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(2015) 08 TP CK 0043

In the Tripura High Court

Case No : W.A. 43 of 2013

State of Tripura and Others — APPELLANT

Vs

Bibhas Kanti Kilikdar — RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:
Constitution of India, 1950 — Article 318, 319

Citation : (2015) 08 TP CK 0043

Hon'ble Judges : Deepak Gupta, C.J;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : D. Chakraborty, Senior Advocate and H. Laskar, for the Appellant; D.K. Biswas, P. Dutta and A. Bhowmik, Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J.

1. This appeal by the State is directed against the judgment dated 24.07.2013 delivered by a learned Single Judge of this Court whereby he held that the petitioner is entitled to the benefit of revised pay meant for Judicial Officers, Grade-II of The Tripura Judicial Service in terms of the Finance Department notification dated 08.07.2010 (Annexure 14 to the writ petitioner) and further held that the petitioner shall be deemed to have continued in judicial service till the date of his demitted office as member of the Tripura Public Service Commission. The learned Single Judge also held that the petitioner is entitled to pension and other retrial benefits by treating him to be a member of the Tripura Judicial Service on the date of his retirement from the Tripura Public Service Commission.

2. The facts of the case are that the petitioner was a member of Tripura Judicial Service, Grade-II. He was selected to be appointed as member of the Tripura Public Service Commission and after approval of the Gauhati High Court which then exercised jurisdiction over the State of Tripura, he joined the Tripura Public

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Service Commission on 01.10.2003. There can be no doubt that w.e.f. 01.10.2003, the petitioner ceased to be a member of the Tripura Judicial Service. He did not even hold any lien on any post in the Tripura Judicial Service.

3. In this behalf, reference may be made to the Article 319 of the Constitution of India, which reads as follows:

"319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.- On ceasing to hold office-

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State".

4. This Article debars any person who has held the post of Chairman or Member of a Public Service Commission from holding any other post or office of profit under the State. This clearly indicates that once the petitioner joined the Tripura Public Service Commission, he severed all links with the Tripura Judicial Service and ceased to be a member of the Tripura Judicial Service for all intents and purposes. Under Article 319 not only was the petitioner who was a Member of the Public Service Commission not entitled to come back and join the post which he may have demitted when he joined as a Member of the Public Service Commission but he cannot even seek any further employment under the State.

5. The petitioner retired from the Public Service Commission on completion of his full terms on 07.10.2009. After the petitioner retired, the State Government issued a notification on 08.07.2010. This notification came into effect from 01.01.2006 and applies to those Judicial Officers who were members of the Tripura Judicial service on 01.01.2006. This notification does not apply to those persons who had ceased to be members of the Tripura Judicial Service prior to 01.01.2006. The petitioner herein had ceased to be a member of the Tripura

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Judicial Service w.e.f. 01.10.2003 and the benefit of the notification dated 08.07.2010 was restricted to those Judicial Officers who were in service on 01.01.2006. The petitioner was not a member of the Tripura Judicial Service on 01.01.2006 and is, therefore, not entitled to claim any benefits under the said notification.

6. The learned Single Judge has relied upon regulation 5 and 10 of the Tripura Public Service Commission Regulations, 1972 to come to the conclusion that the petitioner is entitled to the benefit of being treated to be a member of the Tripura Judicial Services. Regulation 5 and 10 read as follows-

"5. [(1) The Chairman of the Tripura Public Service Commission shall receive pay in the scale of pay of Rs. 22,400/-- 525-24,500/- and each of the Members of the Commission in the scale of pay of Rs. 18,400/-- 500-22,400/- with effect from 1st day of November, 1999]

[Provided that a Chairman or a Member who on the date of his appointment as such was in the service of the Government of India or of any state Government shall be deemed to have retired from such service with effect from the date of his appointment as Chairman of Member]

[Provided further that the Chairman or a Member, who at the time of his appointment as Chairman or Member, is in service under the Government of India or under the Government of a state, shall subject to the provisions of regulation 10, continue to be governed during his term of office as such Chairman or Member, as regards retirement and pension, by the rules applicable to the service to which he belonged]

[Provided (also) that if the Chairman or a Member has, prior to his appointment as Chairman or a Member of the Commission, retired from service under the Government of a State or Central, a local body or a University, he shall receive such pay as together with annuity or pensions before commutation which may have been sanctioned in respect of his previous service will be the amount admissible at different stage in the scale of pay of Rs. 22,400/-525-24,500/- a month in case of the Chairman and in the scale of pay of Rs. 18,400/-, 500-22,400/- a month in case of a Member]".

[10. (1) The service of the Chairman or a Member, who on the date of appointment as such is in pensionable service, either under the Government of India or under the Government of a state, shall count towards pension, if any, admissible to him in that service, both his service and pay as a Member upto the date on which he retires or is superannuated from that service.

(2) The Chairman or a Member, who on the date of appointment as such in not in pensionable service under the Government of India or under the Government of a state, shall be eligible to a terminal gratuity at the rate of half month''s pay for each period of 6 monthly service as Chairman or Member]".

7. The second proviso of regulation 5 is the sheet-anchor of the arguments of the

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writ petitioner. This only provides that a Chairman or a Member who at the time of his appointment is in service under the government shall subject to the provision of Regulation 10 continue to be governed during his term of office as such Chairman or Member as regards retirement and pension by the rules applicable to the service to which he belongs.

8. Sri D. Chakraborty, learned senior counsel appearing for the appellant has raised a submission that this second proviso was introduced only in the year 2007 and the petitioner joined as a member of the Public Service Commission in the year 2003 and, therefore, this regulation would not be applicable to him. Even without going into this question, we are clearly of this view that this proviso does not in any manner help the case of the petitioner. All that this regulation provides is that persons who are already in government service would be regulated in matters of pension by the rules and regulations which governed them prior to the joining office under the Public Service Commission. The rules with regard to pension in their previous service may govern them but this does not mean that they will get benefits of pay revision etc. in the previous service after they have ceased to be members of that service. The petitioner could only get the benefit of the pay drawn by him before he becomes a member of the Tripura Public Service Commission.

9. Regulation 10(1) only provides that when on the date of appointment a person appointed as a Member of the Tripura Public Service Commission was in pensionable service then his service shall count towards pension, if any admissible to him in that service. A combined reading of regulation 10(1) and second proviso of regulation 5 makes it more than amply clear that when a person who is already in government service joins as Member or Chair-person of the Tripura Public Service Commission, the service rendered by him in his parent department is not washed off. It will be taken into consideration for calculating his qualifying service and, therefore, it is relevant to calculate his pension. However, we have no doubt in our mind that the pension has to be calculated on the basis of the last pay drawn by that individual in the Tripura Public Service Commission.

10. An employee who with open eyes gives up his job in one office and joins office in the Tripura Public Service Commission knows that in view of Article 319 and the regulations of Tripura Public Service Commission he has severed all connections with the parent department and only his service is to be counted for purposes of calculating his retrial benefit. Such an employee cannot claim benefit of any revision of pay scale made in his parent department after his severing connections with the parent department. His pay and allowances are governed by what is payable to the Members and Chairman of the Public Service Commission. Even here the pay scales are protected and normally a person is not offered a pay scale which is lower than his pay on the date when he joined.

11. Prior to the appointment as member of the Tripura Public Service Commission, the petitioner was in Grade-II of the Tripura Judicial Service and he

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was drawing salary in the scale of 14,200-350-15950-400-18350 and as per his service book his salary as on 01.07.2003 was Rs. 16,350 and his next increment was due on 01.07.2004. The pay scale of Civil Judge (Senior Division) ACP was 16750-400-19150-450-20500. The petitioner was not even in this scale. The entry level pay scale of a District Judge was 16750-400-19150-450-20500. A District Judge in the selection grade was entitled to the scale of 18750-400-19150-450-21850-500-22850. The petitioner on his appointment as member of the Tripura Public Service Commission was straightway granted the scale of 18400-500-22500 and his salary was fixed at 18,900. This was a scale much higher than the scale which the petitioner was enjoying in the Judicial service. He cannot now argue after having taken benefit of the scale and having severed all connections with the Tripura Judicial Service that the benefit of the notification dated 08.07.2010 which is effective from 01.01.2006 should be granted to him. The scale granted to him was much higher than that of a Grade-II Officer of the Tripura Judicial Service which the petitioner was drawing and in fact it was higher than the scale provided at the entry level of Grade-I of the Tripura Judicial Service and it was a scale which was almost close to the scale provided to the selection grade District Judges. Therefore, the petitioner got a massive advantage while joining the Tripura Public Service Commission and now he wants that without being considered for promotion in the Tripura Judicial Service his pay in the Public Service Commission should be revised by treating him to be a member of Grade-I of the Tripura Judicial Service. This cannot be done.

12. Reliance has been placed by the writ petitioner on the proviso to Article 318 of the Constitution of India, which reads as follows:-

"318. Power to make regulations as to conditions of service of members and staff of the Commission.- In the case of the Union Commission or a Joint Commission, the president and, in the case of a State Commission, the Governor of the State may by regulations-

(a) determine the number of members of the Commission and their conditions of service; and;

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment".

This proviso only makes it clear that the conditions of service of a member of the Public Service Commission shall not be varied to his disadvantage after his appointment. We do not understand how this proviso has any applicability to the facts of the present case. The petitioner willingly left the Tripura Judicial Service and joined the Public Service Commission. After joining the Public Service Commission nothing has been varied to his disadvantage.

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13. What has happened is that pursuant to the notification dated 08.07.2010 which was ordered to be implemented by the Apex Court, members of the Judicial Services of the various State had been given benefit of the same and this benefit is given to those who were in judicial service w.e.f. 01.01.2006 onwards. The petitioner having ceased to be a member of the Tripura Judicial Service much prior to the said date cannot get any benefit of the same.

14. The learned Single Judge while allowing the writ petition has held as follows:

"19. This Court is of the opinion that what has been provided in the 2nd proviso to Regulation 5(1) of the TPSC Regulation, 1972, even if the some parts obfuscate the meaning by referring to the scale of pay attached to the post of the Chairman or the post of the Member of the TPSC, but if read with the provisions of Regulation 10(1) of the TPSC Regulation, 1972 it becomes abundantly clear and unequivocal that the past service of the person who has been appointed either as the Chairman or a Member who on the date of appointment as such was in the pensionable service, either under the Government of India or under the Government of a State shall count towards pension, if any, admissible to him upto the date on which he retires or superannuates from that service. There is no dispute that the petitioner was appointed by the Government of a State as the judicial officer, Gr. II in the Tripura Judicial Service and thus he was in the pensionable service and as such his service shall count towards pension both to his service and pay as a Member of the TPSC upto the date on which he retires or he superannuates from that service. It provides further that the pensionable service shall count towards pension till the date on which he retires or he superannuates from that service. To understand the provisions in a meaningful way it has to be interpreted as that till the person retires as the Member of the TPSC or he superannuates from that service which would include the pensionable service which he was earlier borne into had he been in the uninterrupted service, unless is attended by the other dominant factor. In this case, the relevant date would be the date on which the petitioner had demitted his office as the member of the TPSC. Save and except this interpretation as made for purpose of a meaningful construction the other would make this provision in-operative and otiose. Such interpretation cannot be held to be germane to the scheme as provided under Part-6 of the said Regulation, 1972. On embarking of such interpretation this Court declares that the petitioner has to be deemed to have continued in the pensionable service of the Tripura Judicial Service Grade-II for the purpose of determining the last pay on the day on which he actually demits or retires from the office of the Member of the TPSC. This Court has consciously discarded any exercise for interpreting the clause "or is superannuated from that service". The petitioner cannot be denied the benefit of his pay on the last working day for the purpose of determining the pension and other retrial benefits. By this clause "or is superannuated from that service" it is meant the condition of the service by virtue of his age prior to the tenure as provided for a Member of the TPSC. But when he retires on completion of the tenure this clause "or is superannuated

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from that service" has no relevance. In that case this provision as provided in Regulation 10(1) of the TPSC Regulation, 1972 has to be understood by the clause "upto the date on which he retires".

15. With due respect, we are totally unable to accept the reasoning of the learned Single Judge. As held by us above, what is to be counted is the period of service rendered in the judicial service by the petitioner for calculating his retiral benefit. However, the retrial benefits have to be calculated by taking into consideration the last pay drawn by him as a member of the Public Service Commission. There can be no deemed fiction of treating him to be a member of the judicial service.

16. We are totally unable to persuade ourselves to agree with the reasoning of the learned Single Judge that the petitioner would deemed to continue in judicial service till the date of his demitting office as member of Tripura Public Service Commission. This is totally contrary to the provision of Article 319 of the Constitution of India which creates a clear bar in this respect. It appears that the attention of the learned Single Judge was not drawn to Article 319 of the Constitution of India.

17. What is meant by ''counting service'' is plain and simple that the period of service rendered is to be counted for calculating the pension. The rate of pension and other retrial benefits will be dependent on the emoluments last drawn in the Tripura Public Service Commission.

18. In this view of the matter, we allow the appeal, set aside the judgment of the learned Single Judge and consequently the writ petition is dismissed. No order as to costs.

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