

THE HIGH COURT OF TRIPURA
AGARTALA

W.A. 61 of 2014

Sri Ashok Kumar Ghosh
S/O. Lt. Gopal Chandra Ghosh,
Presently holding the post of
Overseer (Civil), Civil Department,
Tripura Jute Mills Ltd., Hapania,
P.O. Agartala O.N.G.C., Agartala,
P.S. Amtali, Dist. West Tripura.

..... *Appellant*

- Vs. -

1. Tripura Jute Mills Ltd.,
Hapania, P.O. Agartala O.N.G.C., Agartala,
P.S. Amtali,
Dist. West Tripura.
2. The Managing Director,
Tripura Jute Mills Ltd.,
Hapania, P.O. Agartala O.N.G.C., Agartala,
P.S. Amtali,
Dist. West Tripura.
3. The State of Tripura
Represented by
The Secretary-cum-Commissioner,
Department of Finance,
Government of Tripura, Agartala.
4. The Director of Industries,
Department of Industries & Commerce,
Government of Tripura,
Assam Rifles Complex, Gorkhabasti,
Agartala.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. Suman Bhattacharjee, Advocate.

For the respondent : Mr. C.S. Sinha, Advocate.
Nos.1 & 2

For the respondent : Mr. J. Majumder, Advocate.
Nos.3 & 4

Date of hearing & : 23.11.2015.
delivery of
Judgment & order

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

This appeal by the original writ petitioner is directed against the judgment of a learned Single Judge of this Court passed in W.P. (C) No.307 of 2006 whereby, the writ petition filed by the petitioner was rejected.

2. The undisputed facts of the case are that the appellant (hereinafter referred to as the 'petitioner') was employed with the respondent No.1, Tripura Jute Mills Ltd., which is a Government owned company as Work Assistant in the Civil Engineering Department. He was appointed as such in December, 1980. It is not disputed that with effect from 08.01.1989, the petitioner, who was otherwise only appointed as Work Assistant was authorized to sign Measurement Books relating to civil contracts entered into by the company. Vide another order dated 3rd July, 1997, the petitioner was placed in independent charge of the Civil Department though as a stop gap arrangement. However, this arrangement did not remain a stop gap arrangement. He

continued to be in-charge of the Civil Department and on 12.02.1999, an order was issued which reads as follows:-

"-: O R D E R :-

In the interest of the company Shri Ashok Kumar Ghosh, Work Asstt. will function as Overseer in the Civil Engineering Branch of Tripura Jute Mills Ltd. in his existing pay scale without any financial benefit of higher pay scale for holding higher post. This order will not accrue any right and title to Shri Ghosh for confirmation/promotion in the post of Overseer.

***Sd/-
(R.C.CHOUDHURY)
MANAGING DIRECTOR"***

By this order, the petitioner who was substantively holding the post of Work Assistant and working as in-charge of the Civil Department was directed to function as Overseer in the Civil Engineering Branch. It was, however, ordered that he would not get any financial benefit or higher pay scale for holding the higher post. The petitioner was also not entitled to confirmation of promotion to the post of Overseer.

3. The petitioner, thereafter, made a representation on 2nd March, 1999 that he should be given benefit of higher pay scale of the post of Overseer since he is functioning as an Overseer. An order was passed by the Personnel Officer of the company which reads as follows:-

"O R D E R

In inviting reference to the Representation dt. 15.02.1999 made by Sri Ashok Kuamr Ghosh, Overseer(Civil) he is directed to carry out the order of the Authority i.e. to function as Overseer communicated vide No.TJ/PD/(30)/VOL-III/RD/ 960-66 dt. 12th February, 1999. The non-execution of the said order will be

detrimental to the interest of the Company and appropriate disciplinary action will be taken against him by the undersigned as "Disciplinary Authority".

However, as discussed with Managing Director, the undersigned is directed to communicate that the pay of Sri Ashok Kumar Ghosh, would be released very soon in the scale of Rs.6,500-12,300 according to F.R. 49. Further pending introduction of pay in the scale of Rs.6,500-12,300/-, the payment of Officiating Allowance would be considered by the Management shortly @ Rs.650/- (10% of higher scale in initial pay) per month with retrospective effect 12.02.1999.

***Sd/- 02/03/99
(D.R.Choudhury)
Personnel Officer"***

4. In the opening portion of the order passed by the Personnel Officer who is definitely an officer senior to the petitioner. It was made clear to him that if he does not carry out his functions of Overseer it would be detrimental to the interest of the company and disciplinary action would be taken against the petitioner. Therefore, he was virtually threatened that if he did not function as Overseer, disciplinary action would be taken. With regard to the prayer for financial benefits, the petitioner was informed that the scale of Rs.6500-12,300/- would be paid to the petitioner in accordance with FR 49 and that till the introduction of the pay scale he would be granted allowance @ 650/- i.e. 10% of the higher pay scale per month with retrospective effect from 12.02.1999. The petitioner kept praying for this benefit but did not get the same. Finally, he filed the writ petition on 4th August, 2006 in which he prayed for three reliefs. His first relief was that he should be promoted to the post of Overseer and given all consequential benefits with effect from 12.02.1999. His second

relief claimed by him was that he should be given benefit of Carrier Advancement Scheme as applicable to the Officers in the State of Tripura and be granted two benefit of CAS-I and CAS-II and granted two higher pay scales on completion of requisite years of service. His last prayer was that he should be granted the benefit of equal pay for equal work for having carried out the work of Overseer. The learned Single Judge rejected all the prayers mainly on the ground that the petitioner who was only Class-XI passed is not qualify to hold the post of Overseer and that the orders which have been quoted hereinabove did not confer any right upon him to claim promotion and lastly, relying FR 49 it was held that an employee who is asked to discharge functions of a higher post on a stop gap arrangement cannot as a matter of right claim the scale of the higher post. The petitioner by means of this petition has challenged the judgment passed by the learned Single Judge on 02.08.2014 only on one ground. The learned Single Judge held that the petitioner was only entitled to 10% of the minimum of the scale of the Overseer in terms of F.R. 49.

5. Mr. Suman Bhattacharjee, learned counsel submits that the only relief prayed for by him is based on the principle of equal pay for equal work and he submits that the petitioner cannot be denied the benefit of the pay of the scale of Overseer because the company has taken this work for him for more than 16 years now. He submits that the learned Single Judge has erred in holding

that this was a stop gap arrangement. On the other hand, Mr. C.S. Sinha, learned counsel and Mr. J. Majumder, learned counsel have supported the judgment of learned Single Judge.

6. It is not disputed before us that even before he was formally asked to work as Overseer the petitioner was virtually made in-charge of the Civil Department of the company. It may be true that the Company is not in a very good financial stage and the civil work may be of very small nature but the fact remains that the petitioner till date is doing all the work of Overseer. He in addition to his own duties is discharging the duties of a higher office. This cannot be termed to be a stop gap arrangement because it is continuing from 1999 onwards. The petitioner as rightly held by the learned Single Judge cannot be promoted as Overseer because he does not fulfill the minimum education qualifications for that post. However, he cannot be denied the benefit of FR 49 of getting 10% of the scale of the higher post minimum of the scale of the higher post. Reliance have been placed by Mr. Bhattacharjee, learned counsel on the judgment of the Apex Court in ***Selva Raj v. Lt. Governor of Island, Port Blair and others : AIR 1999 SC 838*** wherein, the Apex Court held as follows:-

"3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of

course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum merit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground."

7. The petitioner before us has actually worked in the higher post and cannot be denied the benefit of the scale of the Overseer. Both in ***Selva Raj's (supra)*** case as well as in the Full Bench judgment of the Gauhati High Court in ***Assm Tombi Singh vs. State of Manipur & Ors : 2006 (4) GLT 608 (F.B.)***, the facts were that the person had been appointed only as a stop gap arrangement. As far as the present case is concerned, though in nomenclature the petitioner has been appointed as a stop gap arrangement the fact that he has continued for 16 years clearly shows that the petitioners is discharging the functions of Overseer for more than 16 years. By no stretch of imagination can this be called a stop gap arrangement. A Government corporation or

company is supposed to be a model employer and it cannot extract work from an employee without paying him the amount to which he is legitimately entitled.

8. The stand of the respondents is that the petitioner is not qualified to hold the post of Overseer. If that be true then what has prevented the company from engaging an Overseer by direct recruitment for the last 16 years. It cannot ask the petitioner to function as an Overseer and deny him the salary of that post.

9. We, therefore, allow the writ appeal to the limited extent that the petitioner shall be entitled to the benefit of the scale of Overseer with effect from the date of filing the petition i.e. 4th August, 2006 and the arrears be paid to him within 4(four) months from today.

JUDGE

CHIEF JUSTICE

sima