

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.324 OF 2011

Sri Brahmamoy Chakraborty,
son of late Dinabandhu Chakraborty,
resident of Village & P.O. Arundhutinagar,
Road No.8, near Beltali, P.S. West Agartala,
District : West Tripura

..... Petitioner

– Vs –

1. The State of Tripura,
represented by the Secretary,
Social Welfare & Social Education Department,
Govt. of Tripura, New Capital Complex,
P.O. Kunjaban, P.S. New Capital Complex,
District : West Tripura
2. The Director of Social Welfare & Social Education,
Govt. of Tripura, Abhoynagar,
P.O. Abhoynagar, P.S. West Agartala,
District : West Tripura
3. Sri Bidhan Chandra Das,
Ex. Supervisor of Social Welfare &
Social Education Department,
Govt. of Tripura, now residing at Rajbari,
P.O. & P.S. Dharmanagar, District : North Tripura
4. Sri Hari Narayan Sengupta,
Ex. Supervisor of Social Welfare &
Social Education Department, Govt. of Tripura,
now residing opposite to the office of the SDM,
P.O. & P.S. Belonia, District : South Tripura
5. Sri Phulendra Chandra Sen,
Ex. Supervisor of Social Welfare &
Social Education Department,
Govt. of Tripura, now residing at
Village & P.O. Kanchanbari,
P.S. Kumarghat, District : North Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Mr. H. Sarkar, Advocate

For the respondents : Ms. A.S. Lodh, Addl. G.A.
Mr. C.S. Sinha, Advocate

Date of hearing & order : 07.08.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

Heard Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Addl. Govt. Advocate appearing for the respondents No.1 and 2, whereas Mr. C.S. Sinha, learned counsel appearing for the respondents No.3, 4 and 5.

2. By means of this petition, the petitioner has challenged the final seniority list published by the Memorandum No.F.19(SWE-43)/96 dated 09.10.1996 inasmuch as for considering his promotion to the post of Child Development Project Officer, for short 'CDPO', ahead of the respondents No.3, 4 and 5 with all benefits of service.

3. The facts are mostly admitted.

The petitioner was initially appointed as the Social Education Worker on 01.07.1971, whereas the respondents No.3, 4 and 5 were appointed as the Social Education Worker respectively on 05.03.1973, 23.05.1973 and 01.03.1977. It is also not in dispute that in the year 1979, the respondents No.3, 4 and 5 were directly recruited as the Supervisors (RELF). The petitioner did not participate in the said recruitment process, even though all the Social Education Workers (SEW) were permitted to participate in the said selection process. The said programme for Rural Functional Literacy, a centrally sponsored scheme, later on, was discontinued by the Govt. of India.

4. On 04.03.1985, the petitioner was promoted as the Supervisor, Integrated Child Development Service (ICDS) under the Directorate of Social Welfare and Social Education, Govt. of Tripura in the scale of pay equal to the scale of pay of the Supervisors, RELF. Thereafter, on 06.02.1988, the combined seniority list was published by the Joint Director of Education, where the seniority positions of the Supervisors (RELP) and the Supervisors (ICDS) are reflected. On 10.07.1996, the petitioner and some other

Supervisors (ICDS) raised objection to such combined seniority list. Overriding those objections, the combined final seniority list was published on 09.10.1996, wherein both the Supervisors (RELP) and Supervisors (ICDS) were included and their respective seniority positions were shown. In view of the appointment of the respondents No.3, 4 and 5 earlier to the petitioner, those respondents were shown senior to the petitioner. The petitioner did not challenge that final seniority list immediately thereafter. However, later on, by filing a writ petition, being W.P.(C) No.153/1998, the petitioner had challenged the combining of the posts of the Supervisors (RELP) and the Supervisors (ICDS) by publishing a common seniority list, but, this court did not allow that writ petition with the following observation:

"In view of the retirement of the petitioner from service on attaining the age of the superannuation, the aforesaid prayer made by the petitioner, perhaps, will have no bearing. However, it will be open for the petitioner to agitate his grievances before the departmental authority, if so advised. In the event of making any representation by the petitioner, the said departmental authority may dispose of the same by a speaking order as expeditiously as possible."

5. In the aftermath, the petitioner filed a representation, canvassing his grievance on 23.08.2010,

Annexure-11 to the writ petition, but by the Memorandum dated 03.02.2011, Annexure-12 to the writ petition, the said representation was dismissed on observing that:

"In view of the facts stated above, Sri Brahmamay Chakraborty is hereby informed that since as per final seniority list he was not eligible for promotion to the post of CDPO(ICDS) in the available vacancies at that time thus he was not promoted to the post of CDPO(ICDS)."

From a bare perusal of the said memorandum dated 03.02.2011, it would be apparent that as the petitioner was junior to the respondents No. 3, 4 and 5, he was not considered and the respondents No. 3, 4 and 5 were found suitable for promotion to the post of CDPOs (ICDS).

6. Now, the petitioner by filing this writ petition, again has challenged issuing of the combined seniority list afresh. The petitioner has prayer also for commanding the State-respondent to appoint him for the day when the respondents No. 3, 4 and 5 were promoted to the post of CDPO(ICDS). In a circuitous manner it has been contended that the petitioner was entitled to be considered prior to that of the respondents No.3, 4 and 5.

7. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioner, while arguing, has candidly submitted that by the concerned Recruitment Rules both the post of Supervisor(ICDS) and the Supervisor(RELP) are made the feeder post for promotion to the post of CDPO(ICDS). However, he has argued further that when the final seniority list was published the said Recruitment Rules was not in existence. The said Recruitment Rules was only notified on 28.06.1997 by the Notification under No.F.11(29)-DSWE/82(L). Thus, the preparation of the combined seniority list as stated was absolutely illegal. Mr. Bhowmik, learned senior counsel has also referred a decision of the Gauhati High Court in the matter of **Shri Saktipada Gupta Vs. The State of Tripura & Anr.** (decided by the judgment and order dated 30.01.1996 in Civil Rule No.123 of 1988), Annexure-8 to the writ petition, where almost a similar matter had fallen for consideration of the Gauhati High Court and the said High Court has approvingly quoted **Som Raj Vs. State of Haryana**, reported in **AIR 1990 SC 1176**, where it has been observed that :

"The validity of the rules have not been questioned. The only question is as stated earlier, whether the employees working in

the Head Office and the Subordinate Office are entitled to common seniority. The rules themselves made a distinction between the persons appointed in the Directorate and the Subordinate offices as separate cadres and the subordinate cadre in some cases is the feeder cadre for promotion to the post in the Head Office. In this view, by no stretch of imagination, the appellants can be considered to be equally placed for treating them at par with the Directorate employees for being treated as being in a common cadre. There is reasonable nexus to differentiate the two cadres. Therefore, the classification cannot be said to be arbitrary violating Articles 14 and 16 of the Constitution”.

Having reiterated that principle, in that case, the Gauhati High Court has further observed as under :

9. Nonetheless the petitioner if appointed as Supervisor (RFLP) on regular basis would be entitled to be considered for promotion to higher posts of Inspector of Social Welfare and Education and Asst. Project Officer (RFLP) as would be evident from the Recruitment Rules (Annexure 11 and 14). The respondents have taken a stand that the petitioner continues to be in a temporary establishment and the State Govt. is yet to take a policy decision for converting the temporary establishment to a permanent establishment. But it has been admitted by the respondents in their affidavit-in-opposition filed on 05.09.1988 that there was an advertisement inviting applications from graduates who were willing to be appointed as Supervisors (RFLP) under the centrally sponsored Scheme and pursuant to the said advertisement the petitioner submitted an application while he was working as S.E.W. and was subsequently selected and appointed to the post of Supervisor (RFLP) by

way of direct recruitment in the year 1979. Thus the selection process for appointment to the post of Supervisor (RFLP) as indicated in Recruitment Rules under Articles 309 of the Constitution (Annexure R-6) has been followed at the time of appointment of the petitioner to the post of Supervisor (RFLP) in the year 1979 and thereafter the centrally sponsored Scheme has been discontinued in the year 1992 and the establishment has been transferred to the State Government and the petitioner has continued for more than 15 years as Supervisor (RFLP) and yet no decision had been taken by the respondents for regularisation of the service of the petitioner and others working in the said establishment. The Apex Court in the case of State of Haryana Vs. Piara Singh, AIR 1992 SC 2130, has held :

“Ordinarily speaking the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Art.309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helpless and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must

be a model employer. It is for this reason, it is held that equal pay must be given for equal work which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad-hoc status for long, where a temporary or ad-hoc appointment is continued for long the court presumes that there is need and warrant for regular post and accordingly directs regularization. While all the situations in which the Court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

[Emphasis Supplied]

8. In **Shri Saktipada Gupta Vs. The State of Tripura & Anr.**, the Gauhati High Court has categorically observed that after discontinuation of the centrally sponsored scheme, the Supervisors (RELP) are all transferred to the State Government and are absorbed in the State Government establishment. In that case, the petitioner's grievance was in respect of his non-absorption in the said post under the said establishment.

9. It is also apparent from the said Recruitment Rules that both the posts of Supervisors (ICDS) and the Supervisors (RELP) are the feeder posts for promotion to the post of CDPO (ICDS). That apart, what has come to the

notice of this court is that in another post, namely the Inspector of Social Welfare and Education, as evident from the Recruitment Rules published by the notification dated 01.01.1988 that the Supervisors (ICDS) and Supervisors (RELP) are the feeder posts for promotion to that post as well. Thus, the contention of Mr. Bhowmik, learned senior counsel that the publication of the combined seniority list is unsustainable cannot be maintained when the Recruitment Rules provides for the combination for purpose of consideration for promotion to a higher post. There cannot be any supposition of illegality unless the Recruitment Rules are put under challenge.

10. Ms. A.S. Lodh, learned Addl. Govt. Advocate has while refuting the submission of Mr. Bhowmik, learned senior counsel, submitted that there cannot be any shred of controversy regarding the seniority positions of the respondents No. 3, 4 and 5 vis-à-vis the petitioner. The respondents No. 3, 4 and 5 were appointed as the Supervisors (RELP) in the year 1979 whereas the petitioner was appointed in the post of Supervisor (ICDS) in the year 1985. As such, by promoting the respondents No. 3, 4 and 5 in the posts of CDPO (ICDS) in terms of the Recruitment

Rules, no prejudice has been caused to the petitioner. As such, the entire writ petition is bereft of merit.

11. Mr. C.S. Sinha, learned counsel appearing for the respondents No. 3, 4 and 5, has adopted the submission of Ms. Lodh, learned Addl. Govt. Advocate but added that this writ petition is not maintainable in view of the judgment of the earlier writ petition.

12. Having regard to the contentions as raised by the learned counsel for the parties, this court is of the view that whether this writ petition is maintainable or not in view of the judgment delivered in the earlier writ petition, may not be the main stay of the controversy, but on the merit of it, this court is satisfied that there is no illegality in publishing the combined seniority list of the Supervisors (ICDS) and the Supervisors (RELP) for purpose of consideration of promotion to the post of CDPO (ICDS) or the post of Inspector, Social Welfare and Education as the Recruitment Rules for both the posts have placed those posts of Supervisors as the feeder posts. Moreover, on the basis of the combined seniority list which has been held to be valid in the eye of law, it is abundantly clear that the petitioner was junior to the respondents No. 3, 4 and 5 and

as such the action of the state-respondents cannot be faulted with.

13. Having held so, this writ petition stands dismissed. However in the circumstances of the case, there shall be no order as to costs.

JUDGE

ROY