

THE HIGH COURT OF TRIPURA
A G A R T A L A

WP(C) 336 of 2009

Sri Sukumar Das,
Son of Priyalal Das
Resident of Kashipur,
PO-Reshambagan
PS East Agartala
District-West Tripura.

.....Petitioner

VERSUS

1. Tripura Tribal Areas Autonomous District Council, (to be represented by the Chief Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumulung, West Tripura).
2. The Chief Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumulung, West Tripura.
3. The Deputy Chief Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumulung, West Tripura.
4. The Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumulung, West Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE U.B. SAHA

For the Petitioner : Mr. P Roy Barman, Advocate

For the Respondents : Mr. R Chakraborty, Advocate

Date of hearing and delivery
of Judgement & Order : **18.06.2015.**

Whether fit for reporting : **Yes/No**

JUDGMENT & ORDER (ORAL)

The instant writ petition is filed under Article-226 of the Constitution of India for directing the respondents to give the petitioner the benefit of regular scale of pay of Rs. 970-40-1240-45-1650-50-2400 and also the benefit of CAS-I.

2. Heard Mr. P Roy Barman, learned counsel for the petitioner as well as Mr. R Chakraborty, learned counsel for the respondents.

3. Brief facts of the case needed to be discussed are as follows:

The petitioner was appointed as Lower Division Clerk (for short, "LDC") on fixed pay basis vide Memorandum dated 01.04.1995 and consequent thereto the petitioner joined to the post on 10.04.1995. Vide office order dated 23rd July, 1997 61 numbers of LD Clerks on fixed pay basis @ 9,000/- per month were allowed the regular scale of pay of Rs. 970 -2400 plus other allowances w.e.f. 01.10.1997, depriving the petitioner, on the ground that as per ACR the petitioner was found not qualified.

4. Being aggrieved by the action of the respondents, the petitioner made representation to the respondent No.3 the Deputy Chief Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumlung on 28.10.1997. Thereafter, vide Office Order dated 20.04.1998 the petitioner was provided regular scale of pay of Rs. 970-2400/- w.e.f. 01.05.1998 along with other eight persons. Thereafter, the petitioner made another representation on 27.11.2007,

wherein he requested the authority to provide him CAS-I as he has completed 10 years of continuous service as LD Clerk. In response to the said representation the Executive Officer, respondent No.4, informed the petitioner inter alia that "the representation submitted by you for allowing regular pay scale in the post of LDC with other 61 (sixty one) LDCs with effect from 01.10.1997 has been regretted by the authority due to adverse remarks in the ACRs" but did not mention anything regarding CAS-I. Then again the petitioner made a representation on 06.08.2008 to the respondent No.4, through proper channel, for allowing him regular scale of pay with retrospective effect from 01.10.1997, which was accordingly forwarded by the Zonal Development Officer to the respondent No.4, but no decision has been taken on his prayer for CAS-I. Hence, the writ petition.

5. The respondents by way of filing counter affidavit contended that the case of the petitioner was considered by the DPC and the DPC found the petitioner not qualified as per his ACR. Therefore, he was not provided the regular scale of pay along with other 61 persons w.e.f. 01.10.1997. Subsequently, he was provided the regular scale of pay w.e.f. 01.05.1998. Further case of the respondents is that as the petitioner did not complete 10 years of service from the date of his regular scale of pay i.e. on and from 01.05.1998 he was not provided the benefit of CAS-I.

6. Mr. Roy Barman, learned counsel for the petitioner while urging for the relief sought for would contend that admittedly the persons who were engaged along with the petitioner on fixed pay basis were provided the regular scale of pay but the petitioner was

denied on the ground that as per ACR he was found not qualified, but fact remains the authority did not maintain any ACR so far as the fixed pay LDCs are concerned. He again submits that even if it is admitted that the authority has written the ACRs then also the result of the adverse remarks in the ACR was not communicated to the petitioner and without communicating the adverse remarks in the ACR an action was taken against him which is totally unreasonable and unfair and violative of Article 14 of the Constitution of India.

7. He finally contended that though, the respondents in their counter stated that the petitioner was not allowed CAS-I for non completion of 10 years of continuous service, but fact remains the petitioner has completed 10 years of service w.e.f. 01.10.1997 on which date the regular scale of pay was provided to other 61 persons who were similarly situated with the petitioner.

8. Mr. Chakraborty, learned counsel for the respondents while refuting the submission of Mr. Roy Barman, learned counsel for the petitioner, submits that petitioner was not provided the regular scale of pay as the petitioner could not pass the type test within a period of six months from the date of appointment, as per the terms mentioned in the offer of appointment. He further submits that the DPC found the petitioner not qualified as per his ACR.

9. On 11.06.2015 this Court directed the learned counsel of the respondents, Mr. Chakraborty to produce the DPC file along with the ACRs of the petitioner. But, today when the matter is taken up Mr.

Chakraborty placed the minutes of the DPC/Selection Committee of Group-C Staff, but no ACR of the petitioner has been produced.

10. It also appears from the minutes of the DPC that the DPC has suggested the authority to consider the regular pay scale to the fixed pay employees of Serial No.1 to 59 but the authority has provided regular pay scale to 61 persons i.e. Serial No.1 to 59, 62 & 63, though the DPC found Serial No. 62 and 63 as 'not qualified'. More so, it also appears from the record that copy of the minutes which is placed before this Court (Annexure-R/1 to the writ petition) and the original minutes which is placed before this Court today are not the same and there are some variations.

11. In Annexure-R/1, it is mentioned 'from Sl. No.1 to 59 and 63" whereas in the original DPC minutes it is mentioned as "from Sl. No.1 to 59 and 63, 62". Not only that, though the copy of the minutes of the DPC has been annexed as Annexure-R/1, but the attached sheet with the minutes have not been annexed. In the attached sheet name of the employees, designation, year of ACRs and remarks column relating to 68 LDCs appointed on fixed pay basis are shown. It appears from the said attached sheet that against Sl. No. 59, Monoranjan Debbarma, (1) LDC it is mentioned "No comments(Good 5). In case of Serial No. 62 Rina Debbarma, LDC it is mentioned "not yet qualified". In case of Ratna Debnath, LDC also it is mentioned in the remarks column as "not yet qualified". But these 3 persons have also been provided the regular pay scale, whereas the petitioner along with 6 others were not provided regular pay scale, along with other 61 persons.

12. So far the contention of Mr. Chakraborty, learned counsel for the respondents relating to type test is concerned there is no whisper in the counter affidavit that the petitioner was found unsuitable as he could not pass the type test in terms of the offer of appointment. Not only that in the minutes of the DPC also there is no mention that the other persons were found eligible for regular pay scale because of passing the type test. Therefore, according to this Court, the submission of Mr. Chakraborty is not tenable at all.

13. When the DPC found that Serial No. 62 and 63 were not yet qualified then how the authority provided the regular pay scale to those persons depriving the petitioner. After perusal of records particularly the DPC minutes along with the attached sheet, this Court is of the considered opinion that the entire action of the respondents is not only unfair but unethical also as the benefit of regular pay scale was provided to Sl. No. 62 and 63 inserting subsequently, which will be evident from the noting of the DPC which is as follows:

“.....The balance from Sl. No. 60 to 68 have yet not been acquired qualification for regular scale for which the D.P.C has been constituted”.

14. Before returning the documents placed before us by Mr. Chakraborty, learned counsel for the respondents it would be proper to take copies of original minutes of DPC along with attached sheets, so that subsequently the authority cannot come up with a different plea.

15. Photocopy of the original DPC minutes and the attached sheets is marked as “X” for identification and future reference.

16. From the record placed by Mr. Chakraborty, it is also not clear what is the basis for saying one person as suitable and another as unsuitable. For giving bench mark in the ACR there should be certain criteria/norms and the said norms should have to be followed but in the instant case there is nothing except the remarks qualified/not qualified.

17. In view of the above, this Court is of considered opinion that the respondents denied the benefit of regular pay scale to the petitioner without any basis and the whole action of the authority is unfair, unreasonable and violative of Article 14 of the Constitution of India.

18. Accordingly, the respondents are directed to give the petitioner the benefit of regular pay scale of Rs. 970-2400/- w.e.f. 01.10.1997 on which date other 61 persons were provided regular pay scale. As the petitioner also admittedly has completed 10 years of service w.e.f. 01.10.1997 as LDC the authority is also directed to consider the case of the petitioner so far granting of CAS-I is concerned, as other 61 persons have already been provided the benefit of CAS. Respondents shall complete the entire exercise within three months from today.

19. In the result the writ petition is allowed. No order as to costs.

JUDGE