
(2014) 06 TP CK 0020
In the Tripura High Court
Case No : W.P. (C) 245 of 2005

Churchill Sangma VsThe State of Tripura

Date of Decision : 18-06-2014

Acts Referred:

Citation : (2014) 06 TP CK 0020

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

Bench : Single Bench

Advocate : B. Das, Sr. Advocate and Mr. D. Chakraborty, Advocate for the Appellant; J. Majumder, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—Bahnisikha Chakma, since deceased, the predecessor of the present petitioners, presented the writ petition seeking the following relief:-

- a) admit this petition of the Petitioner and call for records relevant to the subject matter of the Writ Petition from the custody of the Respondents No. 1 & 2;
- b) issue Writ directing and compelling the Respondent State to allow the Petitioner at least 2 (two) promotions, one to the post of Inspector of Police with effect from 18-03-1991 and other to the Post of Deputy Superintendent of Police with effect from 18-03-1999 and also directing the State Respondent to consider the Petitioner's case for further promotion in accordance with her seniority, quality of service and also length of service;
- c) issue Writ directing and compelling the State Respondent to allow the Petitioner pay and allowances and other benefits of service as Inspector of Police on and from 18-03-1991 and the scale of pay and other service benefits as Deputy Superintendent of Police with effect from 18-03-1999, to which the Petitioner is entitled;
- d) pass such further or other order or orders or directions as seem fit and proper having regard to the fact and circumstances of the matter.

2. The petitioner inter alia contended that she joined the post of Women Police

Sub-Inspector under the State-respondents on 18.03.1981 and her service record has/had been without blemish. She passed pre-promotional examination for consideration of her promotion to the next higher rank, but her promotion was not considered on the plea that there was no vacancy and the only promotional post of the Inspector of Police (Women) was already occupied by her senior Smt. Hela Rani Dutta Roy. Since no promotion was given, challenging Notification of the Government of Tripura dated 10.02.1984 and further praying for directing the State-respondents to consider her promotion in the post of Inspector of Police with retrospective effect, she filed a writ petition in the High Court, which was registered as Civil Rule No. 425 of 1997 (re-numbered as W.P. (C) No. 234 of 2004) and in that writ petition, the State-respondents taken a stand that the petitioner could not be promoted since the single promotional post was already occupied by her senior and that as and when there will be scope to promote the petitioner in the post of Inspector of Police (Women), she will be surely promoted in accordance with Rules. It is alleged that subsequently, one Smt. Chandra Das (Debbarma), who was her junior was promoted on 04.01.2001 during the pendency of her writ petition and thereafter on query, she could learn that her case was not at all considered by the State-respondents and the respondents thereby, violated the fundamental rights of the petitioner. She, however, did not make any allegation against selection of Smt. Chandra Das (Debbarma), but arrayed her as respondent No. 3 in the writ petition. She has also alleged that she was not even provided financial benefit for stagnation in the same post for more than 10 years and she was compelled to serve in the same post for last 24 years without any benefit of promotion. It is further stated that her writ petition was disposed of by Judgment & Order dated 24.03.2005 directing to make suitable modification in the Recruitment Rules. Subsequently she preferred a Review Petition No. 05 of 2005 and that Review Petition was also disposed of by Judgment & Order dated 08.06.2005 and in the order passed by the High Court in the Review Case, a liberty was given to her to file fresh writ petition and therefore, she filed the present writ petition. Referring the Judgment of the Apex Court, in the case of State of Tripura and Others Vs. K.K. Roy, it is alleged that the State-respondents were bound to create promotional avenue for the employees working under the State and at least, two promotions in the service carrier should be given and in case of necessity, supernumerary post should be create for giving promotion. Accordingly, she prayed for the relief as stated hereinbefore.

3. Respondents contended that the petitioner was appointed in the post of Sub-Inspector of Police (Women) and there was only one promotional post of Inspector of Police (Women). For promotion to the Post of Inspector of Police (Women), the recommendation as per the Recruitment Rules has to be made by DPC headed by DGP as Chairman, IGP (Administration) as Member and Director, Fire Service as Member. The DPC held its meeting on 03.08.2000 to recommend the candidate to fill up the only post of Inspector of Police (Women), which was occupied by Smt. Hela Rani Dutta (Roy) up to 23.11.1999. The candidature of

two Sub-Inspector of Police (Women) i.e. the petitioner and respondent No. 3 were taken to consideration and the DPC found respondent No. 3 fit for promotion whereas found the petitioner unfit for promotion and accordingly, recommended the name of respondent No. 3 and as per that recommendation, respondent No. 3 was promoted to the Post of Inspector of Police (Women). Copy of the DPC recommendation annexed as Annexure-R-1, which shows that the petitioner was having overall grading "Average" whereas respondent No. 3 was having over all grading "Good". It is stated that having considered the ACR and other service records, since the petitioner was not found fit for promotion, she could not be promoted. It is further stated that the petitioner did not challenge the promotion order of respondent No. 3, also did not challenge the finding of DPC recommending respondent No. 3 for promotion. It is also contended that for stagnation in the same post, petitioner was given the benefit of graded scale as per ROP. 1988 and the details has been stated in the Para 13 of the counter affidavit. It is further stated that with a similar and identical prayer, the petitioner filed the earlier writ petition, which was dismissed by the High Court whereas seeking the same relief the petitioner filed the subsequent writ petition. It is also contended that the ratio of the decision of K.K. Roy (supra) is not applicable in the case of the petitioner since it is not a case of non promotional avenue. Promotional avenue was there, but it was within a limited spare and the petitioner was found not suitable for promotion and hence, she could not be promoted by the time when the writ petitions were filed. The respondents, therefore, prayed for dismissal of the writ petition.

4. Heard learned senior counsel, Mr. B. Das assisted by learned counsel, Mr. D. Chakraborty for the petitioner and learned counsel, Mr. J. Majumder for the State respondents.

Respondent No. 3 did not turn up on receipt of the notice and did not contest the case.

5. It is emphatically submitted by learned senior counsel, Mr. Das that the petitioner joined the post of Sub-Inspector of Police (Women) on 18.03.1981 and she died on 28.07.2007 and during her long tenure of more than 26 years of service, she did not get a single promotion. Heavily relying on the Judgment of the Apex Court in the case of K.K. Roy (supra), Mr. Das, learned senior counsel submitted that the State-respondents were bound to gives at least, two promotions to the petitioners during her service tenure, which has been denied by the respondents.

6. Countering the submission of learned senior counsel, Mr. Das, Mr. Majumder, learned counsel of the State-respondents submitted that the only post of Inspector of Police (Women) was admittedly occupied by one Smt. Hela Rani Dutta (Roy), who was senior to the petitioner and the post was occupied till 23.11.1999. Thereafter, when the post fallen vacant, DPC was held and the DPC found the petitioner not fit for promotion since she was not having with the required bench mark "Good" and consequently, DPC headed by Director General

of Police and two other Members recommended respondent No. 3 for the promotion and the petitioner was not recommended at that time. There was nothing wrong in the recommendation and the petitioner did not challenge the promotion order of respondent No. 3 and also did not challenge the recommendation made by DPC. She filed earlier writ petition on identical ground and seeking identical relief, which was rejected by the High Court and so, the petitioner was barred in filing the subsequent writ petition.

7. It is an admitted position that the petitioner joined the post of Sub-Inspector of Police (Women) on 18.03.1981 and during her service tenure, she did not get any promotion. She filed Civil Rule No. 425 of 1997, which was re-numbered as W.P. (C) 234 of 2004 and in that writ petition her prayer for declaring Notification dated 10.02.1984 as invalid, un-constitutional and void as well as her claim for promotion to the Post of Inspector (Women) was rejected by the High Court with the following observation:-

7. In view of the above discussions, the prayer of the petitioner to declare the impugned Regulation as invalid has no merit and is hereby rejected. Her claim for promotion to the post of Inspector (women) cannot also be allowed for the reason that there is only one post of Inspector (women) held by her senior and that the Recruitment rules for Inspector (Un-armed) as they stand now do not provide for filling up the posts from Sub Inspectors of Police (women).

She filed a Review Petition No. 05 of 2005, but that was also dismissed by order dated 08.06.2005. No copy of order dated 08.06.2005 filed by the petitioner. It is stated in the writ petition that in view of the liberty given in the Review Petition, the fresh writ petition is filed on the same ground for promotion. Since no copy of the order of Review Petition filed by the petitioner, it cannot be said that the petitioner was given liberty to file a fresh writ petition on the same cause of action. In view of the disposal of the earlier writ petition, rejecting the prayer of the petitioner, which was not challenged in any superior forum, the petitioner was barred in filing the subsequent writ petition on the same cause of action.

8. The petitioner contended that her service carrier was without blemish and that her promotion was not considered by the State-respondents. The respondents clearly brought on record that the single promotional post of Inspector of Police (Women), when was fallen vacant, the DPC considered the case of the petitioner and respondent No. 3 and found respondent No. 3 fit for promotion and the petitioner was found unfit for promotion and hence, her promotion was not considered. Annexure-R-1 is the DPC recommendation. The promotion of respondent No. 3 was made during pendency of earlier writ petition and the petitioner would challenge promotion of respondent No. 3 as well as the recommendation of DPC well in the earlier writ petition, but that was not done. In the present writ petition also promotional order of respondent No. 3 as well as the DPC recommendation has not been challenged. It is simply stated that her promotion was not considered, but the records placed by the respondents shows that her promotion was also considered, but she was found unfit. So, the

contention of the petitioner that the State-respondents did not consider her promotion has no leg to stand.

9. The petitioner also contended that the benefit of ROP, 1988 was not provided to her for her stagnation in the same post whereas, the respondents in Para 13 of the counter affidavit brought on record that the benefit of higher scale for stagnation in service was provided to the petitioner, which is not challenged by the petitioner by filing any rejoinder affidavit.

10. The ratio of the decision of the Apex Court in the case of K.K. Roy (supra) is in no way applicable in the present case since in the case of K.K. Roy (supra), there was no promotional avenue for the post, which the petitioner of that case was occupying. Whereas, in the case of the present petitioner, there was promotional post and her case was considered when the promotional post fallen vacant, but she was found unfit for promotion. So, the ratio of K.K. Roy (supra) is not applicable in the facts of the present case.

11. For the discussion made above, I find no merit in the writ petition and accordingly, the writ petition stands dismissed.

No cost.