
(1996) 05 GAU CK 0034
In the Gauhati High Court
Case No : First Appeal No. 7 of 1985

Prafulla Chandra Bhowmik

APPELLANT

Vs

State of Tripura and Ors.

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Citation : (1996) 2 GLJ 233 : (1996) 3 GLR 65 : (1996) 3 GLT 1

Hon'ble Judges : P.K.Sarkar, J

Bench : Single Bench

Advocate : M.K.Dutta, A.M.Lodh , Advocates appearing for Parties

Judgement

1. The present appeal is directed against the judgment and decree passed by the learned Additional Subordinate Judge, West Tripura, Agartala on 7.2.1983 and 24.3.1983 in TS No.61 of 1991.

2. The plaintiff Shri Prafulla Chandra Bhowmik filed a suit in the Court of Subordinate Judge, West Tripura, Agartala claiming the relief that a decree be passed declaring the plaintiff to be entitled to be reinstated in service wef 9.2.1959 with all benefits attached to the Senior Clerk and to treat the period between 9.2.59 and 15.9.78 as spent on duty for all purposes. The plaintiff claims a sum of Rs.2 lakhs as arrear pay and allowances. The case of the plaintiffappellant, in short, is that he was a displaced person from the earstwhile Pakisthan and migrated in India in 1950. He was initially appointed on temporary basis as LDC by the Director of Civil Supplies, Govt of Tripura in 1951. After expiry of his temporary period of service as LDC he was appointed by the then Chief Commissioner, Tripura as Clerk in the Relief and Rehabilitation Department in the scale of pay of Rs.50375 on 1.5.1951. However, his pay was fixed at Rs.75/ wef 9.10.1951. Thereafter he was promoted to the post of Assistant Supervisor which is equivalent to the post of UDC from 25.4.1953 in the scale of pay of Rs.804100. Thereafter, he was promoted to the post of Senior Clerk in the scale of pay of Rs. 1305180 on 14.10.1958. Thus, the plaintiffappellant was in continuous service in the Relief and Rehabilitation Department from 1.8.1951

and he continued in the post of Senior Clerk without any interruption till 8.02.1959 to the satisfaction of the authority.

3. On 9.02.59 the Director of Relief and Rehabilitation Department terminated the service of the plaintiffappellant under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1949. The plaintiff filed writ petition in the Court of the then Judicial Commissioner, Tripura under Article 226 of the Constitution of India challenging the validity of the termination order. The Judicial Commissioner, Tripura in Writ Petition No.2 of 1961 dismissed the petition by his judgment and order dated 30.7.1962. However, the learned Judicial Commissioner made certain observation in the judgment stating that the plaintiffs case has not been dealt with in accordance with the instructions contained in the various official memorandums issued by the Ministry of Home Affairs and that he has been unfairly treated and has been made to lose his job without considering his case for quasi permanency and without giving him an opportunity to improve his work and conduct (if that were found bad) as required by the said instructions issued by the Ministry of Home Affairs. Consequently, the learned Judicial Commissioner further observed that though this Court cannot interfere with the termination of service of the petitioner as it has been done in accordance with Rule 5 of the Temporary Service Rules, it has to be pointed out that the instructions contained in the office memorandum of the Ministry of Home Affairs having not been duly followed in the case of the petitioner and he has not been given a chance of obtaining quasi permanency in site of his 7 and odd years of service the learned Judicial Commissioner, therefore, expressed his hope that the plaintiffpetitioner's case will be given due consideration by the Tripura Administration. Thereafter the plaintiff submitted number of representations to the Government for consideration of his case in the light of the judgment passed by the learned Judicial Commissioner on 30th July, 1962. Ultimately, the plaintiff was reinstated in service on 16.9.1978. The further case of the plaintiff is that the proforma defendants were also terminated under Rule 5 of CCS (Temporary Service) Rules, 1949, but the State Govt reinstated them in service with all benefits including arrear pay and allowances. In this way the plaintiff was discriminated and as such he is entitled to all service benefits during the period of his termination on 9.2.59 and the date of reinstatement on 16.9.79. On reinstatement, the service of the plaintiff was extended and ultimately he retired from the service on 31.3.81 without any pension and pensionary benefits. The learned Additional Subordinate Judge dismissed the suit of the plaintiff holding that he was appointed afresh on 16.9.78 and rejected the prayer to treat his service between 9.2.59 and 16.9.78 as a period spent on duty for all purposes. Having felt aggrieved by the judgment and decree passed by the learned Additional Subordinate Judge in Title Suit No.61 of 1991, the plaintiff filed the present appeal.

4. The State Government contested the case by filing a written statement in which it has been contended that the plaintiff filed a writ petition in the Court of the learned Judicial Commissioner, Tripura who dismissed the petition and

therefore he cannot be reinstated in service wef 9.2.59. However, the State Government considered the case of the plaintiff as per observation made by the learned Judicial Commissioner in his judgment and order passed on 30.7.62 and appointed him afresh on 16.9.78. In the order of appointment it was clearly stated that his actual service from 1.8.51 to 8.2.59 will be counted towards pension and pensionary benefits and his pay will be fixed after taking into consideration of his actual service put in by him for the purpose of fixation of his pay. It has been, further, contended by the Government that the plaintiff has not been discriminated with the proforma respondents and therefore the period of break in service of the plaintiff between 9.2.59 and on 16.9.78 cannot be treated as spent on duty for all purposes.

5. The only question has to be decided in the present appeal is whether the order of the Govt reappointing the plaintiff in his post of Senior Clerk on 16.9.78 can be treated as fresh appointment and whether the period between 9.2.59 and 16.9.78 can be treated as spent on duty and if so upto what extent.

6. It is an admitted fact that the plaintiffappellant was appointed temporarily against a temporary post. The appellant appears to have done well during the period of his service and though he was appointed as LDC in the scale of pay of Rs.50575 his pay in that scale was fixed at the maximum of the scale at Rs.75 wef 9.10.51. The appellant appears to have done well during the period of his service between 1.8.51 and 8.2.59 and during this period he got two promotions firstly, in the post of Assistant Supervisor which is equivalent to the post of UDC from 25.4.53 and again he was promoted to the post of Senior Clerk on 14.10.58. He got his promotions and yearly increments during the aforesaid period. On 9.2.59, however, his appointment was terminated suddenly under Rule 5 of the Temporary Service Rules on certain allegations that his conduct was found suspicious regarding payment of bill and he was also suspected to be connected with the missing of two files relating to fixation of prices of cement. Though the charges could not be specifically proved against him, he was found to be undesirable element and should be weeded out and as a result his service was terminated. The appellant made several representations after termination of his service on 9.2.59. On 4.3.72 plaintiff was informed by an officer of the Rehabilitation Department, Govt of Tripura that his representation dated 2.11.71 addressed to the Hon'ble Lieutenant Governor, Tripura was put up before the appropriate authority, but due to non availability of any vacancy, his case could not be considered. However, the State Government on the basis of the representation of the plaintiffappellant made an inquiry about the allegations leading to the termination of his service by Shri KD Menon, Secretary to the Government of Tripura, Relief and Rehabilitation Department. It appears from the report of the Secretary, Relief and Rehabilitation Department that he inquired about the allegations made against the plaintiff and in the report it has been clearly stated that the first allegation that Shri Bhowmik took some GI Sheets from the Department Dealer for his personal use is false and unfound. The Secretary further held that the allegation against Shri Bhowmik that he raised

false bill of Rs.250/ for payment to the contractor is not correct and no such bill was prepared and paid to any contractor. Regarding the third allegation that Shri Bhowmik removed two files regarding the fixation of price of cement is also not correct as during the inquiry the said two files were found along with 5 (five) other files of the Department. Initially those two files were taken by the Director Civil Supplies for examination and thereafter when he returned those files that were kept in the scheme section of the Department along with 5 (five) other files. Consequently, the Secretary, Relief and Rehabilitation Department clearly stated in his report that the allegation against the plaintiff, Shri Bhowmik is wholly unjustified and unfounded and he was arbitrarily removed from service by the then Director, Food and Civil Supplies. Secretary, Relief Rehabilitation Department, therefore placed his report before the Council of Ministers for reinstatement of Shri Prafulla Chandra Bhowmik in the post of Senior Clerk with all benefits through a Cabinet Memorandum dated 5.6.78. On 25th September, 1978 the Director, Relief and Rehabilitation Department by an order bearing No. 19 C37)/69Admn/511923, reappointed the plaintiff in the post of Senior Clerk wef 16.9.78. After his reappointment the plaintiff made representations and requested the authority that break in service between 9.2.59 and) 6.9.78 be treated as on duty for all purposes. But the request was turned down by the authority. The records before me sufficiently establishes that the work of the plaintiff was marked by Outstanding Efficiency and Devotion to duty and during his short period of 7 years service he got two promotions. Since the Govt did not treat the break period of service of the plaintiff as on duty for all purposes he has filed this present suit.

7. I have examined the case records before me and I have also heard Mr. AM Lodh, the learned senior counsel appearing on behalf of the plaintiffappellant and Mr. MK Dutta, learned Advocate appearing on behalf of the State Government.

8. Mr. AM Lodh argued that the order of the Director, Rehabilitation Department dated 25th September, 1975 reappointing the plaintiff in the post of Senior Clerk should be treated as an order of reinstatement in service. The learned counsel further submitted that the aforesaid order cannot be treated as a fresh appointment in service because there is no scope to appoint a person in the post of Senior Clerk directly as it is a promotional post and further the plaintiff on the date of reappointment was over 54 years of age and at that age entry in the Government service as fresh appointee is not permissible. There is sufficient force in the argument of the learned counsel for the appellant, because on a perusal of the order it appears that the plaintiff,. Shri Prafulla Chandra Bhowmik was reappointed in the post of Senior Clerk from which he was terminated on 9.2.59. In the aforesaid order references has also been made regarding the order of termination issued on 9.2.59. If the intention of the Government was to appoint the plaintiff afresh then the word, "reappointed" should not have been used in the aforesaid order and it was also not necessary to mention the order of termination in the aforesaid order of the Government. The learned Additional Subordinate Judge treated the aforesaid order of the Government as an order of

fresh appointment and therefore dismissed the claim of the plaintiff. It is necessary to examine what the Government really mean by the phraseology, "reappointed". In the service law generally the words, "reinstatement" is used. The words "reinstate" means to reinstall; to establish; to place again, in the former state, condition or office; to restore to a state or position from which the object or person had been removed". In the present case, the plaintiff was terminated from the post of Senior Clerk on 9.2.59 and by an order of the Government dated 25th September, 1978 the plaintiff was reappointed in the same post of Senior Clerk wef 16.9.78. Therefore, I have not hesitation to hold that the order of reappointment is, in fact, a reinstatement of the plaintiff in service wef 16.9.78.

9. In view of the fact that the Secretary, Relief and Rehabilitation Department found all the allegations against the plaintiffappellant is false and unfounded I think that the Government should have found it possible to accede to the request of the appellant to treat the break in service for the purpose of pension and pensionary benefits by fixing his pay notionally from the date of termination till the date of reappointment. There is no doubt that his services was terminated. But the ground on which they are said to have been terminated have subsequently found not correct as to constitute a permanent deterrent to a favourable consideration of the appellant's case. Indeed, the Secretary, Relief and Rehabilitation Department, as I have noted earlier, had expressed his view that it was a good case for reinstatement of service with all service benefits. It is true that the terms on which he was reappointed expressly stated that he would not be entitled to continuity of service, but the actual service put in by him will count towards pension and fixation of his pay. It must be borne in mind the (circumstances in which the plaintiff accepted those terms. He was in no position to bargain for a better deal and in the strange circumstances in which he found himself, he was compelled to accept whatever was dictated to him. I do not for a moment suggest that the sanctity of the contract between the parties should be given go bye, but what I find is that there is a case where it was subsequently found that theallegations on which his services were terminated are all baseless " and quality of his performances was highly appreciated by his superior by giving him promotions indicated that he should be relieved of the disadvantages suffered by him pursuant to that term in his contract of reappointment.

10. It further appears that the learned Judicial Commissioner, Tripura in his judgment and order dated 30.7.62 expressed the hope that the Tripura Government will consider the case of the plaintiff as certain injustice were done to him while terminating his service on 9.2.59. But the Government has taken about 19 years to consider the case of the plaintiffappellant and having found that some injustice has been done to the plaintiff has reappointed him on 16.9.78. I see no reason why the Government of Tripura failed to consider the case of the plaintiff within a reasonable time after the judgment passed by the learned Judicial , Commissioner in July, 1962. I also see no reason why the State Government should take long 19 years to consider the case of the plaintiff. I can

understand that the State Government would take some reasonable time for considering the case of the plaintiff in pursuance of the order of the learned Judicial Commissioner. But I am unable to understand why it failed to do so within a reasonable time.

11. Mr. AM Lodh, the learned senior counsel appearing on behalf of the plaintiffappellant draw my attention to Exhibit C, the order of reappointment of the appellant in the post of the Senior Clerk and the deposition of DW 1 Shri Sudhanshu Mohan Bhattacharjee who has been examined on behalf of the Government. It appears from the evidence of DW 1 that during cross examination this witness admitted that after termination of the service of the plaintiffappellant " under Rule 5 of the Temporary Service Rules, the case of the plaintiffappellant was enquired by Shri KD Menon, Secretary Relief and Rehabilitation Department in pursuance of judgment by the Hon"ble Judicial Commissioner, Tripura. DW 1 further admitted in the cross examination that Mr. Menon in his report found that the service of the plaintiffappellant was terminated under Rule 5 for no fault of him and he was dismissed most illegally and arbitrarily. Mr. Lodh, learned senior counsel, therefore, argued that on the basis of the report of Mr. Menon, Secretary of Relief and Rehabilitation Department, Govt has reappointed the plaintiffappellant in the post of Senior Clerk from which he was terminated. Consequently this order cannot be treated as a fresh appointment and the reappointment is to be treated as reinstatement in service for all purposes.

12. Mr. Lodh further argued that when it has been established during enquiry that the allegations against the plaintiffappellant were wholly baseless and unfounded there is no reason why the plaintiffappellant will not get his arrear of pay and allowances with effect from the date on which he was terminated from service, that is from 9.2.1959. The termination of the plaintiffappellant having been found illegal and arbitrary during the enquiry by Mr. KD Menon, Secretary, Relief and Rehabilitation Department, the plaintiffappellant is entitled to all his back wages from the date of termination of his service.

13. I cannot agree with the submission of Mr. Lodh, the senior counsel appearing on behalf of the plaintiffappellant because when an order of termination is set aside by a Court of law the effect would be that the employee was never deemed to have been lawfully terminated or dismissed and that he was wrongly prevented from attending his duties as a public servant. In such a contingency it would not be open to the department authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work. In the instant case termination order of the plaintiffappellant has not been set aside by any Court of law, on the contrary the learned Judicial Commissioner did not interfere with the order of termination passed against the plaintiffappellant. Therefore, I cannot place much importance in the aforesaid submission of the learned counsel.

14. In the present case the order of reappointment or reinstatement has been

made by the departmental authority. Since the determination by a departmental authority that the order of termination should be cancelled or he should be reappointed is not an adjudication by reappointing the plaintiffappellant to his post does not make the order of termination a nullity. Hence it is competent for the departmental authority to fix the remuneration to be paid to the employee for the intervening period in a case where the termination or dismissal was not wholly unjustified.

15. But before making such order the authority must apply his mind and come to a determination that the employee has not been fully exonerated or that the termination or dismissal was not wholly unjustified. The plaintiff has been reinstated in his service wef 16.9.78 (Ext C) but he has not been paid pay and allowances for the intervening period between the date of termination and reinstatement in service. The Government has, however, allowed the plaintiff the benefit of his past service which he rendered before the date of his termination for the purpose of pension only.

16. Now, the question arises for consideration is whether the Government can reappoint or reinstate a Government servant from any date as it consider fit even if it is found that the termination or dismissal of the Government servant was wholly illegal.

17. In the present case the service of the plaintiffappellant was terminated under Rule 5 because the authority was satisfied that the plaintiffappellant is responsible for missing of two files relating to fixation of the price of cement from the department and without making a proper enquiry the Government resorted to Rule 5 of the Temporary Service Rules as the plaintiffappellant was temporary Government servant at that time. But subsequently when a full fledged enquiry was made it is found that the allegations were wholly unjustified and the two missing files were found in the department itself. The other allegations against the plaintiffappellant were also found to be baseless by the Secretary, Relief and Rehabilitation Department and the Secretary was further of the view that service of the plaintiffappellant was terminated illegally and arbitrarily and therefore he suggested for reinstatement of plaintiffappellant in service with all benefits.

18. The Government has considered the case of the plaintiffappellant in pursuance of the observation made by the Hon'ble Judicial Commissioner in the writ application filed by the plaintiffappellant when the case of the plaintiffappellant has been reopened by the Government and when it was established that the plaintiffappellant was terminated from service most illegally and arbitrarily it is not clear why the Government did not reinstate the plaintiffappellant in service with effect from the date of termination of his service on 9.2.59. But instead of doing so the Government has reappointed the plaintiffappellant wef 16.9.78 that is after a period of 19 years. Mr. MK Dutta, Advocate appearing on behalf of State Government failed to give any reasonable reply for such an arbitrary decisions of the Government regarding reappointment of plaintiff from 16.9.78.

19. On reinstating or reappointing the plaintiffappellant in service from 16.9.78 the Government has partially redressed the grievances of the plaintiffappellant but injustice done to the plaintiffappellant has not been fully redressed by the Government specially in view of the fact that during enquiry it has been found that the plaintiffappellant has been illegally and arbitrarily terminated from the service. Further, order of reappointment or reinstatement in service cannot be made effective from any future or prospective date. The reinstatement or reappointment will always relate back to the date on when a Government servant was terminated or dismissed. Once the Government employee is reinstated, he would be deemed to have continued in service right from the date of termination of his service. Consequently I am of the opinion that the reappointment or reinstatement of the plaintiffappellant in service with effect from 16.9.78 is not based on any sound principle and it is an arbitrary decision of Government. Further, the Government did not count intervening period between the date of dismissal and the date of reappointment of the employee for any purpose. This decision of the Government also suffers from illegality being violative of the natural justice. The plaintiff has already retired from service, therefore, if the intervening period between the date of dismissal from the service and the date of reappointment of the plaintiff in service, that is the period between 9.2.59 and 16.9.78 is treated on duty and his pay is fixed notionally from 9.2.59 till the date of reinstatement, I think ends of justice will be met. The plaintiff is, therefore, entitled to be reinstated in service from 9.2.59 and his pay should be fixed notionally from the date of reinstatement of service till the date of his retirement in the post of Senior Clerk and his pension and pensionary benefits be settled accordingly.

20. Having regard the interest of justice and having regard to all the facts and circumstances of the case I am of the opinion that the appellant is entitled to an order in the break of his service and I believe that he should be considered as continuing in service throughout from the date of his original appointment on 1.8.1951.

21. The appellant will be deemed to be reinstated in service wef 9.2.59 and his pay should be fixed notionally in the post of Senior Clerk till the date of his retirement on 31.3.81 and pensionary benefits may be extended to the appellant accordingly. It is made clear that the appellant will not get any arrear pay and allowances on the basis of no work no pay principle. The appeal is, therefore, allowed. The judgment and decree dated 7.2.83 and 24.3.83 passed by the learned Additional Subordinate Judge in TS No.61 of 1981 is set aside and suit is decreed in the terms as stated above. The respondents are directed to treat the plaintiffappellant as continuous in service wef 1.8.51 and his pay in the post of Senior Clerk be fixed notionally from 9.2.59 till the date of his retirement on 31.3.81 and he may be paid his pension and pensionary benefits on the basis of such notional fixation of his pay in the post of Senior Clerk within a period of 3 (three) months from today.

22. In the circumstances of the case, I make no order as to costs.

A copy of the judgment may be forwarded to the Secretary, Relief and Rehabilitation Department, Govt of Tripura, Agartala free of cost.