

(2014) 08 TP CK 0026
In the Tripura High Court
Case No : W.P. (C) No. 228 of 2009

Jahar Debbarma VsThe State of Tripura

Date of Decision : 19-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2014) 08 TP CK 0026

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : C.S. Sinha, Advocate for the Appellant; B.C. Das, Advocate General, S. Chakraborty, Add. G.A. and J. Majumder, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—By means of this writ petition, fundamentally the constitutionality of the Tripura Power Engineering Service (4th Amendment) Rules, 2002 and the Tripura Power Engineering Service (5th Amendment) Rules, 2007, so far it is related to entitlement of the scale of pay of Rs. 7,450-13,000 after eight years of service in Grade-V(B) of the Tripura Power Engineering Service is concerned, has been challenged. The petitioners No. 1-3, 5-9, 11 and 12 have been allowed their movement to the next grade, being Grade-V(A) of the Tripura Power Engineering Service borne in the scale of pay of Rs. 7,450-13,000 on completion of eight years of continuous and satisfactory service in the Grade-V(B), the entry grade for the said service. On the day of filing of the writ petition, the petitioners No. 4, 10 and 13 were however, not moved to the said grade and the scale of pay.

2. The grievance of the petitioners emanates from the repeal of the provisions which provided that on completion of four years continuous and satisfactory service as the Junior Engineer, Grade-II, the benefit of movement to the higher grade, Junior Engineer Grade-I with higher scale would be automatically available to those engineers. It is to be noted that the Diploma-holder engineers used to be recruited initially as the Junior Engineer Grade-II (now Grade-V(B) of the Tripura Power Engineering Service) and the Degree-holder engineers used to be

recruited initially as the Junior Engineer Grade-I (now Grade-V(A) of the Tripura Power Engineering Service). The petitioners have referred the employment advertisement No. 7/99, dated 28.12.1999, issued by the Tripura Public Service Commission for appointment of the Junior Engineers (Grade-V of the Tripura Power Engineering Service). In clause (4) of the said advertisement dated 28.12.1999, it has been provided that a Diploma holder Engineer will be initially recruited as Junior Engineer, Grade-II and after completion of 4 years Service, he/she will be designated as Junior Engineer Grade-I.

3. There is no dispute that the petitioners were regularly recruited in the Grade-V(B) of the Tripura Power Engineering Service and the petitioners No. 1-3, 5-9, 11 and 12, after completion of their eight years of service, have been allowed to move to the next grade i.e. Grade-V(A) of the Tripura Power Engineering Service. Since the remaining petitioners, being petitioners No. 4, 10 and 13 did not complete that tenure in the entry grade, there had been no occasion for their movement to the next grade. In place of sub-clause (v) of Clause "F" of Rule 6, in the part IV of the Tripura Power Engineering Service Rules, 1987, the following sub-clause had been substituted by the Tripura Power Engineering Service (4th Amendment) Rules, 2002:

"A Diploma holder in Engineering of the concerned branch will be initially recruited as Junior Engineer, Grade-II. After completion of 8 years of service, he/she shall be designated as Junior Engineer, Grade-I."

The qualifying service required for movement/promotion to the next grade of Junior Engineer Grade-I was thus increased to eight years from four years. Subsequently, by the Tripura Power Engineering Service (5th Amendment) Rules, 2007, substantial changes have been made in the provisions of the Tripura Power Engineering Service Rules, 1987. By the said amendment rules, rule 3 and 4 of the principal rules were substituted by converting the Junior Engineer Grade-I and the Junior Engineer Grade-II of the Tripura Power Engineering Service respectively to Grade-V(A) and Grade-V(B) of the Tripura Power Engineering Service.

4. Since the petitioners have confined their challenge only to the provisions related to their movement to the next higher pay scale equivalent to the scale of pay of the Grade-V(A) by way of promotion i.e. Rs. 7,450-13,000, for purpose of reference, the relevant parts of Rule 30 of the Tripura Power Engineering Service (5th Amendment) Rules, 2007 are extracted hereunder:

"

(vi) Grade-V(A):-

(a) For Degree-holder direct recruits at the entry stage- Rs. 7,450-13,000

(b) For Diploma-holders promotees- Rs. 7,450-13,000

(c) For Degree-holders after 8 years of service (under the Career Advancement

Scheme)- Rs. 10,000-15,100

(vi) Grade-V(B):-

(a) For the direct recruits at the entry stage- Rs. 5,000-10,300

(b) After 8 years of service (under the Career Advancement Scheme)- Rs. 7,450-13,000

5. In no uncertain terms it has been provided that a person borne in Grade-V(B), having the scale of pay of Rs. 5,000-10,300, shall be entitled to movement to the higher pay scale of Rs. 7,450-13,000 under the Career Advancement Scheme after eight years of service, meaning thereby, if any person borne in the Grade-V(B) of the Tripura Power Engineering Service is not promoted to a post of Grade-V(A) borne in the scale of pay of Rs. 7,450-13,000 after 8 years of continuous and satisfactory service in the Grade-V(B). In this regard it has to be noted that certain change has also been made in the tenure of qualifying service to earn eligibility for consideration of promotion to Grade-V(A) posts. For purpose of reference, Rule 15(6) of the Tripura Power Engineering Service Rules, 1987 is reproduced hereunder:

"Grade-V(A) posts shall be filled in the manner as specified in sub-rule (2) of rule-5 by officers who are Diploma holder engineers holding Grade-V(B) posts and have rendered not less than 4 years" regular service in the Grade."

6. From a wholesome reading of the amendment provisions and on surveying their impact, it would be apparent that by the Tripura Power Engineering Service (5th Amendment) Rules, 2007, the provision as incorporated by the Tripura Power Engineering Service (4th Amendment) Rules, 2002 has been repealed resurrecting the status anterior to the Tripura Power Engineering Service (4th Amendment) Rules, 2002, which provided as under:

"A Diploma holder in Engineering of the concerned branch will be initially recruited as Jr. Engineer, Gr. II, after completing 4 years of service, he/she shall be designated as Jr. Engineer, Gr. I."

However, it is noticeable that automatic designation has been done away with by the Tripura Power Engineering Service (5th Amendment) Rules, 2007. Now, after four years, an officer borne in the Grade-V(B) of the Tripura Power Engineering Service shall be eligible for consideration of promotion, subject to the vacancies. But, if he/she is not promoted and stagnated in the Grade-V(B) of the Tripura Engineering Service after eight years of continuous and satisfactory service in terms of the provisions of the Career Advancement Scheme and as provided under Rule 10 of the Tripura State Civil Service (Revised Pay) Rules, 1999, the said officer shall be moved to the higher pay scale of the promotion post, but obviously without designation.

7. The petitioners have submitted that such arrangement unleashed by way of the Tripura Power Engineering Service (4th Amendment) Rules, 2002 and the

Tripura Power Engineering Service (5th Amendment) Rules, 2007 is entirely arbitrary and thus offensive to the provisions of Article 14 of the Constitution of India. According to the petitioners, by means of the Tripura Power Engineering Service (4th Amendment) Rules, 2002 and the Tripura Power Engineering Service (5th Amendment) Rules, 2007, the petitioners have been unreasonably deprived from the benefit what was promised at the entry. Hence, they urge this court to strike down those provisions and to direct the respondents to extend the benefit of their movement to the higher grade/higher pay scale on completion of four years of service in the Grade-V(B) of the Tripura Power Engineering Service. In a nutshell, the petitioners want resurrection of rule anterior to the Tripura Power Engineering Service (4th Amendment) Rules, 2002 and the Tripura Power Engineering Service (5th Amendment) Rules, 2007, providing that on completion of four years of service, a Junior Engineer borne in the Grade-II, now Grade-V(B) of the Tripura Power Engineering Service, shall be designated as the Junior Engineer Grade-I, now Grade-V(A) of the Tripura Power Engineering Service.

8. The challenge is structured on the questions that whether the State has power to change/amend or alter the service rules in exercise of its power provided by the proviso to Article 309 of the Constitution of India and if so, to what extent? or whether any vested right created by the un-amended rules has been taken away by the Tripura Power Engineering Service (4th Amendment) Rules, 2002 and the Tripura Power Engineering Service (5th Amendment) Rules, 2007?

9. Mr. C.S. Sinha, learned counsel appearing for the petitioners has submitted that even though the petitioners have been discharging identical duties at par with the officers borne in the Grade-V(A), their movement to the higher pay scale of the next grade has been deferred by eight years, causing serious detriment to their interest. That has been done arbitrarily by the respondents on slicing down the future prospects. Mr. Sinha has further submitted that the petitioners got the legitimate expectation that they would be so moved or designated to the next grade after completion of four years of service. The respondent cannot take away the benefit that existed at the entry of the service.

10. Mr. B.C. Das, learned Advocate General appearing for the state has submitted that the present challenge is no more *res integra* in view of the common judgment and order dated 27.01.2006, passed in W.A. No. 61/2000 (All Tripura Diploma Engineers" Association & Ors. Vs. The State of Tripura & Ors.) and W.A. No. 74/2000 (The Power Engineers" Association, Tripura & Ors. Vs. The State of Tripura & Ors.). By the said judgment, according to Mr. Das, learned Advocate General, similar controversy has been adjudicated by the Gauhati High Court and on a threadbare analysis it has been held that the changes made in the service rules by way of amendment have been so done in terms of the general principles laid down in the Tripura State Civil Services (Revised Pay) Rules, 1988 and the Tripura State Civil Services (Revised Pay) Rules, 1999. In those cases, the principal provisions of the Tripura State Civil Services (Revised

Pay) Rules, 1999, upon which the service rules were amended or altered or changed were also challenged, but the High Court did not accept that challenge, holding that the challenge to the constitutionality of those provisions cannot be sustained.

11. Having regard to the submissions made by the counsel for the parties, we must note that the High Court cannot sit as an Appellate Authority over the decisions and orders of the quasi-judicial authorities. It follows equally that it cannot do so in the case of the administrative authorities as well. In a matter of administrative action, it is well-known, if more than one choice is available to the administrative authorities, they have right to choose between more than one possible courses of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred. As held by Lord Diplock in *Secretary of State for Education and Science vs. Metropolitan Borough of Tameside* in the, 1976 3 All England Law Reports, 665 at 696 the court cannot substitute the judgment of the administrative authorities in such cases. Only when the action of the administrative authorities is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene. The courts would be further slow if the challenge is against the subordinate legislation. In those matters the courts would fundamentally examine whether the executive has got the competence to frame the rules in the matter or in the manner they have so framed and also the aspects whether the rules are constitutionally valid or not. The apex court in *T.R. Kapur and Others Vs. State of Haryana and Others*, has carved out another niche that by way of the subsequent amendment in the rules, principal or by the fresh rules, the vested right of the employee cannot be taken away.

12. What we have noticed is that certain changes in the service rules of the petitioner have been made by the respondents, but those have not taken away any vested right of the petitioners. No doubt, those rules have elongated their waiting in their entry grade. The State has got that power to remove or remould the rules according to the felt necessities of the time. Even it has not been argued before us that the State does not have the power to legislate the rules, the provisions of which have been challenged. Now, the question squarely falls for consideration is that whether the petitioners had got any vested right or not.

13. Had the petitioners completed four years of service before the impugned amendments and they were not given the benefit of their designation and higher pay scale, the State could have been asked not to take away that right from the petitioner. But, this is not the case before us. None of the petitioners had completed 4(four) years of service before introduction of the Tripura Power Engineering Service (4th Amendment) Rules, 2002 and the Tripura Power Engineering Service (5th Amendment) Rules, 2007. No vested right had accrued in favour of the petitioners. The contention of Mr. Sinha, learned counsel appearing for the petitioners that the petitioners have been discharging the similar duties and the responsibilities cannot be surveyed by us and we do not

feel persuaded to survey the same as no materials have been placed before us for such exercise. Even such exercise may be wholly irrelevant as it is well-settled that on the basis of the qualifications two classes can reasonably be formed and the basis of qualification provides the intelligible differentia for eschewing inhibition on the touchstone of Article 14 of the Constitution. Hence, we do not find any merit in this writ petition.

14. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.