

(2015) 06 TP CK 0061
In the Tripura High Court
Case No : Writ Petition (C) 410 of 2012

Nihar Chandra Das and Others	Vs	APPELLANT
The State of Tripura and Others		RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Citation : (2015) 06 TP CK 0061

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

Bench : Division Bench

Advocate : A.K. Bhowmik, Senior Advocate, R. Datta and M. Choudhury, for the Appellant; A.S. Lodh, Addl. G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.

1. The petitioners by means of this petition have challenged the Constitutional validity of the Amendment Rules of 2007 whereby, the provision for absorption of Diploma holder Junior Engineers, who had obtained degree in Engineering was deleted.

2. Briefly stated the facts of the case are that the petitioners were all originally Diploma holder engineers. They were engaged as Jr. Engineer Grade II with the Government of Tripura. We may make reference to the Notification dated 12th December, 1999 especially, the following Tripura Power Engineering Service (2nd Amendment) Rules, 1987:--

"ABSORPTION IN THE GRADE JR. ENGINEER GR-I

i) A Jr. Engineer Gr.II, who possesses qualification of degree in Engineering of recognized University or Institution and already in service under the Power Department on the date of publication of these rules shall be absorbed in the grade of Jr. Engineer Gr. I.

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iii) A Jr. Engineer Gr.II of the Power Department who obtains such degree in Engineering or Equivalent qualification subsequent to the date of publication of rules shall be absorbed in the Gr. of Jr. Engineer Gr. I from the date of publication of the results."

3. Under sub-Clause i), a Jr. Engineer Grade II, who already possessed a degree in Engineering would on the date of publication of the Rules be entitled to be designated as Jr. Engineer Grade I. Sub-Clause iii) provided that a Jr. Engineer Grade II of the Power Department, who obtained a degree in Engineering or equivalent subsequent to the publication of the Rules would be entitled to be absorbed as Jr. Engineer Grade I from the date of publication of the results. Obviously, the results referred to are the degree examination results. The case of the petitioner Nos. 1, 4, 5, 7, 9 and 10 is that prior to the amendment of the Rules in 2007 legitimately expecting that they would be absorbed in the post of Jr. Engineer Grade I, they approached the department for study leave. They were granted study leave and with the permission of the department they proceeded to NIT, Agartala studied there for 3 years and thereafter, obtained a degree in Engineering. They obtained this Engineering degree on 15.05.2009. Petitioners 2 and 3 also proceeded to study for degree in Engineering before the amendment of the rules which took place on 25th October, 2007. As far as the other two petitioners are concerned, admittedly, they proceeded on study leave after the amendment of the Rules in the year 2007.

4. It has been urged by Mr. A.K. Bhowmik, learned senior counsel, appearing on behalf of the petitioners that the petitioners had a legitimate expectation that they would be absorbed against the post of Jr. Engineer Grade I. He submits that they on the basis of this legitimate expectation went on study leave and also furnished a bond that they would after completing the study leave work for a period of 3 years and they were legitimately expecting that after they had rejoined service on completion of study leave they would be absorbed as Jr. Engineer Grade I. This is the crux of the matter.

5. It is well settled law that what should be the educational qualifications for a particular post is for the State to decide. The employer has to decide what are the qualifications, what are the eligibility criteria, what is the length of experience, what are the age limits which it wants to fix for filling up any particular post. The State also has the power to change these criteria by amendment. The only caveat is that the vested right of any party cannot be taken away by amendment unless the amendment is made specifically retrospective and in which event the State will have to justify why the amendment has been made retrospective. As far as the present case is concerned, the amendment was made on 5th October, 2007 whereby the clause for automatic absorption as Jr. Engineer Grade I on obtaining a degree in Engineering has been removed. Now the process of selection is totally different. The issue is whether those employees who were already in service can be denied the benefit of the promotion on the ground that this amendment has come into

force. The next issue is whether the employees could have a legitimate expectation that the Rules would not be changed to their disadvantage.

6. By now the law is well settled that an employee has no fundamental right to be promoted. What is his right is a right to be considered for promotion. The State, no doubt, under the previous Rules had made a provision whereby if a diploma holder Jr. Engineer Grade II, obtained degree in Engineering he was entitled to be absorbed as Jr. Engineer Grade I. This does not, however, mean that this Rule could not be changed. As held by us above, it was for the State to decide whether this Rule should be continued or not. The only issue is whether these employees, who proceeded on study leave before the Rules were amended, could be denied this benefit.

7. That brings us to the second issue as to what is the concept of legitimate expectation. Legitimate expectation is now a well recognized doctrine. Legitimate expectation only means that if a person changes his position to his disadvantage on the basis of a promise held out to him and thereby expected that something would be done to him he can hope that he will be given what was due to him. The doctrine of legitimate expectation can never be extended to mean that the State does not have the power to amend the Rules. The Rule making authority has the power to amend the Rules. The Rules were amended on October, 2007. No doubt till that date, 8 out of the 10 petitioners had already proceeded on study leave. However, in our view, this will not make any difference because going on study leave is a way of improving your own capabilities. We can even accept the fact that the petitioners proceeded on study leave under the hope that they would be absorbed as Jr. Engineers Grade I, but that does not mean that the State is debarred from changing the Rules. There was no sacrosanct, inviolate right whereby the petitioners were bound to be promoted. It has been urged by Mr. Bhowmik, learned senior counsel that the petitioners proceeded for study leave after permission was granted by the State and after they had furnished a bond that they would work for 3 years. This bond, in our opinion, has nothing to do with their promotional avenues. When an employee is on study leave he continues to get many benefits as an employee of the State. His service is counted for all practical purposes. In some cases even salary is paid during this period of study leave. When an employees is on study leave and he is given the privilege of going on study leave an investment have been made by the Government and therefore, the bond is a consideration in favour of the Government that after the persons comes back from study leave he will not immediately resign from service and go after a job somewhere else in the country or in a private firm, but will serve the Government which has borne the cost of his studies for a considerable period. Therefore, the execution of the bond, in our view, does not in any manner help the case of the petitioners.

8. As held by us above, the law is crystal clear that the State has the power to change the Rules at any time and unless it is shown that the power has been exercised arbitrarily this Court cannot intervene in the matter. The State has

taken a policy decision whereby under the new Rules a different method of recruitment to the post of Grade V A, which is equivalent to Jr. Engineer Grade II. The petitioners were not degree holder Engineers on 20th October, 2007 when the Rules were amended. If they had obtained this degree before 20th October, 2007 then definitely they would had a good case, but since this degree has been obtained after the amendment of the Rules, we are afraid we cannot grant any relief to them.

9. Therefore, we find no merit in the petition, which is accordingly dismissed.