. Nath, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.C. Das, J.—By filing this writ petition, Bijay Krishna Das, the predecessor of petitioner No. 1(a) to 1(c) and petitioner Nos. 2 to 8 prayed for allowing them second and third ACP on their successful completion of 17 years and 25 years of service in the same post, without promotion, under the respondents.

2. It is the case of the petitioners that they were directly recruited in the post of Electrician on different dates during the period from 23.03.1990 to 22.09.1992 in the pay-scale of Rs. 1300-3220/- under the Department of Science, Technology and Environment. They completed 10 years of service without promotion and claimed scale advancement as per the provisions of Rule 10 of ROP Rules, 1999. Their claim was refused and so they filed WP(C) 535 of 2000 in the Agartala Bench of the then Gauhati High Court and the learned Single Bench of the High Court by judgment dated 18.09.2006 allowed the writ petition with the following direction:--

"8. From the above submissions, the admitted position that has surfaced is that the petitioners were appointed to the highest graded pay scale (Electrician, later re-designated as Sr. Electrician) in the pay scale of Rs. 1300-3220/- after ROP 1988 came into force and the said pay scale was given the corresponding revised

pay of Rs. 4200-8650/- by ROP 1999. The plea of wrong appointment at the highest grade as adumbrated in the counter-affidavit and argued by Mr. Majumder cannot be accepted at face-value for the reason that if the said appointment to the post of Electrician or Sr. Electrician as the case may be was in violation of the ROP 1988, it was within the administrative ambit of the official respondents to adopt corrective measures. By appointing them as Electrician or Sr. Electrician and giving them appropriate pay scale which the petitioners have been enjoying since their appointment in 1990-92, it does not lie in the mouth of the said respondents to take a defence that the petitioners were appointed wrongly in violation of the ROP 1999. For the aforesaid reasons, such plea stands rejected.

9. Once it is held that the petitioners were appointed as Electricians/Sr. Electricians and they did not get any promotion during the period of 10 years of service, they are certainly entitled to the scale advancement after completion of 10 years of service in the same grade/scale which is as per the Table given in Annexure-"A" of the ROP 1999 i.e. Rs. 5000-10300/- subject to the condition that such pay scale shall not be above the pay scale of the next higher/promotion post in the department, if there is any.

10. For the discussions and reasons aforementioned, this writ petition has merit and, therefore, the same is allowed directing the official respondents to release the pay scale of Rs. 5000-10300/- to each of the petitioners on their completion of 10 years of service, subject to the condition that the said pay-scale is not above the pay scale of next higher/promotion post in the department, if there is any. It is further directed that the arrear of pay from the date of their entitlement, if any, shall also be released within a period of 3(three) months from the date of passing this judgment and order.

No cost."

The above judgment/order passed by the learned Single Judge of the then Gauhati High Court was complied with by Office Order dated 01.12.2006 (Annexure-6 to the writ petition).

3. It is an undisputed fact that all the petitioners completed 17 years of service without promotion. It is the further case of the petitioners that petitioner Nos. 2, 3, 4 and 5 completed 25 years of service on 02.04.2015 and petitioner No. 7 has also completed 25 years of service in the meantime i.e. on 01.06.2015. Petitioner Nos. 6 and 8 will complete their 25 years of service on 01.10.2017. It is alleged by the petitioners that the respondents taking the plea that the petitioners were given two scale advancements at the initial stage of their appointment and so were not entitled to ACP-II and ACP-III.

4. The stand of the respondents in this writ petition, as it appears, is similar and identical as was taken in WP(C) No. 535/2000. In their counter affidavit filed in this Court the stand taken by the respondents may be discerned from Paragraphs 11 & 12 of the counter affidavit which reads as follows:--

"11. That in reply to averments and/or contentions made in Para 12 and 13 of the Writ petition, I state that the post of Electrician carrying pre-revised scale of Rs. 560-1300/- in the Science, Technology & Environment Department was accommodated in the graded scale No. 28 under Part C(Sch-III) of the TSCS(RP) Rules, 1988 with following grade-wise revised pay scales along with re-designations:

As per the provision laid down in (f) below Note-2 under part C (Sch-III) of the TSCS(RP)Rules, 1988 effective from 01.01.1986 onwards no new appointment can be made at a level other than the lowest under any of graded posts. But the petitioners were appointed in between 02.04.1990 to 07.04.1990 directly in the highest grade revised pay scale of Rs. 1300-3200/- as Electrician (Subsequently re-designated as Sr. Electrician) instead of the lowest grade revised pay scale of Rs. 970-2400/- with re-designation as "Jr. Electrician" of the graded scale No. 28 under part C (Sch-III) of the TSSC(RP) Rules 1988, which was not in order as per rules ibid.

Further, as per provision of CAS (modified) effective from 01.01.1999 laid down in Rule-10 of the TSCS(RP) Rules 1999 and clarification issued thereon if any persons appointed directly in intermediate or highest grade post under any graded category of posts under un-avoidable as well as special circumstances on or after 01.01.1986 he/she is treated to have consumed CAS-1 or CAS-2, As the case may be, respectively. Furthermore, TSCS(RP) Rules 2009 (vide Rule-10) effective from 01.01.2006 provides entitlement of 3(three) ACP including promotion on completion of 10, 17 and 25 years of service after his/her direct entry into Government Service subject to certain other conditions in respect of the post holding by the petitioners. Since, the petitioners were, instead of the lowest grade post under Part-C(Sch-III) of the TSCS(RP) Rules 1988, directly appointed as Sr. Electrician in the highest grade post during period 02.04.1990 to 07.04.1990, they were all to be treated to have consumed CAS-2 with their direct appointment in the highest grade post as on completion of 17 years of service under TSCS(RP)Rules 1999, Obviously, they are not further entitled for ACP-2 on completion of 17 years of service under the present TSCS(RP) Rules 2009. In any case, they shall be entitled to get ACP-3 on completion of total 25 years of service provided they do not get promotion to higher post/grade in the meantime under the TSCS(RP)Rules 2009.

12. That in reply to averments and/or contentions made in Para 14 of the Writ petition, I state that all the petitioners were appointed directly in the Senior grade pay scale as per R.O.P.-1988 (graded scale-28) which is treated to have already consumed 2(two) scale advancement (CAS-I & CAS-2) as per provision of CAS(Modified) of the TSCS(RP) Rules, 1999. Hence, they shall be entitled to get CAS-3 only after completion of 29 years of service in the existing pay scale without promotion as per R.O.P.-1999. But as per R.O.P.-2009, CAS-3 for the employees will be applicable only after 25 years of regular service."

5. In course of hearing learned counsel Mr. Roy Barman referring to a judgment

of this Court dated 13.07.2015 in WP(C) No. 466 of 2011 submitted that in a similar and identical case of the same department, the Single Bench of this Court directed grant of CAS-II and CAS-III to the petitioner. Learned counsel Mr. Nath appearing for the State-respondents has admitted that in WP(C) 466 of 2011 such direction has been given by this Court and that has not been challenged by the department as well.

6. It is an admitted position that the petitioners from the date of their appointment have been serving in the same post without promotion. They were not given CAS-I as per ROP Rules, 1999 taking the same stand as have been taken in this writ petition that at the time of their initial appointment they were given the highest scale of graded scale No. 28. From the stand taken by the respondents in this writ petition it appears that the same plea has been taken for not granting the ACP as per ROP Rules, 2009. For clear appreciation and ready reference let us quote here Rule 10 of ROP Rules, 1999 which reads as follows:--

"10. CAREER ADVANCEMENT SCHEME (MODIFIED) WITH EFFECT FROM 01-01-1999.

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 in the following manner:

(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 17 years of continuous and satisfactory service in the scale 1, 2 and 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 and satisfactory service in the entry scale and higher scale of promotion/gradation or advancement respectively, as the case may be, to the higher scales unless they get promoted to higher scale before the prescribed period at each stage.

(c) The employees entering by direct recruitment in the scale about 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 and 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 advancement 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)."

7. What was stated as Career Advancement Scheme in ROP Rules, 1999 has been reiterated as Assured Career Progression (ACP) Scheme in ROP Rules, 2009. Rule 10 of ROP Rules, 2009 is, therefore, relevant which reads as follows:--

"10. Introduction of a new scheme titled "Assured Career Progression" (ACP) Scheme with effect from 1st January, 2006 in replacement of existing CAS introduced under TSCS(Revised Pay) Rules, 1999.-

(1) Under the new scheme (A.C.P.), all Government employees in the PB-1, PB-2 & PB-3 shall be entitled to get a maximum of three financial up gradations, the first after 10 years of service under regular scale, 2nd after another 7 years of service (total 17 years) and 3rd after further 8 years of service (total 25 years) in their service career provided the concerned employee had not got up to three numbers of benefits of scale up gradations including promotions already. In case of PB-4, the employees borne under Grade Pay Rs. 3700/- (against prerevised scale of Rs. 7800-15,100/-), under Grade Pay Rs. 4500/- (against pre-revised scale of Rs. 10,000-15,100/) and Grade Pay Rs. 4800/- (against pre-revised scale of Rs. 10,650-15,850/-) would be entitled to get 3, 2 and 1 financial up gradations respectively under the scheme provided the concerned employee had not got scale upgradation including promotion up to 3, 2 & 1 respectively already.

(2) While determining eligibility of the Government employees under this ACP, it should be considered how many times the concerned employee got the benefit of scale-upgradation including promotion after his direct entry into the service in the State Govt. or, as the case may be, after his direct entry into the cadre service of the State Govt. in which he is presently serving. Each case of promotion or scale upgradation 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 upgradation availed by him before entry into the cadre service will also be counted as consumption of ACP.

(3) For providing benefit under ACP (other than benefit already provided under CAS), every Head of Office shall initiate proposal under prescribed formats (which are being circulated subsequently by the Finance Department) to the Head of Department for the employee(s) whose ACP becomes due. On receipt of these proposals from the Head of Offices, the Head of Department will arrange scrutiny at his end and issue formal communication sanctioning the ACP in favour of eligible cases. On receipt of the communication of sanction, the Head of Office shall make fixation under ACP and record the same in the service book of the concerned employee.

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8. In view of the above provisions of ROP Rules, 1999 and ROP Rules, 2009, the petitioners were entitled to the financial benefits of the higher pay-scale as per rules. The case of the petitioners were considered by the learned Single Judge in the earlier writ petition and the plea taken by the respondents was regretted assigning reason which has not been challenged. I, therefore, find no reason at all for denying the benefit of ACP-II to all the petitioners on their successful completion of total 17 years of service without promotion. Similarly the petitioners shall also be entitled to get ACP-III on their completion of 25 years of service.

9. The writ petition is accordingly allowed. The respondents are directed to give the benefit of ACP-II to all the petitioners on their completion of 17 years of service without promotion and also to give the benefit of ACP-III to the petitioners who have completed 25 years of continuous service without promotion i.e. petitioner Nos. 2, 3, 4, 5 and 7. The petitioner Nos. 6 and 8 will be entitled to the ACP-III in the event of their successful completion of 25 years of service as per the provisions prescribed under the relevant rules.

10. The respondents are further directed to comply the order within 120 days.

11. The writ petition accordingly stands disposed of.