
(1990) 12 SC CK 0033

In the Supreme Court Of India

Case No : Writ Petition No. 1428 of 1979

Shri A.K. Bhattacharyya

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : AIR 1991 SC 468 : (1991) 5 JT 98 : (1991) LabIC 421 : (1990) 2 SCALE 1202 : (1991) 2 SCC 109 Supp : (1991) 1 UJ 230

Hon'ble Judges : Kuldeep Singh, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The petitioner joined Tripura State Civil Service in the princely State of Tripura in the year 1948. The posts of Magistrates, Collectors, Munsiffs and Sub-Divisional Officers were en-cadred in the said service. The princely State was merged with the Union of India on October 15, 1949. In 1953 the lien of the petitioner was fixed against the post of Sub-Divisional Officer with effect from April 1, 1950. The said post was later on re-designated as Deputy Collector. The petitioner was appointed as Additional District Magistrate on January 21, 1963. A new service called "Tripura Civil Service" was constituted with effect from March 4, 1967. The petitioner was not found suitable for induction in the Tripura Civil Service at the time of its initial Constitution due to adverse remarks in his confidential reports. The petitioner challenged his on-selection to the Tripura Civil Service by a writ petition before the Judicial commissioner, Tripura. The writ petition was finally heard on February 2, 1970 when the State of Tripura agreed to consider the petitioner for appointment to the Tripura Civil Service after reviewing the adverse remarks in the character rolls of the petitioner. Thereafter by an order dated October 25, 1973 the State of Tripura appointed the petitioner to the Tripura Civil Service with effect from March 4, 1967 the date of initial Constitution of the service.

2. Meanwhile with effect from January 1, 1968 a common cadre of the Indian Administrative Service for all the Union Territories including Tripura and the North East Frontier Agency was constituted. In 1968 the petitioner was holding the post of Additional District Magistrate which was a cadre post under the I.A.S. Cadre Rules, 1954. Since the petitioner was a non-cadre officer he was appointed to officiate in the cadre post from January 1, 1968 to June 16, 1969 and again from September 11, 1970 to November 30, 1970 with the approval of the Union Public Service Commission and the Union of India. The petitioner was sent on deputation to the Government of India on November 30, 1970 where he remained till his retirement on March 30, 1975.

3. Under Regulation 5(1) of the I.A.S. (Appointment by Promotion) Regulations, 1955 only the members of the State Civil Service are eligible for selection to the Indian Administrative Service. Till October 25, 1973 the petitioner was not considered for appointment to the Indian Administrative Service on the ground that he was not a member of the Tripura Civil Service. The State Government, in the counter affidavit filed before this court has also taken the stand that the petitioner could not be considered for appointment to the Indian Administrative Service because he was not selected to the Tripura Civil Service when it was initially constituted on March 4, 1967.

4. Mr. Tapash Ray, learned Counsel for the petitioner has contended that the adverse remark having been expunged from the character rolls, of the petitioner and having been appointed to the Tripura Civil Service with effect from March 4, 1967 the petitioner, was entitled to be considered for appointment to the Indian Administrative Service with retrospective effect.

5. The contention in the abstract is unexceptionable but in the facts of this case we are not inclined to interfere. The petitioner filed writ petition under Article 226 of the Constitution, being Civil Rule No. 23 of 1974, before the Gauhati High Court seeking promotion to the selection grade of the Tripura Civil Service with effect from January 30, 1970 and also promotion to I.A.S. with effect from February 2, 1971. The High Court disposed of the writ petition on January 25, 1979 with the following order: -

This is an application by the petitioner under Article 226 of the Constitution. The petitioner at the relevant time was in the service of the Tripura Government but he has since been superannuated. In view of the order we are going to pass it is not necessary to narrate the entire facts of the case. Suffice it to say that the petitioner felt that he was superseded by the proforma-respondents and that he ought to have been promoted before them. He, therefore, prays in the petition for issue of a writ of mandamus directing the authorities concerned to give him proper place. He also prays for a declaration that he was entitled to prior promotion to the proforma-respondents.

We have heard the petitioner in person at some length as well as the learned Advocate-General of the State of Tripura. In the light of the decision by their

Lordships of the Supreme Court in the case State of Mysore and Another Vs. Syed Mahmood and Others, , the learned Advocate-General has in fairness, proposed that the Government would consider the suitability of the petitioner for promotion to the selection grade of the T.C.S. in 1970 and if the finding be in favour of the petitioner, necessary reliefs would be given to him. On account of this proposal the petitioner does not want to press this application.

In the result, the petition is rejected and the rule is discharged. Parties will bear their own costs.

Sd/- Baharul islam, Judge. Sd/- K. Lahiri Judge.

6. The petitioner was thus satisfied with the Government- undertaking to the effect that he would be considered for promotion to the selection grade of the Tripura Civil Service. He did not press for any other relief. He cannot, in this petition under Article 32 of the Constitution, ask for the same relief which he had himself given up in the High Court. Even otherwise it would not be in the interest of justice, under the circumstances of this case, to put the clock back by over twenty years.

7. The Writ Petition is, therefore, dismissed with no order as to costs.