
(2010) 02 GAU CK 0073
In the Gauhati High Court
Case No : Writ Petition (C) No. 328 of 1999

Shri Sankar Chandra Paul and Another	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 5(3)

Citation : (2010) 2 GLD 45 : (2011) 1 GLT 93

Hon'ble Judges : Maibam Binoykumar Singh, J

Bench : Single Bench

Advocate : P. Roy Barman, for the Appellant; T.D. Majumder, Addl. GA, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. P. Roy Barman, learned Counsel appearing on behalf of the petitioners and Mr. T.D. Majumder, learned Addl. Govt. Advocate appearing on behalf of the State respondents.

2. This writ petition has been filed praying mainly for quashing two impugned orders bearing the same number being No. F. 3(70)-EO/AC/88 dated 14.3.1997, one concerning the petitioner No. 1 and the other concerning the petitioner No. 2, issued by the Asstt. Director, Evaluation Organisation, Department of Planning and Co-ordination, Government of Tripura. The two impugned orders dated 14.3.1997, were issued re-fixing the pays of the petitioner No. 1 and the petitioner No. 2 respectively at Rs. 2385/- per month in the scale of Rs. 1450-60-1930-65-2450-70-3710/- with effect the date of their joining on 7th September, 1996 (F/N) as Inspector (Group-C) under Rules, FR.22 (1) (a) (i) with the date of next normal increment on 1.1.1997. These two impugned orders were issued in partial modification of an earlier order of the same Department being No. F. 3 (70)-EO/AC/88/1150-55 dated 4th November, 1996, under which consequent upon their promotion from the post of Investigator to the post of

Inspector, apparently, having regard to the provisions of FR 22 (1) (a) (i) as well as their options, the petitioners had been allowed to draw the pay of Rs. 2385/- with effect from 7.9.1996 to 31.12.1996 per month and Rs. 2520/- per month with effect from 1.1.1997 plus other allowances with the date of next increment on 1.1.1998. The said earlier order dated 4.11.1996 had apparently been issued in pursuance of Office Memorandum being No. F. 4 (6)- FIN(PC)/88/Part-I, dated 11.10.1993 of the Finance Department, Government of Tripura on the subject of application of FR 22 in case of fixation of pay on promotion from one post to another carrying same scale of pay involving greater responsibility.

3. Another prayer of the petitioners is for directing the respondents to allow the petitioners to have the benefits of fixation of their pays at Rs. 2,500/- per month with effect from 1.1.1997 in pursuance of FR 22 (1) (a) (i) in consequence of options exercised by them under FR 22 (1) (a) (i) after their promotion from the post of Investigator to the post of Inspector.

4. There is no dispute in respect of the following facts:

The petitioners were in the Evaluation Unit of the Directorate of Statistics and Evaluation Organisation, Govt. of Tripura as Investigators in the scale of Rs. 325-15-445-20-565- 25-665/- and as they had put in 10 (ten) years service as Investigators, they were granted the Inspector (Group-C) Non- Gazetted's scale of Rs. 1450-3710 in pursuance of Finance Department Memorandum No. F. 4 (6)- FIN (PC)/88 dated 15.9.1988 and No. F.4 (6)-FN/88 dated 14.10.1988. An Office Order No. F. 3(70)-EO(AC)/88 of the Planning and Coordination Department (Evaluation Organisation) was issued on 1.6.1991 by the Director and Joint secretary, Planning. The petitioners, pays were fixed by applying FR 22 (1) (a) (i) as permitted in the said Office Order dated 1.6.1991. It is to be noted that this benefit was apparently given to avoid frustration of the Investigators in the said department, who would otherwise be stagnated for want of vacancies in the next promotional post. Later on, both the petitioners were promoted as Inspectors (Group-C) Non-Gazetted in the scale of Rs. 1450-60-1930-65-2050-70-3710/- plus other admissible allowances with effect from their respective dates of joining, vide two separate Memoranda bearing the same number being No. F. 2 (4)-EO/ESTT/86 of the Planning and Co-Ordination (Evaluation Organisation) dated 7.9.1996. Thereafter, an Office Order being No. F. 3 (70)-EO/AC/88 of the said Department, dated 4.11.1996 was issued re-fixing the petitioners, pays as Rs. 2385/- with effect from 7.9.1996 to 31.12.1996 per month and Rs. 2520/- with effect from 1.1.1997 plus other allowances with the date of next increment on 1.1.1998, apparently, having regard to the provisions of FR 22 (1) (a) (i) as well as their options. Then, the two impugned orders dated 14.3.1997 were issued in partial modification of the above said Office Order dated 4.11.1996 re-fixing the pays of the two petitioners as already noted and thereby withdrawing the benefits given to them in the said Office Order dated 4.11.1996.

5. The case of the petitioners is that the two impugned orders are not sustainable in the eye of law as those were issued in violation of Office

Memorandum being No. F. (6)-FIN(PC)/88/Part- I, dated 11.10.1993 and another Memorandum being No. F. 4 (14)- FIN(PC)/88 dated 7.5.1997 of the Finance Department.

6. Now the point for consideration is whether the petitioners who were drawing Rs. 325-665/- as Investigators in the Evaluation Unit of the Directorate of Statistics and Evaluation, Government of Tripura and who on completion of 10 years' service as Investigators were given benefits of FR 22 (1) (a) (i) in. the Inspector (Group-C), Non-Gazetted's scale of Rs. 1450-3710/- in pursuance of the relevant Memorandum of the Finance Department are again entitled on regular promotion as Inspectors after some years to the benefit of same FR 22 (1) (a) (i).

7. In the similar facts and circumstances, the Hon'ble Apex Court in Union of India and Others Vs. Ashoke Kumar Banerjee, held to the effect that the benefit of FR 22 (1) (a) (i) could not be availed of twice. In the said case of Ashoke Kumar Banerjee (supra), FR 22 (1) (a) (i) came up for consideration before the Hon'ble Apex Court. In that case, the respondent was a Junior Engineer in the scale of Rs. 1640-2900/- and he was granted the pay scale of Asstt. Engineer in the scale of Rs. 2000-3500/-. The respondent received the same benefit in advance, while working as Junior Engineer on completion of 15 years' service and not actually functioning as Asstt. Engineer. The respondent was not held entitled to further increment and fixation of pay on promotion to the post of Asstt. Engineer in the pay scale of Rs. 2000-3500/-. The Hon'ble Apex Court held at Para Nos. 8 and 9:

8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000-3500 when he is promoted on 1.8.1991 as Assistant Engineer. This is because as on 1.8.1991, he is not being fitted into the "time scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22.(1) (a) (i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says:

his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

9. Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is

to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22 (1) (a) (i) only once. Such an anomaly was not obviously intended by the FR.

The above said decision was relied upon by the Apex Court in *State of Haryana and Another Vs. Partap Singh and Others*, also.

8. In my considered opinion, the above said decision of the Apex Court in *Ashoke Kumar Banerjee (supra)* will squarely cover the present case. In my opinion, the petitioners having received the benefits in advance while working as Investigators and while not actually functioning as Inspectors are not entitled to the same benefit of fresh fitment in the scale of Rs. 1450-3710/- when they are promoted as Inspectors. For the same reasons given by the Hon'ble Apex Court in *Ashoke Kumar Banerjee (supra)*, the petitioners are not entitled to get the benefit of FR 22 (1) (a) (i) for the second time.

9. Further, it is also ascertained that on promotion to the post of Inspectors, the petitioner's pays were required to be fixed as per provisions contained in PART-B. (SCHEDULE-III) NOTES ON DEPARTMENT OF REVISED. SCALES (Ref : Sub-rule (3) of Rule 5 of these Rules), (particularly, note 3 (c) (i) of the Tripura State Civil Services (Revised Pay) Rules, 1988 which was the relevant Rule governing the situation in which the petitioners were. As per the said provision of the Revised Pay Rules, 1988 however, the scale of promotion post is same as that in which his pay has been fixed in the revised scale, pay on promotion shall be fixed under FR 22 (1) (a) (i) and he shall draw his next increment on the anniversary date. The two impugned orders were issued in consonance with the above said provision of the Tripura State Civil Services (Revised Pay) Rules, 1988, apparently, after having ascertained that the said Office Order being No. F. 3 (70)-EO/AC/88, dated 4.11.1996 was not in consonance with the above said provisions of the Revised Pay Rules, 1988. There was no illegality in issuing the two impugned orders for making correction in consonance with the relevant provision of the Revised Pay Rules, 1988.

10. According to the petitioners, the two impugned orders were issued in violation of the Office Memorandum being No. F. 4 (6)- FIN(PC)/88/Part-I, dated 11.10.1993 and another Office Memorandum being No. F. 4 (14)-FIN(PC)/88 dated 7.5.1997 of the Finance Department, and as such, the two impugned orders are not valid in law. However, since the two impugned orders were issued in consonance with the said relevant Revised Pay Rules of 1988 and since fixing of pays of the two petitioners as per the provision of the said Office Memorandum dated 11.10.1993 would be in violation of the said Revised Pay Rules of 1988, no interference is called for in respect of the two impugned orders. The other Memorandum dated 17.9.1991 is found to have been made prospective in its operation and it was issued subsequent to the two impugned orders. The validity of the two impugned orders is not to be examined on the basis of the subsequently issued Memorandum dated 7.5.1997. At the same

time, the State Government is not empowered to issue any Order/Memorandum in violation of the relevant statutory rules in exercise of its executive power. It is well settled that in case of conflict in between an executive order/direction and a statutory rule, latter shall prevail. In this connection, I think that there is no need of citing any authority. However, if necessary one may refer Sachdev S.L. and Ors. v. Union of India and Ors. AIR 1981 SC 411 (para 13), J. Kumar v. Union of India and Ors. : AIR 1982 SC 1064 (para 31) and Union of India and Ors. v. Somasundaram Viswanath and Ors. AIR 1988 SC 2255 (para 6). The two impugned orders, which were issued in consonance with the relevant statutory rules i.e. the Revised Pay Rules, 1988, cannot be invalidated on the ground that the said impugned orders are in conflict with the executive orders, and as such, the submission of the petitioners in this regard is not accepted.

11. The last point submitted by the learned Counsel appearing on behalf of the petitioners is that while the petitioners had been deprived of the benefits granted to them, other similarly situated employees of the Government of Tripura serving under the Directorate of School Education, to whom the same benefits were granted have not been deprived of the benefits, and as such, the petitioners have been discriminated in violation of Article 14 read with Article 16 of the Constitution of India. The said other employees of the Directorate of School Education are not parties in this case. Necessary and relevant facts in respect of the other employees are not before this Court. Since the present writ petition has not been filed challenging the legality of the continuation of the said benefits in respect of the other employees, I am not in a position to express any opinion about the said matter. In the light of the discussion already made, it has already been ascertained that the petitioners are not entitled to the benefit of FR 22 (1) (a) (i) for the second time in law, and as such, they cannot be allowed to get the said benefits of FR on the consideration that other employees are said to have been given the said benefits for the second time.

12. In the result, in the light of the above discussion and for the reasons already given, I am of the opinion that this writ petition has no merit. Accordingly, this writ petition is dismissed as having no merit. No interference is made in respect of the two impugned orders. No order as to costs.