
(2006) 05 GAU CK 0098
In the Gauhati High Court

Uttam Chakraborty

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Citation : (2009) 3 GLR 655

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The short question for decision in this writ petition is whether age of employees should be the only determining factor for seniority in the absence of any specific provision in the relevant Rules to the contrary.

2. I have heard Mr. P. Roy Barman, learned Counsel for the petitioner, Mr. S. Deb, learned senior counsel, assisted by Mr. S. Choudhury, learned Counsel for the respondent No. 3, Mr. T.D. Majumdar, learned Addl. Government Advocate and Mr. A. Ghosh, learned Counsel for the State-respondents.

3. The material facts, shorn of details are as follows:

The petitioner was appointed as Artist in 1975. His service was terminated w.e.f. 21.4.1978. On 1.7.1980, after more than two years he was again appointed as Folk Entertainment Assistant on regular basis, which post was later re-designated as Cultural Assistant by a memorandum dated 22.12.1981. The third respondent was also appointed as Cultural Assistant w.e.f. 1.7.1980. On 31.10.1987 the third respondent was promoted to the post of Cultural Coordinator along with others including one Smt. Sipra Bhowmik presumably on the basis of tentative seniority list of Cultural Assistant as on 1.4.1987 (Annexure-B). In that seniority list, Smt. Sipra Bhowmik was shown at Sl. No. 1, Shri Uma Sankar Chakraborty (third respondent herein) at Sl. No. 2 and Shri Uttam Chakraborty (petitioner herein) at Sl. No. 5. The petitioner made a representation to the Director of Information, Cultural Affairs & Tourism, the second respondent herein claiming

his seniority over third respondent herein. He claimed that his position should have been above the third respondent as he was senior by age and Smt. Sipra Bhowmik and Monoranjan Bhowmik, who were in the post of Dress Keeper before their re-designation as Cultural Assistant, should have been placed below the petitioner, who along with third respondent were appointed as Cultural Assistant in the pay scale of Rs. 2,40, 440. Later, the second respondent by a memorandum dated 23rd April, 1988 reverted Smt. Sipra Bhowmik to the post of Cultural Assistant and promoted the petitioner to the post of Cultural Coordinator. The petitioner claimed that he should have been promoted to that post w.e.f. 31.10.1987 when the third respondent, being junior to him was promoted. The tentative seniority list had shown the date of birth of the petitioner on 22.3.1954 and that of respondent No. 3 on 23.3.1954 giving the petitioner seniority of age by one day. The seniority list of Cultural Coordinator was published on 4th December, 1993 showing the third respondent at Sl. No. 1 and the petitioner at Sl. No. 5. On 6th December, 1993 the final seniority list of Cultural Assistant was published showing the third respondent at Sl. No. 1 and the petitioner at Sl. No. 3. On 13.12.1995 the third respondent was further promoted on ad-hoc basis to the post of Cultural Organizer, which was regularized later. The petitioner filed the present writ petition on 5.2.1996 claiming seniority over the third respondent and consequential promotions to the higher posts w.e.f. the date when the third respondent was promoted. After filing of the writ petition, the petitioner was promoted to the post of Cultural Organizer on 23.7.1996. As the final seniority list of Cultural Assistant and tentative seniority list of Cultural Coordinator were published on 13.8.1996 and 27.8.1997 during the pendency of the proceeding, the petitioner has called in question the said seniority lists, as he has been placed below the third respondent. On 29.5.2000 the third respondent was promoted to the post of District Cultural Officer, which is also now under challenge. The entire controversy has now been confined to the only question whether the petitioner should have been treated to be senior to the third respondent only because he was senior in age by one day, as all his claims for other benefits inevitably flow from his seniority position claimed by him.

4. The third respondent in his counter-affidavit contended inter alia that while the service of the petitioner was terminated w.e.f. 21.4.1978, he continued in the service without any break, which is a factor for conferring on him seniority over the petitioner. That apart, his further contention is that on 22nd December, 1981 the State-respondent issued a memorandum absorbing the employees holding the post of Dress Keeper and Folk Entertainment Assistant to the re-designated post of Cultural Assistant and in that memorandum the petitioner was shown below the third respondent. While the pay of the third respondent was fixed at Rs. 320 in the pay scale of Rs. 2,40,440, that of the petitioner was fixed at Rs. 240 in the pay scale of Rs. 2,40,440. The order of absorption showing the petitioner below the third respondent in the said memorandum dated 22.12.1981 was not called in question and, therefore, after a period of 15 years it is not open

to the petitioner to dig out the question of seniority on the basis of age to unsettle thereby the settled position. It has been further contended that in the grade of Cultural Coordinator the third respondent was promoted on 31.10.1987, which was regularized w.e.f. 9.11.1987. On the other hand, the petitioner was appointed to the post of Cultural Coordinator on 23.4.1988, which was regularized w.e.f. 25.4.1988, much later than the third respondent. It has been finally contended that the claim of seniority of the petitioner over the third respondent is thus, without any basis and, therefore, the same should be rejected at the very threshold.

5. The State-respondents in their counter-affidavit and additional counter-affidavit contended, inter alia, that age can never be the basis of seniority and thus, the claim of the petitioner at a very belated stage is stale and devoid of any merit. In para-10 of the additional counter-affidavit it has been contended that the service of the petitioner was terminated in 1978 on the ground of his insubordination and misconduct though later he was again accommodated as Cultural Assistant w.e.f. 1.7.1980. As regards the question of seniority in the grade of Cultural Assistant, the contention is that while the petitioner lost continuity in service due to termination, the third respondent was never terminated and was absorbed on 1.7.1980 along with the petitioner and placed at SI. No. 1. That apart, the third respondent was promoted to the post of Cultural Coordinator on the recommendation of the DPC, which was done after consulting the seniority position, integrity, merit and other factors. Therefore, promotions of the third respondent to the higher post earlier than the petitioner cannot be assailed only on the ground of seniority by age.

6. Learned Counsel for the petitioner fairly admitted that he could not come across any rules of seniority including the general principles of seniority providing that age shall be the determining factor for the inter se seniority of the employees who are appointed to same post or grade on the same day, but not on merit. His only submission is that as admittedly the petitioner and the third respondent were appointed on the same day in the grade of Cultural Assistant and the petitioner is admittedly senior in age to the said respondent, the petitioner should have been shown over third respondent in the list of seniority and give him all benefits of promotions with effect from the date when the third respondent was promoted.

7. Mr. S. Deb, learned senior counsel on behalf of the third respondent made a strong submission that such a writ petition is not maintainable as by it the petitioner has put under challenge the position of seniority after a long lapse of 15 years. According to him, the memorandum absorbing the Folk Artists in the Folk Entertainment Assistant appointed on ad-hoc basis in the grade of Cultural Assistant on regular basis on 22.11.1981 showing the third respondent above the petitioner could not be challenged after such a long lapse of time and that there having been no rule applicable to the contending parties to determine inter se seniority on the basis of age, the claim of the petitioner deserves no

consideration. In support of his submission regarding delay in presenting the writ petition, Mr. Deb has placed reliance on the decision of the Supreme Court in the following cases:

- (1) State of Madhya Pradesh Vs. Bhailal Bhai and Others, para 17;
- (2) Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, para 10;
- (3) M.K. Krishnaswamy, etc. Vs. The Union of India (UOI) and Another, para 8;
- (4) S.S. Rathore Vs. State of Madhya Pradesh, para 22;
- (5) R.S. Makashi and Others Vs. I.M. Menon and Others, para 21.

8. From the rival pleadings and submissions set out above, the position coming out for acceptance is firstly, this writ petition seeking to challenge the seniority of the third respondent after absorption on regular basis in 1981 and several promotions thereafter on the basis of tentative and final seniority list is highly belated. Secondly, though the past services rendered on contract basis by the petitioner and the third respondent would be counted only for leave and pension as per the order dated 15th September, 1983, there is nothing in that order that while determining seniority in the regular grade, person having continuity cannot be given any weightage over the other who suffered break. Thirdly, the general principles of seniority or for that matter any other rules regarding seniority applicable to the contending parties contained no provision that age shall be the only basis for determining seniority of the employees absorbed on the same date in the same grade but not merit. The above citations relied on by Mr. Deb re-emphasize the settled principle of law that long delay without satisfactory explanation can be the only ground for rejecting the highly belated stale claim. It is also clear that successive representations to the authority for redress during a long period when several irreversible changes did take place cannot be a ground for overlooking the delay.

9. For the discussion aforementioned, this writ petition, which is highly belated presenting a stale claim supported by no legal principle about seniority, is not sustainable in law and, therefore, is dismissed. No costs.