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(1998) 03 GAU CK 0046

In the Gauhati High Court

Case No : Civil Rule No''s. 43 and 44 of 1987

Dhiresh Chandra Dutta and Others APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:
Constitution of India, 1950 — Article 226, 280

Citation : (1998) 1 GLT 377

Hon'ble Judges : D.N. Chowdhury, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Party in Person in C.R. No. 43/87 and A.L. Saha, in C.R. No. 44/87, for the Appellant; A. Chakraborty, A.G. Tripura, A. Ghosh and S. Chakraborty, for the Respondent

Judgement

A.K. Patnaik, J.—The Petitioner in Civil Rule No. 43/87 is the President of Tripura Mahakaran Karmachari Samity which is an Association looking after the welfare of the employees serving under the Government of Tripura. The Petitioner No. 1 in Civil Rule No. 44/87 is Tripura Shramik Sikshak Karmachari Samity, an Association of employees working under the Government of Tripura and other authorities and aided Institutions in the State of Tripura and the Petitioner No. 2 in the said Civil Rule is the General Secretary of the said Association.

2. In these applications under Article 226 of the Constitution, the Petitioners have prayed for, inter alia, a writ of Mandamus on the State Government of Tripura to pay the entire amount of Rs 112 crores to the State Government employees as Dearness Allowance and Additional Dearness Allowance (hereinafter referred to as "DA" and "ADA" respectively) to neutralise the 120 points from 400 to 520 points rise in the All India Consumer Price Index and for a writ of Prohibition restraining the State Government of Tripura from diverting the aforesaid amount of Rs. 112 crores for any other purpose.

3. The relevant facts briefly are that on the recommendation of the First Tripura Pay Commission, the pay scales of the employees working under the Government

of Tripura were revised with effect from 1.3.74 and the said revised pay scales were linked to 220 point of Labour Bureau''s Consumers Price Index (Tripura Base 1961= 100) which was treated as Local Price Index. Thereafter, the Second Pay Commission was set up by the State of Tripura in the year 1979 and the said Commission submitted its Report in December, 1981. The Government accepted the scales of pay recommended by the said Pay Commission and framed the Tripura Government Services (Revised Pay) Rules, 1982, which came into force with effect from 1st January, 1982. Thereafter, by a Memorandum dated 23 rd December, 1982, of the Government of Tripura, Finance Department, DA/ADA at Central rates to all categories of employees of the Government of Tripura for all instalments sanctioned by the Government of India upto 1.12.81 was granted subject to certain conditions. Subsequently, by another Memorandum dated 9th April, 1984 of the Government of Tripura in the Finance Department, the State Government employees were granted DA/ADA with effect from 1.3.84 provisionally pending final recommendations of the Eighth Finance Commission. In the said Memorandum dated 9th April. 1984, it was stated that the DA/ADA would be subject to review/adjustment on the basis of the recommendations of the Eighth Finance Commission in regard to (a) benefits derived from revised pay scales, and (b) DA/ADa granted under the Memorandum. The Eighth Finance Commission constituted by the President of India under Article 280 of the Constitution submitted its interim and final reports. In the interim report, the Eighth Finance Commission made provisions in the forecasts of different States including Tripura for all the instalments of ADA which had been sanctioned by the Centre upto index number 496 in the All India Consumer Price Index for Industrial Workers (Base 1960== 100) and for such purpose recommended an amount of Rs. 53.34 crores to be granted as grant-in-aid to the State of Tripura for the financial year 1984-85 as the revenue deficit assessed by it. In its final report, the Eighth Finance Commission made provisions for emoluments of Government employees of different States including Tripura . during the five years ending 1988-89 which were in addition to the normal requirements projected during the forecast period and so far as the State of Tripura was concerned, the additional provisions made by the said Commission for emoluments for five years of the forecast period 1984-85 to 1988-89 as given in Table : 1 at page -24 of the report were to the following effect: (Rs. lakhs)

-- Name For DA upto To make Total For DA Total of up the (2+3) conse- of the 12-monthly difference quent 4+5 State CPI average with refer- on of 440 ence to the increase as on presump- in the 12 1.4.1982 tive monthly emoluments average on 1.4.82 CPI from adjusted to 440 to CPI 440 496 -- (1) (2) (3) (4) (5) (6) -- . .. . Tri- 3700 2796 6496 5180 11676 Pura --

In its said final report, the Eighth Finance Commission also recommended grants to cover increases in revenue gaps on accounts of additional provisions for DA which covered the 12-monthly average of AH India Consumer Price Index Number for Industrial Workers (Base 1960=100) upto S20, and so far as the State of Tripura was concerned, a total grant of Rs. 23.95 crores was recommended by the Commission for the aforesaid purpose for the period 1984-89. The case of the Petitioners in these two writ petitions is that although on the basis of the said recommendations made by the said Eighth Finance Commission, an amount of Rs 112 crores was paid by the Central Government to the State Government of Tripura, the State Government of Tripura has not disbursed the same to its employees and that a mandamus should be issued to the State Government of Tripura to disburse the said amount of Rs 112 crores received by it from the Central Government as DA/ADA for the purpose of neutralizing the rise in the cost of living from 400 points to 520 points for the period of five years from 1.4.84 to 31.3.89.

4. At the hearing, Mr. Dhiresh Chandra Dutta, the Petitioner in Civil Rule No. 43/87, appearing in person contended that the Chief Minister of State of Tripura in his Budget Speech for the year 1984-85 delivered on 16th March, 1984 himself referred to the interim report of the Eighth Finance Commission relating to the instalments of ADA which had been sanctioned by the Central Government for its employees upto index number 495 in the All-India Consumer Price Index for Industrial Workers (Base 1960=100), but added that the Government did not know then as to what view had been finally taken by the said Eighth Finance Commission in the matter and assured that the State Government was always concerned about the welfare of its employees and was considering the matter sympathetically. Mr. Dutta similarly submitted that in Memorandum dated 9th April, 1984 by which DA/ADA was granted by the State Government to its employees it was clearly stated that DA/ADA were provisional pending final recommendations of the Eighth Finance Commission. He submitted that despite the aforesaid assurance given by the Chief Minister on the floor of Tripura Assembly in his Budget Speech and given by the State Government in the Memorandum dated 9th April, 1984, no orders were passed by the State Government for payment of DA/ADA to its employees on the basis of the recommendations of the said Eighth Finance Commission after the final report of the Commission. Mr. Dutta referred to the relevant portions of the final report of the Eighth Finance Commission wherein it has expressed its general agreement with the approach of the Sixth and Seventh Finance Commission which took into account not only the capacity of the States to pay emoluments to Government employees, but also the needs of such Government employees. In particular, Mr. Dutta referred to paragraphs 3.60, 3.61 and 3.62 of the final report of the Eighth Finance Commission to show that for the three States of Assam, Meghalaya and Tripura, the Commission had made provisions for DA on the Central pattern. Mr. Dutta vehemently argued that DA/ADA at the rates which would neutralize the rise in the cost of living adequately is not only necessary for taking care of the needs of the employees but is also absolutely essential for the efficiency of

administration. Mr. Dutta referred to paragraph 2.2 of the report of the Eighth Finance Commission in which it had been observed that some States were relatively more advanced while others were lagging behind and the overriding consideration which had guided the Commission was the national interest taken as a whole. He contended that the recommendations of the Eighth Finance Commission including those relating to DA/ADA of the employees of the State Governments therefore were in the national interest as a whole. He argued that the State Government cannot refuse to grant DA/ADA increases on the ground that it had adequately revised the pay of its employees because the said recommendations of the Eighth Finance Commission were specifically for DA/ ADA. Mr. Dutta further submitted that the amount as received by the State Government from the Central Government on the basis of the report of the Eighth Finance Commission was appropriated specifically for the purpose of payment of DA/ADA to the employees of the State Government and that the State Government cannot be allowed to divert the said amount appropriated for a specific purpose for general expenditure. Mr. Dutta cited several decisions of the Apex Court in support of his submissions, but the decisions which are, on DA/ ADA are : The State of Madhya Pradesh Vs. G.C. Mandawar, . The Hindustan Times Ltd., New Delhi Vs. Their Workmen, , Bengal Chemical and Pharmaceutical Works Ltd. Vs. Its Workmen, , and Raja Bahadur Motilal Poona Mills Ltd. Vs. Girni Kamgar Sanghathana, Poona,

5. Mr. A.L. Saha, learned Counsel appearing for the Petitioners in Civil Rule No. 44/87, while adopting the arguments advanced by Mr. Dutta, submitted that it has been held by a learned single Judge of this Court in the case of Tripura Government Employees'' Federation v. State of Tripura and Ors. 1996 2 GLT 555 , that once the recommendation of the Commission relating to DA is accepted by the Government, the Government cannot take a stand that no right accrued to the employees to get the recommended DA. He further argued relying on the decision of the Supreme Court in the case of S.R. Bommai and others Vs. Union of India and others etc. etc., that federalism is one of the basic features of the Constitution of India. According to Mr. Saha, since the constitution of the Finance Commission and its recommendations are part of the federal set up contemplated by the Constitution, the State Government should respect the recommendations of the Finance Commission and the Court can also issue a direction to the State Government to comply with the recommendations of the Finance Commission. He argued that since the recommendations of the Eighth Finance Commission relating to DA/ADA of the employees of the State Government of Tripura have not been complied with by the State Government, directions can be issued to the State Government to comply with the said recommendations and pay the said DA/ADA to the employees of the Government of Tripura.

6. In reply to the aforesaid submissions, Mr. Ashok Chakraborty, learned Advocate General, Tripura, cited the decision of the Apex Court in the case of The State of Madhya Pradesh Vs. G.C. Mandawar, in which it has been held that grant

of DA at a particular rate under Rule 44 of the Fundamental Rules is a matter of grace and not a matter of right and hence a claim against Government for grant of such allowance at a particular rate is not justiciable and no Mandamus as such can be issued to the State Government to compel the Government to pay DA/ADA at any particular rate. He referred to the averments in the affidavit -in-opposition filed on 22.9.94 by the State - Respondents to the effect that during the period covered by the Eighth Finance Commission, the State Government''s expenditure on improvement of pay scales and DA was Rs 44,774 '' 66 lakhs, i.e., Rs. 50.08 crores more than the estimate inclusive of the amount specifically recommended by the said Commission. In support of these averments, Mr. Chakraborty referred to the statements in Annexure-7 to the said affidavit-in-opposition which gives the figures of budget estimates and estimates inclusive of the Eighth Finance Commission''s Award for improvement of pay structure and grants for further DA. He submitted that the State Government''s expenditure on improvement of pay scales and DA of the employees working under the Government of Tripura was therefore far in excess of the award of the Eighth Finance Commission. He relied on paragraph -3 of the affidavit-in-opposition of the State - Respondents filed on 6.9.94 in reply to the rejoinder affidavit in which it has been stated that the recommendations of the Finance Commissions were fully complied with. He further explained that the entire amount as recommended by the Finance Commission was not received at a time but received in different stages. He finally submitted mat the budget for the State Government of Tripura is normally a deficit budget and the deficit amount is obtained from financial institutions with high rates of interest and such being the financial predicament of the State Government of Tripura, it is not possible on the part of the Government to meet the additional demands of DA and ADA as made by the Petitioners in these writ petitions.

7. The question that is to be decided in this case is as to whether a mandamus can be issued on the State of Tripura to pay the amount of Rs 112 crores to the State Government employees as DA/ADA. Law is well-settled mat a mandamus can only be issued to an authority for performance of his legal duty and if a person can show that he has a legal right in him, a corresponding legal duty of the authority towards the person can be enforced by the Court by a writ of mandamus. The employees of the Government of Tripura on whose behalf the present writ applications have been filed, therefore, must show that they had a legal right to receive the amount of Rs 112 crores as DA/ADA for the Court to issue a mandamus to the State Government of Tripura to pay the said amount of Rs 112 crores to its employees. This position of law has been explained by the Supreme Court in the case of State of M.R v. G.C. Mandawar (supra):

Under this provision, it is a matter of discretion with the local Government whether it will grant clearness allowance and if so, how much. That being so, the prayer for mandamus'' is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the

Government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at this own discretion, and no ''mandamus'' can issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced.

In the aforesaid decision, the Supreme Court further held that Rule 44 of the Fundamental Rules did not confer any right on the Government servants to the grant of DA nor did it impose any duty on the State to grant it. Since Rule 44 of the Fundamental Rules is also applicable to the Government Servants in the State of Tripura, it follows that no right to DA/ADA as claimed on behalf of the employees of the Government of Tripura can be based on the said Rule 44 of the Fundamental Rules nor can any duty on the State Government of Tripura to grant the same to its employees be founded on the said rule.

8. In the case of Tripura Government Employees Federation v. State of Tripura, (supra), however, it has been held by a learned single Judge of this Court that when a recommendation was made by a Pay Commission for payment of DA and the said recommendation was accepted by the State Government, it could be very well said that by declaration of its acceptance of the recommendation, the Government induced a reasonable belief to the employees that they would be getting DA at Central rates and that assurance was nothing short of a promise by conduct and hence rules of estoppel bound the Government. In the said decision, therefore, the right of the employees to receive the DA at the Central rates and the corresponding duty of the Government to pay the same were based on the doctrine of promissory estoppel. By the said doctrine of promissory estoppel, if a representation or promise is held out by an authority in favour of any person, and such person has acted upon such promise or representation, the Court can compel the authority to perform its duty under the said representation or promise, if it fails to do so. We have, therefore, to find out as to whether the State Government of Tripura held out any such assurance or promise or representation to its employees to pay the DA/ADA as recommended by the Eighth Finance Commission claimed by the Petitioners in these cases. According to the Petitioners, such assurance was given on behalf of the Government of Tripura in the Memorandum dated 9th April, 1984 of the Government of Tripura in the Finance Department by which the employees were granted DA/ADA with effect from 1.3.84 provisionally pending final recommendations of the Eighth Finance Commission. The relevant paragraph of the said Memorandum dated 9th April, 1984, which is said to contain the said assurance, is quoted hereunder:

...However, subject to what has been stated above, the Governor is pleased to sanction from 1st March, 1984 Dearness Allowance/Additional Dearness Allowance at the rates shown in the Annexure ''B'' provisionally, pending final recommendations of the Eighth Finance Commission and subject to review/ adjustment on the basis of the same in regard to (a) benefits derived from revised pay scales and (b) Dearness Allowance/Additional Dearness Allowance granted under this Memorandum....

Thus, grant of DA/ADA with effect from 1.3.84 to the employees of the Government of Tripura under the Memorandum dated 9.4.84 was a provisional grant pending final recommendations of the Eighth Finance Commission, and this would normally imply that after the final recommendations of the Eighth Finance Commission, the DA/ADA would be paid on the basis of the said final recommendations of the Eighth Finance Commission. But the above-quoted paragraph of Memorandum dated 9.4.84 would show that after the final recommendations of the Eighth Finance Commission, a review/adjustment was to be made in regard to (a) benefits derived from revised pay scales and (b) DA/ADA granted under the said Memorandum. Thus no clear or unambiguous representation or assurance was held out in the aforesaid Memorandum dated 9.4.84 that DA/ADA would be given to the employees of the Government of Tripura as finally recommended by the Eighth Finance Commission and instead a condition was attached to the said representation or promise or assurance that the benefits derived from revised pay scales and DA/ADA already paid to the Government employees under the Memorandum dated 9.4.84 would be reviewed/adjusted on the basis of the recommendations of the Eighth Finance Commission. According to the Petitioners, an assurance or promise or representation to pay DA/ADA to the employees of the Government of Tripura on the final recommendations of the Eighth Finance Commission was also held out by the Chief Minister in his Budget Speech for the financial year 1984-85 on 16.3.84, a copy of which was produced before us at the hearing. Paragraph 18.4. of the said Budget Speech of the Chief Minister is extracted hereinbelow:

18.4. If the revised pay scales are deemed to be linked to index number 336, the dearness allowance and additional dearness allowance already granted to the State Government employees up to index number 440, as mentioned earlier, work out in most cases to be more than what would be admissible up to index number 496 on the basis of pay in revised pay scales. We had, however, pointed out to the Eighth Finance Commission that the entire dearness allowance and additional dearness allowance admissible up to index number 336 of the price index mentioned above were not allowed to be merged at the time of fixation of pay of the existing employees in the revised scales of pay. Thus while the new entrants at the time of revision had got the full benefit up to index number 336 from the revised pay scales, the existing employees did not get the same benefit. We do not know as yet what view has been taken finally by the Eighth Finance Commission in the matter. As the State Government is always concerned about the welfare of its employees, it has, however, been considering the matter sympathetically....

On a reading of the aforesaid paragraph in the Budget Speech of the Chief Minister, we find that he had only said that the Government did not know then what view was taken finally by the Eighth Finance Commission in the matter relating to DA/ADA and that he had not given any clear and unambiguous assurance, promise or representation in the said speech that on the basis of the final recommendations of the Eighth Finance Commission DA/ADA would be granted to the State Government employees and all that he had assured was that the Government would consider the matter sympathetically as it was concerned about the welfare of its employees. In Halsbury''s Laws of England (4th Edn. Vol. 16 p. 1071 para 1595) quoted and relied on by the Supreme Court in the case of Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), it has been observed that "To found an estoppel a representation must be clear an unambiguous", and the old maxim applicable to all estoppels is that they "must be certain to every intent....".

Since no clear and unambiguous representation or promise or assurance has been held out by the State Government of Tripura to its employees to pay the DA/ADA as finally recommended by the Eighth Finance Commission, the Court cannot on the doctrine of promissory estoppel compel the State Government to pay the DA/ADA as finally recommended by the Eighth Finance Commission to its employees as claimed by the Petitioners.

9. The Petitioners have contended that the recommendations of the Eighth Finance Commissions have to be respected because federalism is a basic feature of the Constitution of India and that the provisions of the Constitution relating to Finance Commission and its recommendations are part of the federal set up of the Constitution. On a reading of Article 280 of the Constitution and in particular Clause (3) thereof, we find that the duty of the Finance Commission is to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation between the States of the respective shares of such proceeds, and as to the principles which should govern the grants-in-aid of the revenues of the States out of Consolidated Fund of India. Thus, the role that the Finance Commission plays in the federal set up of the Constitution is with regard to the amount of resources in the shape of proceeds of taxes or grants-in-aid of the revenues of the States that should be allocated to the States. The provisions for DA/ADA at the Central rates for the period 1984-85 to 1988-89 were therefore made by the Eighth Finance Commission in its interim and final report for the State of Tripura for the purpose of determining the resources which should be allocated to the State for meeting its revenue requirements towards the emoluments of the Government employees. In the instant case, the State Government has taken a stand in its affidavit-in-opposition sworn by the Finance Officer & Ex-Officio Deputy Secretary to the Government of Tripura that during the period covered by the Eighth Finance Commission, the State Government''s expenditure on improvement of pay scales and DA of its employees was Rs. 50.08 crores more than the estimate inclusive of the amount specifically recommended by the said Commission. In other words, according to the case of the State Government, it had spent much more on pay scales and DA of its employees than what was granted to the State Government on the

recommendations of the Finance Commission. The Petitioners'' case, on the other hand, is that the recommendations of the Eighth Finance Commission relating to DA/ADA are separate from the recommendations on improvement of pay scales and this Court should direct the State Government to pay the DA/ADA to its employees as recommended by the Eighth Finance Commission. We are, however, of the view that improvement of pay scales and DA are inter-connected with each other inasmuch as DA/ADA is given to the employees only when the pay of the employees becomes inadequate compared to the rise in the cost of living and it is for the State Government to decide as to what portion of the rise in the cost of living should be neutralized by improvement of pay scales and what portion of the rise in the cost of living is to be neutralized by granting DA/ADA. Since, in the instant case, the State Government has taken a categorical stand on affidavit, as stated above, that the State Government''s expenditure on improvement of pay scales and DA was more than the estimate inclusive of the amount specifically recommended by the Eighth Finance Commission, it is difficult for this Court to direct that the amounts received by the State Government on the basis of the recommendations of the Eighth Finance Commission relating to DA/ADA for the period 1984-85 to 1988-89 be paid to its employees as claimed in these writ applications.

10. Mr. Dutta however contended that the amount of Rs. 112 crores as claimed by the Petitioners in these cases was specifically appropriated by the Legislative Assembly of Tripura by Appropriation Acts. He has also produced before us the Tripura Appropriation Act, 1984 and also Vol. II of the Detailed Estimates of the Budget of Government of Tripura for the year 1984-85 in support of his aforesaid submission. We have looked into the Tripura Appropriation Act, 1984, as well as the said Vol. II of the Detailed Estimates of the Budget for the year 1984-85, and from the said Act, 1984 and Vol. II of the Detailed Estimates of the Budget for the year 1984-85, we are unable to determine as to what amount was specifically appropriated by the State Assembly but not paid as DA/ADA for the year 1984-85. The Tripura Appropriate Acts and the Detailed Estimates of Budget for the years 1985-86, 1986-87, 1987-88 and 1988-89 - the remaining period for which relief is claimed in these writ applications - were however not produced before us by the Petitioners.

11. Regarding the authorities cited by Mr. Dutta, we find that in Hindustan Times Ltd., New Delhi v. Their Workmen; The Bengal Chemical & Pharmaceutical Works Ltd. v. Its Workmen and Anr.; and Raja Bahadur Motilal Poona Mills Ltd. v. Girni Kamgar Sanghathan, Poona, (supra), the Supreme Court did not decide any claim of the Government servants to DA to any particular rate but examined some awards on DA in industrial disputes between the workmen and the Management under the Industrial Disputes Act, 1947 for the purpose of finding out if correct principles had been followed by the Tribunal while awarding DA/ADA to the workmen and where the Court found that the award needed correction, issued appropriate writs/directions. The aforesaid decisions of the Supreme Court, therefore, have no relevance to the present case in which the

Petitioners have not shown their legal right to the DA/ADA claimed by them and have yet sought for a mandamus on the State Government to pay the same to them.

12. In the writ applications certain reliefs were claimed with regard to the amendment of 1986 to the Tripura Government Services (Revised Pay) Rules, 1982, and the Memoranda dated 22nd September, 1986 and 23 September, 1986 of the Finance Department, Government of Tripura, but no submissions were made by the Petitioners or their counsel at the time of hearing of the writ applications in support of the said reliefs claimed in the writ applications.

13. For the reasons stated above, the Petitioners are not entitled to any relief and, accordingly, we dismiss these two writ applications. But considering the entire facts and circumstances of the case, the parties shall bear their own costs.