

(2015) 04 TP CK 0011
In the Tripura High Court
Case No : WP(C) No. 187 of 2009

Bimal Bhaumik

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Citation : (2015) 146 FLR 62

Hon'ble Judges : Deepak Gupta, C.J;S.C. Das, J

Bench : Division Bench

Advocate : Somik Deb, for the Appellant; T.D. Majumder, Govt. Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J—The petitioner, who is a doctor, was serving in the Tripura Health Service(THS), Government of Tripura. He joined as "specialist" in Grade III of the Tripura Health Service. The essential qualification for filling up the post of specialist is that the candidate must have a post graduate degree in medicine with minimum five years experience. The petitioner continued to work as specialist and got various promotions and finally was appointed as Director of Health Services. He retired from the post of Director of Health Services on 30th April, 2004.

2. After the retirement of the petitioner, on 12.8.2002, departmental proceedings were initiated against the petitioner and the main charge was that while holding the post of Director, Health Services, the petitioner had engaged in private practice. The case of the government was that the person holding the post of Director, Health Services, was debarred from private practice. Due to the initiation of the departmental proceedings, only provisional pension was paid to the petitioner and some of his retiral benefits were withheld and these retiral benefits were paid to him on 17.7.2008. The petitioner challenged the initiation of departmental proceedings against him and a learned single Judge of the

Agartala Bench of Gauhati High Court quashed the proceedings on two grounds (i) that the sanction of the Governor was not obtained prior to initiating the departmental proceedings and, therefore, the proceedings were commenced in violation of the Rule 9(2)(b)(1) i.e. of the Pension Rules and (ii) that no case on merits was made out. This judgment of the learned single Judge has obtained finality.

3. By means of this writ petition, the petitioner has prayed for two reliefs (i) that he should be given 5 years benefit while calculating his pension in terms of Rule 30 of the Central Civil Services (Pension) Rules, 1972 and (ii) the second relief claimed by him is that he should be awarded interest on the delayed payment of his retiral benefits.

4. Rule 30 of the Central Civil Services (Pension) Rules, 1972 as applicable to the State of Tripura reads as follows:

"30. Addition to qualifying service in special circumstances-

(1) A Government servant appointed to a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one-

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited.

Provided that the concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years.

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule."

5. On behalf of the petitioner it is contended that the petitioner was appointed to the post of specialist after 31st March, 1960 and since the experience required was 5 years only, a candidate who was more than 25 years of age would be recruited for such a post and as such he is entitled to the benefit of this rule. On behalf of the State, reliance is placed on the second proviso and it is submitted that in Tripura Health Service Rules, 1974 there is no specific provision that the post of Specialist is one which carries the benefit of Rule 30.

6. It is urged by Mr. Somik Deb that there is no other post of specialist in the State of Tripura. He has placed reliance on information provided to the petitioner

under the "Right To Information Act(RTI)" by the State Public Information Officer of the Directorate of Health Services which reads as follows:

"With reference to your application dated 06-12-2008, I am to inform you that the Rule 30 of the C.C.S (Pension) Rule 1972 as adopted in the State of Tripura is applicable to the Govt. Servants of the State of Tripura as well as Health Department."

We are of the view that the information given by the State Public Information Officer cannot bind the State. Mr. Somik Deb has failed to point out any provision in the Tripura Health Service Rules, 1974 which would indicate that Rule 30 has been specifically made applicable to the post of specialist. In this view of the matter we are of the considered view that the petitioner is not entitled to any relief under Rule 30 of the C.C.S(Pension) Rules, 1972.

7. However, the petitioner is absolutely right that he is entitled to interest for the period when the retiral benefits were wrongly withheld. On behalf of the state it is urged that the retrial benefits were withheld because of pending proceedings and it is submitted that there is no provision under law whereby the State is liable to pay interest. In this behalf reference may be made to the judgment of the Apex Court in S.K. Dua Vs. State of Haryana and Another, AIR 2008 SC 1077 : (2008) 1 CLT 701 : (2008) 116 FLR 636 : (2008) 1 JT 331 : (2008) 1 SCALE 284 : (2008) 3 SCC 44 : (2008) 1 SCC(L&S) 563 : (2008) 3 SLJ 104 : (2008) AIRSCW 689 : (2008) 1 Supreme 95 wherein the Apex Court held as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

We are clearly of the view that the petitioner was not at fault when his retiral dues were not immediately paid to him on his retirement. The departmental proceedings were initiated after his retirement. The High Court quashed those departmental proceedings. We see no reason why the petitioner should suffer for the delay in payment of the retiral benefits because he is not at fault.

8. True it is, that the department may be entitled to withhold payment of gratuity when departmental proceedings are initiated in terms of Rule 68 of the

C.C.S(Pension) Rules 1972 but if the employee is exonerated from the charges and is found not to be at fault, he must be paid interest for the period for which the payment of his retiral benefits has been delayed. In case the employee is found guilty then the case may be otherwise and the disciplinary authority may pass appropriate orders in this regard. However, where the employee is exonerated and is not found guilty of the charges levelled against him he must get interest on delayed payment of pension and other retiral benefits.

9. It is settled law that these retiral benefits are not a bounty but the right of an employee to get under law. He is entitled to get this amount immediately on his retirement. If the payment of the said amount is withheld even on account of pending disciplinary proceedings then also the State would be liable to pay interest in case the proceedings culminate in favour of the employee. In this view of the matter, we hold that on the delayed payment of retiral benefits the claimant shall be entitled to interest @ 9% per annum from his date of retirement i.e. 30.4.2002 till 17.7.2008 when the benefits were actually paid to him. This interest be paid to him latest by 31.7.2015 failing which the rate of interest shall be @ 12% per annum.

10. The writ petition is disposed of.