
(1991) 11 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 42 of 1981

Binoy Krishna Goswami

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Tripura Judicial Service Rules, 1974 — Rule 14, 14, 15(1), 15(1), 21, 21

Citation : (1991) 2 GLJ 471 : (1992) 1 GLR 128

Hon'ble Judges : U.L.Bhat, C.J. and J.Sangma, J

Bench : Division Bench

Advocate : M.Nath, S.Deb, M.Majumdar, M.Lodh, M.K.Bhowmik, B.B.Deb, A.M.Lodh, Advocates appearing for Parties

Judgement

U.L. Bhat, C.J.—Petitioner is presently working as Additional District Judge in the Tripura Judicial Service Grade 1. When he filed the writ petition he was an Officer in Grade III of the Judicial Service. At that time respondents 4 to 8 were also Officers in Grade III, though at present sixth respondent has retired and seventh respondent is dead and the other respondents are in Grade I. The petition is filed seeking a writ in the nature of Quo Warranto ousting respondents 4 to 8 from the Judicial Service and to quash the appointments given to them in the Tripura Judicial Service. The challenge is mainly on the ground that the selection of respondents 4 to 8 was contrary to Rule 6(3) (d) (ii) of Tripura Judicial Service Rules, 1974. The writ petition is opposed by the State, the High Court as well as the party respondents.

2. Rule 6 of the Rules deal with recruitment Clause (3)(d) of Rule 6 deals with appointment to posts in Grade III of the Judicial Service. This clause provides for recruitment through two different sources and in consultation with two different agencies. Subclause (i) requires that appointment should be made by the Governor by filling up 50% of the posts on the result of the competitive examination to be conducted by the Tripura Public Service Commission.

Subclause (ii) states that the Governor has to make appointment by filling up the remaining 50% of the posts by selection from amongst the members of the Bar in consultation with the High Court. Rule 8 makes it clear that for selection from the Bar a candidate must have practiced at least for three years in any Court. Obviously, this requirement is not necessary with regard to those who are selected through the Public Service Commission.

3. Respondents 4 to 8 were appointed as a result of a selection process undertaken by a Selection Committee appointed by the Govt. of Tripura. Annexure I is the Notification constituting a Selection Committee consisting two Secretaries of the Government and the Advocate General. The Committee went through the process of selection and selected six out of 10 candidates. The Government by letter dated 3.3.75 sought the concurrence of the High Court for appointment of these 6 (six) candidates who include respondent Nos.5 to 8. The High Court in due course granted concurrence and the candidates were appointed. The contention urged by the learned counsel for the petitioner is that Rule 6 (3) (d) (ii) requires consultation with the High Court and in the instant case there has been no consultation as required by the Rules and as explained by the Supreme Court in various decisions referred to before us, namely, Chandra Mohan vs. State of UP, AIR 1966 SC 1987, Mani Suaraj Jain vs. State of Haryana & others, AIR 1977 SC 276: and State U.P vs. Rafiquddin & others, AIR 1988 SC 162. According to the learned Advocate General consultation can be in two ways one way is for the Government to request the High Court to select candidates and prepare a panel, which will be accepted by the Government; and the other way is for the Government by a reasonable process to make a selection and submit a panel to the High Court and obtain the views of the High Court. While it may be true that in the ordinary parlance these two ways can be adopted, we do not think the latter could be properly adopted in the case of consultation with the High Court in the matter of making judicial appointments. The failure on the part of the Government to request the High Court to make the selection may vitiate the appointments though the appointments have been made on some sort of consultation with the High Court. At any rate, we do not think we should delve deeper into the question.

4. Even accepting the contention of the petitioner, we do not think this is a fit case where we should interfere. Petitioner became a Judicial Officer not from the Bar quota where consultation with the High Court is necessary; he became a Judicial Officer through the process of selection conducted by the Public Service Commission in the quota contemplated under Rule 6(3) (d) (i). He was appointed later than the appointments of respondents 4 to 8; the impugned appointments took place in 1975, namely, on 23.4.75, and 16.5.75. He came with the writ petition in October 1980, nearly five years after the impugned appointments were made. It has to be stated that a writ of Quo Warranto is not a writ to meet specific personal grievances of any person: it is intended to serve a more important cause, namely, public interest. Obviously, the petitioner is worried that the private respondents are senior to him in service, though we must record the

statement made by learned counsel for the petitioner very fairly, that the petitioner is not questioning their seniority at all. Petitioner who is a Judicial Officer, wellversed in law and rules, waited for more than five years to file this writ petition, where besides a prayer for a writ of Quo Warranto, he also prayed for quashing the appointments made.

For one reason or the other the writ petition has been pending in this Bench for over 10 years. We do not think after the passage of 16 long years we should interfere with the appointments. This is not to say that we are happy with the manner in which the selection was conducted and that too by a committee nominated by the Government. For another reason also we are not interfering with the order the practice of Government forming Selection Committee which make selection to be followed by formal consultation by the Government with the High Court has been given up by the State Government after the decision of the Supreme Court in *Ashok Kumar Yadav & other vs. State of Haryana & others*, AIR 1987 SC 454 and ever since then the High Court has. been conducting the selection process and advising the Government regarding appointments.

5. Before leaving the case, we would like to touch upon certain provisions, in the Tripura Judicial Service Rules, 1974. There are two sources of selection contemplated in Rule 6 (3) (d). 50% of the posts are to be filled on the result of the competitive examination to be conducted by the Public Service Commission in the manner laid down and the remaining 50% are to be filled up by selection from amongst the members of the Bar in consultation with the High Court. The Supreme Court has repeatedly pointed out, as can be seen from some of the decisions referred to earlier, that the High Court is the best judge of the fitness of any person for selection to hold judicial posts. It is true that the Public Service Commission when it conducts an interview is assisted by an expert, such as a sitting Judge of the High Court to be nominated by the Chief Justice, but then, neither the High Court nor the Judge has any say in regard to written tests. To that extent the process of selection through competitive examination conducted by the Public Service Commission is less satisfactory than the selection processes conducted by the High Court. It is, therefore for the Government to consider seriously the question of amending Rule 6 (3) (d) to ensure that all the posts in Grade III are filled up in consultation with the High Court.

6. There are certain other provisions which are seriously objectionable in the light of the relevant provisions of the Constitution and several decisions of the Supreme Court. We may briefly refer to the same with a view to bring the same to the notice of the Government to enable the Government to amend the same. Rule 5 (3) states, inter alia, that the Governor may leave unfilled or hold in abeyance any post once a post is sanctioned. The Governor cannot direct any post to be unfilled or kept in abeyance.

7. Rule 15 (1) states that appointments of members of the service to the selection grade shall be made in consultation with the High Court on the basis of merit with regard to seniority. This provision is objectionable since according to

the constitutional provisions appointment to the post of District Judges can be made by the Governor and with regard to promotion and other matters of service High Court is the only controlling authority. Conferment of selection grade is only a matter of promotion. Therefore, the Rule has to be changed to make it clear that selection grade is to be granted by the High Court.

8. Note (a) of Rule 14 states that 20% of the posts included in Grade I will be in the Selection Grade of Rs. 2250.00 (fixed). This pay fixed in view of the fact that at that time the pay scale of Officers in Grade I was Rs. 16001900/, Note (c) of Rule 14 states 5% of the posts included in Grade III will be in the Selection Grade of Rs. 1150501300/. This pay scale was evidently fixed bearing in mind that at that time the scale of Grade III posts was only Rs. 50040900501300/. In the last Pay Revision Order the pay of Selection Grade in Grade I and pay scale of Selection Grade in Grade III have not been fixed. We understand this was because Pay Commission has not made any specific recommendation in this behalf. In our opinion, there is justification for the Government failing to prescribe the pay scales of the Selection Grade posts. Therefore, the Government have a responsibility to prescribe the pay scales with retrospective effect for the Selection Grade posts.

9. The posts of Legal Remembrancer and Secretary, Law Department, Registrar of High Court and Secretary, Legislative Assembly are ordinarily to be manned by senior District Judges. We find that earlier the pay scale of these three posts was the same. However, in recent years, the pay scales of Legal Remembrancer and Secretary, Law Department and Secretary, Legislative Assembly have been enhanced without at the same time enhancing the pay scale of Registrar, who is the Chief Executive Officer of the High Court. It is, therefore, necessary that these three posts should carry the same pay scale and that should be the same as the pay scale of Selection Grade District Judges.

10. Rule 21 states that the seniority interse of the members of Grade I or Grade II shall be determined by the Governor. This provision is also highly objectionable as it infringes on the control which is conferred on the High Court by the Constitution.

11. Rule 25(2) states that no disciplinary proceeding should be started against a member of the service except on the recommendation of the High Court. The Rule is framed as if to suggest somebody other than the High Court is to be incharge of the disciplinary proceeding. This subrule is also unnecessary and has to be deleted.

12. Subject to the above observations in paragraphs 5 to 11, the writ petition is dismissed.

13. A copy of the judgment will be forwarded to the Secretary to the Government of Tripura, Department of Law for necessary action. Copy of judgment will also be forwarded to other State Governments within the jurisdiction of the High Court for information and necessary action.