(2016) 01 TP CK 0030

In the Tripura High Court

Case No : W.P.(C) No. 411 of 2012

Jayanti Dam and Others APPELLANT

Vs

Tripura Scheduled Tribes Cooperative Development Corporation Ltd. and Others RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Citation : (2016) 01 TP CK 0030

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : G.S. Bhattacharji, Advocate, for the Appellant; S. Deb, Senior Advocate, S. Chakraborty, P.K. Pal and S. Datta, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—1. By means of this writ petition, the petitioners have challenged the Memorandum No. F.10(65)-Corpn/ST/07-08/865-71 dated 22.05.2012 (Annexure-P/7 to the writ petition), whereby the Managing Director of Tripura Scheduled Tribes Cooperative Development Corporation Ltd. has published the final seniority list of the UDC/UDC(Accounts) under the said Corporation showing the seniority positions as on 25.04.2012. The petitioners have also challenged the Memorandum No. F.10(65)-Corpn/ST/11-12/3452-57 dated 25.07.2012 (Annexure-P/9 to the writ petition), whereby the objection raised by the petitioners against the said final seniority list was turned down and their seniority position as determined by the memorandum dated 22.05.2012 was declared final.

2. The facts are mostly admitted.

Both the petitioners, namely Smt. Jayanti Dam (the petitioner No. 1) and Smt. Geeta Rangkhawl (the petitioner No. 2), at the time of filing of the writ petition, were working as the Upper Division Clerk (UDC) and the respondents, namely Sri Amulya Ch. Sarkar (the respondent No. 7), Sri Sanjoy Kr. Paul (the respondent

No. 8), Sri Debojit Chakraborty (the respondent No. 9) and Sri Santosh Kr. Sharma (the respondent No. 10) were working as the UDC (Accounts). The impugned memorandum dated 22.05.2012 is the final seniority list in respect of the petitioners and the respondents No. 7, 8, 9 and 10. It is not in dispute that a combined draft seniority list of the UDC/UDC(Accounts) of the ST/SC Cooperative Development Corporations was earlier published by the Memorandum No. F.10(65)-Corpn/ST/11-12/377-84 dated 12.04.2012 (Annexure-P/6 to the writ petition). For purpose of reference, the tentative determination of the seniority in respect of the petitioner and the respondents No. 7, 8, 9 and 10 in the said draft seniority list is reproduced hereinbelow :

3. From the above, it appears particularly from the column for ''remarks'' that the petitioner No. 1 was appointed as the UDC on 27.12.1993 on promotion whereas the petitioner No. 2 was directly recruited in the grade of UDC on 25.01.1992. It further appears that all the respondents were appointed initially as the Accounts Clerk on diverse dates. The respondent No. 7, Sri Amulya Ch. Sarkar was appointed as the Accounts Clerk on 25.05.1990, the respondent No. 8, Sri Sanjay Kr. Paul on 02.09.1991, the respondent No. 9, Sri Debajit Chakraborty on 02.09.1991 and the respondent No. 10, Sri Santosh Kr. Sarma on 27.02.1992.

4. The petitioner No. 1 was initially appointed as the Bengali Typist by the order No. F.1(2)-Corpn/ST(L)/82-83(Vol-I)/739-743 dated 24.02.1986 (Annexure-P/1 to the writ petition). It is also not in dispute that the post of Accounts Clerk was re-designated w.e.f. 01.01.1994. In the impugned final seniority list (Annexure-P/7 to the writ petition), the seniority positions as published by the memorandum dated 12.04.2012 were completely altered in the following manner :

5. It appears that the controversy has sprung from the column 6, which denotes the dates of entry into the present service/grade. In the said column it has been shown that the respondent No. 7 was appointed in the grade of UDC(Accounts) on 25.05.1990, the respondent No. 8 on 02.09.1991, the respondent No. 9 on 02.09.1991 and the respondent No. 10 on 27.02.1992, whereas the petitioner No. 1 has been shown to have entered in the service/grade on 27.12.1993 and the petitioner No. 2 on 25.01.1992 and thus the seniority positions were substantially altered. It further appears that the respondents No. 7, 8 and 9 became senior to the petitioners No. 1, 2 and the respondent No. 10 became junior to the petitioner No. 2 but senior to the petitioner No. 1. Thus, the petitioner No. 1 became the juniormost employee in that grade as she was shown to be junior to the respondent No. 10 even. As there is contemplation of further promotion to the post of Accountant from that grade of UDC/ UDC(Accounts), the petitioners, apprehending serious detriment of their interest, have filed this writ petition also urging for prohibition, restraining the respondent Corporation from making any appointment on promotion to the post of Accountant based on the impugned final seniority list vide memorandum dated

22.05.2012 (Annexure-P/7 to the writ petition).

6. Mr. G.S. Bhattacharji, learned counsel appearing for the petitioners has briefly submitted on the creation of the posts, the appointments of the petitioners as well as of the respondents No. 7, 8, 9 and 10. Posts of Bengali typist, borne in the grade of LDC-cum-typist and the Accounts Clerk were created in the scale of pay of Rs. 430-850. He has shown from the office notes that the creation of posts with specific pay scale was approved by the Finance Department. For further dilation, Mr. Bhattacharji, learned counsel has made reference to the minutes of 12th meeting of the Board of Directors of the Tripura Scheduled Tribes Cooperative Development Corporation Ltd. held on 15.06.1987. In the said meeting, the Board of Directors appraised the financial situations, pecuniary liabilities, creation of posts and the pay scales. It is apparent from the resolution adopted under agenda item No. 5 that the L.D. Clerk was borne in the scale of pay of Rs. 430-850 and the Accounts Clerk was also borne in the scale of pay of Rs. 430-850. As such, the Accounts Clerks were treated at par with the LDCs having borne in the same pay scale. Mr. Bhattacharji, learned counsel has also made reference to the decision taken under agenda item No. 6 as regards the pay and allowances of several categories of employees. It has been decided in the meeting of the Board of Directors held on 15.06.1987 that :

"The Board of Directors accepted the proposal that the employees under the Corporation will be entitled to pay & allowances as admissible from time to time to similar category of employees under the Govt. of Tripura."

7. For purpose of making reference to the scale of similarly situated employees in the Government Departments, Mr. Bhattacharji, learned counsel has referred to the provisions of Tripura Government Services (Revised Pay) Rules, 1982, where in the Schedule-III for categories of posts common to all or many Departments/ Offices, the scale of LDCs has been shown as Rs. 430-850 (revised scale of pay of Rs. 240-440) at Sl. No. 35. In the said Sl. No. 35, even the Accounts Clerk has been accommodated with the same scale. In the Sl. No. 32, the Upper Division Clerk (UDC) and Sr. Accounts Clerk/Accounts Clerk etc. have been accommodated with the higher pay scale of Rs. 550-1245 (revised scale of Rs. 330-580). Reference has been also made to the provisions of Tripura State Civil Services (Revised Pay) Rules, 1988.

8. There is no dispute that as per the Tripura State Civil Services (Revised Pay) Rules, 1988, the scale of pay of Rs. 430-850 was provided with the modified scale of pay of Rs. 470-1025 w.e.f. 01.01.1982 and the revised scale of pay of Rs. 970-2400 w.e.f. 01.01.1986. The petitioner No. 1 was given the modified and the revised scale in terms of the said resolution of the Board of Directors. The petitioner No. 2 was appointed in the scale of pay of Rs. 1250-2890 as the UDC directly. The petitioners have further projected that at no point of time there was any post of Accounts Clerk in the Corporation in the scale of pay of Rs. 1250-2890 and as such the respondents No. 7, 8, 9 and 10 cannot even be deemed to be borne in the scale of pay of Rs. 1250-2890. In the meeting of the

Board of Directors held on 17.07.1993, under the agenda No. 12 for consideration of the proposal in respect of the pay scale of the Accounts Clerk of Corporation was considered and the following was decided :

"The Board accepted the proposal for giving pay scale to the Accounts Clerk which was admissible to the incumbent of the Govt. Deptts. to its Account Clerks in the light of the decision taken by the Directors in its meeting held on 15th June, 1987."

9. The petitioners have produced the relevant extract of the Service Book of the respondent No. 7, Sri Amulya Ch. Sarkar to show that the re-designation of the posts of Accounts Clerk in the upgraded pay scale was given effect to by the order No. F.1(12)-Corpn/ST/1993-94/6381-85 dated 28.12.1993 and thus from 01.01.1994 the Accounts Clerks were re-designated as the UDC (Accounts) with the pay scale of Rs. 1250-2890. According to the petitioners, the said re-designation and upgradation was not retrospective as it clearly transpires from the history and verification of service as maintained in the service book. It would further appear that the respondents No. 7, 8, 9 and 10 were given the said re-designation with the upgraded scale w.e.f. 01.01.1994 and the same has also been noted in the seniority list, which is under challenge in this writ petition.

10. Mr. Bhattacharji, learned counsel has further submitted that on a perverse understanding of the decision of the Board of Directors, the said re-designation was considered to have come into effect from 01.01.1986 and the same has been reflected in the note No. 7 (page 104 of the writ petition), based on which the objection raised by the petitioners as to the final seniority list has been discarded. Mr. Bhattacharji, learned counsel, to dispel all sorts of confusion, has referred to the order dated 28.12.1993 by which the said re-designation and upgraded scale was provided to the respondents No. 7, 8, 9 and 10. For purpose of reference, the entire text of the said order dated 28.12.1993 (Annexure-P/17 to the writ petition) is extracted hereunder :

"The Management of the Tripura Scheduled Tribes Cooperative Development Corporation and Tripura Scheduled Castes Cooperative Development Corporation Ltd., have been pleased to allow the pay scale of Rs. 1250-45-1610-50-2010-55-2890 to the following Accounts Clerks of the Corporations w.e.f. 1.1.94 and re-designate them as U.D. Clerk (Accounts) from the said date.

This has the approval of the Board of Directors of Tripura ST Coop. Dev. Corporation vide agenda item No. 12 of the meeting held on 17.7.93 and that of SC Coop. Dev. Corporation vide agenda item No. 12 of the 19th meeting held on 20.8.93.

NAME OF THE ACCOUNTS CLERK

1. Shri Amulya Ch. Sarkar.

2. Shri Debajit Chakraborty.

3. Shri Santosh Kr. Sarma.

4. Shri Sanjoy Kr. Pal.

Their payment be fixed as per medical rules."

11. Mr. Bhattacharji, learned counsel appearing for the petitioners has categorically stated that there is no ambiguity that the respondents No. 7, 8, 9 and 10 were re-designated with the pay scale of Rs. 1250-2890 w.e.f. 01.01.1994, not before that, in terms of the resolution of the Board of Directors taken in the meeting held on 17.07.1993.

12. Mr. P.K. Pal, learned counsel appearing for the respondents No. 1, 2 and 3 has submitted that the re-designation has taken place in terms of the provisions of the ROP Rules, 1988 and as such that would be effective from 01.01.1986 and the respondents No. 7, 8, 9 and 10 had been brought in the scale of pay of Rs. 1250-2890 which had been introduced w.e.f. 01.01.1986. He has further submitted that in the meeting of the Board of Directors held on 15.06.1987, under the agenda item No. 6 it was unambiguously decided that the employees under the Corporation would be entitled to the pay and allowances as admissible from time to time to similar categories of employees under the Government of Tripura. Mr. Pal, learned counsel has referred to the pay scales for the Food & Civil Supplies Department, where it appears that the Accounts Clerk (Sl. No. 16, page 69 of the ROP Rules, 1988), borne in the pre-revised scale of Rs. 550-1245 and in the modified scale of pay of Rs. 560-1300, was re-designated as U.D. Clerk (Accounts) with the revised scale of pay of Rs. 1250-2890. On that basis Mr. Pal, learned counsel appearing for the respondents No. 1 to 3, has submitted that there is nothing wrong in giving the said revised scale of pay of Rs. 1250-2890 from the day when the respondents No. 7, 8, 9 and 10 were appointed as the Accounts Clerk, re-designated as the U.D.C. (Accounts). As such, the seniority positions as shown in the impugned final seniority list, cannot be faulted with.

13. Mr. S. Deb, learned senior counsel appearing for the respondent No. 7, has raised the similar analogy to defend the impugned final seniority list. He has added that the Board of Directors of the Corporation adopted the resolution for upgrading the pay scales of the Accounts Clerk in their meeting held on 17.07.1993 (vide Annexure-P/13 to the writ petition) in terms of their earlier resolution adopted on 15.06.1987 (vide Annexure-P/12 to the writ petition) and as such there is nothing wrong in giving the benefit of the upgraded scale from the day of appointment of the respondents No. 7, 8, 9 and 10 in the post of the Accounts Clerk. He has further submitted that the resolution that was adopted by the Board of Directors on 15.06.1987 had clearly stipulated that the employees of the Corporation would get the similar pay scale of the Government employees and as such the Accounts Clerk ought to have been given the benefit of scale of pay of Rs. 550-1245 (pre-revised) and the modified scale of pay of Rs. 560-1300 and the revised scale of pay of Rs. 1250-2890. As such, the respondent No. 7

and other private respondents be deemed to have been borne in the scale of pay of Rs. 1250-2890 from the date of their appointment as the Accounts Clerk.

14. Having regard to the submissions made by the learned counsel appearing for the petitioners as well as for the respondents, the questions which are pertinent to be addressed to, may be formulated in the following terms :

"(i) Whether the respondents No. 7, 8, 9 and 10 were brought in the scale of pay of Rs. 1250-2890 from the day of their appointment as the Account Clerks? and

(ii) What would be the impact of the order dated 28.12.1993 (Annexure-P/17 to the writ petition) issued by the Managing Director, ST Development Corporation?"

15. There is no amount of doubt that when the impugned final seniority list was published on 22.05.2012 the scale of pay was revised, further in terms of the revision of pay given effect to having regards to the Tripura State Civil Services (Revised Pay) Rules, 1999 and the Tripura State Civil Services (Revised Pay) Rules, 2009 followed by the restructuring. But the pay scale as revised subsequently have not been referred to, for the simple reason that the dispute for determining the seniority position is confined to the date of entry in the scale of pay of Rs. 1250-2890, which is the pay scale for both the posts of the UDC and the UDC (Accounts). The combined final seniority list is for the posts of the UDC and the UDC(Accounts), as re-designated from the post of Accounts Clerk. There is no controversy regarding the date of entry of the petitioners and the respondents No. 7, 8, 9 and 10 at their respective entry grades shown in the column 5 of the impugned final seniority list. But, there is serious controversy as to the column 6 of the impugned final seniority list, since the private respondents'' entry in the grade for which the final seniority list has been published is shown from the day when they entered in the services of the Corporation as the Accounts Clerks. However, the entry date in the grade of UDC in respect of the petitioners has been correctly shown. Therefore, the moot question that flows from those entries is that whether the respondents No. 1, 2 and 3 by treating the entry date of the respondents No. 7, 8 and 9 and 10 in the post of Accounts Clerk as the entry date in the grade of UDC (Accounts) have acted legally or not. If the entry date for the post of Accounts Clerk is treated as the entry date for the post of UDC (Accounts), the re-designation and the upgraded pay scale of Rs. 1250-2890 should be treated as commenced from the entry date of the respondents No. 7, 8, 9 and 10 in the post of Accounts Clerk. The petitioners have produced the records to show that the post of Accounts Clerk was created in the pay scale of Rs. 430-850, but the respondents did not submit any record whatsoever either with their counter-affidavit or otherwise to show that at any point of time the said scale of pay was retrospectively modified to the scale of pay of Rs. 550-1245 or that scale was modified to Rs. 560-1300. On the contrary, when the matter for consideration of implementation of the Tripura State Civil Services (Revised Pay) Rules, 1988 had been considered by the Board of Directors, in the minutes, the scale of pay of the Accounts Clerk was shown as Rs. 430-850. The resolution adopted by the Board of Directors under

item No. 12 in their meeting dated 17.07.1993 has to be understood having referred to the said scale of pay of Rs. 430-850, not having reference to the scale of pay of Rs. 550-1245, which is related to the re-designated post of UDC(Accounts), with modified scale of pay of Rs. 560-1300 and the revised scale of pay of Rs. 1250-2890. As such, the revision has to be from the scale of pay of Rs. 430-850 as in the same scale the post of Accounts Clerk is also available in the State Government Department under the serial No. 35, as stated, as referred by Mr. Bhattacharji, learned counsel appearing for the petitioners.

16. As no decision was taken by the Board of Directors to extend the benefit of the re-designation with upgraded scale, as claimed by the respondent and the respondents No. 7, 8, 9 and 10, for the post of the Accounts Clerk, by way of interpretation that cannot be done or extended as the financial benefits has been admittedly released only from 01.01.1994 in terms of the order dated 28.12.1993 (Annexure-P/17 to the writ petition), which has unambiguously stated that the respondents No. 7, 8, 9 and 10, who were Accounts Clerks at the relevant point of time, would be re-designated as the UDC (Accounts) from 01.01.1994 in terms of the resolution adopted in the meeting held on 17.07.1993 by the Board of Directors. At no point of time, at least that has not been produced before this court, the respondents No. 7, 8, 9 and 10 had contested the order dated 28.12.1993 nor had they raised protest against fixation of their pay in the scale of pay of Rs. 1250-2890 w.e.f. 01.01.1994. Even from scrutiny of the relevant pages of the service book which are annexed by the petitioners in the writ petition, it would appear without a streak of doubt that they were given the benefit of upgraded scale for their re-designation w.e.f. 01.01.1994. As such, this court does not have any hesitation to hold that the respondents No. 7, 8, 9 and 10 had been the UDC (Accounts) w.e.f. 01.01.1994, borne in the scale of pay of Rs. 1250-2890 and that re-designation was not made having any reference to the Tripura State Civil Services (Revised Pay) Rules, 1988. The re-designation borne in the said upgraded scale has been done and given effect to by dint of the order dated 28.12.1993 and the said order does not speak of giving the re-designation retrospectively or to treat the petitioner to be borne in the scale of pay of Rs. 1250-2890 from their date of appointment in the post of Accounts Clerk. As such, the petitioners cannot get any benefit beyond what has been provided by the order dated 28.12.1993 (Annexure-P/17 to the writ petition).

17. Having held so, it is declared and directed that the respondents No. 7, 8, 9 and 10 shall be deemed to have been appointed as the UDC (Accounts) on and from 01.01.1994 in the scale of pay of Rs. 1250-2890 (pre-revised). Accordingly, the impugned final seniority list published by the Memorandum under No. F.10(65)-Corpn/ST/07-08/865-71 dated 22.05.2012 (Annexure-P/7 to the writ petition) as well as the impugned Memorandum under No. F.10(65)-Corpn/ST/11-12/3452-57 dated 25.07.2012 (Annexure-P/9 to the writ petition), are interfered with and set aside. The official respondents shall publish the final seniority list in terms of the draft seniority list published by the Memorandum No.

F.10(65)-Corpn/ST/11-12/377-84 dated 12.04.2012 (Annexure-P/6 to the writ petition) and such publication shall be made within 30(thirty) days from today. Further, the official respondents shall take all necessary steps to fill up the promotional post of Accountant on the basis of the said final seniority list.

18. Hence the writ petition stands allowed to the extent as indicated above. However, in the circumstances of the case, there shall be no order as to costs.