
(2016) 08 TP CK 0003
In the Tripura High Court
Case No : W.P.(C) No. 120 of 2014

Smti. Saswati Acharyya

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Citation : (2017) 1 GauLT 127

Hon'ble Judges : Mr. S.C. Das, J.

Bench : Single Bench

Advocate : Mr. S.M. Chakraborty, Mr. S. Bhattacharjee, Ms. D. Das and Ms. P. Sen, Advocates, for the Petitioner; Mr. T.D. Majumder, Mr. P. Datta, Mr. Ratan Datta, Ms. R. Purkayastha, Mr. A. Acharjee and Ms. P. Ghatak, Advocates., for the Respondent

Final Decision : Disposed Off

Judgement

Mr. S.C. Das, J. (Oral) - Heard learned senior counsel, Mr. S.M. Chakraborty, assisted by learned counsel, Ms. P.Sen, for the petitioner, learned Government Advocate, Mr. T.D. Majumder for the respondent Nos. 1 and 2, learned counsel, Mr. P. Dutta for the respondent No. 3 and learned counsel, Mr. R. Datta for the respondent No. 4.

2. There is no dispute that the petitioner was appointed to the post of Scientific Assistant in the department of Science, Technology and Environment of the Government of Tripura on 09.03.1990 and she is working in the same post till today. It is also an admitted position that respondent No.4 was appointed in the same post of Scientific Assistant under the same department on 22.12.1997. As per the seniority list published on 29.11.2013 (Annexure-9 to the writ petition), the seniority position of the petitioner was in the top of the list, i.e., Sl. No.1 and the position of respondent No.4 was in Sl. No.3 in the post of Scientific Assistant.

3. It is also an admitted position that there were separate recruitment rules for the post of Research Officer (Engineering) and Project Officer. By Notification No.

F.4(143)/DSTE/ESTT/Pt-II/2943-49, dated 01.06.2013 (Annexure-4 to the writ petition), the recruitment rule for the post of Project Officer was made and notified and thereby the earlier rule dated 27.06.1994 was repealed.

4. Similarly for the post of Research Officer recruitment rule was notified vide Notification No. F.4(143)/DSTE/ESTT/Pt-II/2950-56, dated 01.06.2013 (Annexure-R/6 to the counter affidavit of respondent Nos. 1 and 2) and the previous recruitment rule for the post of Research Officer dated 27.06.1994 was repealed.

5. It is an admitted position that the post of Research Officer and the post of Project Officer were two identical posts under the same department having separate recruitment rules for those two posts.

6. It is also not in dispute that the post of Project Officer was occupied by one Moulindu Debbarma as a direct recruit and he was promoted to the post of Scientific Officer and as a result the post of Project Officer fallen vacant.

7. The petitioner made several representations seeking her promotion to the post of Project Officer, which had fallen vacant due to the promotion of Sri Moulindu Debbarma, but she received no response from the respondents.

8. The respondents pursuant to a roster verification made by the SC and ST Department arrived at a conclusion that the post of Project Officer should be filled up by SC category candidate and thereby respondent No.4 was promoted to the post of Project Officer by Office Order dated 25.02.2014(Annexure-10 to the writ petition). A copy of the roster verification has annexed as Annexure-8/A to the writ petition.

9. It is the case of the petitioner that at the time of roster verification the posts of Research Officer and Project Officer, which were two identical posts under two separate recruitment rules, were clubbed together to apply the reservation roster, which is not permitted by law and thereby she has been deprived of her promotion to the post of Project Officer.

The petitioner, therefore, prayed for quashing the roster verification report dated 20.11.2013 (Annexure-8/A to the writ petition) and also prayed for quashing the promotion order of respondent No.4, i.e., Office Order dated 25.02.2014 (Annexure-10 to the writ petition). She further prayed for directing the respondents to consider her promotion to the post of Project Officer.

10. Respondent Nos. 1 and 2 submitted a joint counter affidavit and respondent Nos. 3 and 4 submitted respective separate counter affidavits. It is contended by respondent Nos. 1 and 2 that the relevant rules for recruitment/promotion to the posts of Project Officer and Research Officer were amended in the year 2013 with a view to create some promotional avenues from the post of Scientific Assistant. Earlier those posts were filled up by direct recruitment and there was no scope for promotion from the post of Scientific Assistant. The State Government considering the stagnation in the post of Scientific Assistant amended the

recruitment rule in the year 2013 and the modalities for appointment in those posts of Research Officer and Project Officer were same and identical and without any variation. Since those posts were carrying same pay scale, same status and same qualification, those were clubbed together as per Rule 10 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (hereinafter referred as "Rules of 1992") and thereafter reservation roster was applied and according to the roster verification by the SC and ST Department, the post of Project Officer, since was held by a ST category candidate earlier, it was decided that the vacancy will be held by a SC category candidate and, therefore, respondent No.4 being a SC category candidate was promoted to the post of Project Officer. It is the case of the respondents that the post of Research Officer is occupied by a UR category candidate and, therefore, the promotion of respondent No.4 to the post of Project Officer was justified.

11. The affidavit of respondent No.3 is not required to be discussed for decision of the issues involved in this writ petition.

12. Respondent No. 4, inter alia, contended that he was eligible for promotion having required qualification and experience and since he belonged to SC category, the department promoted him while the vacancy was identified to be filled up by a SC category candidate.

13. As already discussed hereinbefore, the posts of Project Officer and Research Officer were two identical posts under the same department and the recruitment rules for those two posts were different. The schedule to the recruitment rules of Project Officer prescribes thus:

"Schedule

Recruitment Rules For The Post of Project Officer Under The Department Of Science, Technology &

Environment, Govt. of Tripura.

1

Name of the post (s)

Project Officer

2

No. of post(s)

01(one) plus additional post(s) as and when created

3

Classification

Group-"B" Non-Gazetted

4

Scale of pay

Pay Band-3 Rs.9570-30000/- plus Grade Pay Rs.3100/- subject to revision by the Government from time to time

5

Method of recruitment : whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled up by various methods.

(i) 50% by promotion failing which by transfer on deputation and (ii) 50% by direct recruitment.

6

Age limit for direct recruitment

Up to 40 years. Upper age limit is relaxable by 5(five) years in case of SC/ST/ differently able(PH) candidates and Government servants.

7

Educational and other qualifications required for direct recruitment.

(i) 1st class Bachelor's degree in Engineering (Civil/Mechanical/ Electrical/ Electronics/Computer Science Engineering) from AICTE approved Institution or 1st Class Master's degree in Science (Zoology/Botany/Physics/ Chemistry/ Biotechnology) from recognized University. (ii) At least 5(five)years working experience in any State Government/Central Government/Other reputed organization in a pay scale not less than Rs.9570-30000/-. W.P.(C) No. 120 of 2014 Page 7 of 11 Desirable:- Knowledge in computer application.

8

Whether age & education qualification prescribed for direct recruits will apply in case of promotes.

Not applicable.

9

Period of probation, if any

2(two) years

10

Whether selection Post or Non-selection Post.

Selection

11

In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer is to be made

Promotion :- From the post of Scientific Assistant with experience of at least 5(five) years in the grade. Transfer on deputation :- From the analogous posts of the State/Central Government having requisite qualification & experience prescribed for direct recruitment.

12

If a DPC exists, what is its composition

Group-B DPC.

13

Circumstances in which TPSC is to be consulted in making recruitment

As required under the Tripura Public Service Commission (Exemption from consultation) Regulation, 1973."

14. It is an admitted position that the number of post of Project Officer was one and there was no additional post. It is also an admitted position that the post was occupied by one Sri Moulindu Debbarma as a direct recruit and he was promoted to the post of Scientific Officer and as a result the post of Project Officer fallen vacant. The schedule to the recruitment rule of Research Officer (Annexure-R/6 to the counter affidavit) makes it abundantly clear that it is identical to that of the recruitment rule of Project Officer and there is no difference at all.

15. Be that as it may, the question is whether these two identical posts can be clubbed together for the purpose of application of reservation roster at the time of consideration of promotion from the post of Scientific Assistant. Both the rule prescribe provision for promotion from the post of Scientific Assistant with experience of at least five years in the post and it has been prescribed that 50% of the posts shall be filled up by promotion, failing which by transfer on deputation and the other 50% should be direct recruitment. While it was a single post and it was occupied by a direct recruit, i.e., Sri Moulindu Debbarma, on his promotion to the post of Scientific Officer, while the post of Project Officer occupied by him fallen vacant, naturally the department took steps to fill up the post by promotion from the post of Scientific Assistant.

16. The question which has arisen for consideration is whether the clubbing together of two posts for the purpose of application of reservation roster is permissible in view of Rule 10 of the Rules of 1992.

17. For ready reference let us reproduce here Rule 10 of the Rules of 1992, which reads as follows:

"10. Grouping of isolated Posts Isolated individual posts and small cadres of the same class/group of service having [less than four posts] and having the same

status, salary and the same minimum qualifications prescribed for direct recruitment shall be grouped together for the purpose of reservation."

18. A bare reading of the above provision makes it abundantly clear that clubbing together is permissible for direct recruitment and not for promotion or otherwise. The above rule cannot be interpreted in any manner otherwise than its plain language that clubbing together is permissible only for direct recruitment.

19. A three Judges Bench of the Apex Court in the case of Nelson Motis v. Union of India & anr., reported in AIR 1992 SC 1981 has observed;

"....It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences...."

20. It is also a settled principle as held by the Apex Court that if statutory power has to be exercised in a particular manner, any exercise of that power has to comply with that procedure.

21. It is an admitted position that SC and ST Department while verification of roster clubbed together the posts of Project Officer and Research Officer, two identical posts under two identical service rules, and while considering promotion, after clubbing together those two posts, the respondents arrived at a decision that the post shall go to the SC category and accordingly, respondent No.4 was promoted to the post, who is admittedly junior to the petitioner in the post of Scientific Assistant.

22. It is an admitted position that the post of Project Officer is a single post and so, the replacement roster as contained in the schedule (1) (b) of the SC and ST Reservation Act, 1991 shall apply. It is also an admitted position that the post of Project Officer was occupied by a ST category candidate by direct recruitment, namely, Sri Moulindu Debbarma and on his promotion to next superior post, the post of Project Officer fallen vacant and naturally the post now shall be filled up by promotion from the post of Scientific Assistant as prescribed under the rules.

23. A three Judges Bench of the Apex Court in the case of S.R. Murthy v. State of Karnataka & ors., reported in AIR 2000 SC 450 in paras 3 and 4 of the judgment observed thus:

"3. The Constitution Bench of this Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association, (1998) 3 JT (SC) 223 : 1998 AIR SCW 1553 : AIR 1998 SC 1767 : (1998 Lab IC 1582), has held, after discussing all decisions on this question, that:

"In a single post cadre, reservation at any point of time on account of rotation or roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in

total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the background(backward) classes is not permitted within the constitutional framework".

4. In the light of this ratio since the post in question was a single post, the application of the roster for the purpose of promotion was not permissible."

24. The post of Project Officer, which had fallen vacant due to promotion of the direct recruit ST category candidate was due to be filled up by promotion from the post of Scientific Assistant. The persons working in the post of Scientific Assistant shall be considered for the purpose of promotion according to the seniority. The clubbing together of the posts of Project Officer and Research Officer for the purpose of promotion by the SC and ST Department applying the provision of Rule 10 of the Rules of 1992 was not permissible and so, promotion of respondent No.4 to the post of Project Officer was wrong and illegal and cannot sustain. The post cannot go to the reserved category by way of clubbing together with another post for the purpose of promotion. I have, therefore, no hesitation to quash the roster verification made by SC and ST Department dated 20.11.2013 (Annexure-8/A to the writ petition) and the promotion order of respondent No.4 by Office Order dated 25.02.2014 (Annexure-10 to the writ petition). Consequently, the roster verification dated 20.11.2013 and the promotion order of respondent No.4 dated 25.02.2014 are quashed. Respondent Nos.1 and 2 are directed to arrange DPC for consideration of promotion to the post of Project Officer from the post of Scientific Assistant at the earliest and not later than 60(sixty) days from today.

25. The writ petition is accordingly allowed and disposed of. Parties to bear their own costs.