

(2010) 04 GAU CK 0019
In the Gauhati High Court
Case No : WA No. 11 of 2004

State of Tripura and Others

APPELLANT

Vs

Bijoy Choudhury and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2010) 4 GLR 797

Hon'ble Judges : Iqbal Ahmed Ansari, J;C.R. Sharma, J

Bench : Division Bench

Advocate : S. Chakraborty, for the Appellant; A.K. Bhowmik and S. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Office Memorandum, dated 7.12.1992, was issued by the Department of Finance, Government of Tripura, granting benefit of higher pay scales to Assistant Teachers on acquiring higher qualification in some respective trade and subjects. Under the said Office Memorandum, dated 7.12.1992, those teachers, whose scale of pay, in terms of pay revision of 1982, was Rs. 560-1300, were granted extended pay scale of Rs. 1300-3200. By the subsequent Office Memorandum, dated 11.6.1993, the benefit of pay scale of Rs. 1300-3220 was extended to those junior Physical Instructors, who had acquired Bachelor Degree in Physical Education ("B.P. Ed.") or Post Graduate Diploma in Physical Education ("D.P. Ed.") on or after or prior to 24.4.1982, but up to 31.12.1991.

2. By filing a writ petition under Article 226, the respondents herein challenged the Office Memorandum, dated 11.6.1993, as illegal and arbitrary on the ground that having acquired D.P. Ed. before the date of the Office Memorandum, dated 7.12.1992, read with the Office Memorandum, dated 11.6.1993, they too ought to have been given the benefit of the extended pay scale in terms of the Office Memorandum, dated 11.6.1993, but they had been illegally denied the benefit of

the said rise in the pay scale by arbitrarily choosing the cut-off date of 31.12.1991. This writ petition gave rise to Civil Rule No. 446 of 1997, wherein the respondents contended that they were not responsible for having not been able to obtain requisite qualification before 31.12.1991 inasmuch as the junior Physical Instructors were being sent, for acquiring the D.P. Ed, course, not in order of seniority, but by adopting the policy of "pack and choose".

3. The appellants herein resisted the writ petition, contending, inter alia, that the Government had the right to choose cut-off date and it was not illegal for the Government to have chosen 31.12.1991 as the cut-off date for granting benefit of higher pay scale to those junior Physical Instructors, who had acquired Post Graduate Diploma as on 31.12.1991. The respondents also contended that before the selection of the said D.P. Ed, course, all concerned Head of Offices/DD Os had been asked to obtain willingness from the untrained Physical Instructors and on the basis of the same, selections were made strictly in order of seniority from amongst those, who had offered their willingness to pursue the said course of D.P. Ed.

4. In the affidavit-in-reply to the counter-affidavit, so filed by the State-respondents, the petitioners, in the writ petition, asserted that while sending the junior Physical Instructors for D.P. Ed, courses, seniority had not been maintained.

5. By judgment and order, dated 10.3.2004, the writ petition has been allowed. The reason for allowing the writ petition is that, the selection for perusing the D.P. Ed, course was not based on any rational principle or seniority and, hence, in absence of evidence showing any reasonable or intelligible basis for granting higher pay scale to those, who had acquired the prescribed higher qualification up to 31.12.1991, the choice of cut-off date on the basis of such fortuitous circumstance is plainly-arbitrary and violative of Articles 14 and 16 of the Constitution. By the said judgment and order, dated 10.3.2004, the appellants herein, as respondents in the writ petition, have been directed to make available to the writ petitioners-respondents herein revised pay scale of Rs. 1300-3200 w.e.f. 1.12.1992, less the additional increment, if already drawn by them, in the interregnum, within two months from the receipt of the copy of judgment and order dated 10.3.2004. Aggrieved by the directions so given to the State-respondents in the writ petition, to make available to the writ petitioners the revised pay scale of Rs. 1300-3200, this appeal has been preferred.

6. We have heard Mr. S. Chakraborty, learned Addl. Government Advocate, appearing for the State-appellants, and Mr. A.K. Bhowmik, learned senior counsel, appearing for the respondents/writ petitioners.

7. On careful perusal of the counter-affidavit filed by the State-respondents, we find that the learned Single Judge had correctly taken note of the fact that the State-respondents' case was that, before selection of the trainees for the D.P. Ed. course, all concerned Head of Offices and DD Os were asked to obtain

willingness from the un-trained Physical instructors and it was on the basis thereof that the selection was made strictly according to the seniority from amongst those, who had offered their willingness to pursue the course.

8. Having, however, noted the fact that the State-respondents, (i.e., the appellants herein) had asserted that the selection for sending employees to undertake the D.P. Ed. course was based on willingness, it appears that it escaped the attention of the learned Single Judge that the writ petitioners had, nowhere, denied the State-respondents' contention that the employees were sent for D.P. Ed. course on the basis of willingness obtained from them. Obviously, when the employees were sent for D.P. Ed. course on the basis of willingness obtained from them, the original seniority may not have been obtained. If the senior opts not to go for training and the junior opts to go for training, the original seniority cannot be maintained. On the ground, therefore, that, while sending for undergoing D.P. Ed. course, the seniority was not maintained, the cut-off date mentioned in the impugned Office Memorandum, dated 11.6.1993, could not have been interfered with. That apart, as correctly pointed out, on behalf of the appellants, before the date of issuance of the Office Memorandum, dated 11.6.1993, the writ petitioners had never expressed any resentment on their alleged denial of right to undergo the requisite course for completion of D.P. Ed.. It is, therefore, clear that the writ petitioners became irritated only when the financial benefit, granted under Office Memorandum, dated 7.12.1992, came to be extended to some junior Physical Instructors by virtue of the Office Memorandum, dated 11.6.1993.

9. Having, thus, concluded that, interference with the impugned Office Memorandum, dated 11.6.1993, was not legally possible on the ground that while sending the junior Physical Instructors to undergo D.P. Ed. course, seniority was not maintained, what remains to be examined is as to whether the selection of the cut-off date, in the present case, is arbitrary. In this regard, it may be noted that as far as the appellants are concerned, neither in the writ petition; nor in the appeal, they have been able to assign any reason as to why the cut-off date was chosen as 31.12.1991. Though the State-appellants have the authority to choose a cut-off date, they must be able to show, when questioned, as to why the cut-off date shall be regarded non-arbitrary even when the cut-off date was causing discrimination to those, who were substantially similarly situated persons. Except for the fact that the writ petitioners-respondents had acquired the requisite qualification after 31.12.1991, there was no other reason to deny the benefit of higher pay-scale to the writ petitioners. Those, who came to be covered by the Office Memorandum, dated 11.6.1993, stood on the same footing as did the writ petitioners so far as their qualifications are concerned. In such a situation, it was the duty of the State-respondents to show that the State Government was justified in choosing the cut-off date as 31.12.1991. However, as the State-Government had extended the benefit of higher pay scale of Rs. 1300-3200 by issuing the Office Memorandum, dated 11.6.1993, aforementioned to those, who had acquired the requisite qualification of D.P. Ed. course, it ought

to have been able to answer, when questioned, as to why the writ petitioners had been denied the benefit of higher pay-scale as late as on 11.6.1993, while the writ petitioners too had acquired the said qualification before 7.12.1992, (i.e., the original notification), along with those, who came to be covered subsequently under the Office memorandum, dated 7.12.1992, by virtue of extension of the benefit thereof with the help of Office Memorandum, dated 11.6.1993.

10. Situated, thus, we are of the view that the selection of the cut-off date as 31.12.1991 was, in the facts and attending circumstances of the present case, illegal and arbitrary and cannot be sustained.

11. We, therefore, hold that the direction, given by the learned Single Judge to make available the higher pay scale to the writ petitioners, calls for no interference by this Court.

12. In the result and for the forgoing reasons, his writ appeal fails and shall accordingly shall stand dismissed.

13. No order as to costs.