
(1998) 06 GAU CK 0035

In the Gauhati High Court

Case No : Writ Appeal No. 44 of 1994 and Arising out of C.R. No. 167/93

State of Tripura and Others

APPELLANT

Vs

Dhirendra Debnath (Dr.)

RESPONDENT

Date of Decision : 16-06-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1998) 3 GLT 14

Hon'ble Judges : H.K.K. Singh, J; A.K. Patnaik, J

Bench : Division Bench

Advocate : R.B. Sinha, G.A, for the Appellant; S. Talapatra, for the Respondent

Judgement

A.K. Patnaik, J.—This is an appeal against the judgment and order dated 1.9.94 of the learned Single Judge in Civil Rule No. 167/93.

2. The facts briefly are that pursuant to an advertisement, the Respondent/writ Petitioner and other candidates applied for Ph. Degree study and the Respondent/writ Petitioner was selected and placed at the top of the list. Thereafter, the Appellants granted study leave to the Respondent/writ Petitioner to pursue the study at his own cost. Since the Respondent/writ Petitioner did not get his salary for the period of said study, he moved this Court in the aforesaid Civil Rule No. 167/93 under Article 226 of the Constitution for a direction on the Appellants/ Respondents to pay the salary for the said period of study. Learned Single Judge by the impugned judgment and order dated 1.9.94 found that the case of the Respondent/writ Petitioner was covered by the judgment and order dated 19.7.90 of a Division Bench of this Court in Civil Rule No. 2/87 and, accordingly, directed that the Appellants/Respondents would treat the Respondent/writ Petitioner as having been on duty during the period of study, but the Respondent/writ Petitioner would not be entitled to the stipend money received by him for the aforesaid course earlier.

3. Mr. R.B. Sinha, learned Counsel appearing for the Appellants/Respondents,

submitted that the case of the Respondent/writ Petitioner was not covered by the judgment dated 19.7.90 inasmuch as the Petitioner, in the said Civil Rule No. 2/87 was sponsored by the State Government for study leave but the Respondent/writ Petitioner in the present case was not sponsored by the State Government and that the Respondent/writ Petitioner had pursued the study at his own cost and was granted study leave for the said course in terms of the letter dated 5th November, 1981 of the Director of Agriculture, Tripura under which the application of the Respondent/writ Petitioner for undergoing the study/course was forwarded to the Under Secretary (Education), Indian Council of Agricultural Research, New Delhi.

4. Mr. S. Talapatra, learned Counsel appearing for the Respondent/writ Petitioner, on the other hand, submitted that there is no difference at all between the case of the present Respondent/writ Petitioner and that of the Petitioner in Civil Rule No. 2/87. He further pointed out that though the Petitioner in the aforesaid Civil Rule No. 2/87 was not sponsored by the State Government he had pursued the study like the Respondent/writ Petitioner while on study leave and that he was also not treated as on duty when he pursued the study. The Division Bench however by the said judgment and order dated 19.7.90 in the said Civil Rule No. 2/87 that there was discrimination between the Petitioner in the said Civil Rule and the two other Executive Engineers of the Public Health Engineering Department inasmuch as the two other officers while pursuing the study were treated as on duty and were paid their salary while the Petitioner in the said Civil Rule though belonged to same Department was not allowed the study period as on duty and was not paid the salary.

5. Para-4 of the said judgment dated 19.7.90 of the Division Bench in Civil Rule 2/87 is quoted hereinbelow:

4. On consideration of the facts placed before us we are satisfied that the Petitioner's grievance is justified that the two other officers of the same Department while attending the same course had been treated as on duty which was clearly discriminatory and violative of right to equality. Even though when he proceeded to attend the course the Petitioner had taken study leave but after he joined the course had requested for equal treatment. It could be that earlier he was not aware of the case of said two others. However, that does not mean that the Respondents should treat the Petitioner differently.

6. It is apparent from the aforesaid extract from the judgment and order dated 19.7.90 of the Division Bench in Civil Rule No. 2/87 that the Division Bench held that while two other officers of the same Department while attending the course had been treated as on duty, the Petitioner in that case had not been treated as on duty which was clearly discriminatory and violative of the right to equality. In the aforesaid judgment the Division Bench also took note of the fact that when the Petitioner in that case proceeded to attend the course he had taken study leave, and came to the conclusion that the Petitioner and other two officers should not have been treated differently and the Petitioner should have been

treated as on duty during the said course as was allowed to the other two officers.

7. Mr. Sinha, learned Counsel for the Appellants/Respondents, vehemently contended that the Government cannot possibly sponsor every candidate for such study leave and depending upon its resources the State Government has been sponsoring only two candidates and this aspect of the matter has not been considered by the Division Bench in the aforesaid Civil Rule No. 2/87 as well as by the learned Single Judge in Civil Rule No. 167/93 out of which the present writ appeal arises.

8. As to how many candidates the Government will sponsor will obviously depend upon the resources of the Government and it is for the Government to take a decision in this regard. But sponsoring of candidates for study leave is entirely different from treating the period of study as on duty. Sponsoring of candidate for study would mean that the Government will bear the expenses of the candidate undertaking the study; but treating the period of study as on duty would mean that the Government would pay the salary of the candidates undertaking the study. Amongst the candidates who applied pursuant to the same advertisement, while two candidates were sponsored by the State Government, others were not sponsored by the State Government for study of Ph.D. Course. This does not necessarily mean that only the two candidates who were sponsored by the State Government would be treated as on duty during the period of course and that the candidates who had not been sponsored by the State Government and had undertaken the study at their own cost would not be treated as on duty. The equality clauses in Article 14 of the Constitution permit classification of persons into groups for the purpose of differential treatment, but the differential for such classification must be intelligible and must have a rational nexus with the object sought to be achieved. In our considered opinion, the criteria for distinguishing the candidates who have been sponsored for the study and the candidates who have not been sponsored by the State Government for the study has no rational nexus with the object sought to be achieved for allowing the candidates to pursue the study. The object obviously for allowing candidates to undertake such study is to ensure that the candidates acquire necessary technical knowledge and come to the Department and work more efficiently. Such being the object, we fail to see as to why the candidates who were sponsored by the State Government should only be allowed to undertake the study as a part of their duty while the candidates who attended such study at their own cost should not be allowed to attend the study as on duty, and be denied their salary during the period of such study.

9. For the reasons stated above, we are not inclined to interfere with the impugned judgment and order dated 1.9.94 of the learned Single Judge in Civil Rule No. 167/93 and, accordingly, we reject this writ appeal. There shall be no order as to costs.