
(1995) 10 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 121 of 1987

Ramendra Chandra Chakraborty

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Tripura Government Service (Revised Pay) Rules, 1975 — Rule 7(b)(ii), 7(b)(ii)

Citation : (1996) 1 GLJ 233

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : A.Bhattacharjee, B.Das, S.Chakraborty, P.Deb Roy, Advocates
appearing for Parties

Judgement

1.This is an application under Article 226 of the Constitution filed by the petitioner for a writ directing the respondents to cancel the decision of the Directorate of Education, Govt. of Tripura communicated under letter dated 25.9.1984 of the Secretary of Ramkrishna Ashram Vidyamandir (Annexure B to the writ petition) and for a direction to the respondents to fix the pay of the petitioner at Rs.370/ on 25.9.1974 in the scale of pay of Rs.325665/ subsequently further revised on and from 1.1.1982 to Rs.5601350/.

2. The facts are, very briefly, that the petitioner joined the service of Ramkrishna Ashram Vidyamandir on 1.2.1967 as Assistant Teacher in the Primary Establishment in the scale of pay of Rs. 125200/. At the time of joining the service, he was an undergraduate and untrained teacher. Ramkrishna Ashram Vidyamandir is an aided school and the aforesaid scale of pay which was introduced with effect from 1.4.1961 was revised to Rs.240440/ w.e.f. 1.3.1974. Accordingly w.e.f. 1.3.1974 the petitioner started drawing the revised pay of Rs.320/. Thereafter, the petitioner took the BA examination from the Calcutta University and graduated as per result of the BA examination declared on 25.9.1974. The petitioner's case in the writ petition is that w.e.f. the date of publication of the result i.e. on 25.9.1974 he is entitled to the revised pay of

Rs.370/ as an untrained graduate teacher in accordance with the Tripura Government Services (Revised Pay) Rules, 1975 as has been decided in the memorandum dated 7.3.1981 (Annexure A) of the Director of School Education, Government of Tripura. Although the petitioner was allowed initially to draw the aforesaid revised pay of Rs.370/, by the impugned letter dated 23.11.1984 ^ (Annexure B). the Secretary of the Ramkrishna Ashram Vidyamandir, Agartala has intimated the petitioner that as per the memo dated 25.9.1984 of the Director of School Education, Government of Tripura, the pay scale of the petitioner has to be refixed in a lower stage and the excess payment made to him will have to be refunded to the Education Department.

3. In the affidavit in opposition filed on behalf of the respondent Nos.1, 2 and 3 it has been stated in para 7 that on 25.9.1974 when the petitioner was declared to be a graduate he was drawing a basic pay of Rs.330/ in the scale of Rs.240440/ as an under graduate teacher of Primary Establishment. It has been further stated that the provision contained in Rule 7 (b) (ii) 2nd proviso read with Schedule 4. Item 39 of the Tripura Government Service (Revised Pay) Rules, 1975 (for short the 1975 Revised Pay Rules) were not applicable to the petitioner since he was neither an Assistant Teacher of Middle School and High School and was not drawing existing pay scale of Rs.175325/ for trained graduate or Rs.175/ (fixed) for untrained graduate. Accordingly the petitioner's case is treated as a new entrant on 1.3.1974 for the purpose of regularisation of his pay. In the said affidavit in opposition reliance has been placed on the memorandum dated 25.9.1984 of the Govt. of Tripura. Directorate of School Education (Estt Confirmation Section) wherein it has been stated that where the pay of an Assistant Teacher in the scale of Rs.240440/ on the date immediately preceding the date of declaration of his Bachelor's Degree Examination was lower than the minimum of the scale of Rs.325665/ then his pay in the pay scale of Rs.325665/ on the date of declaration of Degree Examination result, shall be fixed at the minimum scale of Rs.325/ "with DNI after 12 complete months, but where his pay in the scale of Rs.240440/ as on the date immediately preceding the date of declaration of the Bachelor's Degree examination result was equal to or higher than the minimum scale of Rs.325665/ then his pay on that date in the scale of Rs.325665/ shall be at that stage if there is such a stage in the scale of Rs.325665/ or at the lower stage, the difference being treated as personal pay to be absorbed in future increase of pay. In accordance with the said memo dated 25.9.1984 the pay of the petitioner who was drawing Rs.330/as on 25.9.1974 when the result of the BA Degree examination was published was fixed at Rs.325/ + 5/ (Personal Pay), in accordance with FR 22 (a) (ii).

4. At the hearing of the writ petition, Mr. B. Das, learned senior counsel for the petitioner submitted that it would be evident from the memorandum dated 7.3.1981, (Annexure A to the writ petition) that even though the provisions of (Revised Pay) Rules, 1975 were not applicable to Assistant Teachers borne on the Primary Establishment, by the aforesaid memo dated 7.3.1981 it was decided, in supersession of all previous orders on the subject, that graduate Assistant

Teachers borne on the Primary Establishment shall be allowed the scale of Rs.325665/ w.e.f. 1.3.1974 or the date of their appointment, or the date of acquiring the Bachelor Degree whichever is later, subject to the conditions set forth in the said memo. Mr. Das further submitted that a reading of Entry 39 of Schedule 4 of the aforesaid 1975 Rules would make it clear that all existing untrained graduate teacher as on the publication of the Rules will get a fixed of Rs.370/ per month and increments will be allowed after successful necessary training. According to Mr. Das since the memo dated 7.3.1981 (Annexure A) made the aforesaid 1975 Rules applicable to the Assistant Teacher either w.e.f. 1.3.1974 or the date of appointment, or the date of acquiring the Bachelor Degree, whichever was later and since the petitioner acquired the Bachelor Degree only on 25.9.1974, the petitioner was entitled to a fixed pay of Rs.370/ as untrained graduate teacher from the date of publication of the result of Degree Examination i.e. 25.9.1974.

5. Mr. P. Deb Roy, learned Government Advocate, on the other hand, relied on the averments made in the affidavit in opposition filed on behalf of the respondent Nos.1, 2 and 3 and contended that the pay of the petitioner as on 25.9.1974 has been rightly fixed at Rs.325/ + Rs.5/ (personal pay).

6. Having considered the aforesaid submissions of the learned counsel of the parties I am of the opinion that the petitioner is entitled to a fixed pay of Rs.370/ as an untrained graduate Assistant Teacher w.e.f. 29.9.1974, the date on which his result of the BA examination was declared for reasons that will follow. It is true as contended by the State respondents in the affidavit in opposition that Entry 39 of Schedule 4 of the 1975 Revised Pay Rules was applicable expressly only to Assistant Teacher of Middle School and High School and hence by virtue of the provisions in the said Entry 39 of the 1975 Revised Pay Rules, the petitioner not being an Assistant Teacher of Middle or High School or not being an existing untrained graduate teacher on the date on which the 1975 Revised Pay Rules came into force was not entitled to a fixed pay of Rs.370/. But then by the Memo dated 7.3.1981, it was decided by the Government of Tripura in the Education Department in effect to extend the benefits of the aforesaid Entry 39 to Assistant Teacher's borne in Primary Establishment with qualification of Bachelor Degree (in Arts/Science/ Commerce) and it was clearly stated in the said memo that an Assistant Teacher borne in the Primary Establishment shall be allowed the scale of Rs.325665/ on the date of acquiring Bachelor Degree subject to the conditions set forth in the office memo. Since the petitioner acquired the Bachelor Degree on 25.9.1974, he was entitled to the benefits of pay revision w.e.f. 25.9.1974 as per Entry 39 of the 4th Schedule of 1975 Revised Pay Rules not by virtue of the aforesaid statutory Rules, but by virtue of the executive decision contained in the memo dated 7.3.1981 of the Director of School Education, Tripura. Since the petitioner was an untrained teacher and became a graduate untrained teacher w.e.f. 25.9.1974 he would be entitled to fixed pay of Rs.370/ with effect from 25.9.1974 as per the said memo dated 7.3.1981 read with Entry 39 of the 4th Schedule of the 1975 Revised Pay Rules. It appears that

the respondents have proceeded on the erroneous assumption that the petitioner is a trained graduate teacher in the Primary Establishment and have accordingly allowed him the scale of pay Rs.325665/ and fixed his pay in the said scale as on 25.9.1974 at Rs.325/ + Rs.5/ as personal pay in accordance with the memo dated 25.9.1981 which would apply only to trained graduate teachers and not to untrained graduate teachers.

7. In the result, the writ petition is allowed and the impugned communication dated 23.11.1984 of the Secretary, Ramkrishna Ashram Vidyamandir, Agartala to the petitioner (Annexure B) is quashed and the respondents are directed to allow the petitioner a fixed pay of Rs.370/ as on 25.9.1974, the date on which he acquired the BA Degree and not the scale of pay of Rs.325665/ which was available only to trained graduate teacher and not to untrained graduate teacher. After the pay of the petitioner is fixed as directed above, in case the petitioner has drawn any pay in excess, the same shall be recovered, but in case the petitioner has drawn anything less than the amount not drawn shall be paid to the petitioner.

8. But in the facts and circumstances of the case there will be no order as to costs.