
(2006) 05 GAU CK 0105
In the Gauhati High Court
Case No : Civil Rule No. 379 of 1996

Kusum Ch. Sarkar

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 7

Citation : (2006) 3 GLT 167

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

Bench : Single Bench

Advocate : A.L. Saha, for the Appellant; S. Chakraborty, for the Respondent

Judgement

A.B. Pal, J.—The Petitioner was initially appointed as Assistant Teacher on 28.3.1977 in the pay scale of Rs. 240-440/- under the Directorate of Education. On 17.9.1981 his services were placed under the disposal of the Social Welfare and Social Education Directorate to work for visually handicapped boys. On 18.6.1983 he was deputed to the training center for visually handicapped at Ramkrishna Mission, Narehdrapur, Kolkata, which he successfully completed. On 26.10.1984 he was appointed as Instructor-cum-Warden in the pay scale of Rs. 560-1300/-, which ultimately became his substantive post in the Department of Social Welfare and Social Education. The Tripura State Civil Services (Revision Pay) Rules, 1988 (for short "ROP Rules, 1988") came into force w.e.f. 1.1.1986. The pay scale of Rs. 560-1300/- of the said post of Instructor-cum-Warden was revised to Rs. 1300-3220/- to which the pay of the Petitioner was again fixed in accordance with the provisions contained in the said ROP Rules, 1988. The scheme of revision in the said ROP Rules, 1988 provided for career advancement of all employees either by promotion or by movement to higher scale or graded scale after completion of 10 years and 18 years of service if during this period an employee does not get any promotion. Part "A" of the ROP Rules, 1988 deals with pay scales of the cadre services, Part "B" takes care of the posts of non-cadre services and Part "C" with some other posts for which graded scale of pay

have been provided. According to the provision contained in Part "B" (Schedule III) employees other than those specified in Note 3(a)(i)(ii)(iii) shall on completion of 10 years of service in the same post without promotion move to the higher scale of pay. Similarly, on completion of 18 years of service in the same post without any promotion since his first appointment, an employee shall move to the scale next above the scale, which is next higher than the revised scale. Similarly, for the employees included in Part "C" graded scales of pay have been provided. Such employees entering into the lowest grade shall move to the next higher grade on completion of 10 years of service and the highest grade on completion of 18 years of service if during this period he gets no promotion. The said ROP Rules, 1988 provide that for the post of Instructor-cum-Warden of the Social Welfare and Social Education Department, graded scale No. 27 shall be applicable. But in Part "C" containing the graded scales, the post of Instructor-cum-Warden has not been mentioned. In scale No. 27 no pay scale higher than the pay scale of Rs. 1300-3220/- has been provided there for movement of an employee on completion of 10 years and 18 years of service, who was appointed as Instructor-cum-Warden and remained in the same post without any promotion. The grievance of the Petitioner is that as he was directly appointed to the post of Instructor-cum-Warden in the pay scale of Rs. 560-1300/-, which was revised to Rs. 1300-3220/-, two more higher graded scales of pay should have been created in the graded scale No. 27 or the post should have been brought into Part "B" of Schedule III in order to enable him to move to the next higher pay scales on completion of 10 years and 18 years of service in the same post without promotion. According to the Petitioner, it is a clear case of discrimination and deprivation from the benefit of career advancement and, therefore, the equality clause of Article 14 of the Constitution stands infarcted calling for interference by this court.

2. The State Respondents admitted in their counter-affidavit that the Petitioner was appointed as Instructor-cum-warden in the pay scale of Rs. 560-1300/- on 26.10.1984 and the pay scale of the said post was revised to Rs. 1300-3220/- by the ROP Rules, 1988. The only contention against the claim of the Petitioner is that the Petitioner is entitled to the benefit of graded scale No. 27 by promotion or movement to the scale of pay of higher grades and, therefore, he cannot have any grievance as no discrimination or deprivation does at all arise.

3. I have heard Mr. A.L. Saha, learned Counsel for the Petitioner and Mr. S. Chakraborty, learned Counsel for the State Respondents.

4. It is not in dispute that the scheme embodied in the said ROP Rules, 1988 provides for career advancement after 10 years and 18 years of service in the same post or grade if an employee does not get any promotion during that period. It is, therefore, legally desirable that no discrimination is done to any employee or any class of employees from the benefit of such career advancement scheme. As noted above, Part "A" of Schedule III deals with cadre services, which is not necessary for discussion in the present context as the post

of Instructor-cum-Warden does not belong to any cadre service. The relevant provisions contained in Part "B" or as the case may be, in Part "C" of Schedule III fall for judicial scrutiny in order to see whether the benefit of the career advancement scheme is available to the Petitioner. Note 3 under Part "B" (Schedule III) of the said ROP Rules, 1988 providing for career advancement need to be noticed before adverting to the controversy. The said provision provides as follows:

Note-3 : Fixation of pay of certain categories of existing employees:

(a) Except in case of an employee:

(i) Who holds a post for which graded scales are prescribed, or

(ii) Who holds a post for which a Selection grade or senior grade post is also provided, or

(iii) Who holds a post of a Teacher in a Higher Secondary School or a Middle and High Stage level School or a Primary School, pay of an existing employee who was first appointed to a post specified in this part of the Schedule which carries any of the existing pay scales of Rs. 430-850, Rs. 470-1025, Rs. 550-1245, Rs. 560-1300 and Rs. 600-1440 shall be fixed in the revised scale in the manner indicated in (b) below, if the employee concerned has not got any promotion for 10 years since his first appointment to the post.

(b) For the purpose of (a):

(1) First the refixation of pay in the modified present scale, if any, shall be made and the existing emoluments determined as per Rule 7 of these Rules.

(2) Thereafter, the revised scale in which pay is to be fixed under these Rules shall be determined in the following manner:

(i) Where the employee concerned has completed on 1.1.1986 or on the date of coming over to the revised scale 10 years of service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post;and

(ii) Where the employee concerned has completed on 1.1.1986 or on the date of coming over to the revised scale 18 years of the service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next above the scale which is next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post.

[Please see table given below Note-4] Provided that the provision in (ii) shall not apply to an employee who is directly appointed to a post in the existing scale of Rs. 600-1440.

(Emphasis given)

5. It would appear from (a)(i) that an employee for whom no graded scale has been prescribed would be entitled to the benefit of advancement provided under Part "B". The question is whether for the post of Instructor-cum-warden any graded scale has been prescribed? It has been argued by the learned Counsel for the State Respondents that against Scale 133 for the post of Instructor-cum-Warden the revised pay scale has been provided to be as per Graded Scale No. 27. The relevant entries appearing against 133 are reproduced below:

133. Instructor-cum-Warden--560-1300 Instructor and Warden vide Graded Scale No. 27.

Part "C" of the said Rules contains 29 graded scales. Note 2 of Part "C" (Schedule III) provides:

Movement of a Government servant from the lowest grade-scale to the successive higher post/grade-scale shall be regulated as follows:

(a) Subject to seniority and fitness a Government servant holding a post in the lowest post/grade shall be allowed to move:

(i) To the first higher post/grade on completion of 10 years of service in the lowest post/grade; and

(ii) To the second higher post/grade on completion of 8 years of service in the first higher post/grade.

6. It would thus appear from the above provision that only an employee, who was appointed to the lowest post or grade would get the benefit of two movements after completion of 10 years and 18 years of service and naturally he cannot claim any further movement. But an employee, who was directly appointed to the highest post or grade cannot get any benefit of the advancement provided in Part "C" The graded scale No. 27 may now be seen for the scrutiny whether there is any advancement in graded scale after 10 years and 18 years of service for the post of Instructor-cum-Warden. Graded Scale No. 27 is reproduced below:

"GRADED SCALE No. 27

(Similar for all other posts)

Note : Redesignation of various existing posts has been shown in the departmental list in Part B of Schedule III.

7. The post of Instructor-cum-Warden is absent in the nomenclatures against Entry 27. The note provides that redesignation has been shown in the departmental list in Part "B" of Schedule III. I have already noted above that against Scale No. 133 there is only one post of Instructor-cum-Warden with no lower or higher post or grade and, therefore, neither in Part "B" of Schedule III nor in Part "C" of that Schedule the provisions for career advancement has been extended to the Instructor-cum-Warden. But it is the admitted position that the

scheme of career advancement as embodied in the said ROP Rules, 1988 was intended to cover each and every employee for extending the benefit of either scale advancement or grade advancement after 10 or 18 years of service in the same post or grade without any promotion.

8. It may be reiterated that Note 3 of Part B (Schedule III) provides that an employee for whom no graded scale has been prescribed or for whom the benefit of selection grade or senior grade post has not been provided or who is not a teacher, shall be entitled to the benefit of movement to the next higher pay scale (not graded pay scale) after 10 years or 18 years of service in the same post without any promotion. The Petitioner having been appointed to the post of Instructor-cum-Warden does not obviously come within the exception under (i)(ii)(iii) of Note 3(a) and, therefore, his claim for benefit of scale advancement appears to be just and reasonable. It has been provided below Note 4 of the said Part that an employee in the revised pay scale of Rs. 1300-3220/- shall move to Rs. 1450-3980/- after 18 years of service. The scale movement as shown below Note No. 4 is re-produced below:

Note-4 : Regulation of pay of employees covered by Note-3 in future:

(a) The revised scales of pay as indicated in (b)(2) of Note-3 shall also be allowed to the following employees on completion of 10 years or 18 years of service, as the case may be, in their respective posts if they do not get any promotion otherwise:

(i) Those who at the time of coming over to the revised scale under these rules did not complete 10 years or 18 years of service, as the case may be; and

(ii) Those who are appointed to a post on or after 1.1.86.

(b) In the cases covered by (a) pay in the higher revised scale(s) shall be fixed under the provision of F.R. 22 (a)(i).

The existing scales, revised scales, next higher scales and scales above the next higher scales which shall apply to cases covered by Note-3 are shown below:

9. As the Petitioner was in the revised pay scale of Rs. 1300-3220/-, he was certainly entitled to movement to the next higher scale of pay in terms of the above provision if he was not consigned to Grade advancement of Part "C" which in fact proved to be illusory.

10. In the counter-affidavit, the State Respondents have contended in Para 5 that the Petitioner in the pay scale of Rs. 1300-3220/- was allowed the graded scale No. 27 having scope to be promoted to the promotional post as mentioned in that graded scale. Para 5 being an important averment to address the controversy is quoted below:

5. That with regard to the averments made in paragraphs 10 to 12 of the writ petition it is submitted by the answering Respondents that the Petitioner, for holding the post of Instructor-cum-Warden, was allowed the graded scale No. 27

in the Pay-scale of Rs. 1300-3220/- and he has the scope to be promoted to the promotional posts as mentioned in Graded Scale No. 27.

11. This is completely new revelation as nowhere in the pleadings of the Petitioner or in the ROP Rules, 1988 I have noticed any promotional post to be filled up by Instructor-cum-Warden. If it is so, then the post of Instructor-cum-Warden, which has scope of further movement to a higher post by way of promotion should not have been included in graded scale No. 27, where pay scale of Rs. 1300-3220/- is the scale of highest grade. A person entering into the lowest grade in the graded scale No. 27 can reach to the highest grade of the pay scale of Rs. 1300-3220/- after 18 years of service and there cannot be any further movement according to the provisions laid down in Part "C". As it is the definite case of the State Respondents that the Instructor-cum-Warden is a post or grade from where further upward movement by way of promotion is available, though I find no such provision in the rules, the same should have been brought within the scale advancement scheme of Part "B" of Schedule III so that in the event an employee like the Petitioner entering into the grade or post of Instructor-cum-Warden continues in the same post for a period of ten years without any promotion can get the benefit of movement to the higher scale of pay. Nowhere in the pleadings of the Respondents it has been indicated about the next higher promotional post or the higher scale of pay attached to it for the post of Instructor-cum-Warden for advancement by promotion or scale movement. The materials now available on record are not enough to get a clear picture about the contention made in Para 5 of the counter-affidavit.

12. Situated thus, it can be said that if the Petitioner, who is stated to have the benefit of promotion, as noticed in Para 5 of the counter-affidavit, was not promoted for a period of 10 years or 18 years, as the case may be, he was certainly entitled to be considered for movement to the next higher scale of pay and if that was not done it should be done by the Respondents. It has not been stated anywhere in the pleadings of the parties about the pay revision of 1999, which have taken effect from 1.1.1996 and what has been the effect of subsequent revision in respect of the pay scale of the post of Instructor-cum-Warden. The Petitioner has approached this Court eight years after the ROP Rules, 1988 were published, which delay has not been sufficiently explained. It seems there may be various other posts like the Instructor-cum-Warden and the incumbents to those posts were directly appointed in the pay scale of Rs. 560-1300/- (revised Rs. 1300-3220/-). By providing for such employees graded scale No. 27 in Part "C" of the ROP Rules, 1988 the benefit of scale advancement under Part "B" or grade advancement under Part "C" after a period of 10 years or 18 years have been denied. What would be the consequential effect if all such posts are directed to be brought under Part "B" for scale advancement for the reason that they have no provision in Part "C" for grade advancement remained unanswered in the pleadings. The insufficient materials do not help this Court to enter into this grey area after such a long period as this may topple the apple-cart, unsettle the settled position. This prevents me from giving a general

direction to set at rest the controversies relating to all such posts.

13. Under the circumstances, it would be expedient for this Court to confine the judicial scrutiny within the scope of the contention made in Para 5 of the counter-affidavit, according to which the Instructor-cum-Warden had the scope of promotion to the higher grades as per graded pay scale No. 27. But in the rule book of pay revision of 1988 such higher grades pay scale for advancement from Instructor-cum-Warden could not be noticed. May be, the entries therein are not complete or upto date. However, as according to the official Respondents the post of Instructor-cum-Warden had the scope of grade advancement in Part "C", the benefits thereof should be given to him if not already given. This writ petition may, therefore, be closed with a direction to the official Respondents to examine the case of the Petitioner afresh in the light of their pleadings in Para 5 of their return and if it is found that he was not given the benefit of grade advancement though such grade was available as per provision in the said rules, the same should be given in terms of the said rules on completion of 10 or 18 years of service, as the case may be, in the same grade/post. This exercise shall be completed within six months from today. No cost.