
(2009) 02 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 214 of 1999

Khagendra Chandra Debnath and Others	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Citation : (2009) 2 GLT 344

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : B. Das and N. Majumdar, for the Appellant; S. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ petition filed in 1999, the Petitioner has prayed for the particular pay scale with subsequent revisions with effect from 1.4.1961, 1.3.1973, 1.1.1982 and 1.1.1986. Further prayer made in the writ petition is to set aside and quash the letter dated 25.8.1998 (Annexure-E), by which the learned Counsel for the Petitioners was intimated that the Petitioner was not entitled to have any pay scale benefit as was prayed for.

2. The four Petitioners initially entered into the services under the Respondents on 1.9.1960, 7.9.1959, 9.3.1959 and 1.3.1960 respectively at a fixed pay of Rs. 90/- plus other allowances. Subsequently, the fixed pay was enhanced to Rs. 120/-.

3. According to the Petitioners, they were working against the posts of craft instructor and thus were entitled to the admissible pay scale of Rs. 175-325/- with effect from 1.4.1961; Rs. 325-665/- with effect from 1.3.1973; Rs. 563-1300/- with effect from 1.1.1982 and Rs. 1300-3200/- with effect from 1.1.1986 and thereafter corresponding revised pay scale with effect from 1.1.1996 under Tripura State Civil Services (Revision of Pay) Rules, 1999.

4. In the writ petition, the Petitioners have referred to the judgment and order

dated 27.1.1989 passed by this Court in the writ petition being Civil Rule No. 48/1980. According to the Petitioners, some other craft instructors working in the Education Department filed the said writ petition and this Court allowed the aforesaid pay scales to the said instructors. Thus, it is the case of the Petitioners that they are entitled to the same benefits. The Petitioners have also projected their case on the principles of equal pay for equal work.

5. When the Petitioners were not favoured with the aforesaid pay scale, they issued a legal notice demanding the same in response to which the Director of School Education, Tripura issued the annexure-E letter dated 25.8.1998 rejecting the claim of the Petitioners. Hence the writ petition was filed on 5.5.1999 praying for the aforesaid relief

6. The Respondents have filed their counter affidavit denying the contentions raised in the writ petition. According to them the judgment and order of this Court on the basis of which the Petitioners have stacked their claim is not applicable to the instant case. The Respondents have disclosed that the Petitioners were regularly appointed as craft instructor with effect from 20.5.1974 and prior to that they were engaged as contingent skilled/semi skilled workers on wage basis. It has been revealed that the Petitioners No. 1 and 4 were engaged as contingent semi skilled worker at a fixed pay of Rs. 60/- plus other allowances and the Petitioners No. 2 and 3 were engaged as contingent skilled workers at a fixed pay of Rs. 90/- plus other allowances. In this connection, they have annexed the Annexure R/1 and R/2 engagement orders.

7. Thus, according to the Respondents the Petitioners having not been appointed as regular craft instructors against any regular post during the relevant period, they are not entitled to the salary in the time scale of pay as has been prayed for.

8. I have heard Mr. N. Majumdar, learned Counsel led by Mr. B. Das, learned Sr. Counsel appearing for the Petitioners as well as Mr. S. Chakraborty, learned State Counsel.

9. Admittedly, the Petitioners were engaged as skilled and/or semi skilled contingent workers on wage basis during the relevant period. Surprisingly, in the writ petition, the Petitioners have not disclosed their orders of appointment issued in 1974, which was preceded by their earlier engagement on wage basis. The Respondents in their counter affidavit have annexed the appointment order dated 24.6.1974 (Annexure-R/1). Such appointments of the Petitioners were against vacant posts of craft inspectors. Annexure- R/2 is the letter dated 24.6.1972, by which service particulars of skilled and semi skilled workers paid from contingency were furnished. Thus, the Petitioners having not been appointed against any regular post of craft instructor during the relevant period, they cannot claim the pay scale admissible in case of regular appointment.

10. From the materials on record it appears that the Petitioners were appointed as craft instructor in the pay scale of Rs. 125/- 200/- (pre-revised) with effect from 20.5.1974 vide Order dated 24.6.1974. They were allowed higher pay scale

of Rs. 325/- 665/- (corresponding revised pay scale of Rs. 175-225/- as per ROP Rules of 1975 introduced w.e.f 1.3.1974) w.e.f 20.5.1974 as well as corresponding revised scale thereto as per ROP Rules, 1982 and 1988 introduced w.e.f 1.1.1982 and 1.1.1986 respectively vide order dated 21.8.1998. Accordingly, the Petitioners on the option date of coming over to the ROP rules 1982 and 1998 were eligible to get their pay fixed in the revised pay scale of Rs. 550-1300/- and Rs. 1450-3710/- (first graded scale for completion of 10 years in the posts) respectively and thereafter, w.e.f. 20.5.1992 in the higher graded scale of Rs. 1700/- 3980/- after completion of 18 years of service in the posts. The Petitioners have been granted the said benefits.

11. The aforesaid contentions of the Respondents in the counter affidavit has been countered by the Petitioners on the ground that they are entitled to the benefit of the aforesaid judgment and order and that irrespective of their appointments as skilled/semi skilled worker during the relevant period, they are entitled to receive the salary in the time scale of pay. Such a stand on the part of the Petitioners is fallacious, firstly because they having not been appointed against any regular post in the time scale of pay and they having accepted the said appointment and also the subsequent regular appointment in the year 1974, they cannot claim regular salary in the time scale of pay for the said period. Secondly, the judgment on which, they have placed reliance is simply not applicable to their case. In the judgment in question, the Petitioner involved was appointed as craft instructor w.e.f. 6.6.1974 in the particular time scale of pay (Rs. 125-200/-). It was his contention that he was entitled to the pay scale of Rs. 175-325/-, which was subsequently revised to Rs. 325-665/- w.e.f. the same date i.e. 6.6.1974. The grievance of the Petitioner was that he should have been allowed the same pay scale at par with the other craft instructors who had been appointed and allowed the pay scale of Rs. 325-665/-

12. Unlike the aforesaid case, the Petitioners were never appointed in the time scale of pay. They were appointed as skilled/semi skilled workers during the relevant period on wage basis. They were appointed in the year 1974 only in the time scale of pay about which detailed discussions have been made above. It cannot be said that the said judgment is a judgment in rem. The judgment was delivered pertaining to the Petitioner and in the fact situation involved in the case.

13. Thirdly, the Petitioners cannot claim the benefit of the said judgment w.e.f. 1961 with corresponding revised pay scales from time to time. If the Petitioners were aggrieved, they ought to have approached the Court without any unreasonable delay. The judgment on which the Petitioners have placed reliance was on the basis of the writ petition filed by the Petitioner in the year 1980 and he was appointed in the year 1974. Unlike the said case, the Petitioners were appointed in the year 1959 and 1960 and they filed the instant writ petition in the year 1999, nearly 40 years after their initial appointments. Thus, the delay and laches on the part of the Petitioners stare on the face of it and consequently no relief can be granted to the Petitioners.

14. The Apex Court in the case of Ratan Chandra Sammanta and others Vs. Union of India and others, rejected the claim of the Petitioner that he was similiarly situated like that of other casual workers of the Railways and thus was entitled to get his service regularized. The Apex Court considering the fact that the writ petition was filed claiming similar relief, but after considerable delay refused to grant similar relief to the Petitioner with the following observations:

Two questions arise, one, if the Petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in Railways has been recognized both by the Railways and this Court. But unfortunately the Petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It as urged by the learned Counsel for the Petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law.

15. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it stands dismissed, without, however, any order as to costs.