
(2006) 12 GAU CK 0001
In the Gauhati High Court
Case No : Writ Appeal No. 49 of 2001

State of Tripura and Another	Vs	APPELLANT
Bhajan Chandra Debnath and Others		RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Citation : (2006) GLT 567 Supp

Hon'ble Judges : R.B. Misra, J; M.B.K. Singh, J

Bench : Division Bench

Advocate : S. Chakraborty, for the Appellant; S. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—We have heard Mr. S. Chakraborty, learned Additional Govt. Advocate and Mr. S. Ghosh, learned Counsel for the Respondents.

2. The present Appeal has been preferred against the order dated 13.03.2001 passed by the learned Single Judge in Civil Rule No. 394/1994, whereby while adjudicating the issues, Hon'ble High Court passed direction to the State and its authorities to pay to the writ Petitioner the arrear of salary to be computed in accordance to the provisions of relevant rules and to promote the writ Petitioner from the date his juniors were promoted and granting of all the consequential benefits for which the writ Petitioner was entitled.

3. It appears the writ Petitioner being aggrieved by the promotion of his juniors, namely Respondent Nos. 2 to 15, filed a suit being Title Suit No. 121/1981 in the Court of Sadar Munsiff, Agartala praying for declaration that the seniority list published by the state authorities by Memo dated 30.08.1975 to be declared as illegal and void and to treat the writ Petitioner as senior to the present Respondent Nos. 2 to 25. The writ Petitioner also prayed for decree declaring the promotion of Respondent Nos. 2 to 15 herein to the post of UDC by passing the claim of the writ Petitioner as illegal and for further direction to the present appeals (State Respondents in the writ petition) and to promote the writ

Petitioner to the post of UDC with effect from the date prior to the date of promotion of his juniors. By judgment and decree dated 21.09.1987 the Trial Court dismissed the above suit. Being aggrieved, the writ Petitioner preferred Title Appeal No. 72/ 1987 before the District Judge, West Tripura, Agartala. The learned appellate Court by judgment and decree dated 21.05.1988 decreed the suit of the writ Petitioner in so far as the relief of declaring the invalidity of the seniority list was concerned. The first appellate Court also directed for promotion of the writ Petitioner to the post of UDC from the date prior to the date of promotion of his juniors namely Respondent Nos. 2 to 15 in the instant appeal. Against the order dated 21.05.1988, a Second Appeal No. 19/1998 was preferred by the writ Petitioner regarding refusal of relief of declaring the seniority of the writ Petitioner over the Respondent Nos. 2 to 15 herein. The State-Appellants herein also preferred Anr. Second Appeal No. 21/1998 against the order dated 21.05.1988 challenging the interim judgment and decree of the appellate Court dated 21.05.1988. This Court by judgment and order dated 20.11.1992 was pleased to dismiss the appeal filed by the State namely Second Appeal No. 21/1998. In so far as the appeal filed by the writ Petitioner is concerned, this Court directed that the writ Petitioner be declared as senior to Respondent Nos. 2 to 15 herein. Further direction was issued for preparation of seniority list in terms of the judgment and order of this Court dated 20.11.1992.

4. In reference to the said order of this Court dated 20.11.1992 passed in Second Appeal Nos. 19 & 21 of 1998, the State authorities passed an Office order dated 28.05.1993 extending the writ Petitioner the benefit of regular appointment to the post of UDC w.e.f. 06.04.1981. The writ Petitioner was still aggrieved as according to him once he was appointed as UDC on regular basis w.e.f. 06.04.1981 then he was also to be given arrear of salary. The vital question of payment of arrear salary to the writ Petitioner from 06.04.1981 i.e. from the date he was regularly appointed to the post of UDC was considered by the Single Judge of this Court dated 13.03.2001. Learned Counsel for the writ Petitioner in support of his claim for granting of arrear salary from the date of promotion, has placed reliance on the decision of the Supreme Court in *Union of India Vs. K.V. Jankiraman, etc. etc.*, and *State of Andhra Pradesh Vs. K.V.L. Narasimha Rao and Others*, On the other hand, it was submitted by the learned Govt. Advocate that the writ Petitioner had not at all worked on the promotional post, therefore, on the concept of "no work no pay", the arrear could not be granted to the writ Petitioner. In support of the stand learned Counsel for State has referred and relied on the decision of the Supreme Court in *Union of India and Ors. vs. Rajinder Singh Rawat*, 1999 19 SCC 173 The learned Single Judge, after considering the submissions of the learned Counsel on behalf of the writ Petitioner as well as the State-Respondents, has observed that the writ Petitioner was entitled to be paid arrear of salary in accordance with the provisions of relevant rules within 45 days from the date of the order and if the payment is withheld beyond 45 days, the same shall carry interest @9% per annum thereafter.

5. Upon hearing the learned Counsel of both the parties and perusal of the impugned order, we are of the considered opinion that since the writ Petitioner (Respondent herein) after having been found senior to the Respondent Nos. 2 to 15 was rightly given the promotion to the post of UDC w.e.f. 06.04.1981. When Court finds that for the lapse on the part of State/authorities an incumbent is granted promotion to a particular post from the date his juniors were promoted then granting of promotion and payment of scale to that post and payment of arrear salary becomes co-existent and inseparable. Therefore, after giving promotion from 06.04.1981 on regular basis, the writ Petitioner was also entitled to be given arrear of salary.

6. We have carefully gone through the impugned order of the learned Single Judge. We find no scope of any interference in the said order. The order dated 13.03.2001 being legally correct and the present Writ Appeal is dismissed accordingly.