

(2011) 05 GAU CK 0029

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) No. 461 of 2010

Shri Tapan Das and Others

APPELLANT

Vs

Tripura Renewable Energy
Development Agency, The State
of Tripura and The Secretary to
the Government of Tripura,
Finance Department

RESPONDENT

Date of Decision: May 11, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- DFPRT Rules, 2007 - Rule 19

Hon'ble Judges: Utpalendu Bikas Saha, J

Bench: Single Bench

Advocate: S. Talapatra and S. Deb Gupta, for the Appellant; A.S. Lodh, Additional Government Advocate, for the Respondent

Judgement

U.B. Saha, J.

The instant writ petition is filed by the Petitioners, five in number, for a direction to the Respondents for granting them the benefits of revision of pay as brought about by the Tripura State Civil Services (Revision Pay) Rules, 2009 basing their pre-revised scale at Rs. 7450-13000/- and to release all arrears of pay and allowances. The further prayer of the Petitioners No. 1 and 2 is that they should be provided with the benefit of CAS-1 by moving their scale of pay from Rs. 7450-13,000/- to Rs. 10,000-15,000/- w.e.f. 1.6.2008 as they have completed 8 years of service on 31.5.2008 as required under the statute and also to quash the observation and advice of the Finance Department contained in Note No. 43 rendered in reference to the Note No. 40 of the Science, Technology & Environment Department.

2. Heard Mr. S. Talapatra, learned senior counsel, assisted by Ms. S. Deb (Gupta), learned Counsel appearing for the Petitioners. Also heard Ms. AS Lodh, learned

Addl. Govt. Advocate appearing on behalf of the Respondents.

3. As agreed to by the learned Counsel appearing for the parties, the instant writ petition is taken up for final disposal at the order stage in view of the instructions provided by the Department of Finance, Govt. of Tripura, i.e. the Respondent No. 3.

4. The pleaded case of the Petitioners, in short, is as follows:

The writ Petitioners are the Junior Engineers (Degree holder) and are working under the Respondent No. 1, Tripura Renewable Energy Development Agency on and from 17.6.1999, 2.7.2002 and 31.12.2002 respectively. They were provided with the pre-revised scale of pay of Rs. 2000-4410/-, which was revised to Rs. 6,500-12,300/- by the Tripura Civil Services (Revised Pay) Rules, 1999 whereas at the relevant point of time, the pay scale of the Junior Engineers borne in Grade V(A) of the Tripura Engineering Service was Rs. 7,450-13,000/- for which there was a serious grievance within the employees working in various Government Departments, Govt. funded Agencies and undertakings. As a result, the Government had to take an exercise to ameliorate the said grievance by bringing out a change in the said scale of the Petitioners by the Tripura State Civil Services (Revised Pay) (15th Amendment) Rules 2004 whereby and where under the said scale was further revised to Rs. 7,450-13,000/- from Rs. 6,500-12,300/- w.e.f. 1.1.1996. However, the period from 1.1.1996 to 31.3.2004 was granted as notional benefit and actual benefit was granted w.e.f. 1.4.2004 by operation of the said 15th Amendment. As the Respondents even after change of the said pay scale of the Petitioners due to revision of pay did not implement the provisions of 15th Amendment of the ROP Rules, 1999, due to which they were seriously prejudiced, the Petitioner Nos. 4 and 5 filed W.P.(C) No. 228 of 2007 and the Petitioners No. 1 and 2 along with another Smt. Manasi Mukhopadhaya filed W.P.(C) No. 229 of 2007 and the State Respondents also contested the aforesaid writ petitions and ultimately after hearing the parties, this Court by a common judgment and order, dated 13.6.2008 while disposing the writ petitions observed, inter alia, "In view of the above discussion and having regard to the grievances of the Petitioners, this Court is of the opinion that the Petitioners have been treated unfairly and discrimination or arbitrariness meted out by the Respondents to the Petitioners is hit by equality Clause enshrined in Articles 14 and 16 of the Constitution of India" and directed the State Respondents to rectify the anomaly in the pay structure of Junior Engineer Grade-I existing between/among the Petitioners and their counterparts working in another Departments and PSU and to extend the benefit of the pay scale of Rs. 7,450/- to Rs. 13,000/- to the Petitioners and, if necessary, to amend/modify the relevant rules/instructions. This Court also directed the Respondents to implement the aforesaid directions within a period of two months from the date of receipt of the judgment and order.

5. The Respondent No. 1 pursuant to the aforesaid judgment and order of this Court, obtained the legal advice from the Govt. of Tripura and ultimately implemented the direction of this Court, but after introduction of the Tripura State

Civil Services (Revised Pay) Rules, 2009, as adopted by the Respondent No. 1, the Respondents did not fix the pay of the Petitioners in the aforesaid scale of pay of Rs. 7,450-13,000/- or in the corresponding CAS Scale though they exercised their option for the said pre-revised pay scale as the pre-revised scale is necessary for fixing their pay in the revised pay structure. Being aggrieved by the action of the Respondents, the Petitioners submitted representation to the Respondent No. 1, but as the Respondent No. 1 did not dispose of their representation, they again submitted representation on 22.4.2010 to the Respondent No. 1 vide Annexure-5 to the writ petition. When the Respondent No. 1 was sitting over the representations of the Petitioners, they at their own took information regarding the reasons for nongranteeing the aforesaid pay scale and ultimately they received information that due to the adverse opinion of the Finance Department, Govt. of Tripura, the Respondent No. 1 is not providing the aforesaid pay scale to the Petitioners. The opinion of the Finance Department is as follows:

(i) TREDATA is a society. For creation of any post in the Society prior concurrence is required to be taken from the Finance Department. Action taken in the past, for transfer of post of J Es from the State Council to TREDATA without the Finance Department's concurrence was an unauthorized action.

(ii) At the time of recruitment of JE in the TREDATA, the pay scale of Rs. 6500-12300/- was mentioned in the advertisement as per RR and accordingly they were recruited. So it is clear that at the time of recruitment it was well known to them that their admissible pay scale was Rs. 6500-12300/-. Considering this the Finance Department had communicated regret on the proposal for upgrading the pay scale.

(iii) Implementation of the judgment by providing higher pay scale without consulting the Finance Department is a undesirable action. Now it appears that the Department has sought ex-post-facto concurrence without admitting fact that providing of benefit by TREDATA authority without consulting the Finance Department was not proper. Also no assurance given with the proposal stating that such action will not be repeated in future. The Department is requested to look into this.

6. Being aggrieved by the aforesaid observations of the Finance Department, the Petitioners filed the instant writ petition with the prayers as stated supra.

7. The State Respondents did not file any counter-affidavit, but relied upon the instructions given by the Finance Department vide Note No. 17, which is as follows:

Finance Department agrees to accept the views of the Law Deptt. Vide Note No. 14 & 15 of the Department file to the implementation of the common judgment and order dated 13-06-2008 on W.P.(C) No. 223 of 2007 and W.P.(C) No. 229 of 2007 filed by Sri Suvendu Chakraborty and Anr. and Smti. Manasi Mukhopadhyaya and Ors. respectively⁶ for allowing higher pay scale of Rs. 7450-13000/- (ROP'99) to the Degree holder junior Engineers and similarly situated other Junior Engineers under the Deptt. like the Petitioner Sri Tapan Das and Ors. of W.P.(C) No. 461 of 2011 in the

Hon"ble Gauhati High Court, Agartala Bench.

This is in supersession of earlier communications made on by the Finance Deptt. in this regard.

8. Mr. Talapatra submits that in view of the Note No. 17 of the Finance Department (supra), this writ petition can be disposed of with a simple direction to the Respondents to provide the benefit of pre-revised higher pay scale of Rs. 7,450-13,000/- to the Petitioners degree holder Junior Engineers.

9. Ms. Lodh on instruction of the Respondent No. 1 would contend that the instant writ petition can be disposed of on the basis of Note Nos. 14, 15 and 17 of the Law Department and Finance Department respectively. For better appreciation, Note Nos. 14 and 15 of the Law Department are quoted herein under:

(14)

As per Rule 19 of DFPRT 2007, the department is to consult FD, before implementation of court's order if Financial involvement is involved.

It appears that FD is contesting the case as its concurrence was not taken before giving the pay scale to J Es of TRED A.

However, having granted them pay scale equal to that of other J Es of TES & other PS Us. Consequential benefits cannot be refused.

Court will not see whether the order of the Hon"ble Court (Single Bench) was implemented without consulting the FD.

The State Respondents therefore must have a uniform stand & FD may be requested to reconsider its stand specially when it is on record that they have allowed subsequent creation of posts of J Es in higher scale.

May kindly like to see.

Sd/-26/3/11

(15)

Portion marked "X" is approved

10. It appears from the Note No. 17 (supra) of the Finance Department that ultimately the Finance Department accepted the reasons of the Law Department and agreed to provide the aforesaid higher scale of pay of Rs. 7,450-13,000/- to the Petitioner degree holder Junior Engineers and similarly situated other Junior Engineers under the Department.

11. In view of the above, it can be said that the Respondents are willing to provide the Petitioners the benefit of their expected prerevised scale of pay as sought for in the writ petition. Therefore, this Court is of the considered opinion that the

grievance of the Petitioners as it relates to getting of higher pay scale is meted out. However, it is not clear from the note of the Finance Department as to whether the Petitioners are entitled to the benefit of CAS by their moving from the pay scale of Rs. 7,450-13,000/- to Rs. 10,000-15,100/- w.e.f. 1.6.2008 or not. Therefore, according to this Court, it would be proper to direct the Respondents to examine the same in accordance with law and if it is found that really the Petitioners are entitled to the said benefit, the same should be provided to them.

12. Order accordingly.

13. This Court hope and trust that the Respondents will pass necessary orders within a period of two months from the date of receipt of this judgment and order 14. With the above observations and directions, this petition is disposed of.

15. The letter No. F.11 (22)/DSTE/CC/Pt.-I/2432 dated 29/04/2011 of the Sr. Scientific Officer, Department of Science, Technology & Environment, Govt. of Tripura and zerox copies of the Note of the Law Department as well as Finance Department are marked as "X" for identification and kept in the file for future reference.