
(1996) 01 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 123 of 1988

Saktipada Gupta

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1997) 1 GLR 91

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

Bench : Single Bench

Advocate : S. Deb, R. Dasgupa and B. Debnath, for the Appellant; R.B. Singh, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the memo dated 17.5.88 under which the tentative seniority list for Extension Officers (Social)/Assistant Inspectors of Social Education/Social Education Officers/Mukhya Sevikas has been published by the Directorate of Social Welfare in Social Education, Government of Tripura, and for a mandamus on the Respondents to prepare a fresh combined seniority list for the aforesaid employees and the Superintendents of home and Supervisors (RFLP & ICDS).

2. The facts as stated in the Writ Petition briefly are that the Petitioner was appointed as a Social Education Worker under the Government of Tripura on 1.3.1971 and was thereafter appointed on promotion to the post of Supervisor, Rural Functional Literacy Project (RFLP) on 3.12.79. By an extra-ordinary Gazette dated 8th Dec'88 a manual of broad job outlines for field level supervisory staff under the Social Education Programme was published by the Government of Tripura in the Education Department. In the said manual, it was stated that all the supervisory posts under the Social Education Programme with different nomenclature such as Social Education Organiser, Mukhya Sevika, Extension Officer (Social Education), Assistant Inspector of Social Education and Supervisor

(except ICDS Scheme) carry identical scales of pay and their jobs were classified under different heads such as supervision, administrative and general activities. All the aforesaid different categories of supervisor staff namely Extension Officer (Social), Assistant Inspector of Social Education, Social Education Organiser, Mukhya Sevika, Supervisory (RFLP & ICDS) and Superintendent of Home constitute feeder posts for promotion to the post of Inspector of Social Welfare and Education as well as Assistant Project Officer (RFLP). The case of the Petitioner is that since Extension Officer (Social), Assistant Inspector of Social Education, Social Education Organiser, Mukhya Sevika, Supervisors (RFLP & ICDS) and Superintendent of Home belong to the broad category of supervisory staff working in the Social Education Programme and have the same duties and responsibilities as well as pay scale and are to be considered for promotion to the posts of Inspector of Social Education and Project Officer (RFLP), a common seniority list has to be prepared by the Respondents for all persons holding all these posts of Supervisory staff. The Petitioner has further stated in the Writ Petition that as matter of fact by a memo dated 7.5.88 of the Directorate of Social Welfare and Social Education, Government of Tripura (Annexure-3 to the Civil Rule) a combined seniority list for the posts of Extension Officers (Social)/ Assistant Inspector of Social Education/SEO/MS/Supervisor (ICDS & RFLP) and Superintendent of Home as on 31.10.87 was prepared tentatively and circulated amongst the employees in which the Petitioner's name was shown as SI, 51, but soon thereafter by a memo dated 17.5.88 another tentative seniority list for the post of Extension Officers(Social)/Assistant Inspector of Social Education/SEO/MS only was prepared and circulated amongst the employees from which Supervisors (ICDS & RFLP) including the Petitioner were excluded. The Petitioner has challenged the said Memo dated 17.5.88 (Annexure-4) contending that such exclusion of the Petitioner and other Supervisors (ICDS & RFLP) is violative of Article 14 and 16 of the Constitution inasmuch as the Petitioner and other Supervisors would not be duly considered for promotion to the higher posts of Inspector of Social Welfare and Education and Assistant Project Officers (RFLP).

3. An affidavit-in-opposition has been filed by the Respondents stating that the Petitioner was not promoted to the post of Supervisor (RFLP) but was appointed to the said post in the year 1979 pursuant to an advertisement inviting applications from Graduates for the post under a centrally sponsored scheme in the daily newspaper and the subsequent selection made for appointments to the said post. The Respondents have further contended in their affidavit-in-opposition on the basis the recruitment rules framed under Article 309 of the Constitution that the posts of Assistant Inspector of Social Education, Extension Officer, Superintendents, Social Education Organiser/Mukhya Sevika and Supervisor are different from each other carrying different scales of pay. It has however been admitted in the affidavit-in-opposition that in the year 1983 the aforesaid posts carried identical scales of pay and that a common job outline manual for all the aforesaid field level Supervisor staff under the Social Education Programme in Tripura was published in the extra-ordinary issue of the Tripura

Gazette dated 8th Dec'83. But this did not make all these posts identical and hence separate seniority lists were prepared and circulated for all these posts from time to time and a copy of the separate seniority list of Supervisors (RFLP) as on 12.12.83 has been annexed to the affidavit-in-opposition. The Respondents have further stated in the affidavit-in-opposition that for the first time a combined seniority list for the posts of Extension Officer (Social/Assistant Inspector of Social Education/SEO/MS/Supervisor (ICDS & RFLP)/Superintendent of Home as on 31.10.87 was prepared by the Respondent No. 2, but the same was not circulated to the employees concerned through their Heads of Office and it was not clear as to how the Petitioner received the copy of the seniority list under the memo dated 7.5.88 when it was not circulated to the employees. It has been clarified in the affidavit-in-opposition that the Social Welfare and Social Education Organisation under the Government of Tripura has a temporary and permanent establishment. While the posts of Assistant Inspector of Social Education, Extension Officer, SEO and MS was come in the permanent establishment, the posts of Supervisors (ICDS & RFLP) belong to the temporary establishment. For the permanent establishment a common seniority list of persons who are declared or likely to be declared as permanent in different Supervisors posts were published tentatively and circulated by the impugned memo dated 17.5.88 to the employees concerned to raise objection and furnish other information which were required for administrative reasons. The Supervisors (ICDS & RFLP) who had been appointed under the Centrally sponsored scheme could not be treated as part of the permanent establishment until the posts held by them were converted into permanent posts by a policy decision of the State Government. It has however been clarified in the affidavit-in-opposition that the common seniority list circulated under the impugned memo dated 17.5.88 has no relationship with the promotion and at the time of promotion, the seniority lists of different categories of supervisory staff published separately of the feeder posts shall be taken into account and there would be no violation of Articles 14 and 16 of the Constitution while making the promotion to the higher posts.

4. An additional affidavit was filed by the Respondent on 8.11.95 in which the upto date position has been indicated. It has been stated therein that pursuant to the decision dated 25.3.91 of the Government of India, the Rural Functional Literacy Project Scheme under the Central plan has been discontinued w.e.f 1.4.92 and the said scheme has been temporarily transferred to the State plan under the State Adult Education Programme which is also temporary scheme under the State plan. It has been further state in the said additional counter-affidavit that a combined seniority list of Extension Officer/Assistant Inspector of Social Education/Education Organiser/Mukhya Sevika/Supervisor (RFLP & ICDS)/Superintendent of Home cannot be published, as each of these posts carried different scales of pay under the revision of pay scale made in the year 1988 as per details herein below:

(a) Extension Officer/Asstt. Inspector of Social Education/Superintendent of

Home Rs. 1450-3710/- of ROP, 1988-

(b) Social Education Organiser/Mukhya Sevika Rs. 1300-3220/- under Part-B of ROP, 1988.

(c) Supervisor (RFLP & ICDS) Rs. 1300-3220/- (Graded pay scale) under Part-C of ROP, 1988.

5. In view of clear averment in the affidavit-in-opposition of the Respondents that the tentative seniority list circulated under the impugned memo dated 17.5.88 was prepared only for administrative reasons for the purpose of gathering information from different categories of staff working in the permanent establishment and that the said seniority list has no relationship with promotion, it is not necessary to quash the impugned memo dated 17.5.88 and the main question to be decided in this Writ Petition is as to whether the Respondents should be directed to prepare (sic) and circulate a combined seniority list for the posts of Extension Officer (Social), Assistant Inspector of Social Education, Social Education Officer (SEO) Mukhya Sevika (MS), Superintendent of Home and Supervisor (RFLP & ICDS).

6. At the hearing, Mr. S. Deb, learned Counsel for the Petitioner, referred to the Recruitment Rules framed under Articles 309 of the Constitution by the Govt, of Tripura for the post of Inspector of Social Welfare and Education and for the post of Assistant Project Officer, RFLP (Annexure-R-11 and R-12 to the affidavit in opposition of the Respondents) to show that promotion to the said two posts is to take place from the feeder posts of Extension Officer (Social), Assistant Inspector of Social Education, Social Education Organiser, Mukhya Sevika, Supervisor (RFLP & ICDS) and Superintendent of Home and argued that for such promotion a common seniority list has to be maintained for all the aforesaid posts. He further contended that as a matter of fact a combined seniority list had been prepared for all these posts on 7.5.88, a copy of which has been annexed to the Civil Rule as (Annexure-3). He further submitted that one of the grounds for preparation of separate seniority list for these posts taken by the Respondents in their affidavit-in-opposition and the additional counter affidavit is that the scales of pay of the posts are different but it would appear from the copy of the seniority list dated 30.5.88 (Annexure-R 22) that a combined seniority list for the post of Extension Officer (Social)/Asstt. Inspector of Social Education, Mukhya Sevika has been prepared and circulated although the scales of pay of all these posts are different. Mr. Deb also urged that the Petitioner has been appointed as a direct recruit after selection pursuant to an advertisement and having remained in service continuously for more than 15 years now, he can not be treated as a temporary appointee and hence the other ground given by the Respondents for not including him in the combined seniority list of the persons holding different posts of supervisory staff has no basis.

7. In reply, Mr. R.B. Singh, learned Counsel for the Respondents, submitted that the Petitioner was appointed under a centrally sponsored scheme as Supervisor

(RFLP) in the year 1979 and was hence part of the temporary establishment. Thereafter, in 1992 the Central Govt, decided to discontinue the scheme and the entire temporary establishment in which the Petitioner was appointed was transferred to the State Government temporarily and until the Petitioner and other Supervisors (RFLP) are regularised in service and made part of the permanent establishment they cannot be treated at par with the employees working in the permanent establishment. He, however, clarified that as and when the State Govt. takes a policy decision to convert the temporary establishment in which the Petitioner is working as a permanent establishment and the Petitioner's services are regularised, his seniority as Supervisor (RFLP) shall be taken into consideration along with the seniority of the officers manning different feeder posts for the purpose of promotion to the higher posts of Inspector of Social Welfare and Education and Assistant Project Officer (RFLP).

8. I was initially impressed by the argument of Mr. Deb, learned Counsel for 1 the Petitioner, that unless a combined seniority list was prepared of Officers , belonging to the post of Extension Officer (Social), Asstt. Inspector of Social ; Education, Social Education Organiser, Mukhya Sevika, Supervisors (RFLP & ICDS) and Superintendent of Home, the employees belonging to the said posts including the Petitioner may not be equally treated in the matter of promotion to the posts of Inspector of Social Welfare and Education and Asstt. Project Officer (RFLP) and Articles 14 and 16 to the Constitution would be violated. But on a scrutiny of the Recruitment Rules made under Article 309 of the Constitution for the post of Inspector of Social Welfare and Education and Chief Social Education Organiser, Project Officer (RFLP), and Asstt. Project Officer (RFLP) (Annexures R-11, R-12, R-13 and R-14 respectively) and on examination of the law as laid down by the Apex Court on the subject, I find that no direction can be given to the Respondents to prepare such a combined seniority list as prayed for in this writ petition for reasons which I shall now indicate. It is true that for the post of Inspector of Social Welfare and Education and Asstt. Project Officer (RFLP), the Recruitment Rules for the said posts (Annexures-11 and 14) provide that the feeder posts are Extension Officer (Social), Asstt. Inspector of Social Education, Social Education Organiser, Mukhya Sevika, Supervisors (RFLP & ICDS) and Superintendent of Home, but the Recruitment Rules for the post of Chief Social Education Organiser (Annexure-12) show that Supervisor (RFLP) & ICDS) does not constitute a feeder post while the posts of Assistant Inspector of Social Education, Extension Officer, Mukhya Sevika and Superintendent of Home and Social Welfare Organiser constitute feeder posts for promotion to the post of Chief Social Education Organiser. Similarly, a reading of the Recruitment Rules for the post of Project Officer, RFLP (Annexure-13) clearly show that while the posts of Extension Officer (Social Education), Asstt. Inspector of Social Education, Social Education Organiser and Mukhya Sevika constitute feeder posts, Supervisor (RFLP & ICDS) does not constitute a feeder post for promotion to the post of Project Officer (RFLP) and only after a Supervisor (RFLP) is promoted as Asstt. Project Officer (RFLP) that he can be appointed on transfer to the post of

Project officer (RFLP). Thus, the Recruitment Rules framed under Article 309 of the Constitution make a distinction between Supervisors (RFLP) and the posts of Extension Officer (Social Education), Assistant Inspector Social Education, Social Education Organiser, Mukhya Sevika and Superintendent of Home even for the purpose of promotion to higher posts. These Rules have not been challenged in this Writ Petition and so long as these Rules are in force the Respondents cannot be directed to prepare and circulate a combined seniority list for all these posts which do not form a common cadre. In the case of *Som Raj and others etc. Vs. State of Haryana and others*, the Supreme Court while considering the prayer for a common seniority list for two categories of employees held that:

The validity of the rules have not been questioned. The only question is as stated earlier, whether the employees working in the Head Office and the Subordinate Office are entitled to common seniority. The rules themselves made a distinction between the persons appointed in the Directorate and the Subordinate offices as separate cadres and the subordinate cadre in some cases is the feeder cadre for promotion to the post in the Head Office. In this view, by no stretch of imagination, the Appellants can be considered to be equally placed for treating them at par with the Directorate employees for being treated as being in a common cadre. There is reasonable nexus to differentiate the two cadres. Therefore, the classification cannot be said to be arbitrary violating Articles 14 and 16 of the Constitution.

The Petitioner is therefore not entitled to a direction from this Court to the Respondents to prepare a combined seniority list for the posts of Extension Officer, Asstt. Inspector of Social Education, Social Education Organiser and Mukhya Sevika, Supervisor (RFI P & ICDS) and Superintendent of Home which form separate cadres under the recruitment rules.

9. Nonetheless the Petitioner if appointed as Supervisor (RFLP) on regular basis would be entitled to be considered for promotion to higher posts of Inspector of Social Welfare and Education and Asstt. Project Officer (RFLP) as would be evident from the Recruitment Rules (Annexures 11 and 14). The Respondents have taken a stand that the Petitioner continues to be in a temporary establishment and the State Govt, is yet to take a policy decision for converting the temporary establishment to a permanent establishment. But it has been admitted by the Respondents in their affidavit-in-opposition filed on 5.9.88 that there was an advertisement inviting applications from graduates who were willing to be appointed as Supervisors (RFLP) under the centrally sponsored Scheme and pursuant to the said advertisement the Petitioner submitted an application while he was working as S.E.W. and was subsequently selected and appointed to the post of Supervisor (RFLP) by way of direct recruitment in the year 1979. Thus the selection process for appointment to the post of Supervisor (RFLP) as indicated in Recruitment Rules under Article 309 of the Constitution (Annexure R-6) has been followed at the time of appointment of the Petitioner to the post of Supervisor (RFLP) in the year 1979 and thereafter the centrally sponsored

scheme has been discontinued in the year 1992 and the establishment has been transferred to the State Government and the Petitioner has continued for more than 15 years as Supervisor (RFLP) and yet no decision had been taken by the Respondents for regularisation of the service of the Petitioner and others working in the said establishment. The Apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., has held:

Ordinarily speaking the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Art, 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for regular post and accordingly directs regularisation. While all the situations in which the Court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. (Emphasis supplied).

After considering the facts and circumstances of the case and having applied my mind to the law as explained in the case of State of Haryana v. Piara Singh (supra) quoted above, I direct that the Petitioner's service shall be regularised in the post of Supervisor (RFLP) by the Respondents within a period of three months from today. The Respondents have made a categorical statement in para 10 of the affidavit-in-opposition that at the time of promotion, the seniority list as published separately of the feeder posts shall be taken into account. Thus the Petitioner's seniority in the post of Supervisor (RFLP) determined on the basis of his length of service along with the seniority of all employees in the posts of Extension Officer (Social), Asstt. Inspector of Social Education and Social Education Organiser, Mukhya Sevika, Supervisor (RFLP & ICDS) and Superintendent of Home shall be considered for promotion to higher posts such as the Inspector of Social Welfare and Education and the Assistant Project Officer (RFLP) in accordance with the Rules.

This writ petition is disposed of accordingly. But considering the facts and

circumstances of the case, the parties shall bear their own costs.