
(2002) 12 GAU CK 0015
In the Gauhati High Court
Case No : WP (C) No. 178 of 2002

Bijoy Deb Barma and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Tripura Civil Services Rules, 1967 — Rule 14, 14(3), 14(4), 5

Citation : (2003) 2 GLR 238

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; T.D. Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

B.B. Deb, J.—In this petition under Article 266 of the Constitution of India, the petitioners challenged the provision of Sub-rule (3) of Rule 14 of Tripura Civil Service Rules, 1967 (hereinafter called the Rules) being ultra vires on the ground that once a post is included in the feeder post for the purpose of appointment to the post of Tripura Civil Service Grade-II the right of the incumbents holding the said feeder post cannot be denied putting an impediment of qualification requirement.

2. The petitioners have been serving as Inspector (Motor Vehicles) being appointed on different dates, but all of them in the meanwhile completed 5 years regular service. The recruitment rules for the post of Inspector prescribes requisite qualification as under:

""Essential:

(i) Passed Madhyamik or equivalent examination of any recognised University/ Board.

(ii) Passed 3 years Diploma Course in Automobile Engineering/Mechanical Engineering from a recognised Institution.

(iii) Should have knowledge in Motor Vehicles Act, 1939.

(iv) Should have knowledge in Bengali. Desirable: Be a holder of Driving Licence for Motor Vehicles."

3. The substantive vacancies of the posts in Tripura Civil Service Grade-II are to be filled up according to the method of Recruitment prescribed under Rule 5 of Tripura Civil Service Rules, 1967 (as amended upto date). Under Rule 5(I)(a) not more than 50% of the substantive vacancies occurs from time to time in the service shall be filled up by direct recruitment through competitive examination to be conducted by Public Service Commission in the manner prescribed in the Rule and under Rule 5(1)(6) the remaining vacancies shall be filled up by selection in the manner prescribed in part-V of the Rules from among the officers figured in the schedule, of course, 75% of the vacancies shall be filled up by officers holding the Feeder posts under Group "A" and remaining 25% vacancies from among the officers holding the posts under Group "B". The post of Inspector in the Transport Department has been figured at serial No. 2 under Group "B" Feeder post and, accordingly, the petitioners holding the post of Inspector in Transport Department are eligible for being appointed to the post of T.C.S. Grade-II in view of Rule 5(1)(6) of the Rules, but in Rule 14 the State Government put an impediment to deprive the petitioners such right by putting "graduation" being a minimum educational qualification and that has been done by 21st Amendment of the Rules in 2001. For convenience sake, the related clause of Rule 14 of the Tripura Civil Service Rules is quoted below :-

"14. Conditions of Eligibility and Procedure for Selection :

(1) x x x

(2) x x x

(3) Minimum educational qualification for promotion to TCS Grade II shall be "Graduation".

(4) The Committee shall not consider the cases of officers in the feeder posts who have attained the age of 53 years on the 1st day of January of the year in which the Committee meets."

Hence filing this writ petition the afore-quoted Clause (3) of Rule 14 has been challenged by the petitioners being contrary to and inconsistent with the provision of Rule 5(1)(6).

4. The State respondents contested the motion by filing affidavit-in-opposition contending, inter alia, that having regard to the volume of works, degree of responsibility, nature of complicated duties to be performed by the T.C.S. Grade-II officers, the authority put the qualification criterion being "graduation" for in-service candidates to be appointed to the post of T.C.S. Grade-II and in doing so, the State Government dwelt in its competency. No hostile attitude to any group or class of officers regardless of their placement either in Group "A" or Group "B"

had been done in putting the qualification requirement being graduate for considering in service candidacy. The affidavit-in-opposition further contains that diploma in Engineering or technical stream of education is acknowledgedly distinguishable from degree. The qualification obtained by an individual from a recognised Technical Institution affiliated to AICTE is called "Diploma" and the "Degree" in Technical or Engineering stream is undoubtedly being awarded by the recognised University. Duration of the course of Diploma Engineering and Degree Engineering are also different. For the course of Diploma Engineering duration is 3 years while the course of Degree Engineering varies from 4 to 5 years and in some University Diploma holders are also made eligible for prosecuting bridge degree course and as such according to the State Government Diploma cannot be equated with degree in Technical/Engineering Education.

5. Learned counsel Mr. S. Talapatra, appearing for the petitioners submits that once the authority having formulated the mood of recruitment to the post of T.C.S, Grade-II decides to make appointment virtually by promotion from the holders of feeder posts shown either under Group "A" or Group "B" of the schedule u/s 5 of the Rules, the putting of the impediment of qualification requirement under Rule 14(3) of the Rules is self contrary and in-consistent between the said two rules.

6. It is correct that Rule 5 (1)(6) prescribes the method of recruitment from among the in service officers specified either in Group "A" or Group "B". The post of Inspector Transport department finds its place at Sl. No. 2 under Group "B" and no qualification requirement is prescribed thereunder but in Rule 14 the State Government prescribes the minimum qualification for promotion to the T.C.S. Grade-II as graduation. That apart, in Sub-rule (4) of Rule 14 of the Rules, the State Government also prescribes the maximum age of 53 years for appointment to the post of T.C.S. Grade-II from the officers catalogued in the feeder posts of both Group "A" and Group "B".

7. Right to promotion is not a fundamental right nor legal one but right to be considered, of course, subject to fulfilment of required eligibilities is undoubtedly a right which could be enforced in legal forum. In the present case the holder of the feeder posts enumerated either in Group "A" or Group "B" of the schedule appended to Rule 5 of the Rules can claim to be considered only on fulfilment of eligibility criteria prescribed in Rule 14 of the Rules. Among others in view of Sub-rule (3) of Rule 14 person included in the feeder posts under the schedule appended to Rule 5 having graduation being minimum educational qualification could be considered. Like wise in Sub-rule (4) the officers included in the feeder posts having graduation to be minimum qualification can claim to be considered for the post of T.C.S. Grade-II till he attains age of 53 years, A combined reading of Rule 5(b) and Rule 14 leads a prudent man to infer that inclusion of posts in the feeder posts under the Schedule of Rule 5 is not enough to get consideration for being appointed to the T.C.S, Grade-II unless the other requirement

embodied in Rule 14 are fulfilled. Qualification criterion and upper age limit have been incorporated under Sub-rules (3) and (4) respectively of Rule 14 and in doing so, in my considered opinion, the authority committed no wrong or illegality.

8. Mr. Talapatra, learned counsel for the petitioners submits that since the Recruitment Rule for the post of Inspector (Vehicles) qualification prescribed is Madhyamik with 3 years' diploma course in Automobile/Mechanical Engineering and, as such, the candidates having Madhyamik passed qualification with 3 years diploma in Automobile/Mechanical Engineering are found to be eligible for the post of Inspector (Vehicles). This being the admitted position, how the authority could expect that a degree holder in any stream of education would be available from among the Inspector (Vehicles) and as such, according to Mr. Talapatra, Rule 14(3) of the Rules is inconsistent with the Recruitment Rules for the post of Inspector (Vehicles) and it is opposed to the provision of Rule 5(1)(6) of the Rules.

9. The Recruitment Rules for the post of Inspector (Vehicles) has been framed having kept in mind the nature of works, degree of responsibility, area of performance to be undertaken/to be assigned to the Inspector (Vehicles). While in framing the T.C.S. Rules the authority keeps eyes open to the field of work to be performed, the degree of responsibility to be undertaken by T.C.S. Grade-II officers. Moreover, the promotion avenues for T.C.S. Grade-II officers are kept open to the next post of T.C.S, Grade-I and, thereafter to Indian Administrative Service, and, as such, in my considered opinion, prescribing minimum qualification to be a graduate for filling up the post of T.C.S, Grade-II from among the feeder posts figured under Group "A" and Group "B" of the schedule appended to Rule 5 suffers from no mala fide nor inconsistent with the objects to be achieved. The said qualification requirement appears to be for serving the Public purpose and it does not oppose to public policy,

10. Mr. Talapatra, learned counsel for the petitioners strongly argues that since the post of Inspector (vehicles) once figured in Group "B" under Rule 5(1)(6) of the Rules, their right to be considered for being appointed to the post of TCS Grade-II cannot legally be taken away by incorporating qualification criteria "graduation" in Sub-rule (3) of Rule 14 of the Rules.

11. On careful perusal of Rule 5 (1)(6) and Rule 14 including Sub-rule (4) of TCS Rules, 1967, it reveals that both the aforesaid provisions of Rule 5 and Rule 14 are indivisible twin of eligibility criterion and as such one cannot be considered in isolation of other and according in my considered opinion, the provision of Sub-rule (3) of Rule 14 of the Rules is not inconsistent with Rule 5(1)(6), but is inseparable part of the same.

12. Mr. Talapatra submits that in a broader sense the petitioners who are diploma holders in Automobile/Mechanical Engineering are also graduate and as such they are eligible to be considered for the posts of TCS Grade-II.

13. It is acknowledged by the petitioners that they passed three years" diploma course after passing Madhyamik or equivalent examination. Mr. Talapatra referring Black's Law Dictionary submits that the petitioners completed the course of engineering from recognised institute and microscopic difference in the duration of the Course of diploma and degree in Engineering stream should be ignored.

14. According to the Black's Law Dictionary "graduate" is one who has received a degree, or other evidence of completion, from a grade school. High School, trade or vocational school, college, university, graduate or professional school, or the like. According to the dictionary meaning given in Black's Law Dictionary, one must have received a "degree" regardless of the institution. Institution may be named as college or school, vocational or professional, but qualification awarded must be a "degree". In the present case, admittedly, the petitioners have received a "diploma" of three years" duration from a technical institute affiliated to/approved by "All India Council for Technical Education". There is no document available with the record to infer that "All India Council of Technical Education" has ever recognised three years" diploma course in engineering stream to be a "Bachelor of Engineering" or "Bachelor of Technology" and as such the dictionary meaning as has been relied upon by the learned counsel for the petitioners Mr. Talapatra is of no help in the present case and as such I am of the considered opinion to hold that the qualification of three years diploma in engineering stream cannot be declared equivalent to a degree in engineering stream.

15. In view of what have been discussed above, I am constrained to hold that the petitioners failed to make out a case for issuing Rule. The petition, therefore, stands dismissed at admission stage. No order as to costs.