
(2006) 09 GAU CK 0096
In the Gauhati High Court
Case No : Writ Petition (C) No. 535 of 2000

Narayan Chandra Deb and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:

Tripura State Civil Services (Revised Pay) (Amendment) Rules, 1999 — Rule 10

Citation : (2006) GLT 329 Supp

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

Bench : Single Bench

Advocate : P. Roy Barman, for the Appellant; T.D. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—I have heard Mr. P. Roy Barman, learned Counsel for the Petitioners and Mr. T. D. Majumdar, learned Additional Govt. Advocate for the State-Respondents.

2. All the 8(eight) writ Petitioners, who are presently holding the post of Sr. Electricians were initially appointed to the posts of Electrician between 23.03.1990 and 22.09.1992 in the pay scale of Rs. 1300-3220/- in the department of Science, Technology and Environment. This pay scale of Rs. 1300-3220/- was the revised pay scale as per the Tripura State Civil Services (Revised Pay) Rules, 1988 (for short "ROP 1988"). The corresponding un-revised pay scale before the said revision was Rs. 560-1300/-. The relevant entries relating to the revised pay scale by ROP 1988 appearing at Sl. No. 8 under "36-Science, Technology and Environment Deptt." reads as follows:

36-SCIENCE, TECHNOLOGY AND ENVIRONMENT DEPTT.

All the writ Petitioners having been appointed directly in the pay-scale of Rs. 1300-3220/- after ROP 1988 came into force, it would be seen that they were appointed in the highest graded scale of Graded Scale No. 28 though at the time of appointment the designation "Sr. Electrician" was not inadvertently

mentioned. Later, all the Petitioners appointed as Electricians were redesignated as Sr. Electricians.

3. The Tripura State Civil Services (Revised Pay) Rules, 1999 (for short "ROP 1999") came in force w.e.f. 01.01.1996. Rule 10 of the said Rules provides for scale advancement for all the State Government employees by way of promotion, failing which for time bound movement in higher pay scale as per Table in Annexure- "A" after entry into the service. The relevant provision in Rule 10(a) and (b) provides as follows:

10. (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.

(b) The employees entering by direct recruitment in the existing scales No. 4 to 10 or revised scale No. 5 to 11 or corresponding earlier scale will have 2 scale advancement in next higher scales as per table in Annexure "A" at the end of 10 and 7 years of continuous & satisfactory service in the entry scale and higher scale of promotion/gradation or advancement respectively, as the case may be, to the higher scales unless they get promoted to higher scale before the proscribed period at each stage.

4. All the Petitioners being the Sr. Electricians were entitled to the corresponding revised pay scale of Rs. 4200-8650/- and the same was accordingly given to them. Thus, though they received the revised pay scale under the ROP 1988 and ROP 1999, they have no promotional avenues for further scale advancement after completion of 10 years or 17 years as contemplated by the provision contained in Rule 10. In view of the provision contained in Rule 10(b), the Petitioners claimed that they being the holder of the revised pay scale of Rs. 4200-8650/- are entitled to the next higher pay scale of Rs. 5000-10,300/- on completion of 10 years of service. The grievance of the Petitioners is that in spite of their approach to the competent authorities, the Respondents herein, their claim in terms of rule 10(b) of the ROP 1999 was denied for no justifiable reasons. By a letter dated 17.08.2000, the concerned Respondent informed the Petitioners that their claim for scale advancement on completion of 10 years was referred to the Finance Department, but the response from the said Department was that no CAS would be admissible to the Sr. Electricians as they were recruited to the highest grade. By means of this writ petition, the Petitioners have sought a direction to the Respondents to grant the Petitioners the pay scale of Rs. 5000-10,300/- on completion of 10 years of service in the same grade.

5. This claim of scale advancement on completion of 10 years of service put forward by the Petitioners has been opposed by the official Respondents in their counter-affidavit. Admitting the factual position that the Petitioners were appointed originally as Electrician, re-designated as Sr. Electrician in the highest

pay scale of the graded pay scale No. 28, contended that the Petitioners formed an independent class because of the reason that by virtue of the ROP 1988 every initial appointment should have been in the lowest grade. But the Petitioners were appointed in the pay scale of Rs. 1300 - 3220/-, which is the highest pay scale of graded pay scale No. 28 and because of that reason, the Finance Department after re-designating the post as Sr. Electrician refused to admit any further scale advancement after completion of 10 years of service. The position which was adumbrated in the letter dated 17.08.2000 has been reiterated in the counter-affidavit as the only ground for refusing the scale advancement to the Petitioners.

6. The rival positions set out thus, Mr. Roy Barman would argue that as the Petitioners were not appointed in the lowest graded scale No. 28, there is no question of scale advancement after 10 years or 17 years of service as the case may be. The fact being that the Petitioners were appointed in the pay scale of 1300-3220/- they cannot be saddled with the graded pay scale and consequently the provision of Part-C for scale advancement would not apply in their case. Referring to the provision of Rule 10(b) of the ROP 1999, Mr. Roy Barman's submission is that as admittedly the Petitioners were not promoted to any higher post during the period of 10 years, they were entitled to the scale movement, which is meant for all the State Government employees who do not get promotion. It is also admitted position that the revised pay scale of the Petitioners by ROP 1999 is Rs. 4200-8650/- and, therefore, on completion of 10 years they were entitled to the pay scale of Rs. 5000-10,300/-. As they have not completed 17 years of service they were not claimed the second scale advancement as per the said provision.

7. Per contra, the submission of Mr. Majumder is that after coming into force of the ROP 1988 whereby graded pay scale was provided for the posts under the Science, Technology and Environment Department in the graded pay scale No. 28, the Petitioners should have been appointed to the lowest grade of Jr. Blacksmith or Jr. Fitter in the pay scale of Rs. 970-2400/- so that they could move to the next higher pay scale of Rs. 1250-2890/- after completion of 10 years of service and again Rs. 1300-3220/- after Anr. 7 years of service. Mr. Majumder has pointed out that in Part - C of the ROP 1988 it has been clearly provided in Note- 2 (f) that no new appointment shall be made at a level other than the lowest. Ignoring the said provision, the Petitioners were directly appointed to the highest grade in the pay scale of Rs. 1300-3220/-, which has given rise to their claim for next higher pay scale after the revision by ROP 1999.

8. From the above submissions, the admitted position that has surfaced is that the Petitioners were appointed to the highest graded pay scale (Electrician, later redesignated as Sr. Electrician) in the pay scale of Rs. 1300-3220/- after ROP 1988 came into force and the said pay scale was given the corresponding revised pay of Rs. 4200-8650/- by ROP 1999. The plea of wrong appointment at the highest grade as adumbrated in the counter-affidavit and argued by Mr.

Majumder cannot be accepted at face-value for the reason that if the said appointment to the post of Electrician or Sr. Electrician as the case may be was in violation of the ROP 1988, it was within the administrative ambit of the official Respondents to adopt corrective measures. By appointing them as Electrician or Sr. Electrician and giving them appropriate pay scale which the Petitioners have been enjoying since their appointment in 1990-92, it does not lie in the mouth of the said Respondents to take a defence that the Petitioners were appointed wrongly in violation of the ROP 1999. For the aforesaid reasons, such plea stands rejected.

9. Once it is held that the Petitioners were appointed as Electricians Sr. Electricians and they did not get any promotion during the period of 10 years of service, they are certainly entitled to the scale advancement after completion of 10 years of service in the same grade/scale which is as per the Table given in Annexure - "A" of the ROP 1999 i.e. Rs. 5000-10,300/- subject to the condition that such pay scale shall not be above the pay scale of the next higher/promotion post in the department, if there is any.

10. For the discussions and reasons aforementioned, this writ petition has merit and, therefore, the same is allowed directing the official Respondents to release the pay scale of Rs. 5000-10,300/- to each of the Petitioners on their completion of 10 years of service, subject to the condition that the said pay-scale is not above the pay scale of next higher/promotion post in the department, if there is any. It is further directed that the arrear of pay from the date of their entitlement, if any, shall also be released within a period of 3(three) months from the date of passing this judgment and order.

No cost.