
(1992) 11 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 519 of 1992

Dilip Ranjan Dam

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 GLR 53

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee and S. Roy, for the Appellant; I.B. Deb and D.P. Chaliha, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—In this application under Article 226 of the Constitution of India, the Petitioner has challenged an order dated 43.92 under which the Government of Tripura had not extended the term of the post of Accounts Officer attached to the District & Sessions Judge, West Tripura.

2. Facts leading to this writ application, in brief, are as follows. The Government of Tripura created a temporary post of Accounts Officer for the office of the erstwhile District & Sessions Judge of Tripura (Now District Judge and Sessions Judge Tripura west after consideration for a period of six months under order dated 28.3.79. The term of the post was extended from time to time. The last extension order was made on 19.2.92 extending it for one year from 1.3.91 to 29.2.92. Under letter dated 4.3.92, it was intimated to the District & Sessions Judge that the Government has decided that no further extension would be made beyond February 1992 mainly due to financial constraint. At the relevant time the Petitioner was holding the post of Accounts Officer. He was appointed under order dated 9.1.92, on promotion. The Petitioner has challenged the order of the Government discontinuing the posts of Accounts Officer with effect from 29.2.92. It may be stated here that the Government of Tripura sent a draft recruitment

rules to the Gauhati High Court for its approval of the same under letter dated 15.3.79. The High Court did not respond to it; and that there was/is no post of Accounts Officer for the District Judge of North and South Districts.

3. Mr J.P. Bhattacharyya, learned Counsel for the Petitioner, has contended that the impugned order of discontinuance was made by the first Respondent, Government of Tripura, and the second Respondent, Secretary (Law) to the Government of Tripura not only malafide, but also out of vindictiveness against the Petitioner. Mr. Bhattacharyya has drawn my attention to a decision of the Supreme Court reported as Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, relating to "malice in law".

4. Generally speaking, it is prerogative of the Executive whether or not the term of the post would be extended. The main concern of the Court in such matter is of sec that the Executive acts fairly. The Petitioner has alleged malafides. Action or the public official in discharge of their public duty is to be presumed bonafide and, therefore, the Petitioner is to make definite allegations on malafides with full details and to prove the same. The allegations in the petition are thus under order dated 5.3.92, the Government of Tripura sanctioned, continuance of 47 posts, ministerial staff, for the 3 District. Judges of Tripura. Of which 23 posts for North Tripura District 23 for South Tripura District and 1 for West Tripura District. Under another order dated 5.3.92, the Government of Tripura sanctioned the continuance of two posts of part--time contingent worker for West Tripura District. The main ground for discontinuance of the post of Accounts Officer was financial constraint. If there was financial constraint why the term of the posts mentioned above was extended excluding the post of Accounts Officer held by the Petitioner. Therefore, the order of discontinuance of the post of the Accounts Officer was made malafide.

5. The term "malafides" is being used in administrative action in the sense of exercise of power out of dishonest intent or corrupt motive, it includes personal animosity, spite, vengeance, etc. with regard a vindictiveness, the cases of the Petitioner is that the impugned order was made vindictively by the Government of Tripura and the Secretary (Law) to the Government of Tripura. In S. Pratap Singh Vs. The State of Punjab, the Supreme Court has used the phrase "mala fides" for initiating administrative action against any individual "for satisfying a private or personal grudge of the authority". No allegation of private or personal grudge against the Minister in-charge or a person holding the post of Secretary has been made.

The extension of the term of 47 posts excluding the post held by the Petitioner, namely, Accounts Officer, may create a suspicion about the bonafides of the Government. The suspicion cannot take die place of prove of mala fides. The proof needed here is of a high degree one.

6. For the reasons stated above, the Petitioner has failed to prove die mala fides. The petition is, accordingly, dismissed. No costs.