
(1998) 06 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule No. 386 of 1997

Haradhan Saha

APPELLANT

Vs

Tripura Small Industries Corporation Ltd. and Others

RESPONDENT

Date of Decision : 22-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 GLT 90

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : A.K. Bhowmik and S. Ghosh, for the Appellant; B.B. Deb, P.B. Dhar and S. Chakraborty, for the Respondent

Judgement

P.C. Phukan, J.—I have heard Mr. A.K. Bhowmik, the learned senior counsel appearing on behalf of the Petitioner as well as Mr. S. Chakraborty, the learned Counsel for the Respondent Nos. 1 and 2 and Mr. B.B. Deb, the learned senior counsel for the private Respondent No. 3.

2. This Court by its order dated 4.5.1998 directed the Respondent No. 1 Corporation to produce all the relevant records including the merit list, application of private Respondent with all annexures and the Corporation's order rejecting the Respondent No. 3's petition for preponing her date of joining. Mr. Chakraborty, the learned Counsel for Respondent Nos. 1 and 2, informs that no merit list was prepared. He has, however, produced other relevant records.

3. The admitted facts of this case may be stated as follows. The Respondent No. 1 the Tripura Small Industries Corporation is a Government of Tripura undertaking. On 25.1.1982 its Managing Director, Respondent No. 2 issued the circular Annexure-D/1, the relevant portion of which reads as under:

Following vacant posts under this Corporation are intended to be filled up shortly:

1) x x x

2) Typist.

(a) Scale of pay : Rs. 240-8-320-10-440/-.

(b) No. of posts: 3 (one reserved for S.T. & 2 unreserved).

(c) Qualification : Passed School final or equivalent having a speed of type at least 40 words per minute.

Employees of this Corporation satisfying the requirements of the above posts may apply to the undersigned within 10(ten) days of the issue of this circular.

4. The candidates including the Petitioner, sponsored by the Employment Exchange and the Respondent No. 3, a daily rated worker, who appeared in the Interview held on 13.2.82 and 14.2.82 were put to Type test. In paras 3 of the writ petition supported by an affidavit, the Petitioner states that in the type test he scored 40.9 words per minute and the Respondent No. 3 only 26.2 words per minute. This has not been disputed by any of the Respondents in their affidavit-in-opposition. The Petitioner and the Respondent No. 3 were selected for appointment to the two unreserved posts. In the absence of any S.T. candidate, one post reserved for S.T. was not filled up. The Respondent No. 2 on 7.2.83 issued Memo Annexure-1 and Annexure-A offering to the Petitioner and Respondent No. 3 respectively the post of typists making the appointment, "subject to production of a certificate of fitness from Civil Assistant Surgeon". The Petitioner produced such a certificate on 9.2.83 and was allowed to join on the said date. The Respondent No. 3 submitted the joining report on 7.2.83 without producing required medical certificate which she could obtain only on 9.2.83 and could produce the same on 10.2.83. The Respondent No. 2 accepted her joining report with effect from 9.2.83 and not from 7.2.83. Accordingly, the Respondent No. 2 issued Annexure-2 and Annexure-B appointing the Petitioner and Respondent No. 3 respectively.

5. Annexure-2 reads, inter alia, as follows:

Shri Haradhan Saha (Petitioner) is appointed to the post of typist in a temporary capacity with effect from February 9, 1983 (forenoon). . .

Annexure-B reads, inter alia, as follows:

Smti. Sankari Roy (Respondent No. 3) is appointed to the post of Typist in a temporary capacity with effect from February 9, 1983 (forenoon)...

6. About 10 years later, the Respondent No. 3 submitted representation to the Respondent Nos. 1 and 2 to prepone her date of joining to 7.2.83 from 9.2.83 and admittedly the said representation was not considered by the Respondent Nos. 1 and 2. However, after 2 years therefrom the Respondent No. 2 preponed her date of joining to 7.2.83 from 9.2.83 vide Memo Annexure-8 dated 1.7.96. In the meantime, the Respondent No. 2 circulated draft seniority list Annexure-3 dated 30.6.95 placing the Respondent No. 3 above the Petitioner. The Petitioner submitted his objection Annexure-4 dated 12.7.95. Thereafter, the Respondent

No. 2 published the final seniority list vide Memo Annexure-5 dated 9.5.97 wherein it was stated:

The claim of Shri Saha (Petitioner) to his seniority over Smti. Roy (Respondent No. 3) cannot be considered in absence of selection priority.

7. Actually, the Respondent No. 2 should have considered the Petitioner's claim, and only after such consideration necessary orders, either allowing or rejecting the claim, should have been passed. Be that as it may, the Respondent No. 2 issued order Annexure-6 dated 12.5.97 promoting the Respondent No. 3 to the post of U.D. Clerk with retrospective effect from 1.1.93. The Petitioner submitted his objection Annexure-7 dated 15.5.97.

8. Unable to get any relief from the Respondent Nos. 1 and 2, the Petitioner has moved this Court by filing this application under Article 226 of the Constitution seeking appropriate writ to quash and set aside the seniority list Annexure-5 placing Respondent No. 3 above the Petitioner and the order Annexure-6 promoting the Respondent No. 3 to the post of U.D. Clerk as well as the earlier Memo Annexure-8 dated 1.7.96 preponing the date of joining of the Respondent No. 3 to 7.2.83 from 9.2.83. The Petitioner further seeks a direction to the Respondent Nos. 1 and 2 to place him above Respondent No. 3 in the final seniority list in the cadre of Typist and L.D. Clerk (Typist) and to promote him to the post of U.D. Clerk.

9. Having given my anxious consideration to the rival contentions of the learned Counsel for the parties, I am unable to persuade myself to accept the stand taken by the Respondents in the affidavit-in-opposition that production of a medical certificate of fitness was not necessary in case of the Respondent No. 3 since she was already in service under Respondent No. 1. In this regard, it has to be borne in mind that Respondent No. 3 was not in regular service under the Respondent No. 1; she was only engaged as a daily rated worker on contingent basis, and for such engagement obviously she was not required to produce any medical certificate of fitness. However, on offering her the post of Typist by Annexure-A, the production of such certificate of fitness was made a precondition to her appointment, and that is why in her appointment letter Annexure-B it was clearly stated that she was appointed with effect from 9.2.83 when she obtained a medical certificate of fitness and not from 7.2.83 when she submitted the joining report without producing such a certificate. Curiously enough, more than 12 years later, the Respondent No. 2 by a Memo Annexure-8 dated 1.7.96 preponed her date of joining to 7.2.83 from 9.2.83 on the wholly unconvincing and untenable ground that in similar cases joining reports were accepted without production of medical certificates of fitness, as if mistakes can be made precedents, and that since she was already engaged as a daily rated worker and had been performing as such by virtue of her medical fitness, the question of further fitness certificate as envisaged in the appointment offer Annexure-A had little utility. Such an approach was in utter disregard to and in flagrant violation of the terms and conditions of the appointment offer Annexure-A which had

made production of medical certificate of fitness a pre-condition to her appointment as a typist. In view of what is stated above, the Memo Annexure-8 dated 1.7.96 preponing the date of joining of the Respondent No. 3 to 7.2.83 from 9.2.83 cannot be sustained and must be set aside.

10. What is worse, even before the order of preponment as aforesaid was issued on 1.7.96, the Respondent No. 2 circulated the draft seniority list Annexure-3 dated 30.6.95 placing the Respondent No. 3 above the Petitioner when as per the then existing official records both the Petitioner and Respondent No. 3 joined on the same date 9.2.83. This was done inspite of the undisputed fact that in the type test (no other test was taken) the Petitioner secured 40.9 words per minute and the Respondent No. 3 only 26.2 words per minute which is far below the minimum required speed of 40 words per minute as per circular Annexure D-I inviting applications for the posts of typists in connection with which the type test was taken. The Petitioner and the Respondent No. 3 (unlike Samir Chakraborty and Naresh Ghosh) having been selected on the basis of the common interview/type test taken in connection with the same circular Annexure D-I, the type test of the Respondent No. 3 taken before appointment offer to her cannot be said to be infructuous, as contended the Respondents, on any ground whatsoever. There is also no force in the contention of Respondent No. 3 in para 12 of her affidavit-in-opposition that the Petitioner might have stood first in the interview as direct/fresh candidate, but she stood first in assessment of her performance in regularisation of her service. She and the Petitioner having been selected for appointment on the basis of a common interview/type test held in connection with the same circular Annexure-DI there was no scope for separate evaluation, and there was no question of regularising a daily rated worker giving him or her seniority over a candidate, who was not a daily rated worker even though both were held to have joined on the same date, and the later achieved better results in the type test. Nothing has been shown to me to prove the contrary. Therefore, the final seniority list Annexure-5 dated 9.5.97 so far as it places the Respondent No. 3 above the Petitioner is liable to be quashed and set aside.

11. In para 9 of the affidavit-in-opposition filed on behalf of the Respondent Nos. 1 and 2 it has been categorically stated that "as per seniority the Respondent No. 3 was promoted to the post of U.D. Clerk." Since I have already held that the Respondent No. 3 was not senior to the Petitioner in the cadre of Typist and L.D. Clerk (Typist), the order Annexure-6 promoting the Respondent No. 3 to the post of U.D. Clerk on the premises that she was senior to the Petitioner must be quashed and set aside.

12. In the result, the Memo Annexure-8 dated 1.7.96 preponing the date of joining of the Respondent No. 3 to 7.2.83 from 9.2.83 quashed and set aside. The final seniority list Annexure-5 dated 9.5.97 so far as it places the Respondent No. 3 above the Petitioner is also quashed and set aside with a direction to the Respondent Nos. 1 and 2 to place the Respondent No. 3 below the Petitioner in the final seniority list in the cadre of Typist and L.D. Clerk

(Typist). Further, the order Annexure-6 dated 12.5.97 promoting the Respondent No. 3 to the post of U.D. Clerk is quashed and set aside with a direction to the Respondent Nos. 1 and 2 to consider the case of the Petitioner for promotion to the said post of U.D. Clerk, if he comes within the zone of consideration, having regard to the principle of seniority cum merit subject to the relevant rules, if any. In the facts and circumstances of the case, the Respondent No. 3 shall not be called upon to refund any amount she had drawn in excess of what she would have drawn had her date of joining not been preponed and had she not been promoted to the post of U.D. Clerk.

13. The writ petition is disposed of as indicated above. There shall be no order as to costs.