

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WA. No.214 of 2021

Sri Sushil Debbarma and 3 Others

.....Appellants

_V_E_R_S_U_S_

The State of Tripura and 4 Others

.....Respondents

For Appellant(s)	:	Mr. Somik Deb, Sr. Advocate. Mr. Abir Baran, Advocate.
For Respondent(s)	:	Mr. D. Bhattacharjee, Advocate. Ms. S. Saha, Advocate.
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

_F_I_N_A_L_O_R_D_E_R_

30.08.2023

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel appearing for the appellants also heard Mr. D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the respondents.

[2] The present appeal has been filed under Rule-2 of Chapter-V-A of the Gauhati High Court Rules, read with Article-226 of the Constitution of India against the impugned judgment and order dated 08.01.2021 passed in WP(C) No.810 of 2020, whereby and whereunder, this Court has dismissed the writ petition, thereby committing manifest error of facts and law in determining the legal issues raised by the petitioner-appellants.

[3] The facts in brief are that, the appellant Nos. 1, 2 & 3 had joined the Forest Department, Government of Tripura in 1992, and the appellant No.4 had joined in the year 1985 as TFS Grade II. In the WP, the appellants contended that the appellant Nos.1, 2 & 3 completed ten years of service in 2002, and the appellant No.4 completed ten years of service in the year 1995, and became eligible for appointment to TFS Grade 1. By the Order dated 05.11.2015, Foresters were promoted to the post of Forest Rangers, with retrospective effect from 20.11.2003, being the date of their acquiring eligibility of promotion.

[4] By a Letter dated 26.02.2019, the Representation of the appellants was rejected, by a non-speaking Order, and thus, the grievance as well as legitimate

claim of the appellants, for appointment to the post of TFS Grade-1, from the respective dates of acquiring eligibility remained unaddressed, and therefore, on 24.08.2018, they had served a Demand Notice upon the respondents, stating in details, and requested for their appointment to TFS Grade-1, with effect from their respective dates of acquiring eligibility. In the WP, the appellants contended that by a letter dated 07.10.2020, the GA(P&T) Department, Government of Tripura gave a reply to the Demand Notice dated 24.08.2020.

[5] Mr. S. Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel appearing for the appellants has submitted that the Hon'ble Single Judge has failed to appreciate the mandate, contained in Rule-31 of the Tripura Forest Service Rules, 1988, which inter alia mandates that appointments of the members of the service to the selection Grade, shall be made, in consultation with the Tripura Public Service Commission, on the basis of merit, with due regard to seniority, and Rule 31(2) of the said Rules prescribes the minimum eligibility of ten years of service, in the feeder grade of Tripura Forest Service Grade-II, for being considered for appointment to the Selection Grade.

[6] The Hon'ble Single Judge has failed to appreciate that by the Order dated 03.11.2015 (Annexure-4 to the WP), five officers were appointed as Forest Rangers, with retrospective effect from 20.12.2003 against the supernumerary post of Forest Ranger, Forest Department, Government of Tripura, by the Memorandum dated 05.11.2015, with the prior concurrence of the Finance Department, Government of Tripura, which by itself, manifested the hostility and discrimination, meted out to the appellants.

[7] The Hon'ble Single Judge has failed to appreciate that the claims of the appellants cannot be termed as belated inasmuch as the appellants were informed about the rejection of their Demand Notice by the Communication dated 07.10.2020, and therefore, such claims of the appellants cannot be treated as highly belated so as to merit dismissal. That apart, the appellants having proceeded on retirement, in the event, such retrospective promotion is granted, the same would only have the effect of advancement of pay and allowances, by retrospective fixation thereof and consequently, the same would result in fixation of higher pension. In such view of the matter, it is most humbly and respectfully submitted that the Hon'ble Single Judge was wholly in error, in dismissing the WP, presented by the appellants.

[8] The Hon'ble Single Judge has failed to appreciate that the prayers of the appellants to the extent of grant of financial benefits could not have been rejected, on the ground of delay and laches inasmuch as it is a settled legal principle that where the issue relates to payment or fixation of salary or any allowance, such challenge cannot be held to be barred by limitation on the doctrine of laches as the denial of benefit occurs every month, when the salary is paid, thereby giving rise to a fresh cause of action, based on the principle of 'continuing wrong'.

[9] After overall discussions, if we go by the appellants own dates and events, they want retrospective benefits whereas; they are late by decades in approaching the Court. Even If we consider the appellants scale down expectations of grant of due date of promotion from the date where the vacancies arose, by their own account such event took place in the year 2004. This promotional order made it clear that the effect of promotion is prospective. Limitation Act may not be applicable to the writ petition, which was due for his protection way-back in 1995 but to get over the action of laches which was not explained, they only made representation for the purpose of creating litigation in the year 2018 and the same stands rejected and thereafter, filed writ petition. Mere filing of representation before the concerned authority after elapse of 16-17 years, itself draws adverse inference against the conduct of the appellants which amounts to laches. Accordingly, we find no infirmities in the finding of the Hon'ble Single Judge.

[10] In this count, the Hon'ble Apex Court in a case of ***Union of India and Others v. Chaman Rana***, reported in (2018) 5 SCC 798, held that *"In the facts and circumstances of the present case, any direction to consider retrospective promotion of the respondents at such a belated passage of time of over 17 to 20 years, would virtually bring a tsunami in the service resulting in administrative chaos quite apart from the financial implications for the government. The order of the High Court is therefore held to be unsustainable and is set aside."*

[11] The appellants are not either contingency paid staff who would be on tenterhooks and therefore, always slow in taking on the administration in a neither Court of law, nor are low paid servants. They are Grade-I officers who had sufficient means and wherewithal to ventilate their grievance timely but, that has not been done by the appellants. According to the Apex Court it has been

categorically indicated that after travelling for so many years if the promotion is now decided, that would create chaos would amount to creating tsunami.

[12] In view of the above discussions, this Court has no hesitation to hold that they only made representation for the purpose of creating litigation in the year 2018 and the same stands rejected thereafter, filed writ petition and the rejection order is challenged in the writ petition. So, the action of the petitioners sleeping over the matter for long time till the date of filing representation, amounts to laches and this Court draws an inference that only to bring this litigation under the purview of the writ jurisdiction, they have filed the same and thereafter, the writ appeal has been filed. This action of the petitioners cannot be appreciated when the petitioners are not serious enough about their rights, this Court cannot appreciate the said action. On the ground of laches, this Court draws an adverse inference against the petitioners and declines to interfere with the order passed by the Hon'ble Single Judge on 08.01.2021.

[13] In that view of the matter, the present appeal stands dismissed. Consequently, the judgment and order of the Hon'ble Single Judge stands affirmed.

JUDGE

JUDGE

A. Ghosh

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