
(2006) 01 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 40 of 1996

Keshab Debnath (Dr.)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Citation : (2006) 2 GLT 44

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : . B. Das and D. Chakraborty, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—Whether a senior Medical Officer is entitled to get his pay stepped up to the pay of his junior in the given facts and circumstances of the case is the only question this Court is called upon to decide in the present writ petition.

2. The factual position, which is almost undisputed, giving rise to the present controversy in a short compass is that the Petitioner Dr. Keshab Debnath was appointed as Medical Officer in Grade-V of the Tripura Health Service (for short "THS") on 17.11.1975 on ad hoc basis. Dr. Guru Prasad Debroy, the fifth Respondent herein, was appointed to the same Grade of THS on ad hoc basis on 8.7.1974. Dr. Jagannath Muhury, the sixth Respondent herein, was appointed to that Grade of THS on 18.11.1975 on ad hoc basis. All the three Medical Officers were appointed on regular basis on the recommendation of the Tripura Public Service Commission (for short "TPSC") on 7.5.1976 showing them at serial Nos. 2, 3 and 6 respectively in the notification dated 21.6.1976. Dr. (Mrs.) Ruplekha Chakraborty, the seventh Respondent herein, was directly appointed on regular basis on 31.1.1977. Thus the above three Respondents are admittedly juniors to the Petitioner. This has been reflected in the seniority list of Medical Officers in Grade-V of THS in which the Petitioner has been shown at serial No. 55, fifth, sixth and seventh Respondents at serial Nos. 56, 59 and 66 respectively. On

16.4.1982, thirteen Medical Officers including the above three Respondents were promoted to Grade-IV of the THS on ad hoc basis leaving the Petitioner in the lower Grade. It is his grievance that while promoting the above Respondents to Grade-IV, the Petitioner, though senior to all of them, was not considered for promotion to that Grade. The result was the junior Medical Officers started to get higher pay scale while the Petitioner remained in the lower scale of pay. On 19.4.1982, the Petitioner submitted a representation seeking redress, but the same could evoke no response. During 1982-83 he along with seventh Respondent were sent to Calcutta University for Diploma in Child Health (for short "DCH"), which he completed successfully. Both of them were given an additional increment with effect from 21.11.1983 in terms of the Rules. On 11.4.1983, nineteen Medical Officers including the Petitioner and the above three Respondents were promoted to Grade-IV of the service, but while in the case of above three Respondents including some others the date of effect of such promotion was given from 1.3.1983, in case of Petitioner it was specifically provided that the promotion would take effect from the date of his joining in the Grade. At that time the Petitioner was prosecuting DCH in Calcutta University on completion of which he could join the higher Grade only on 17.9.1983. He submitted his second representation on 20.2.1988 for stepping up of his pay to his three juniors, whose pay was fixed at a higher stage because of their earlier promotion on ad hoc basis and because of the Petitioner's joining in the promotion Grade at a later date. However, on 17.3.1990 a corrigendum was issued providing that the date of effect of promotion of the Petitioner in Grade-IV of the THS would take effect from 1.3.1983, the same date when the promotion of fifth, sixth and seventh Respondents had taken effect. This was an attempt to remove grievances of the Petitioner. But though his promotion had taken effect from 1.3.1983 by virtue of the corrigendum, the fact remained that the Petitioner could join the higher Grade only on 17.9.1983 and, therefore, his pay in the higher Grade was fixed counting his pay from the date of joining in the promotion Grade resulting thereby continued lesser pay than his above three juniors. From a memorandum dated 6.11.1992 (Annexure-8), showing release of increments of the Medical Officers, the Petitioner for the first time came to know that in November, 1992, his pay was much less than sixth and seventh Respondents. While his basic pay was only Rs. 4560/-, the sixth and the seventh Respondents were drawing the basic pay of Rs. 4660/- and 4865/- respectively. On 16.6.1994, the Petitioner submitted another representation for stepping up of his pay, which was considered by the appropriate State Respondent and on 18.9.1995, the Director of Health Services (for short "DHS"), the fourth Respondent herein, intimated the Petitioner that there is no provision in the Revision of Pay Rules, 1988 (for short "ROP, 1988") for stepping up the pay of the Petitioner equal to the pay drawn by his juniors in the facts and circumstances of his case. By this writ petition the Petitioner has sought appropriate direction for redress of his grievance that due to ad hoc promotion of the above three juniors on 16.4.1982 superseding him and his promotion to Grade-IV w.e.f. 1.3.1983 without corresponding financial benefit resulted to the

pay anomaly is not sustainable in law.

3. The State Respondents filed a consolidated counter-affidavit admitting that the Petitioner is senior to the fifth, sixth and seventh Respondents in both Grade-V and Grade-IV of THS, but contending, inter alia, that the reasons for the juniors drawing higher pay are different, which cannot be said to be unjustified in the given facts and circumstances of the case. As regards seventh Respondent, the contention is that before induction in Grade-V of THS on 31.1.1977, she was a Medical Officer in the Central Health Services since June, 1972. Considering her past service, her pay was fixed in Grade-V of the THS at the stage of Rs. 660/- plus Rs. 20/- personal pay in the scale of Rs. 500-1300/- with the date of next increment on 31.1.1978 under Fundamental Rule 27 (for short "FR 27"). This was done in accordance with the Govt. of India's decision No. 35 below FR 27 with the concurrence of the Finance Department. As a result of such fixation, she became entitled to draw higher pay than the normal pay of the Grade. As regards Dr. Jagannath Muhury, the sixth Respondent herein, it is contended that he exercised option of coming over to the revised pay scale of Rs. 3200-5600/- w.e.f. 28.9.1987 though the ROP, 1988 came into effect from 1.1.1986. On the other hand, the Petitioner exercised his option for the revised pay w.e.f. 21.11.1987. The options were exercised by them in terms of the provisions of the ROP, 1988, which came into effect from 1.1.1986. The said Rules provides for the manner of fixation of pay following the exercise of option according to which the existing emolument has to be worked out and then fixed to a stage of the revised scale of pay next above the emolument so worked out. Thereafter, one increment for 15 years of total continuous service rendered by the officer before 1.1.1986, one for every five years of total continuous service from the date of coming over to the revised pay scale subject to maximum of two increments were added. While making the fixation in accordance with the provisions of the said ROP, 1988, the Respondent No. 6 had to be given one more increment on his completion of five years in Grade-IV from the date of his coming over to the revised scale of pay as per the option exercised by him. But as the Petitioner did not complete five years of service in Grade-IV on the date of his coming over to the revised pay as per option exercised by him, he could not be given the benefit of another increment like the sixth Respondent. Further contention of the Respondents is that the fifth and sixth Respondents were appointed in Grade-IV of the THS on ad hoc basis vide notification dated 16.4.1982 and as their services were utilized since then, they were entitled to the monetary benefit of the higher pay scale and increments which fact is also an important factor for the Petitioner drawing a pay lesser than them. Thus the pay differences between the Petitioner and the three Respondents as noted above, which is not the result of any arbitrary or illegal action and has been caused due to fixation of pay in accordance with the Rules, cannot be the subject matter of the writ proceeding.

4. I have heard the learned Counsels for the contending parties.

5. It would appear from the above undisputed factual position that the Petitioner

is senior to all the three private Respondents, but though senior he was not promoted to Grade-IV of the THS on ad hoc basis when the above three Respondents were promoted and consequently, enjoying higher scale of pay. Though he claimed to have submitted a representation on 19.4.1982, which was not responded by the State Respondents, he chose to remain silent and for the first time, voiced his grievance in the present writ petition, which was filed on 18.1.1996, after a period of about 14 years. The reason is not far to seek. He was promoted to Grade-IV on regular basis along with the others including the private Respondents on 11.4.1983 showing his appropriate seniority position over the private Respondents and his initial grievance about date of effect of promotion from the date of joining was removed by corrigendum dated 17.3.1990 whereby the same date of effect of his promotion was given as in the case of the private Respondents. But the inevitable consequences with regard to pay fixation had to follow due to longer service in Grade-IV on ad hoc and regular basis by fifth and sixth Respondents and due to the Petitioner's joining on a later date on 17.9.1983. The case of the seventh Respondent is altogether different as her pay was initially fixed at a higher stage than the initial pay of the Grade because she had rendered service in the Central Health Services. Thus it cannot be said that the Petitioner was similarly situated with the above three private Respondents if the length of service is considered and taken into account. The date of exercising option to the revised scale of pay by the Petitioner and the sixth Respondent seems to be the another admitted factor for the pay differences between the two. As the Petitioner could not be given one additional increment, which the sixth Respondent came to get for the reason that the Petitioner unlike the sixth Respondent could not complete five years of service in Grade-IV on the date of his coming over to the revised pay as per the date of option exercised by him. If his supersession had taken place on 16.4.1982 when the private Respondents were promoted on ad hoc basis to Grade-IV of THS and thus stole a march over him in the matter of continuous length of service in the higher Grade, it is he, who is to be blamed for not approaching the court for a period of about 14 years in case he felt his grievance was of a nature, which called for adjudication. The question that he was not at all considered for promotion to Grade-IV on ad hoc basis when the private Respondents being juniors to him were promoted to that Grade, cannot now be re-opened and redressed after such a long lapse of time. Even if there was an illegality in the matter of non-consideration of his case for ad hoc promotion, it is to be noticed from the face of the record that he remained complacent after an initial representation on 19.4.1982 and when he was promoted on regular basis on 11.4.1983 showing him senior to all the three private Respondents, he did not consider it necessary to pursue his grievance of non-consideration of his case for ad hoc promotion. The long delay prevents me from adverting to that question now. It can be easily understood from his contention that when he came to know that he was drawing a lessor pay after perusal of the memorandum dated 6.11.1992 (Annexure-8), he voiced his grievances only with regard to his pay. Even before that memorandum, in his representation dated 20.2.1988 (Annexure-6), he confined

his grievances to pay only with a prayer to step up the same without any grievance about non-consideration of his case when the private Respondents were promoted on ad hoc basis to Grade-IV of THS. The claim of retrospective promotion to Grade-IV on ad hoc basis w.e. from the date when the private Respondents were promoted on 16.4.1982 was, however, adumbrated in the third representation dated 20.1.1993, after he came to know from the memorandum dated 6.11.1992 that he was drawing a lesser pay than the private Respondents. His grievance thus centered round the lesser pay he was drawing and as one of the factors for his drawing a lesser pay is relatable to promotion of those Respondents on ad hoc basis by notification dated 16.4.1982 superseding him, he made the claim of retrospective promotion w.e. from that date after a period of 14 years, which in my considered view, as I have already pointed out above, is not legally maintainable mainly for the reason of delay.

6. As already discussed above, the Petitioner and the three private Respondents are not similarly situated and, therefore, the question of discrimination is totally misplaced. The seventh Respondent was given higher pay in consideration of her service in the Central Health Services and Respondent Nos. 5 and 6 were given one additional increment because of their continuous length of service in Grade-IV and also the date of exercising option of coming over to the revised scale of pay in terms of the provisions of ROP, 1988. It is not a correct legal proposition that a senior officer under no circumstances can get a pay lesser than his juniors. Circumstances may exist, such as the present case, due to past and longer service and exercise of option of different dates resulting to higher pay to the juniors and lower pay to the senior, which cannot be said to be a pay anomaly or cannot be said to be a discrimination, particularly because they cannot be said to be similarly situated.

7. For the discussions made above, this writ petition is found to be devoid of any merit and consequently, the same is dismissed leaving the parties to bear their own cost.