

(1996) 07 GAU CK 0037

In the Gauhati High Court

Case No : Civil Rule No. 162 of 1996 (Old No. C.R. 48 of 1988)

Parimal Kanti Chakraborty

APPELLANT

Vs

Tripura Jute Mills Ltd. and Another

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Citation : (1997) 1 GLR 102

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : S. Deb and R. Dasgupta, for the Appellant; A. Chakraborty, A. Ghosh and P.K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Das, J.—The question involved in this writ petition is whether the Petitioner is entitled to get the revised scale of Overseer and Accounts Assistants on the ground that at the time of his initial appointment was given the pre-revised scale of Overseer and Accounts Assistant.

2. The Petitioner's case is that he was appointed as Pharmacist Grade-I by Respondent No. 1 viz. Tripura Jute Mills Ltd. on 30.4.1981 in the scale of Rs. 1330-10-400-15-580/- (Annexure-2). But subsequently this post was re-designated as Medical Assistant with immediate effect by an order dated 7.9.1982 (Annexure-3). The Petitioner raised objection to such re-designation but the authority did not Recede to that objection.

3. However, the Respondent No. 1 by its resolution dated 23.5.1976 decided that all the persons appointed in their Company will be governed by the Service Rules and Conditions of the Government of Tripura until the Respondent No. 1 frames its own Rules. By resolution dated 24th December, 1977 the Respondent No. 1 also adopted the pay scales of the employees of the Government of Tripura for the office employees of the Respondent No. 1 and subsequent to this adoption the scale of the Pharmacist Grade-I was revised to Rs.

400-15-550-20-750-25-900/- . But the Petitioner was not given the new scale which came to be Rs. 800-50-1050-60-1350/-.

4. Therefore, on 24.12.1985 the Petitioner submitted a representation (Annexure-5A) to the Respondent No. 1 stating, inter alia, that the qualification he possesses is equivalent to L.M.F. and as such he is entitled to get supervisory benefits and claimed higher pay scale. It is stated that before this revision of pay the Petitioner as well as Accounts Assistants and Overseers were getting the same scale. But even though the Petitioner submitted a number of representations for upgradation of his pay scale the same was turned down by the Respondent No. 1 by his order dated 28th April, 1986 (Annexure-5B). The Petitioner, therefore, filed Civil Rule No. 36/1987 which was disposed of by a Division Bench of this High Court on 16.6.1987 requiring the Respondent No. 1 to re-consider the Petitioner's representation dated 10.12.1984 (Annexure-6C) so as to confer benefits on and avoid discrimination of the persons of the same scale of pay. But it has been alleged that despite that direction the Respondent No. 1 by its order dated 29.8.1987 (Annexure-8) informed the Petitioner that nothing could be done to the Petitioner as according to the latest Wage Agreement the salary of the Petitioner was fixed at Rs. 730/- with effect from 1.12.86. The Petitioner has, therefore, alleged that even though the Respondent No. 1 by its communication dated 28.4.1986 confirmed that the Petitioner comes under the purview of the definition of "employee" it ultimately did not consider the case of the Petitioner by raising his pay scale to Rs. 800-1350/. The Petitioner has, therefore, filed this application for issuance of an appropriate writ.

5. The Respondents resisted this writ petition by filing an affidavit-in-opposition wherein it has been admitted that the Petitioner was, at first, appointed as Pharmacist Grade-I and thereafter he was re-designated as Medical Assistant under the same terms and conditions of service. It has also been admitted that the scale of pay of the post of Pharmacist was revised to Rs. 400-900/-. But it has been contended that the post of the Petitioner was re-designated as Medical Assistant when it came to the notice of the Respondents that the Petitioner was holding the certificate of Pharmacist of D category only from National Medical College, Dacca and his qualification is not accepted by the Indian Medical Council. Of course, the Petitioner claimed that the qualification he possesses was equivalent to L.M.F., but he failed to show any authentic proof in support of his such claim. The Respondents, however, wrote to the Director of Health Services, Govt. of Tripura to confirm if the qualification which the Petitioner possesses was equivalent to L.M.F. or not. But the Director of Health Services, Govt. of Tripura could not find it in the schedule of Indian Medical Council. So, on receipt of the notice of the Petitioner served through his pleader the Respondents also wrote to the Pleader of the Petitioner for ascertaining from Indian Medical Council as to whether the Petitioner's qualification was equivalent to L.M.F. or not. But the Respondents got no response from the Petitioner's counsel.

6. However, to show respect to the order of the High Court passed in Civil Rule

No. 36 of 1987 the Respondents upgraded the scale of the Petitioner to Rs. 730-25/- which is the highest pay scale of non-supervisory employees with effect from the year 1986 and in doing so the Respondent also considered his handicap.

7. It has been further stated that the Respondent No. 1 had no pay scale of its own at the time when the Petitioner was appointed and hence, the Respondent No. 1 adopted the pay scale of the Government of Tripura for its office employees for the time being with a clear observation that such adoption shall remain in force until the company frames its own pay scale. Therefore, the contention of the Petitioner that the employees of Respondent No. 1 were covered by the pay scale of the Government of Tripura is not correct. It has, therefore, been stated that Petitioner is not entitled to any further relief.

8. Mr. Section Deb, the learned senior counsel appearing on behalf of the Petitioner has urged that the pay scale of the Petitioner as well as the pay scale of the Overseer and Accounts Assistant was same before revision i.e. they were having the scale of Rs. 400-900/-. But when this scale was revised to Rs. 800-1350/- the same was not given to the Petitioner although the Overseer and Accounts Assistants who were receiving the scale of Rs. 400-900/- were allowed to get the revised scale viz. Rs. 800-1350/-. In this context, it has been further pointed out by Mr. Deb that the Respondent No. 1, which is a Government Company, by its resolution adopted the pay scales of the employees of the Government of Tripura and as such there was no reason for depriving the Petitioner of getting the revised pay scale of Rs. 800-1350/-.

9. But it has been contended by Mr. A. Chakraborty, the learned senior counsel appearing on behalf of the Respondents that nature of the works of the Overseer and the Accounts Assistant are quite distinct and as such the Petitioner is not entitled to claim parity in pay scale with the overseer and Accounts Assistant. It is submitted by Mr. Chakraborty that initially Petitioner was appointed as Pharmacist Grade-I but when it came to the notice of the Respondents that the Petitioner holds only a certificate of Pharmacist of D Category the Respondents had to re-designate the post of the Petitioner as Medical Assistant. Mr. Chakraborty has further pointed out that on receipt of the notice of the Pleader of the Petitioner the Respondents asked the Petitioner's lawyer to get the confirmation from Indian Medical Council as to whether the certificate which the Petitioner obtained was equivalent with L.M.F. or not. But that having not been done there is no scope for reconsideration of the case of the Petitioner. Moreover, the Petitioner did not challenge the Wage Agreement on the basis of which the scales of pay of different categories of the employees were determined; The reply of Mr. Deb is that the Wage Agreement was made before the order of the court passed in Civil Rule No. 36 of 1987.

10. Here it has to be noticed that the Petitioner in his writ petition stated that even though this Court by its order dated 16.6.1987 passed in Civil Rule No. 36/1987 gave a direction to the Respondents to reconsider the Petitioner's representation dated 10.12.84 so as to confer benefits on him and avoid

discrimination between persons of the same scale of pay, the Respondents did not consider that direction. But in the counter-affidavit it has been specifically stated by the Respondents that to show respect to the order of the High Court the Respondents up-graded the scale of the Petitioner to Rs. 730-25/- which is the highest pay scale of non-supervisory employees with effect from the year 1986 and that in doing so, the Respondents also considered that he is handicapped. Under para 14 of the writ petition it has also been admitted that by the, order dated 29.8.87 (vide No. TJ/ADMIN (97)/591) the pay scale of the Petitioner was raised to Rs. 730-25/-. It is, therefore, clear that this order of up-grading the scale of the Petitioner was passed after a few months of the order that was passed by this Court in Civil Rule No. 36/1987. There is, there fore, no scope to say that the Respondents did not consider the direction of the court.

11. Mr. Deb has, however, contended that the Petitioner was entitled to get the scale of Rs. 800-1350/- which was given to the Overseer and Accounts Assistants and in support of his contention Mr. Deb has placed reliance upon a decision of the Supreme Court in the case of Employees of Employees of Tannery and Footwear Corporation of India Ltd. and another Vs. Union of India and others, But the facts of the case referred to above by Mr. Deb appears to be a little different inasmuch as in that case the real question which needed to be examined was whether the revision in the pay scales of the employees falling in the four categories, namely, (i) Peons, Watchmen etc. (ii) Jamadars, Recorders etc. (iii) Lower Division Clerks, Cleks-cum-Typists, Compounders, Teachers, Typists, Nurses, Drivers etc. and (iv) Stenographers, Upper Division Clerks etc. in the unionised cadre in the Respondents-Corporation under order dated April 25, 1986 suffers from any legal infirmity. The Petitioner therein assailed the said fixation on the ground that they were denied parity with other employees similarly situate employed with the Cotton Corporation of India and they wanted their pay scales to be revised on the same pattern. In that case, the undisputed fact was that in the year 1970 pay scales of the employees falling in the aforesaid four categories employed with the Respondent-Corporation as well as Cotton Corporation of India were identical and it was also found that the nature of duties of the staff falling in those four categories in both the Corporations were same and there was parity with the pay scales in both these Corporations. After 1970 the pay scales of the employees in the Cotton Corporation of India were revised thrice whereas the pay scales of the employees in the Respondent-Corporation were revised twice,

12. In the background of these facts the writ petition was allowed to the extent that Respondent Nos. 1 and 3 were directed to suitably modify the order dated April 25, 1986 with regard to the revision of pay scales and allowances of the employees in the unionised cadre in the Respondent-Corporation in a way that the revised pay scales and allowances of the four categories of the employees in the said cadre are at par with the pay scales and allowances of such staff of the Cotton Corporation of India on August 1, 1983.

13. But in the present case, it would be apparent from the facts stated above that although the Petitioner was initially appointed as Pharmacist Grade-I his designation was changed and it was re-designated as Medical Assistant when it came to the notice of the Respondents that the qualification which the Petitioner held was not equivalent to L.M.F. But he simply holds the certificate of Pharmacist of D category. A number of correspondences were made in this regard, but the Petitioner failed to show that the qualification he holds was equivalent to L.M.F. Therefore, the Respondents changed the designation of the post to keep the Petitioner in service. But since at that time it was not possible to change the pay scale it remained same. Here it may also be re-called that the Minutes of the Meeting of the Board of Directors of the Respondent No. 1 held on 24.12.1977 resolved that the pay scales of the Government of Tripura would be adopted for the time being for the employees of the office of Tripura Jute Mills Ltd. The Respondents also specifically averred in the counter that the pay scales of the employees of Government of Tripura were taken for the time being as at that time the Respondent No. 1 had no separate pay scales of its employees. So, when Respondent No. 1 formulated its own pay scales based on the Wage Agreement the pay scales of the Medical Assistant was fixed as per that resolution.

14. Mr. Deb has, however, urged that nature of duties of Overseer. Accounts Assistant and Medical Assistant are same and hence the Petitioner is very much entitled to claim parity in pay scales with that of Overseer and Accounts Assistant. But Mr. Chakraborty has urged that in view of the qualification the designation of the Petitioner was changed keeping the post of Pharmacist Grade-I separate and in view of this fact there is no scope to say that nature of duties of these posts are same. What in precise is contended by Mr. Chakraborty is that unless and until the Petitioner is allowed to hold the post of Pharmacist Grade-I there is no scope for him to claim the revised scale which was raised to Rs. 800-1350/-. In this context, it has also been submitted by Mr. Chakraborty that it would be quite apparent from the Annexure-B to the writ petition that in compliance with the order of this Court dated 16.6.1987 the scale of the Petitioner was raised to Rs. 730-25/-. In this regard, it cannot also be lost sight of that although the Petitioner was aggrieved by the order changing his designation, the Petitioner did not approach this Court for redress claiming that the qualification he holds was equivalent to that of L.M.F. and as such he was entitled to hold the post of Pharmacist Grade-A.

15. For the reasons I find that the Petitioner is not entitled to get the revised scale of Overseer and Accounts Assistant unless he is allowed to hold the post of Pharmacist Grade-A.

16. The writ petition is accordingly dismissed. The parties are, however, left to bear their own costs.