

(2014) 09 TP CK 0023
In the Tripura High Court
Case No : W.P.(C) No. 423 of 2005

Sushanta Kumar Das VsThe Secretary

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2014) 09 TP CK 0023

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : S. Deb, Sr. Advocate and B. Debnath, Advocate for the Appellant;
T.D. Majumder, G.A. and P. Datta, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—By means of this writ petition, Memorandum under No. F.1(251)-LA/79-I dated 07.10.2005, Annexure-6 to the writ petition, read with corrigendum to the said memorandum under even No. dated 17.10.2005, Annexure-8 to the writ petition, are under challenge by the petitioners. By the said memorandum dated 07.10.2005, hereafter referred to as the impugned memorandum, the final seniority list of the Junior Reporters of Tripura Legislative Assembly Secretariat published under even No. dated 29.10.2002, has been altered and the petitioners were shown much below to the junior reporters, who were shown junior to them in the said final seniority list dated 29.10.2002, Annexure-2 to the writ petition. In the said final seniority list, the petitioners and the respondents No. 3 and 4 were shown as under:

2. Shri Sushanta Kumar Das, the petitioner No. 1
3. Smt. Lalita Barman, petitioner No. 2
4. Shri Amrit Chandra Sarkar, respondent No. 3
5. Shri Ashim Das, respondent No. 4

But in the impugned memorandum, their positions were altered after purported consideration of the Hon'ble Speaker, Tripura Legislative Assembly. The seniority positions after the modification and finalisation afresh stand as under:

3. Shri Amrit Chandra Sarkar, respondent No. 3.
4. Shri Ashim Das, respondent No. 4.
5. Shri Sushanta Kumar Das, the petitioner No. 1.
6. Smt. Lalita Barman, petitioner No. 2.

Being aggrieved by such action, the petitioners have approached this Court for remedy.

2. The facts are mostly undisputed. By the advertisement dated 25.09.1997, Annexure-C to the counter affidavit filed by the respondents No. 1 and 2, a selection process for junior reporter and other posts had commenced. For purpose of selection there was type writing and shorthand test. According to the procedure, the petitioners and the respondents No. 2 and 3 were selected by the Selection Board. The select panel was approved by the Hon''ble Speaker, Tripura Legislative Assembly and thereafter, the petitioners and the respondents No. 3 and 4 had joined as the junior reporter on 28.10.1998.

3. In due course, a tentative seniority list was published under memorandum of the even No. dated 06.06.2002, Annexure-1 to the writ petition, showing the following seniority positions for the petitioners and the respondents No. 3 and 4:

2. Shri Sushanta Kumar Das, the petitioner No. 1
3. Smt. Lalita Barman, petitioner No. 2
4. Shri Amrit Chandra Sarkar, respondent No. 3
5. Shri Ashim Das, respondent No. 4

Objections were invited from the employees for consideration. It appears from the records as produced by the respondents No. 1 and 2 at Annexure-H/1 of the counter affidavit that the respondents No. 3 and 4 had raised objection and after due consideration, those objections were rejected. Even thereafter, the respondents No. 3 and 4 raised further objection when it has been recorded in the note No. 12, Annexure-H/1 of the counter affidavit filed by the respondents No. 3 and 4 that:

"after scrutiny the final seniority list was published accordingly vide page-93. In this connection S.L. No. 12 at page-56 may also be perused by the authority. Objection raised by Sri Sarkar was not allowed as there has not been recorded in merit basis in respect of Shri Amrit Chandra Sarkar at the time of appointment. His seniority was fixed as per rule. However, two relevant papers also at p/108 & p/109 have been submitted which will speaks for itself.

At conclusion it may be stated here that the claim (according to the merit basis) of Sri Sarkar may not be accepted and may stands as before as the final seniority list was prepared as per record."

Exactly similar observation has been made in respect of the respondent No. 4, Ashim Das. From Note No. 23, Annexure-H/I to the counter affidavit filed by the respondents No. 3 and 4 it further appears that:

"in the present case this Secretariat did not prepare any select list as reported by the Office Superintendent. However, there is a letter issued by the Superintendent accepting the joining report of the Jr. Reporters vide letter mentioned in the previous paragraphs in which the two applicants are shown as follows:

1. Shri Amrit Chandra Sarkar.
2. Shri Ashim Das.
3. Shri Sushanta Kumar Das.
4. Smt. Lalita Barman.

But from the Note No. 24 dated 12.07.2005 it appears that at the intervention of the Hon"ble Speaker a fresh exercise was initiated and one file bearing No. F.1(47)-LA/73-IV on appointment of Class-III employees was placed before the Secretary to the Tripura Legislative Assembly. From the said note it appears that the select list of junior reporters and others were prepared by the selection board for appointment and that list was approved by the Hon"ble Speaker. From the entries made therein, it does not surface that select panel contained any merit position at all. Moreover, that was an extract of the note of the Hon"ble Speaker. But on the basis of the said note, the Secretary to the Tripura Legislative Assembly had inferred that in preparation of the final seniority list of the junior reporters some mistakes had been committed. Thereafter, on the basis of the said note No. 190 dated 21.10.1998, the impugned memorandum reviewing the seniority position was published in terms of the Note No. 24 dated 12.07.2005 of the Secretary to the Tripura Legislative Assembly.

4. Mr. S. Deb, learned senior counsel appearing for the petitioners has submitted that there is no inter se merit list in the selection. The selection board had only prepared a select list of the four persons without indicating to their merit position and thereafter, for purpose of preparing the final seniority list in absence of the select panel showing the merit position, the age of the junior reporters was considered as they all joined on the same date i.e. 28.04.1998. What has been derived from note No. 190 dated 21.10.1998 in File No. 1(203)-LA/78-I cannot be the merit position. It bears a column of interview board serial number, not the merit positions.

5. Mr. T.D. Majumder, learned counsel appearing for the respondents No. 1 and 2 has strenuously argued that interview board serial number denotes the merit position. Mr. P. Dutta, learned counsel appearing for the respondents No. 3 and 4 has supported such contention. Mr. Dutta, learned counsel has contended that before reviewing the final seniority list. The notice was given to the petitioners and their representations were considered with due regard. Mr. Dutta, learned

counsel has also pressed one order dated 05.11.1998, Annexure-VII to the counter affidavit which is the acceptance of the joining report of the petitioners and the respondent No. 4 w.e.f. 24.10.1990 to demonstrate that in the said order dated 05.11.1998 the respondents No. 3 and 4 had been shown above the petitioners. According to Mr. Dutta, it further reflects that the petitioners were junior to the respondents No. 3 and 4.

6. The petitioners have categorically denied that the select panel contained any merit position. Even the Note No. 190 does not reflect the merit positions. Since the controversy hinges on whether the select panel contained the merit position or not, this Court amid the hearing directed the learned counsel for respondents No. 1 and 2 to produce the relevant records for inspection by the court. It has been categorically mentioned in the said order dated 01.03.2014 as under

"It appears that the records relating to the seniority list of the petitioners as well as the merit list of the said post are required to be produced before this Court for hearing the matter effectively."

7. Mr. Majumder, learned counsel appearing for the respondents No. 1 and 2 has produced the records but no such select panel is available in the record. When asked by Mr. Majumder, learned counsel to place the file as requisitioned the Secretary to the Tripura Legislative Assembly has given the following observation in note No. 13 on 09.07.2014 in the case file: "the papers as asked for could not be traced out even after making thorough search in our office." The File No. 1(259)-LA/79-I relating to the appointments of Class-III employees of Tripura Legislative Assembly has been placed for inspection. It further appears that the said file was used for publication of the final seniority list and the exercise for review but nowhere in that file the select panel is available. It is further observed that the representations/objections filed by the respondents No. 3 and 4 were rejected several times. But at the intervention of the Hon'ble Speaker and on the basis of the note No. 190 the seniority position has been reviewed and the impugned memorandum read with the corrigendum has been published.

8. For appreciating the submissions of the learned counsel, this Court has scrutinized the records so produced. For non production of the records as directed by the order dated 01.03.2014, this Court is constrained to observe that there was no select panel containing the merit position of those who have been selected for appointment to the post of junior reporters in the Tripura Legislative Assembly. Thus the entire exercise of review as desired by the Hon'ble Speaker was based on no material. Despite that the seniority positions were reviewed to the detriment of the petitioners. In absence of any select panel, the seniority has to be determined on the basis of the seniority of the age if the employees concerned joined on the same date. The said golden rule has been followed in the present case, in absence of the merit positions in the select panel. Note No. 190 as referred cannot lead us to a different inference. Moreover, even in the Note No. 90 any reference to the merit position has been made. Thus, the review as made in respect of the final seniority list is unsustainable.

9. Having held so, the impugned Memorandum dated 07.10.2005, Annexure-6 to the writ petition and the corrigendum thereof dated 17.10.2005, Annexure-8 to the writ petition are interfered with and set aside. The seniority position amongst the petitioners and the respondents No. 3 and 4 shall be governed by the final seniority list published by the Memorandum No. F.1(259)-LA/79-I dated 29.10.2002, Annexure-2 to the writ petition.

With this direction and observation, this petition stands allowed to the extent as indicated above. There shall be no order as to costs.