

(2017) 05 TP CK 0005
In the Tripura High Court
Case No : 313 of 2011

Sri Rabindra Kumar Debnath

APPELLANT

Vs

The Tripura Small Industries Corporation Ltd

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

[Right to Information Act, 2005](#), [Section 6](#)
- Request for obtaining information

Citation : (2017) 05 TP CK 0005

Advocate : B. Banerjee, R. Majumder, S. Deb, A.S. Lodh, S. Saha

Judgement

1. The main reliefs claimed in this writ petition are as follows: (1) issue writ directing the Respondent Corporation to give the petitioner all service benefits of the post of Head Clerk in the scale of pay of Rs.10,200-20,300/- with effect from 12-05-1997 without any further delay; (2) issue writ directing the Respondents to promote the petitioner to the post of Head Clerk when the juniors were promoted.

2. The petitioner was initially engaged as Daily Rated Worker (DRW) under Respondent No. 1 vide the order dated 2-12-1974 and was subsequently appointed as LDC on 13-11-1978 and was promoted to the post of UDC on 1-1-1993. According to the petitioner, when his junior, one Pradip Bhattacherrjee was given promotion to the post of Assistant Marketing Officer without considering his case, he filed WP(C) No. 442 of 1999 before this Court, which by the order dated 18-06-2008 directed him to submit a representation before the respondent-Corporation to ventilate his grievance within 15 days, which should be considered with a "human touch" and grant the relief claimed if he was found entitled within a period of 6 months. After considerable delay, the respondent Corporation ultimately passed the order dated 25-9-2010 stating therein that his case had been referred to the Finance Department for creation of the post of Head Clerk to accommodate him, but the said Department did not agree to create the post and the respondent-Corporation, therefore, could not promote him to the post of Head Clerk. Moreover, contends the Corporation, there was no

provision for promoting the petitioner to the post of Head Clerk unless he passed Accounts training. The second representation made by him on 23-2-2011 demanding his promotion to the post of Head Clerk was also not accepted. It is contended by the petitioner that as per the information obtained by him under Section 6 of the Right to Information Act, 2005, the post of Head Clerk has been vacant since 31-12-2006 and that as per the Recruitment Rules, there is no provision prescribing passing of Accounts training for an UDC for promotion to the post of Head Clerk. As he has been deprived of promotion to the post of Head Clerk since 12-5-1997 when his junior had in the meantime been further promoted to the post of Assistant Marketing Officer, he was entitled not only to the post of Head Clerk but also to the higher post of Assistant Marketing officer. It is thus the case of the petitioner that he was entitled to the post of Head Clerk with effect from 12-5-1997 when his junior was appointed on promotion to the post of Assistant Marketing Officer without considering his case.

3. After perusing the pleadings of the parties and other materials on record, it becomes clear that the only question which falls for consideration in this writ petition is whether the petitioner could have been promoted to the post of Head Clerk on 31-12-2006. The recruitment rules annexed to the affidavit dated 11-5-2012 filed by the respondent No. 2 reveals that for promotion, among others, of UDC to the post of Head Clerk, what is required is that the UDC should have five years" experience in the grade but he must have acquired Accounts training conducted by the State Government for promotion to the post of Head Clerk Accountant/Accountant. The Note to the RR, however, provides that departmental candidates having completed fifteen years of service or more in the grade of UDC Clerk, etc. as well as having attained the age of 55 years may be exempted from passing out the proposed Accounts training. What is obvious is that the petitioner was not seeking promotion to the post of Head Clerk-Accountant/Accountant but was seeking promotion to the post of Head Clerk. If that is the case, the petitioner was never ineligible for the post of Head Clerk. He was denied of promotion on flimsy grounds.

4. In paragraphs 8 and 9 of the writ petition, a clear averment is made by the petitioner in the following manner: "8. That the petitioner obtained certain information under Section 6 of the Right to information Act, 2005 including the pro forma for sending the proposal for creation of new post. From the said pro forma, it is evident that one sanctioned post of Head Clerk is lying vacant from 31-12-2006. A copy of the said pro forma as sent to the Finance Department of the Respondent No.2 is annexed hereto and marked as Annexure-6.

9. That it is further available from the statement of vacant posts that the said post of Head Clerk remained vacant as on 31-12-2006.

A copy of the said synopsis of the statement of different categories of vacant posts is annexed hereto and marked as Annexure-7."

5. The specific averments made by the petitioner in the foregoing two

paragraphs have not been denied by the answering respondents in their counter affidavits. Admitted facts need not be proved. The stance taken by them that the petitioner was not eligible for the post of Head Clerk, as already noted by me, flies in the face of the recruitment rules annexed by them at Annexure-R/2. Therefore, the justification given by the respondent authorities in denying promotion to the petitioner appears to be without any foundation. This alone is sufficient to grant the relief claimed by the petitioner. At this stage, it may be noted that the learned counsel for the respondents makes a submission to the effect that all the issues raised by the petitioner in this writ petition were directly and substantially in issue in the former writ petition, i.e. WP(C) No. 442 of 1999 and the petitioner is, therefore, barred by the principle of res judicata from raising those issue in this writ petition. In my opinion, the earlier writ petition filed by the petitioner seeking his promotion to the post of Head Clerk was never heard and finally decided by this Court, and it cannot be , therefore, be said that this writ petition is barred by the principle of res judicata. No other issue survives for consideration.

6. For what has been stated in the foregoing, this writ petition succeeds. The respondent authorities are, therefore, directed to notionally promote the petitioner to the post of Head Clerk with effect from 31-12- 2006. As he has retired from service in the meantime, he will be entitled only to pension benefits against the post of Head Clerk, which shall be processed and paid to him within a period of three months from the date of receipt of this judgment.