

(2005) 08 GAU CK 0089
In the Gauhati High Court
Case No : W.A. No. 14 of 2001

Tripura Tea Development Corporation and Another	APPELLANT
Vs	
Manabendra Chakraborty and Others	RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 2, 5(3)

Citation : (2006) GLT 327 Supp

Hon'ble Judges : R.B. Misra, J;A.B. Pal, J

Bench : Division Bench

Advocate : U.B. Saha, N. Majumder and P. Datta, for the Appellant; C.S. Sinha and B. Sinha, for the Respondent

Judgement

A.B. Pal, J.—By this writ appeal, the Tripura Tea Development Corporation Limited (in short Corporation) and its Managing Director, being the Appellants herein have impugned the judgment dated 16th January, 2001 passed by the learned Single Judge of this Court in Civil Rule No. 618 of 1997 whereby the Respondents herein who are employees under the Corporation holding the post of Jr. Supervisors have been declared as entitled to move to the higher pay scale of Rs. 1300-3220/- on completion of 10 years of continuous service in the grade of Jr. Supervisor.

2. The Respondents herein, who joined as Jr. Supervisors under the Corporation in the pay scale of Rs. 470-1025/- claimed that the Tripura State Civil Services (Revised Pay) Rules, 1988 (for short ROP Rules) having been adopted by the Corporation for its employees, they became entitled to the revised pay scale of Rs. 1020-2620/- w.e.f. 1.1.1986 which has been given to them. Again, as per the provision of the said ROP Rules, they are entitled to move to the higher pay scale of Rs. 1300- 3220/- on completion of 10 years continuous service in the grade of Jr. Supervisor. But by the impugned memorandum dated 28.8.1997 (Annexure-9 (b) of the Writ Petition) they have been given the next higher pay scale of Rs. 1250-2890/-, which is the cause of their grievance. According to

them, as per provision of Clause 2(a)(i) and (c) of Part-C of the ROP Rules, they are entitled to pay scale of Supervisor, i.e. Rs. 1300-3220/-, not the immediate higher pay scale of Rs. 1250-2890/- as given to them. In the writ petition filed by them, they assailed the above memorandum dated 28th August, 1997 coupled with a prayer for direction to the Respondents to allow them the pay scale of Rs. 1300-3220/-. The Corporation contested the claim before the learned Single Judge contending, inter alia, that the Respondents herein are not entitled to the pay scale of Rs. 1300-3220/- on completion of 10 years, rather, they are entitled to only the next higher pay scale being Rs. 1250-2890/-. They have been given the same on completion of 10 years of continuous service as per provision of Rule 5(3) of Part-B of the ROP Rules under which the impugned memorandum dated 28th August, 1997 has been issued by the Corporation. In other words, according to the Corporation, the Petitioners are not entitled to the pay scale at Sl. No. 27 as per provision of Rule 2(a)(i) and (c) of Part-C of the ROP Rules, rather, they are entitled to the provisions of Sub-rule (3) of Rule 5 of Part-B which provides that on completion of 10 years an employee shall move to the next higher pay scale, not the pay scale of the next higher grade. Admittedly, the pay scale of the next higher grade (Supervisor) is Rs. 1300-3220/-, but the next higher pay scale is Rs. 1250-2890/-. The central point of controversy is whether the Jr. Supervisors of the Corporation who are admittedly entitled to the pay scale of Rs. 1020-2620/- are, on completion of 10 years, entitled to move to the next higher pay scale of Rs. 1250-2890/- as provided by the impugned memorandum or to the pay scale of the next higher grade of Supervisor i.e. Rs. 1300-3200/- as per provision of Part-C of the ROP Rules.

3. The rival contentions set out thus, we may now proceed to examine how the learned Single Judge has arrived in his findings that the Respondents herein are entitled to the pay scale of Rs. 1300-3220/- which is the pay scale of the next higher grade, on completion of 10 years by virtue of the relevant provision in Part-C of the ROP Rules. The impugned memorandum dated 28.8.1997 has been issued under Sub-rule (3) of Rule 5 of Part-B of the schedule of the ROP Rules as noted above. After quoting Sub-rule (3) of Rule 5 as aforesaid, the learned Single Judge proceed to hold that this provision does not support the pay scale allowed to the Petitioners as given by the impugned memorandum. The working out of the scale which are shown in the impugned memorandum gets no support from the ROP Rules. Consequently, it has been held that the Respondents herein are entitled to the revised pay in accordance to the graded pay scale No. 27 and on completion of 10 years they shall move to the next higher pay scale meant for the Supervisor at Rs. 1300-3220/-.

4. We have heard Mr. U.B. Saha, learned senior Govt. Advocate assisted by Mr. N. Majumder and Mr. P. Datta, Advocates for the Appellants and Mr. C.S. Sinha along with Mr. B. Saha, learned Counsels for the Respondents.

5. It is not in dispute that the Corporation is a juristic person having its entity distinct from the State and consequently the ROP Rules meant for employees

under the State Government do not automatically apply to the employees of the Corporation unless specifically adopted. It is also not in dispute that such adoption by the Corporation can not be unilaterally done because of the financial implication as the Corporation is wholly dependent on State Government. Because of that reason, the approval of the State Government for such adoption is required. Such adoption was done by the Corporation by Resolution No. 16 (Annexure-D) which was approved by the Governor (Annexure-D) on 8th September, 1989. The memorandum conveying approval of the Governor is quoted below:

The undersigned is directed to convey the approval of Governor, Tripura to the adoption of corresponding revised scales of pay for the employees of Tripura Tea Development Corporation Ltd. as per Annexure-I subject to strict compliance of Tripura State Civil Services (Revised pay) Rules, 1988 and also subject to availability of fund for this purpose in corporations Budget.

(emphasis supplied)

6. Mr. Saha submits that this memorandum cannot be interpreted to be an act of the Corporation whereby it has adopted all the provisions of the ROP Rules. On the contrary, the pronounced intention is to introduce the revised pay scales within a limited extent as per Annexure-1 only enclosed with the memorandum. The annexure clearly provides that for the post of Jr. Supervisor the pay scale of Rs. 470-1025/- has been revised to the pay scale is Rs. 1020-2620/-. Nothing more in relation to this post has been adopted by that memorandum, not to speak of movement to the next higher pay scale after completion of certain periods. Only by the impugned memorandum dated 28.8.1997 {Annexure-(b)}, the Jr. Supervisors who have completed 10 years service in the grade have been given the next higher pay scale of Rs. 1250-2890/- in pursuance of Sub-rule (3) of Rule 5 of Part-B (Schedule-III) of the ROP Rules. Nothing more of the ROP Rules can be said to have been adopted by the impugned memorandum. His next submission is that there is no notification or memorandum issued by the Corporation adopting the provision of Part-C of the said Rules for the employees of the corporation and therefore, the benefit of that Part, in as much as the pay scale of the next higher grade (Supervisor), cannot be said to be admissible.

7. Mr. Sinha advanced his arguments for the Respondents contending that though by several notifications the revised pay scales for different posts under the Corporation as per ROP 1988 have been extended to the employees of the Corporation, it has never been in dispute that all such employees are entitled to the Career Advancement Scheme (CAS) like the employees in corresponding grade of the State Government. According to him, the provisions of Part-C of the Rules in the Schedule are the appropriate provisions for movement to the pay scale of the next higher grade (Supervisor).

8. We have carefully perused the memorandum dated 8th September, 1989 whereby approval of the Governor to the adoption of the corresponding revised

pay scales has been conveyed. The words "as per Annexure-I" and "subject to availability of fund for this purpose in corporation Budget" unmistakably give us the impression that all the provisions of the ROP Rules have not been adopted thereby. To our pointed query, Mr. Sinha could not say whether any other notification has ever been issued adopting the relevant provisions of the ROP Rules, which provides for movement to higher pay scale after completion of certain years in the grade. As regards the impugned notification dated 28th August, 1997, the same having been issued under Sub-rule (3) of Rule 5 of Part-B (Schedule-III) we are of the view that nothing more can be read in that memorandum. The learned Single Judge quoted the provisions containing Part-B (Schedule-III) with reference to Sub-rule (3) of Rule 5 of the said Rules and held that the pay scales given in the impugned memorandum to the Jr. Supervisors gets no support from the provision of that Schedule. We have noticed that only a part of that Schedule has been quoted by the learned Single Judge but the most important provisions under Note No. 4 regarding existing scales, revised scales, next higher revised scales and next above the next higher revised scales have not been mentioned. The relevant provisions are reproduced below:

Where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale 10 years of service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post; and

(ii) Where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale 18 years of the service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next above the scale which is next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post.

....

The existing scales, revised scales, next higher scales and scales above the next higher scales which shall apply to cases covered by Note-3 are shown below:

9. It thus appear to us that for the Jr. Supervisors under the Corporation the existing pay scale is Rs. 470-1025, revised pay scale-Rs. 1020-2620/-, next higher revised scale Rs. 1250-2890/- (which is admissible on completion of 10 years) and next above the next higher revised scale Rs. 1300-3220/- (which is admissible after completion of 18 years of service). The Respondents have been given the next higher pay scale of Rs. 1250-2890/- by the impugned memorandum strictly as per provision contained in Part-B (Schedule-III) and therefore, we find it difficult to agree with the learned Single Judge that the pay scales given by the impugned notification gets no support from the above Schedule.

10. After holding that the impugned memorandum finds no support from Part-B, learned Single Judge turned to Part-C of the Schedule to hold that Sl. No. 27

which is specifically admissible for the Supervisors of the Industries Department are admissible to the Respondents herein. In the absence of any specific notification adopting the provisions of Part-C, we are unable to agree with such observation that the Respondents are entitled to the benefit of that Part. In para-8 of the impugned judgment the learned Single Judge observed as follows:

The authority of the Corporation while adopting the R.O.P., 1988 could have made some modification, but that was not done and the R.O.P. of 1988 meant for the government employees of the Tripura had been adopted in verbatim without any modification or alteration while made applicable to the Corporation employees.

Neither we are unable to find out nor the learned Counsels for the parties could locate the relevant notifications whereby the ROP Rules, 1988 meant for the Government employees have been adopted in verbatim without any modification. On the contrary what we find is that the State Government as well as the Corporation have adopted specifically certain revised pay scales for the employees of the Corporation and nowhere there is any whisper in those notifications including the impugned one that all the provisions of the ROP Rules mutatis mutandis have been adopted for the revision of pay of the employees under the Corporation.

11. In view of the above discussions, we are of the considered view that the impugned judgment of the learned Single Judge is not sustainable in law and consequently the same is liable to set aside, which we hereby do.

12. Accordingly, the writ appeal is allowed but there shall be no order as to cost.