

Case No :WP(C) 0000189/2015

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Party Name : HARI CHARAN DAS Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Ms. A. S. Lodh, learned Addl. G.A. appearing for the respondent No.1. None appears for the respondents No. 2 and 3, but through Ms. A.S. Lodh, learned Addl. G.A., Mr. T. D. Majumder, learned G.A. appearing for the respondent No. 2 and 3 has produced a statement as to the fixation of pay. This writ petition has a chequered history. The petitioner had been working as the Grade-IV employee in the Tripura Handloom and Handicraft Development Corporation, but he had been discharging the duty as the Craftsman in the Corporation, the respondent No.2 herein, even though he had all the qualification of being recruited as the Master Craftsman. Being aggrieved by the action of the respondents No. 2 and 3, by not appointing him as the Master Craftsman, the petitioner filed a writ petition, being Civil Rule No. 365 of 1996 which was disposed of by the judgement and order dated 27.06.2000 on directing the Corporation to consider the petitioner for the said post and if necessary by relaxing the educational qualification as per the convention of the Corporation. By the order dated 27.06.2000, the respondent No.3 held that there was no cogent reason to dilute the status of the post for the interest of a person having educational qualification far below the standard prescribed in the Recruitment Rules. On such premises, the petitioner was not appointed as the Master Craftsman. Being aggrieved by the said order dated 19.08.2000, another writ petition was filed by the petitioner, being WP(C) 183 of 2003 which was disposed of by the judgement and order dated 05.04.2013 on observing and directing the respondents as under:

"[10] The premise of such consideration is entirely untenable in as much as the respondent No.3 presupposed that the petitioner was lacking in the educational qualification. As such, the impugned order dated 19.08.2000 is liable to be interfered with and accordingly, the same is set aside and quashed. Since this Court has already observed that there are 2(two) posts of Master Craftsman (Handicraft) according to the Recruitment Rules, the contention of the respondents No.2 and 3 as available in the para-16 of their counter affidavit has to be discarded as those respondents did not explain how and on the basis of what documents or records they had averred so. This Court would go by the provision as made in the Recruitment Rules. This Court is bound to hold that there is another post of Master Craftsman is available with the respondent Nos. 2 and 3. As the petitioner filed the first writ petition being Civil Rule No. 365 of 1996 on 29.07.1996 the relevant date for consideration would be the said date and thus the writ petitioner be deemed to be within the prescribed age limit.

[11] The petitioner therefore, has all the qualifications for appointment to the post of the Master Craftsman and non consideration thereof despite the direction as given by this Court by the order dated 27.06.2000 (Annexure-9 series) is absolutely unreasonable and arbitrary. The respondent Nos.2 and 3 are hereby directed to consider the appointment of the petitioner to the post of Master Craftsman (Handicrafts) within a period of two months from today in terms of the observation made herein."

In compliance to the said judgement and order dated 05.04.2013, Annexure P-1 to the writ petition, the petitioner has been appointed to the post of Master Craftsman(Handicrafts) @@@@on ad-hoc basis as supernumerary post@@@@ in the revised pay scale of pay of Rs.5310-24000/- under P.B.-2 with Grade pay of Rs. 2400/.

Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that the said memorandum dated 27.08.2013 is in no way compliance of the judgment and order dated 05.04.2013 inasmuch as the petitioner was supposed to be appointed as the Master Craftsman regularly. In the said judgement, it has been categorically observed that the two posts of Master Craftsman were available in the Corporation and only one post was filled up at the relevant point of time. According to Mr. Deb, learned counsel appearing for the petitioner, a proper interpretation of the judgement would give effect the said appointment from 29.07.1996 as that was the day marked for consideration of his appointment to the post of Master Craftsman.

By this petition, the petitioner has also advanced some other reliefs, that to fix the pay of the petitioner in the pay scale of Rs.10,400-20,340/-. Mr. Deb, learned counsel appearing for the petitioner has submitted that from the memorandum dated 30.05.2009, Annexure R-2 to the counter-affidavit filed by the Corporation, it would be apparent that the scale of Master Craftsman was revised from the scale of Rs.5000- 10,300/- to Rs. 10,400-20,340/-, but the petitioner@@@@s pay was not fixed in the said revised scale by the purported action on the basis of the communication dated 20.07.2010, Annexure R-4 to the counter affidavit.

Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondent No.1 has submitted that the Corporation is bound to follow the memorandum at Annexure R-2 to the counter affidavit at the relevant point of time and conversion has been effect in terms of the communication dated 20.07.2010, Annexure R-2 to the writ petition. In this regard, the note as placed by Mr. T.D. Majumder, learned G.A. through Ms. A. S. Lodh, learned Addl. G.A. for the respondents No. 2 and 3 is of some utility in understanding that devolution. From the perusal of the said note, it would appear that the petitioner has been appointed in the new structure of pay following the pay band and grade pay system. He has been appointed in the pay under the Pay Band-2 meaning Rs.5310-24000/- with grade pay of Rs2400/- which is the corresponding pay scale for the Master Craftsman.

From the rival contentions two pertinent questions fall for consideration in this writ proceedings:

(i) whether the petitioner is entitled to get the benefit of his appointment retrospectively from 29.07.1996 in a regular post? and

(ii) whether the petitioner@@@@s pay shall initially be fixed in the revised pay scale of Rs.10,400-20,340/-and thereafter in the scale under the band with grade pay?

So far the claim of giving retrospective operation of the appointment in the post of Master Craftsman is concerned, Mr. Deb, learned counsel appearing for the petitioner has relied on para-10 of the judgement and order dated 05.04.2013 as stated. According to Mr. Deb, learned counsel, the date has been determined by this court on 29.07.1996 when the petitioner should have been appointed in the post of the Master Craftsman, not from any other posterior day as has been done by the order of appointment issued by the respondent No.3. In the considered opinion of this court, the said date i.e 29.07.1996, was made relevant for obviating the difficulty that might arise having regard to the maximum prescribed age limit and for, it was found that the respondents No. 2 and 3 were dilly-dallying the matter by resorting to unreasonable pleas and on resorting to an unacceptable pretext that no additional post of Master Craftsman was available. But nowhere in the said judgement, any direction for retrospective benefit was given. As such, that judgement is of no utility to the petitioner. Moreover, the embargo that was in the way of the petitioner as can be gathered from the previous judgement, cannot be stated to be an embargo of little consequence. However, while declining to grant the retrospective benefit, this court is unhappy to observe that the petitioner has been given the ad-hoc appointment without any basis despite the fact that there was a categorical observation that two posts were available for the Master Craftsman and availability one vacancy out of two posts are recorded in the Recruitment Rules had been marked.

Hence, this court is compelled to interfere with the order of the appointment as made to the petitioner by the memorandum dated 27.10.2013 on ad-hoc basis. The said appointment of the petitioner shall be treated as a regular appointment for all purposes from the date when the same was issued and the petitioner shall be granted all benefits for being the regular Master Craftsman. The second question that has been formulated by this court is whether the petitioner should have first been given the pay scale of Rs10400-20340/- in view of the memorandum dated 30.05.2009, Annexure R-2 to the counter-affidavit or not.

This court is of the view that when the petitioner was appointed on 02.09.2013 the pay band with the grade pay was in force in the Corporation. Since this court has declined to give any retrospective effect of the appointment, fixation of the petitioner@@@@s pay in the Pay Band 2 with grade pay cannot be held to be suffering from any infirmity. As such, the second question also is decided against the petitioner.

Having held so, this writ petition stands disposed of, with the observation and direction as made above.

There shall be no order as to costs.