
(1997) 01 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 128 of 1998

Sabyasachi Bhattacharjee	Vs	APPELLANT
State of Tripura and Another		RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Citation : (1998) 2 GLR 359

Hon'ble Judges : V.K. Khanna, C.J.; D.N. Baruah, J.; A.K. Patnaik, J

Bench : Full Bench

Advocate : B. Das, J.R. Dutta, S. Chakraborty and A. Bhattacharjee, for the Appellant; A. Chakraborty, A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Khanna, C.J.—The Petitioner, Shri Sabyasachi Bhattacharjee, entered into Public Service of Tripura in 1963 as Asstt. Teacher under the Education Department. While entering into service as aforesaid, the Petitioner was an under-graduate and his services were taken against Primary Education Head and while in service, the Petitioner passed his B.A. examination in the year, 1970. According to the Petitioner, many other persons also had entered service under the Education Department as Asstt. Teacher against the Primary Education Head and some of them were already Graduates at the time of their entry into service and others were undergraduates but like the Petitioner, subsequently became graduates.

2. The State of Tripura took a decision to allow the scale meant for the graduate teachers to all the teachers having graduation irrespective of the Heads against which they were entertained and in pursuance of that decision, the Govt. of Tripura, Education Department issued a memorandum numbering F.2 (10-23) DSE/79, dated 7.3.81 (Annexure A). According to the Petitioner, this decision was effective from the respective dates from which the examination results were published in the individual cases.

3. Admittedly, one Shri Pradip Chandra Bhattacharjee, filed a Civil Suit in the Court of the Sadar Munsiff, Agartala numbered as Title Suit No. 24/74, claiming that he is entitled to get the pay scale meant for untrained Asstt. Teachers from the date of attaining graduation by him. In the aforesaid Suit, the stand of the State of Tripura was that the scale meant for graduate teachers can only be available to the graduate teachers serving in the Secondary and Higher Secondary Schools but are not for such graduates who are serving in Primary Schools. The Suit was dismissed by the trial Court. An appeal was preferred against the aforesaid judgment of dismissal which was numbered as Title Appeal No. 4/76. The appeal too was dismissed. Thereafter, a Second Appeal was preferred before the High Court (S.A. 14/76). The aforesaid Second Appeal was finally decided by the learned Single Judge of this Court by his judgment and order dated 14th September, 1979 (Annexure B). The learned Single Judge held that from the language of item 44, as it is, there was no reason to restrict the benefit of the 1965 ROP amended Rules to the teachers of Secondary stage inasmuch as it simply says "Assistant Teacher (Untrained Graduate)". It was also held that the pay scale which has been mentioned in serial (iii) of column 3 is one which before the 1963 Rules had admittedly applied to all the teachers irrespective of whether they were in Primary or Secondary Schools. Serial No. 18 of the Rules has itself dealt with Trained Matriculate or Under-Graduate Untrained without making distinction between teachers of Primary or Secondary School. The 1967 amendment viewed in this context cannot be restricted to teachers in the Secondary Schools. The learned Single Judge in his judgment had also referred to letter of the Director of Education (ext. A 12) which unequivocally shows that the benefit of fixed pay of Rs. 175/- per month was made available to the untrained Graduate teachers at the Primary stage from the date of appointment or from the date of declaration of the result of their degree examination whichever is latter.

4. The ultimate finding recorded was that if the intention of the Government was to restrict the benefit of the amended 1965 Rules to the Secondary teachers, there was nothing to prevent it from saying so. The appeal was, therefore, allowed and the Suit was decreed and the claim of the Plaintiff to get the benefits from the date of his Graduation was allowed. It has not been disputed by the Advocate General for the State of Tripura that against the aforesaid Second Appeal, no proceedings were taken and the judgment has become final and the Plaintiff of the aforesaid Suit has derived benefit from the date he did his graduation.

5. Thereafter, Civil Rules Nos. 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and 76 of 1980 were filed by a large number of Petitioners praying for the same relief. The aforesaid Civil Rules were decided by a common judgment by a Division Bench of this High Court by its judgment dated 21.12.88. The Division Bench took the view, relying in the decision of the learned Single Judge given in the aforesaid Second Appeal, that as the State Govt. itself has allowed Graduate scale to the three persons named therein from the date of their graduation and

this Court also allowed similar reliefs in the above Second Appeal, the Court found no cogent reasons to deny the benefit to the applicants in the Civil Rules. All the Civil Rules were thereafter allowed.

6. Mr. A. Chakravarty has also not disputed the fact that thereafter several Civil Rules including Civil Rule No. 82/80 were filed and had been disposed of by this Court in terms of the judgment given in Civil Rules Nos. 64 to 76 of 1980.

7. Five Civil Rules numbering 53/81, 55/82, 56/82, 57/81 and 129/81 were thereafter filed by the Petitioners claiming the aforesaid benefits on the basis of item No. 44 inserted in ROP Rules of 1965 vide notification dated 9th May, 1967. The Division Bench decided the aforesaid Civil Rules by a common judgment on 22.2.92. Regarding the decisions given in various petitions extending benefits to a large numbers of Petitioners on the basis of the earlier Division Bench judgment, the Division Bench was of the opinion that all those facts were not before the Bench. As far as the decision of the learned Single Judge in the Second Appeal is concerned, the Bench was of the opinion that the learned Single Judge did not consider the scope of applicability of item 44 of the amended 1965 ROP Rules in respect of the teachers who were absorbed in the three pre-revised pay scales drawing regular increments. It was held that the decision given by this Court in Second Appeal so far as it purports to hold that the benefit of the fixed pay of Rs. 175/- per month as provided in item 44 of the amended ROP Rules of 1965 was not limited to those incumbents who used to get fixed pay of Rs. 100/- is not good in law.

8. It may also be noticed that SLP (C) No. 11866/89 with SLP No. 787-99 of 1990 were filed against the judgment and order dated 6.1.89 and 21.8.88 of the Gauhati High Court Civil Rules Nos. 182/80 and 64 and 76 of 1980 which were filed by the State of Tripura. It is pertinent to note that in the aforesaid SLPs. the following statement was given by the learned Counsel appearing for the State of Tripura:

Learned Counsel for the Petitioner submits that these SLPs have become infructuous on account of the fact that the Respondents have been given the benefit which they were claiming (emphasis provided), Accordingly, the SLPs are dismissed as infructuous.

9. At the very outset the first question which arises relates to the facts of the decisions given in the Second Appeal and the large number of Civil Rules which had been decided in favour of similarly situated Petitioners and allowed by this Court and as has been observed above, the SLPs which have been got dismissed as having become infructuous by the State of Tripura on the ground that the claims of the Petitioners in those Civil Rules had already been given.

10. From the aforesaid admitted facts, it is clear that in connection with a large number of similarly situated teachers, the benefit under item 44 of the amended ROP Rules of 1965 has already been extended by the State of Tripura on the basis of the judgment given in the Second Appeal by the learned Single Judge

and by various Division Benches in a large number of Civil Rules filed in this Court. From the aforesaid, it is clear that the view which the Government had taken in respect of item No. 44 was that the benefit of the aforesaid item No. 44 was not restricted to any class of teachers and was available even to the Primary School teachers from the date when they obtained Graduation Degrees. As it would be noticed, it is thus clear that in the State of Tripura, the Government of its own interpretation has created two classes of teachers: (i) to whom they have already extended the benefit of item 44 after following the decisions given in the Second Appeal and various Civil Rules and (ii) after making the statement before the Supreme Court in the SLPs that the benefits claimed by those Petitioners in the Civil Rules against which the SLPs had been filed by the State of Tripura has already been given to them.

11. The first legal question which arises for consideration is the fact of the judgment given by the Division Bench of this Court of a later date in Civil Rules Nos. 53/81, 55/82, 56/82, 57/81 and 129/81 on a much later date i.e., 22.2.92. As has been observed above, the aforesaid Division Bench had not taken into account the large number of the earlier Division Bench judgments of this Court which had confirmed that view taken by the learned Single Judge in the Second Appeal. In our opinion in view of the aforesaid admitted facts when the later Division Bench has not taken into account the decisions given in a large number of cases by an earlier Division Bench in connection with similarly situated teachers in respect of item 44, the judgment given by the Division Bench will be treated to be per incuriam.

12. Secondly, the legal question which arises for determination is whether in the State of Tripura, the decision in respect of interpretation of item 44 was given by the learned Single Judge as early as 14th September, 1979. This view had been confirmed as has been observed above, in a large number of Civil Rules later on. On the admitted facts, therefore, the position which the Government had also accepted in connection with interpretation of item 44 right from 14th September, 1979 till 22-2-92 i.e., for a period of about fourteen years was that the interpretation of item 44 was that the benefit was available to all types of Graduate teachers from the date that they had done their Graduation. On the principle of "Stare Decisis" Page 1406, Black's Law Dictionary, when the law in the State of Tripura in respect of interpretation of item 44 stood for fourteen years, in our view, the later Division Bench after fourteen years should not have unsettled the law, specifically when before the Supreme Court in connection with the SLPs, the State of Tripura had taken the stand that they had themselves extended the benefits claimed by the Petitioners in the Civil Rules which had been allowed by this Court and had themselves withdrawn their SLPs as having become infructuous. There is one thing pertinent to note that the SLPs have been dismissed in the year, 1994 and till then, the State of Tripura was not prepared to challenge the earlier decisions of the Division Bench before the Supreme Court even though the SLPs had been filed and had taken up the stand that the interpretation given to item 44 by the earlier Division Bench was correct

and for that reason, the benefit had been extended. In our opinion, therefore, in these cases the principle of Stare Decisis will be clearly applicable and the settled position of law in respect of the interpretation of item 44 would not be unsettled specially on the ground that the State of Tripura has itself given that interpretation and had extended all the benefits to all the categories of teachers from the date of their doing the Graduation.

13. We have also independently examined the decision given by the learned Single Judge in the Second Appeal and also the decision given by the Division Bench in the Civil Rules on 22.2.92, In our opinion, the view taken by the learned Single Judge was a plausible view in view of the fact that the Advocate General for the State of Tripura has himself conceded that item No. 44 itself does not indicate that the benefit is restricted to any particular category of Graduate teachers. The learned Single Judge in the Second Appeal has taken that view in the good year 1979 which interpretation was prevailing for more than fourteen years and even in the year 1994, even though a challenge was made before the Supreme Court, the same was not pressed on merits and the SLPs were got dismissed on the ground that the benefit is being extended to the Petitioners. Clearly, at the time of making of the statement, the stand of the State of Tripura was that the interpretation which had been given to item 44 by the learned Single Judge in the Second Appeal and by the Division Bench in a large number of Civil Rules later on was being extended and not contested by the State of Tripura.

14. We are thus of the opinion that on the principle of Stare Decisis, the interpretation of item 44 which has been the law prevailing in the State of Tripura will not be unsettled by this Court, Even otherwise on merits, we are of the pinion that the view taken by the learned Single Judge in the Second Appeal and which has been followed later on by the Division Bench cannot be said to be incorrect. The Civil Rule is accordingly allowed. There shall be no order as to costs.