

(2000) 04 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 139 of 1990

Pratap Sanyal (Dr.)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Constitution of India, 1950 — Article 16(1), 16(4), 16(4A)

Citation : (2000) 2 GLT 507

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B. Das and A. Bhattacharjee, for the Appellant; M. Nath, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Sri B. Das, learned senior counsel for the Petitioner and Sri M. Nath, learned senior counsel for the Respondents. State of Tripura.

2. The Petitioner, Dr. Pratap Sanyal joined the Tripura Health Service on 27.1.1975 in Grade-V of the said service. He was promoted to the Grade-IV of the service on 1.3.1983 and thereafter while he was waiting for his promotion to the next grade i.e. Grade-III, the Respondent No. 3 Dr. Nirode Das, who according to the Petitioner, was junior to him. was promoted to Grade-III on the basis of the Govt. memorandum providing for enhanced promotional avenues for reserve categories i.e. officers belonging to schedule caste and schedule tribe. In this writ petition, the Petitioner has challenged the above Govt. Memo providing for reservation/promotion mainly on the grounds that

(i) there cannot be a reservation in a single post.

(ii) the question of efficiency of the services was not considered while making the provision for reservation and that the existing rules provided for recruitment/promotion according to merit with due regard to the seniority and the rules are silent as regards the reservation, and the gap cannot be filled up by way of such

Govt. circular.

3. It may be mentioned here that in the meantime the State of Tripura has enacted the Reservation for schedule caste and schedule tribe Service Act in 1991 and the rules have also been framed in the year 1992.

4. The submission regarding single post promotion need not be discussed as on perusal of the writ petition I find that there is no whisper even that the post to which Respondent No. 3 was promoted is a single promotion post; on the contrary, it is stated in para 18 that there were other writ petitions filed by other members of the Service challenging the above Govt. notification. Sri Das submits that the decision in the Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., still holds field and the reservation for schedule caste and schedule tribe in the matter of promotion has been deprecated by the Apex Court. Learned Counsel for the Respondents on the other hand submits that the matter in hand stands covered by the decision of this Court in Civil Rule No. 104, 158, 159, 180 and 181 of 1982, given on 15.3.1992. In the above decision, this Court held that the provision for reservation in recruitment by promotion in Tripura Health Service does not suffer from any infirmity, much less any illegality and the batch of writ petitions were accordingly dismissed. Similar view was taken by this Court in a later decision i.e. in the case of Bikash Deb Barma, Petitioner v. Registrar Gauhati High Court and Ors. Respondents 1997 (1) GLT 565 . The decision of the learned Single Judge in Bikash Debbarma (supra) was subsequently upheld by the Division Bench in the writ appeal. In a recent decision, in the case of Ajit Singh and Others Vs. The State of Punjab and Others, Workmen represented by Assam Petroleum Mazdoor Union Vs. Management Oil India Ltd. and Others, , the Apex Court observed as below:

28. We next come to the question whether Article 16(4) and Article 16(4A) guaranteed any fundamental right to reservation. It should be noted that both these articles open with a non-obstante clause?"Nothing in this article shall prevent the State from making any provisions for reservation?" There is a marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4A). There is no directive or command in Article 16(4) or Article 16(4A) as in Article 16(1). On the face of it, the above language in each of Articles 16(4) and 16(4 A), is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963.

5. As the State of Tripura has provided for reservation in the matter of promotion in the health services of the State and in absence of any materials to show that the above promotion will hamper/affect the efficiency in the service, no case for quashing the above notification has been made out.

6. Relying on the observation of the Apex Court in Ajit Singh (supra), Sri Das, learned senior counsel for the petitioner submits that the reserve category promotees cannot be given accelerated promotion each time overlooking the

general category officers who were senior to them in the feeder post. It is stated that the petitioner and the Respondent No. 3 were together in Grade-V of the service and as a matter of fact, the Respondent No. 3 was junior to the petitioner and in view of the reservation, he was promoted to Grade-IV prior to the petitioner. Subsequently, the petitioner was also promoted to Grade-IV. In Grade-IV the petitioner should have been treated as senior to the Respondent No. 3, but the authority concerned has again promoted the Respondent No. 3 to Grade-III. I will like to reproduce the following observation of the Apex Court in Ajit Singh (supra):

76. We, therefore, hold that the roster point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post vis-a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate?he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal and Ajit Singh have been correctly decided and that Jagdishlal is not correct decided. Points 1 and 2 are decided accordingly.

80. As accepted in Union of India and others etc. Vs. Virpal Singh Chauhan etc., and Ajit Singh Januja and others Vs. State of Punjab and others, , we hold that in case any senior general candidate at level 2 (Assistant) reaches Level 3 (Superintendent Grade II) before the reserved candidate (roster point promotee) at level 3 goes further up to level 4 in that case the seniority at level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at level 2. Further promotion to level 4 must be on the basis of such a modified seniority at level 3, namely that the senior general candidate of level 2 will remain senior also at level 3 to the reserved candidate, even if the latter had reached level 3 earlier and remained there when the senior general candidate reached that level 3. In cases where the reserved candidate has gone up to level 4 ignoring the seniority of the senior general candidate at level 3, seniority at level 4 has to be refixed (when the senior general candidate is promoted to level 4) on the basis of when the time of reserved candidate for promotion to level 4 would have come, if the case of the senior general candidates was considered at level 3 in due time. To the above extent, we accept the first part of the contention of the learned Counsel for the general candidates. Such a procedure in our view will properly balance the rights of me reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidates.

7. In order to consider the submission of the learned Counsel, I have perused the pleadings of the writ petitioner, but find no averment to the effect that the Respondent No. 3 was junior to the petitioner in Grade-V of the service or that

the said Respondent was promoted to Grade-IV on the basis of the reservation. Hence, in absence of the pleadings, it cannot be said that the petitioner shall be treated as senior to the Respondent No. 3 in Grade-IV of the service. Further Respondent No. 3 was promoted in the year 1990 and considering the prospectivity laid down in the case of R.K. Sabharwal and others Vs. State of Punjab and others, and reiterated in Ajit Singh (supra) better known as Ajit Singh (II) case, it is held that no case for reversion of Respondent No. 3 has been made out. Learned Counsel for the petitioner has no information as to whether during the last ten years, the petitioner has been promoted to Grade-IH or not. The question of seniority is not involved in the present writ petition, but it goes without saying that the State-Respondents shall be bound to follow the principle of seniority laid down in Ajit Singh (II) case.

8. In the result, writ petition stands dismissed.