
(2000) 02 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No's. 492, 495, 497 and 498 of 1998

Sh. Tombisana Devi and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) 3 GLR 768 : (2000) 1 GLT 438

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : I. Lalitkumar, for the Appellant; Kh. Nimai Chand, Addl. GA, for the Respondent

Judgement

D. Biswas, J.—By this common judgment, I propose to dispose of Civil Rule No. 492 of 1998. Civil Rule No. 495 of 1998, Civil Rule No. 497 of 1998 and Civil Rule No. 498 of 1998 as common question of law and facts are involved in these petitions.

2. Before embarking on a discussion on merit, it is necessary to have a look into the facts which have eventually driven the petitioners to move this Court to vindicate their grievance.

3. The petitioners in Civil Rule No. 492 of 1998 were appointed as Physical Instructors, presently redesignated as Lecturer in Physical Education, on adhoc basis and they joined their respective posts on 1.1.1981 and 28.2.1981 in two different colleges. Similarly the petitioners No. 1, 2 and 3 of Civil Rule No. 495 of 1998 were appointed in different Colleges with effect from 16.7.1979, 27.8.1979 and 22.8.1979. The lone petitioner in Civil Rule No. 497 of 1998 were appointed as Librarian with effect from 27.8.1979 and the writ petitioner of Civil Rule No. 498 of 1998 was appointed as Physical Instructor with effect from 1.11.1981.

4. The State Government vide order dated 12th November, 1997 (Annexure-A/10) announced placement of Librarians and Physical Instructors in different

scales of pay as per recommendation of the University Grants Commission. It would appear that all the petitioners have been given the upgraded scale of pay of Rs. 2200 - 4000 with effect from 1.1.1986 and the senior scale after eight years therefrom. The petitioners claim benefit of senior scale of Rs. 3000-5000 on computation of the period of eight years from the date of their initial appointment. According to them, this benefit has been extended to other similarly situated Librarians and Physical Instructors vide notification dated 6th July, 1991 (Annexure-A/6). The petitioners felt aggrieved as they have been denied equal treatment in the matter of placement.

5. The State in paragraph-5 of their affidavit-in-opposition tried to defend the apparent unequal treatment on the ground that the petitioners were appointed initially to a lower scale. The State relied upon the criteria laid down in the letter dated 22nd July, 1998 (Annexure-D/1) of the Government of India.

6. During the course of argument, it transpired that there is no dispute with regard to appointment of the writ petitioners on ad-hoc basis on various dates as indicated at the very outset of this judgment. There is also no dispute that the writ petitioners were regularised with effect from 24.5.1986. The State Government by the order dated 4.12.1990 (Annexure-A/4) sanctioned the scale of Rs. 2200 - 5000 for Librarians and Physical Instructors with notional benefit of fixation from 1.1.1986 subject to eligibility criteria as laid down in the letter dated 22nd July, 1988 by the Government of India. Accordingly, by the impugned notification dated 12th November, 1997 (Annexure-A/10), the petitioners were given the upgraded scale with effect from 1.1.1986 and the benefit of senior scale eight years thereafter.

7. The learned counsel for the petitioners referring to the Office Memorandum dated 6th July, 1991 (Annexure-A/6) pointed out that the persons who were placed in the scale of Rs. 2200 - 4000 on 1.1.1986 were given the benefit of senior scale before completion of eight years. That apart, he also cited other examples to show that similarly situated persons have been given the benefit of senior scale before completion of eight years. The learned State counsel did not dispute that some of the Librarians and Physical Instructors have been treated differently.

8. There is no dispute to the contention that in Appendix - II attached to the letter dated 22nd July, 1988 of the Government of India, senior scale was decided to be given to the Librarians and Physical Instructors on completion of eight years of service in the scale of Rs. 2200 - 4000. The State have obviously made a deviation from the said principle/ policy and applied a different yardstick in the matter of computation of service experience so far others similarly situated persons are concerned. The writ petitioners who were earlier in the scale of Rs. 700-1600 were placed in the scale of Rs. 2200-4000 in order to make them eligible for consideration for placement in the senior scale on completion of eight years in the scale of Rs. 2200-4000. In my considered opinion, the State has made a breach of its own policy to favour a group of its employees to the

exclusion of the writ petitioners. This is evident from the notification dated 6th July, 1991 (Annexure-A/6).

9. The learned counsel for the State submitted that wrong orders passed earlier in favour of some persons will not amount to discrimination within the meaning of Article-14 so as to compel the State to pass similar wrong orders in favour of petitioners. This submission has been made relying on a decision of the Supreme Court in *M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others*, The learned counsel further tried to augment his contention by relying on another decision of the Supreme Court in respect of computation of seniority of ad-hoc employees. In *Davinder Bathia and Others Vs. Union of India and Others*, the Supreme Court held that ad-hoc services of a Railway employee regularised after regular selection process cannot be counted for the purpose of seniority. The learned State counsel also relied on other decisions of the Supreme Court in *Dr. Anuradha Bodi and Others Etc. Etc. Vs. Minicipal Corporation of Delhi and Others*, and *Union of India and Others Vs. Subir Mukharji and Others*,

10. The aforesaid decisions of the Supreme Court in my opinion is not determinative of the question at hand. In the instant case we are not concerned with the question of seniority of the writ petitioners. The prime consideration in this case is whether the State is competent to drift and deviate from its own policy and the criteria laid down by the Government of India with a view to favour some employees with the benefit of senior scale before completion of eight years to the exclusion of other similarly situated persons. In my considered opinion, when the State itself deviates from its own declared policy, such deviation may be permissible by way of exception only on a rational basis provided it is made applicable equally for all the employees similarly situated. The State cannot adopt a pick and choose policy and distribute favour to a group of employees to the exclusion of others in deviation of its own policy.

11. It is true that wrong orders cannot be cited to make out a case of discrimination under Article 14. But the State in their affidavit-in-opposition have not pleaded that the orders passed in deviation of its own policy were wrong, and that the said orders are under review. The question here is not of giving relief under any statutory provision; and though the State policy reflected through its Executive Instructions has the force of law, yet, in a given case where the State deviates from its own policy and the deviation is so grave that it touches the root of the policy, the plea that the earlier orders were wrong cannot be accepted as a sustainable defence to defeat the claim of the persons discriminated. This is more so when "wrong orders" appear to be the rule. The "wrong orders" designed to favour those who have a access to the corridors of power cannot be shielded in the absence of reasonable justification. In my opinion, this calls for introspection; and review of the orders become inevitable to ensure symmetry in the State action with regard to its own employees.

12. In the result, the writ petitions are disposed of with a direction to the State to review the order dated 12th November, 1997, as well as other orders, as may

be necessary in the light of the discussion above in order to rationalise its action in the matter of computation of the prescribed period of service for the purpose of extending senior scale by passing appropriate orders within a period of four months from today.

No order as to costs.