
(2015) 08 TP CK 0036
In the Tripura High Court
Case No : WA No. 08 of 2015

Jharna Sarkar

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 TP CK 0036

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

Bench : Division Bench

Advocate : Somik Deb, for the Appellant; T.D. Majumder, G.A., Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J—This writ appeal is directed against the judgment, dated 12.01.2015, passed by a learned single Judge of this Court in W.P.(C) No. 298 of 2007.

2. This case has a long history of litigation. The petitioner along with one Sri Gautam Debbarma applied for the post of "Compositor & Machineman" in the Jail Department. One post was reserved for Scheduled Tribe and one was reserved for Scheduled Caste. The appellant belongs to the Scheduled Caste. Sri Gautam Debbarma belongs to the Scheduled Tribe.

3. Though the interview was conducted the result of the interview was not published for a long time. The petitioner approached the Agartala Bench of the Gauhati High Court by filing Civil Rule No. 595 of 1995 praying that the result of the interview be declared but that writ petition was disposed of as being premature.

4. Thereafter, the result was not declared for a long time and in the mean time, the petitioner came to know that Sri Gautam Debbarma who had appeared in the same selection process had been appointed and posted as Machineman. She, therefore, prayed that she should also be given appointment on the basis of the

same selection. Finally, she filed Civil Rule No. 69 of 1997 claiming the aforesaid relief.

5. This petition was contested by the state of Tripura and the main defence of the state was that the selection process for the post of Machineman & Compositor were conducted separately. The state admitted that the selection board had conducted the interview on the same date and that some of the members of the interview board had not attended the meeting. According to the Government, the state had canceled the interview for administrative reasons with approval of the Government. In the mean time, one Sri. Sankar Das respondent No. 9 in Civil Rule 69 of 1997 was found eligible for the post, issued interview card but he was also not selected. The learned single Judge of this Court found that the stand of the Government was totally false. The Writ Court went on to hold that the action of the Government was mala fide and further that documents had been manufactured to thwart the claim of the petitioner. It would be relevant to quote para 15 of the side judgment in this regard:-

"15. Applying the above principles to the facts by this case, the plea of mala fides can be said to have been established by the following facts and surrounding circumstances:-

(1) The respondent No. 9 was issued the interview card only on or just before the day of the interview at the instance of the Minister of Jail, the respondent No. 10.

(2) The grounds for cancellation of the interview held on 24.11.1995 are found to be non-existent.

(3) The allegations made by the petitioner that the result of the select list was not published because of the non-selection of the respondent No. 9, the favourite of the Minister of Jail, has not been controverted or challenged by the said respondents even though notices were duly served upon them.

(4) Though paragraph 6 of the representation made by the petitioner to the Chief Secretary (annexure 12) clearly mentioned that the respondent No. 9 and the other S.C. candidate were not qualified, which remains uncontradicted, no attempt was made by the answering respondents to give ad hoc appointment to the petitioner, who happens to be the only qualified candidate, in terms of the decision dated 30.10.1995 of the Committee to review for SC/ST progress made under the Special Recruitment Drive, even if it was found that regular appointment could not be made to her."

6. After holding that the action of the respondents was mala fide and that the state was in fact guilty of manufacturing certain documents, the learned single Judge considered the question as to what relief should be granted to the petitioner. Para 16 of the judgment reads as follows:

"16. The last point for consideration in this writ petition is the nature of reliefs, which can be granted on the facts and circumstances of the case. The relief

claimed by the petitioner is, among others, publication of the select list prepared by the Selection Committee held on 24.11.1995. No select list recommending the petitioner for appointment to the post of Compositor is available from the record. On the other hand, a copy of the incomplete minutes of the Selection Committee dated 24.11.1995 has been held to be a false and fabricated document. Consequently, the question of directing the answering respondents to publish the said select list does not arise. However, in view of my finding that the petitioner was duly recommended by the Selection Committee and that the recommendation was not acted upon for non-existent, mala fide and irrelevant grounds, the reliefs claimed have to be necessarily moulded for the ends of justice. Therefore, I allow this petition with the following directions and orders:-

- (1) The letter No. II-582/IGP/83/6355/56 dated 18.12.96 is hereby quashed.
- (2) The minutes of the Selection Committee dated 24.11.1995 at Annexure R/B to the counter-affidavit is hereby declared as nonexistent.
- (3) The State respondents, particularly the respondent No. 2, are directed to appoint the petitioner to the post of Compositor against the post reserved for S.C. subject to police verification and of her fulfilling other formalities required by the rules in force within a period of two months from the date of receipt of this judgment.
- (4) The appointment shall be with effect from the date on which Gautam Debbarma was appointed to the post of Machineman.
- (5) The petitioner shall be given notional benefits of seniority and increment but without actual monetary benefit.

The parties are directed to bear their own costs."

7. We are here concerned mainly with sub para 5 of para 16 in which it is clearly mentioned that the petitioner shall be given notional benefit of seniority and increment but without actual monetary benefit. It is, therefore, clear that the intention of the learned single Judge was that the petitioner would be deemed to be in service for all intents and purposes but would not get any monetary benefits for the period prior to her actual appointment. This judgment has attained finality and therefore, is binding on all including this Court.

8. Pursuant to the said judgment, the petitioner was offered appointment on 10.3.2006 and the relevant portion of the order of appointment reads as follows:-

"Smti. Sarkar shall be given notional benefits of seniority and yearly increment including all other service benefits with effect from 15/3/1996 as per rules as admissible from time to time in the scale of pay of Rs. 3200-90-4280-100-5480-110-6030/- (Revised Pay) Rules, 1999 vide sub para-5 of para 16 of the aforesaid Judgment order dated 19-4-2005."

9. We are dealing here with a case where the action of the state was admittedly totally illegal. It was mala fide and biased and it appears that the action was

taken with a view to appoint somebody else against the same post for which the petitioner had already been selected. Even after holding so the learned single Judge was very benevolent towards the State and did not grant back wages to the petitioner. However, he clearly held that the entire past service should be counted for all intents and purposes including seniority and other service benefits. Even in the order of appointment it is clearly mentioned that the appellant would be entitled to seniority and yearly increment including all other service benefits.

10. A combined regarding of the judgment of the learned single Judge and the order of appointment, dated 10.3.2006, leaves no manner of doubt that both the Court and the State understood the order to mean that the appellant would be deemed to be in service w.e.f. 15.3.1996 but would get the benefit of pay and other monetary benefits only w.e.f. 10.3.2006. In the present writ petition which has been dismissed by the learned single Judge, the petitioner has claimed mainly two reliefs; (i) she has claimed that she should get the benefit of Career Advancement Scheme (CAS) by taking her notional service into the consideration and (ii) she has claimed that the benefit of Commuted Leave be granted to her for counting her total leave at the time of her retirement. These benefits have been rejected.

11. As far as the first benefit is concerned, the learned single Judge has relied upon the judgment of the Apex Court in Union of India and Others Versus Satya Prakash Vasisht, 1994 Supp (2) Supreme Court Cases 52. We are afraid that the learned single Judge misdirected himself in following this judgment. The Apex Court itself decided what relief should be granted to the employee in that case and it limited the reliefs. In this case we are dealing with a matter where the learned single Judge by his order granted certain reliefs and those reliefs have become final. In fact, pursuant to the orders of the learned single Judge the State has also granted the same reliefs i.e. the benefits of seniority, yearly increment including all other service benefits to the petitioner. There can be no manner of doubt that the Court can mould the reliefs in the peculiar facts and circumstances of the case. In the present case the learned single Judge could have even granted back wages or partly granted back wages but he did not choose to do. The Apex Court was not dealing with the interpretation of a judgment but itself decided what relief should be granted in the peculiar facts and circumstances of the case. Therefore, that judgment is not a precedent to decide the present case. We are clearly of the opinion that the present case has to be decided on strict interpretation of the judgment rendered in Civil Rule 69 of 1997 as well as the order of appointment dated 10.3.2006.

12. Sri T.D. Majumder, learned Government Advocate, has referred to para 10 of the Tripura State Civil Services (Revised Pay) Rules, 1999 which deals with Career Advanced Scheme. The first part reads as follows:-

"10. CAREER ADVANCEMENT SCHEME (MODIFIED) WITH EFFECT FROM 01-01-1999

The State Government employees will have scale advancement by way of promotion, failing which by time bound movement in a higher scale as per table in Annexure "A" after entry into service in the whole service life in the following manner:

(a) The employees entering by direct recruitment in scale No. 1 as per statement at Annexure-A or corresponding scale earlier will have 3 scale advancement at the end of 10, 7 and 7 years of continuous and satisfactory service in the scale 1, 2 & 3 to the scale 2, 3 and 4 respectively unless they get promoted to a post of higher scale before the period at each stage."

13. It is contended by Sri. Majumder that since the appellant has not actually worked there is no question of giving her the benefit of CAS because it can not now be decided that she has worked continuously and that her service was satisfactory. Sri Majumder is right that there is no gauge to decide whether the service of the petitioner was satisfactory. Obviously this can not be done because the petitioner was not in service. Whose fault was it that she was not in service? The answer lies in judgment of Civil Rule 97 of 1997 wherein it has been clearly held that the fault squarely lay at the door of the State. Can the person who is at fault be heard to argue that because he is at fault benefit should be denied to the person to against whom wrong has been committed? Such argument can not be accepted. The appellant could not work, not for her own fault but because of the fact that the State acted mala fide and in fact was guilty of manufacturing records to thwart the claim of the appellant. Therefore, the appellant will have to be deemed to be in continuous service w.e.f. 15.3.1996 and this service has to be presumed to be satisfactory service and she is entitled to the benefit of the same.

14. Coming to the claim for grant of benefit of commuted leave, we are clearly of the view that the petitioner can not be granted any monetary benefits for Earned Leave etc. However, "leave" though it is the privilege is also a benefit of service. For purposes of counting her total leave due and payable at the time of her retirement, the benefit of commuted leave will have to be given to her right from 15.3.1996, as if she had availed no leave during this period. She may not be entitled to any monetary benefits for this but at the time of her retirement while considering what is her entitlement to leave encashment she must be given benefit by taking her to be in service w.e.f. 15.3.1996.

15. In this view of the matter, we set aside the judgment of the learned single Judge and allow the writ appeal by holding that the appellant shall be deemed to be in service from 15.3.1996 and she shall be given benefit of CAS and leave in encashment as advised by us.

16. The State is directed to ensure that the benefit that her benefit under the CAS is calculated and paid to her latest by 31st December, 2015 failing which the State shall be liable to pay interest on the amount due and payable @ 12% per annum from today till payment of the same.

The appeal is allowed in the aforesaid terms with costs assessed at Rs. 5000/-.