
(2010) 08 GAU CK 0131
In the Gauhati High Court
Case No : W.A. No. 16 of 2004

Pranati Modak (Saha)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Education (Youth Affairs and Sports) Departments Recruitment Rules — Rule 1.3.3

Citation : (2011) 4 GLR 50 : (2010) 4 GLT 387

Hon'ble Judges : Madan B. Lokur, C.J;C.R. Sharma, J

Bench : Division Bench

Advocate : S. Talapatra and B. Banerjee, for the Appellant; T.D. Majumder, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The judgment and order dated 21st April, 2004, passed by the learned Single Judge, in Civil Rule No. 307 of 1998, is in challenge in this appeal.

2. The Appellant was initially appointed as a class-III staff (Primary Teacher) on 28.04.1964 and, thereafter, by order dated 11.11.1965, she was appointed to the post of Instructor (Physical Education) and, w.e.f 24.09.1968, she was posted as Physical Instructor (Graduate). By order, dated 09.01.1976, the post held by the Appellant, was re-designated as Junior Coach in the pay scale of Graduate Physical Instructor and then, w.e.f 09.11.1967, she was confirmed in the post of Physical Instructor. Thereafter, from 09.08.1988, the Appellant was placed in the selection grade of Physical Instructor/Senior Coach. By order, dated 02.01.1992, the Appellant was transferred from the existing place of posting i.e. the Office of the Sports and Youth Programme, Udaipur, to the Government College of Education, Agartala, with her existing pay scale along with admissible allowances until further order. In the said transfer order, it was stipulated that her pay and allowances would be drawn and disbursed from the Head of Government Colleges and Institutions viz. "2002-General Education, 02-Secondary Education, 306-Teachers training, 1-Salaries (non-plan)".

3. According to the Appellant, she obtained B.A. degree in 1968, M.A. degree in Physical Education 1976, B.Ed, degree in 1996-97 and obtained teacher's certificate in Physical Education in 1980. The Appellant, contended that since her transfer to the Government College of Education, she has been performing all the duties and responsibilities of Asstt. Professor of the said College including preparation of course materials on Physical Education for the Tripura University and authoring text books. According to the Appellant, though she was discharging the duties and responsibilities of Asstt. Professor, she was given the pay scale of Senior Coach violating the principle of "equal pay for equal work". In spite of submission of several representations, refusal of the State-Respondents to grant the pay scale of lecturer/senior lecturer to the Appellant, compelled the Appellant to prefer a writ petition seeking pay scale of Lecturer/Senior Lecturer and absorption/appointment as Asstt. Professor.

During the pendency of the writ petition, by order dated 04.06.2001, the Director, Youth Affairs and Sports, Tripura, transferred the Appellant from the Government College of Education to the Office of the West District Youth Affairs and Sports at Agartala. Bringing a challenge to the said transfer order, the Appellant amended the writ petition. According to the Appellant, the said transfer order was passed with mala fide intention with a view to frustrate her claim for absorption as lecturer/senior lecturer in the Government College of Education.

4. The State-Respondents contested the claim of the Appellant, by filing affidavit-in-opposition. In their affidavit-in-opposition, the contesting Respondents contended, inter alia, that the Appellant, who was appointed as Physical Instructor/Senior coach, was not entitled to claim the pay scale of lecturer under the UGC norms only on the ground of her transfer to the Government College of Education. According to the contesting Respondents, the fixation of pay, which is done on the recommendation of the Pay Commission, is in the domain of the State Government and that the writ Petitioner/Appellant, who was transferred to the said college as Senior Coach with her existing scale of pay, was not entitled for absorption/appointment as lecturer. It was also contended, that in the College, to which the writ Petitioner/Appellant was transferred, there was no post of Senior Coach and that her transfer to the said College was a mere administrative arrangement and as such the said transfer did not confer her any right for absorption in the said College.

The State-Respondents, in their affidavit-in-opposition, pointed out that there was no relation between the posts of Senior Coach and Assistant Professor and that the duties required to be performed by a Senior Coach related to physical activities as an expert of physical education. It is also contended that the State Government did not take any policy decision for granting UGC pay scale to the Physical Instructors of the College.

It was also contended that the writ Petitioner/Appellant was not qualified for appointment as Asstt. Professor. According to the State-Respondents, the writ Petitioner/Appellant did not possess the minimum qualification, prescribed by the

UGC and that no Physical Instructor, employed in the Degree Colleges and Universities, were allowed the UGC pay scale.

5. Denying any mala fide intention with regard to the transfer order, dated 04.06.2001, the answering Respondents stated that, in 1979, the Directorate of Education was trifurcated creating the Directorate of Higher Education, the Directorate of School Education and the Directorate of Social Welfare and Social Education and that subsequently, the Directorate of Sports and Youth Programme was also created. According to the Respondents, by notification, dated 28.03.1994, the Govt. of Tripura placed, the services of all Physical Instructors of various designations, working under the Directorate of Higher Education and the Directorate of School Education, under the administrative control of the Directorate of Sports and Youth Programme w.e.f 01.04.1994 and that in view of the said order, issued by the Government, the writ Petitioner/Appellant no longer remained as a staff/employee of the Directorate of Higher Education and that she came under the Directorate of Sports and Youth Programme, which was subsequently renamed as the Directorate of Youth Affairs and Sports of various District and Sub-Division. It was further averred that the State-Respondent, by its Memorandum, dated 16.02.1996, issued by the Respondent No. 3, declared the Head of offices and Drawing and Disbursing Officers (DDO) of various Sub-Divisional Youth Affairs and Sports Offices and the respective Head of Offices and DDOs of Youth Affairs and Sports were directed to draw and disburse salaries of Physical Instructors and Coaches and that in terms of the said memorandum, all the Physical Instructors and Coaches, including the writ Petitioner/Appellant were drawing their salaries from the respective offices of the Directorate of Youth Affairs and Sports. In view of the said Notification, it is contended, the Respondent No. 3 was the competent authority to issue the transfer order and that there was no infirmity in the impugned transfer order inasmuch as the writ Petitioner/Appellant was not an employee of the Directorate of Higher Education.

6. By the impugned judgment and order under appeal, the writ petition filed by the Appellant was dismissed, giving rise to this writ appeal.

7. We have heard Mr. S. Talapatra, learned Senior Counsel, assisted by Mr. B. Banerjee, learned Counsel for the Appellant. We have also heard Mr. T.D. Majumder, learned Addl. Govt. Advocate for the State-Respondents.

8. The first contention raised by Mr. S. Talapatra, learned Senior Counsel, for the Appellant, is that the Appellant, having been transferred to the Government College of Education, Agartala, was entrusted with the duties and responsibilities of a lecturer and as such she was entitled to be absorbed as Asstt. Professor and get the financial benefit w.e.f 02.01.1992 i.e. the date of her transfer to the said College like other similarly situated Lectures/Asstt. Professors of the College.

The second point, urged by the Senior Counsel, is that the subsequent transfer of the Appellant, by the impugned order, dated 04.06.2001, issued by the Director, Youth Affairs and Sports, Agartala, was illegal and without any authority and that

the same was issued only for the purpose of defeating the Appellant's claim for absorption in the said College.

9. Refuting the said argument, advanced on behalf of the Appellant, Mr. T.D. Majumder, learned Addl. Govt. Advocate submitted that the Appellant was appointed in the substantive post of Physical Instructor and that she was transferred to the Government College of Education as Senior Coach, which post belonged to the category of Physical Instructor and that, as the Appellant was not appointed as lecturer/teacher of the said College, she was not entitled for absorption as lecturer or Asstt. Professor, for want of required qualification as per UGC norms. It is also submitted, by the learned Addl. Govt. Advocate, that, in view of separation of the Directorate of Education into three Directorates and the placement of the services of all the Physical Instructors of various designations, working under the Directorate of Higher Education and the Directorate of School Education, under the administrative control of the Directorate of Sports and Youth Programme w.e.f 01.04.1994 and drawal and disbursement of salary of the Physical Instructors and Coaches, including the Appellant, from the Directorate of Youth Affairs and Sports, the transfer order issued by the Director of Youth Affairs and Sports, was lawful and not violative of any principles of natural justice, warranting interference by this Court. It is also contended that as the Appellant, in his capacity as Physical Instructor/Senior Coach, was transferred by the Director of Higher Education to the Government College of Education, her subsequent transfer from the said College cannot be termed as illegal, inasmuch as she was not permanently posted/appointed in the said College.

10. The first point, which needs determination is whether the Appellant, in view of her transfer to the Government College of Education, was entitled to be absorbed against a post of lecturer/senior lecturer/lecturer selection grade and get the benefit of pay scale under the UGC scheme. There is no dispute that the Appellant was appointed as a graduate Physical Instructor w.e.f 24.09.1988 and subsequently she was placed in the selection grade of Physical Instructor i.e. Senior Coach. The Director of Higher Education, as it was then, transferred the Appellant as Senior Coach from the Office of the Sports and Youth Programme, Udaipur to the Government College of Education at Agartala with her existing pay scale and other allowances until further order. The Director of Higher Education, in the transfer order or in any other subsequent order, did not mention anything requiring the Appellant to perform the duties of a teacher/lecturer or Asstt. Professor in the Government College of Education, Agartala As per record, she was transferred as Senior Coach. The contention of the Appellant is that, after her transfer to the said College, she was required to perform the duties and responsibilities of Lecturer/Asstt. Professor and as such she was entitled to get all the benefit extended to the Lecturer/Asstt. Professor. The contention of the State- Respondents is that, as the Appellant was not qualified for appointment as Lecturer/Asstt. Professor and in view of her transfer as Senior Coach, she was not entitled for absorption/appointment as Lecturer/Asstt. Professor.

In view of the categorical statement of the State-Respondents, regarding insufficiency of qualification in respect of the Appellant, the Appellant failed to substantiate that she was qualified under the UGC scheme for absorption/appointment as Lecturer/Asstt. Professor

11. The Appellant countered the said argument, advanced on behalf of the State-Respondents, by referring to the certificate issued by the Principal of the said College, wherein the Principal stated that the Appellant was performing the duties and responsibilities of the Asstt. Professor of the College. On the strength of the said certificate, the Appellant contended that, as she was required to perform the duties and responsibilities of Asstt. Professor, she was lawfully entitled for all the benefits available to a Lecturer/Asstt. Professor of the College. The Appellant being a Government employee and appointed under certain rules and regulations is covered by her service rules and she failed to substantiate that under the service rule she was entitled for absorption/appointment as Asstt. Professor of the College, to which she was transferred.

12. As indicated by the learned Single Judge, the qualification for recruitment to the post of lecturer, in the Government College, is prescribed by the UGC notification and the minimum qualification for appointment of teachers, in the University and Colleges, is governed by the University Grants Commission Regulation. In terms of the said notification, the post of Lecturer/Reader/Professor, in the Universities and Colleges, are required to be filled up by direct recruitment through advertisement and selection by the duly constituted selection committee, set up under the statute/ordinance of the concerned University. The learned Single Judge has also recorded, in the impugned judgment, that the minimum qualification, prescribed for the post of lecturer in Physical Education, is good academic record at the Master Degree level with qualification in National Eligibility Test (NET). It is the specific contention of the contesting State-Respondents that the Appellant did not possess the required qualification for appointment as lecturers and that there being no post of Senior Coach in the said College, the Appellant was not entitled to be absorbed as Lecturer or as a Senior Coach in the said College.

13. Mr. S. Talapatra, learned Senior Counsel, appearing for the Appellant, has submitted that the factual position as Well as the law applicable to the present case are almost similar to that of the writ petition No. W.P. (C) 177 of 2002, which has already been heard by this Court. The learned Addl. Govt. Advocate, appearing for the State-Respondents, has also fairly conceded to the said submission of the learned senior counsel for the Appellant.

14. There is no dispute that the Service Rules of the Department and the Regulations/norms, issued by the University Grants Commission (for short "UGC"), notice of which has already been taken in W.P. (C) No. 177 of 2002, are applicable to this case also. Therefore, for arriving at a correct decision, we would like to refer to the said Rules and Regulations.

15. The UGC Regulations, 2000, regarding minimum qualifications for appointment and career advancement of teachers, in universities and colleges, as notified vide letter No. F.3-1/2000(PS), dated March 2000, while laying down the qualification for appointment to the post of lecturer, made it compulsory, for those candidates, who did not complete M.Phil degree or had not submitted Ph.D. thesis in the concerned subject upto 31st December, 1993, to qualify in the NET. The note attached to Rule 1.3.3 of the said Regulation reads as follows:

Net shall remain the compulsory requirement for appointment as lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil. Degree or have submitted Ph.D. thesis in the concerned subject upto 31st December, 1993, are excepted from appearing in the NET examination.

16. From the above, it transpires that NET was not a compulsory requirement only for those candidates, who could obtain M.Phil or submit Ph.D. thesis prior to 31st December, 1993. But the requirement of NET clearance was made compulsory, for those candidates, who did not fulfil the said terms and conditions. In the said notification, it was also made clear that any relaxation in the prescribed qualification could be made by the UGC in a particular subject in which NET is not conducted or enough number of candidates are not available with NET qualification for specific period only. It was also made clear that such relaxation would be given basing on sound justification and would apply to affected Universities for that particular period. There is nothing on record to find that any such relaxation of qualification was granted by the UGC in respect of the subject "Physical Education" under the Tripura University, exempting the Appellant from the requirement of NET or SLET clearance. In the notification No. F.3-1/94(PS), dated 24-12-98, issued by the UGC, it was provided that it would be optional for the University to exempt Ph.D. holders or to require NET clearance in their case either as a desirable or essential qualification for appointment as lecturer in the University's departments and colleges. Despite such provision, there is no material, on record, to show that the Tripura University had granted any relaxation in this regard.

17. Vide notification No. 51-F-1/2002 (PS) Exempt dated 31-7-02, the UGC in partial modification of the earlier Regulation issued vide letter No. F.3-1/2000(PS) dated 4-4-2000, modified the qualification criterion by extending the cut off year to 31st December, 2002. The modification reads as follows:

NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M. Phil degree by 31st December, 1993 or have submitted Ph.D. these to the university in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. Degree, they shall have to pass the NET examination.

18. The cut off year as well as the qualification prescribed by the UGC

Regulations/norms have also been incorporated in the Recruitment Rules. Therefore, the Recruitment Rules i.e. the "Education (Youth Affairs and Sports) Departments Recruitment Rules" is found to be in conformity with the UGC Regulations/norms and the Recruitment Rules also prescribed the said qualification for appointment as Lecturer/Asstt. Professor.

19. From the said Service Rules as well as the University Regulations aforesaid, it is found that for appointment as a Lecturer/Asstt. Professor, one must hold a degree of Ph.D. apart from securing 55% marks in Master Degree. Candidates not having Ph.D. degree are required to clear NET. There is nothing on record to find that the Appellant obtained Ph.D. or that she had qualified in National Eligibility Test (NET). Therefore, as per the Service Rules as well as regulations/norms issued by the University Grants Commission, the Appellant was not qualified for appointment as Asstt. Professor or Lecturer.

20. The Appellant referring to the judgment and order, dated 24.09.1998, passed by this Court in Civil Rule Nos. 50, 51, 52 of 1981 and Civil Rule No. 301 of 1980, has claimed to she is entitled to get the pay scale of Asstt. Professor as prescribed by the UGC. The Petitioners in the above referred cases were Asstt. Teachers and they were appointed as Lecturers in Degree Colleges. Though they were Qualified for appointment as Lecturers, they were not given the pay scale, meant for other Lecturers in the concerned College, on the ground that they were not selected for the said post by the Tripura Public Service Commission. In the above referred cases, it was observed by the Court that if the other Lectures could be paid salary in the higher pay scale, despite they not having been recommended by the Tripura Public Service Commission, there was no reason to deny the same to the Petitioners on the said ground. As the Petitioners had served the said College for about one and a half decade, the Court, in deciding the case in favour of the writ Petitioners, dispensed with their requirement of selection by the Public Service Commission and the Respondents were directed to make available to the Petitioners the pay scale applicable to other lecturers in the Degree Colleges.

21. In the present case in hand, the Appellant was appointed as Physical Instructor/Senior Coach and she was transferred to the Government College of Education, Agartala in her capacity as Senior Coach under the existing pay scale and by the said transfer order, she was not required to perform the job of a Lecturer or Asstt. Professor. That apart, the Appellant did not possess the academic qualification for appointment as Lecturer/Asstt. Professor under the Service Rule as well as the regulation/norms, prescribed by the University Grants Commission. Therefore, the factual position of the above referred cases are distinguishable and as such the Appellant cannot draw any benefit from the decision, rendered by this Court, in the above referred cases. The Appellant has also referred to the case of Sri Malay Kumar Saha. On behalf of the State-Respondents, it was pointed out that Sri Malay Kumar Saha was appointed as subject teacher and as such he had the qualification of a Teacher, whereas the

Appellant was appointed as a Physical Instructor/Senior Coach. The duties and responsibilities of a Physical Instructor/Senior Coach and responsibility of a Teacher are certainly not similar and as such the Appellant cannot equate herself with Sri Malay Kumar Saha.

22. In the light of the above decision, we find no sufficient force in the contention, advanced on behalf of the Appellant, that the Appellant, in view of her transfer to the Government College of Education, Agartala, as Senior Coach in the existing pay scale, was entitled for absorption/appointment as Lecturer/Senior Lecturer/Asstt. Professor despite not having the requisite qualification for such post i.e. in contrary to the Rules and the Regulations aforesaid.

23. With regard to her transfer by the impugned order, dated 04.06.2001, it has been contended that the said transfer was mala fide, without authority of law and that the same was done with a view to frustrate her absorption in the College. According to the learned Addl. Govt. Advocate, appearing for the State-Respondents, the Appellant having been transferred to the said College as Senior Coach by the Director of Higher Education, was liable to be re-transferred from the said College and that there was no mala fide intention in issuing the said transfer order. Admittedly, as revealed from the transfer order, dated 02.01.1992, the Appellant, prior to her transfer to the said College, discharged her function as Senior Coach in the office of Sports and Youth Programme at Udaipur. The transfer order was made for a period until further order. By the said transfer order, the service of the Appellant was not permanently placed with the establishment of the said College. There is no dispute that, in 1979, the Directorate of Education was trifurcated into three Directorates, namely, the Directorate of Higher Education, the Directorate of School Education and the Directorate of Social Welfare and Social Education and subsequently the Directorate of Sports and Youth Programme was created. It is also not disputed that, by notification, dated 28.03.1994, the Govt. of Tripura placed the services of all the Physical Instructors of various designations, working under the Directorate of Higher Education and the Directorate of Social Education, under the administrative control of the Directorate of Sports and Youth Programme w.e.f. 01.04.1994. Therefore, in view of the said notification, the services of the Appellant stood placed under the Directorate of Sports and Youth Programme. The legality and validity of the said notification, placing the service of the Appellant under the Directorate of Sports and Youth Programme has not been challenged. Therefore, in our considered opinion, the Directorate of Youth Affairs and Sports, Agartala, being the administrative head, was lawfully entitled to cause transfer of the Physical Instructors of various designations. As the Appellant, who was holding the post of Senior Coach, which was a designation of Physical Instructor, was liable to be transferred by the Director of Youth Affairs and Sports, Agartala. The authority, which had the power to transfer the Appellant as Senior Coach to the Government College of Education, had certainly the power to re-transfer the employee concerned. The impugned transfer order was made after about 9 years of the transfer of the Appellant to the Government

College of Education. In view of absence of any order or rule, in support of the Appellant's claim for permanent absorption in the said College, to which she was earlier transferred for a period until further order, her subsequent transfer cannot be held to be bad in the eye of law and mala fide. There is nothing on record to show that, but for the said transfer order, the Appellant was entitled for her absorption in the said College as Lecturer or Asstt. Professor. Therefore, we find no infirmity in the impugned transfer order requiring any interference.

24. In the light of the above discussions, we find no merit in this appeal requiring interference with the impugned judgment and order, passed by the learned Single Judge. Accordingly, the appeal stands dismissed. No costs.