

Pallab Datta Roy Vs State of Tripura and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: Feb. 25, 2009

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (2010) 1 GLR 68 : (2009) 2 GLT 315

Hon'ble Judges: B.K. Sharma, J; B.D. Agarwal, J

Bench: Division Bench

Advocate: S. Talapatra and B. Banerjee, for the Appellant; P. Dutta and Somik Deb, for the Respondent

Judgement

B.K. Sharma, J.

Both the writ petitions raising seniority dispute pertaining to the same establishment and cadre have been heard together

and are being disposed of by this common judgment and order.

2. At the time of filing the writ petitions, the two petitioners involved in the writ petitions were working as Lower Division Clerk (LDC) in the

establishment of the Chief Judicial Magistrate, South Tripura, Udaipur and the Chief Judicial Magistrate, West Tripura, Agartala respectively. The

petitioners were initially appointed as non-regular copyists for a period of 6 months. Both of them were so appointed in the year 1981. On the

other hand, the respondent No. 7 Shri Dilip Kumar Sinha and the respondent No. 8 Shri Kajal Kanti Sengupta were so appointed in the year

1982. In the draft seniority list of non-regular copyist as on 1.3.1984, the petitioners' names appeared at serial No. 4 and 1 respectively and that

of the respondent Nos. 7 and 8 at serial Nos. 9 and 15 respectively.

3. The petitioner in the first writ petition was appointed in the regular post of typist-copyist by order dated 18.7.1984, while the petitioner in the

second writ petition was so appointed by order dated 30.3.1984. At that point of time, the private respondents were still working as non-regular

copyist. However, by order dated 8/10.6.1992 (Annexure-E), they were shown regularized as typist-copyist with effect from 26.8.1982 stating

the same to be the date from which their juniors were appointed as Typist-Copyist. By the said order, both of them were deemed to have been

appointed on regular basis as typist-copyist with effect from 26.8.1982. It will be pertinent to mention here that in none of the writ petitions this

order is under challenge. Being aggrieved, both the petitioners made representations, copies of which have been annexed to the writ petitions as

Annexure-E and F respectively. However, none of the representations is dated. The prayer made in the representations was for retrospective

regularization of service at par with the respondents.

4. The draft seniority list of Group-C staff as on 1.11.1996 was published vide memorandum dated 20.3.1997, in which the respondents Nos. 7

and 8 were placed at serial Nos. 95 and 96, while the petitioners were placed at serial Nos. 112 and 109 respectively. The draft seniority list was

re-published by memorandum dated 14.7.1997, in which also the private respondents were assigned higher seniority above the petitioners. Finally,

the final seniority list of Group-C staff was published by memorandum dated 26.2.1998, in which the private respondents figured at serial Nos. 68

and 69 respectively, while the petitioners figured at serial Nos. 90 and 87 respectively.

5. It is in the aforesaid backdrop the writ petitions were filed in the year 1998. Long 10 years have passed since then and about 17 years have

passed since the private respondents were regularized in the post of typist-copyist with retrospective effect at par with their juniors by order dated

8/10.6.1992, which is also not under challenge. The petitioners apart from making challenge to the memorandum dated 26.2.1998, by which the

final seniority list was published assigning the higher seniority to the private respondents, have also made a prayer in the writ petitions to grant them

retrospective regularization of service with effect from 26.8.1982 at par with the private respondents.

6. The respondents have filed their counter affidavit disputing the claim made in the writ petitions. The gist of the resistance to the writ petitions is

that a selection was conducted in the year 1981 for the post of LDC in which the private respondents could qualify while the petitioners could not.

However, instead of appointing them on regular basis, they were appointed on non-regular basis in March, 1982. The select list pertaining to the

1981 selection was published on 2.3.1981. Appointments were made up to serial No. 24. The respondent Nos. 7 and 8 allegedly could not be

appointed as their merit positions were at serial Nos. 25 and 26. Subsequently, the authority found that 7 persons whose merit positions were

below the private respondents were appointed with effect from 26.8.1982. Those 7 candidates although could not qualify in the type test, and

could qualify only in the written test were given another chance to appear in the type test which they could qualify and consequently they were

appointed as LDC with effect from 26.8.1982. On the other hand, the private respondents were not appointed although they had qualified in the

1981 selection. The authority upon a thread bare discussion of the matter decided to grant retrospective regularization to the private respondents at

par with the aforesaid 7 candidates.

7. We have heard Mr. S. Talapatra, Learned Senior Counsel assisted by Mr. B. Banerjee, Learned Counsel for the petitioners as well as Mr. P.

Dutta, Learned Counsel representing the official respondents. We have also heard Mr. Somik Deb, Learned Counsel representing the private

respondents. We have also perused the records produced by Mr. Dutta. We have given our anxious consideration to the submissions advanced by

the Learned Counsel for the parties and the materials on record.

8. It is an admitted position that in the 1981 selection, while the private respondents could qualify in both the written test and type test, the

petitioners either did not appear in the selection or could not qualify in the same. The aforesaid 7 candidates in reference to whom the private

respondents had been given retrospective regularization of service could not qualify in the type test. As noted above, although, they had qualified

only in the written test. The private respondents were not given appointment on the ground of non-existence of vacancy. As noticed above, their

merit positions were serial Nos. 25 and 26 and the appointments were made up to serial No. 24. However, later on, the aforesaid 7 candidates

who could not qualify in the type test were allowed to qualify in a subsequent type test conducted in 1982 and they were appointed with effect

from 26.8.1982, against available vacancies.

9. From the above, it will be seen that the aforesaid 7 candidates who could not qualify in the 1981 selection so far as type test is concerned, had

been preferred over the private respondents in the matter of appointment unmindful of the fact that the private respondents had already qualified in

the said selection both in written and type test and thus naturally had by far better claim than the said 7 candidates. The authority having realized the

fallacy, took up the matter by constituting a DPC, which met on 19.4.1992, 20.4.1992 and 21.4.1992 and upon a threadbare, discussion of the

matter in its entirety, decided to grant the similar benefit to the private respondents at par with the said 7 candidates. It will be pertinent to mention

here that three learned District & Sessions Judge constituted the DPC. As has been observed by the Apex Court in R.K. Sethi and another Vs.

Oil and Natural Gas Commission and others, the next below rule in service jurisprudence seeks to ensure that if a junior employee is given

promotion without considering his senior than the senior employee can claim the right to be considered for such promotion with effect from the date

on which the junior was so promoted. Although, in the instant case, we are not concerned with any promotion, but having regard to the fact that

the services of the existing employees were regularized without considering the cases of the private respondents, the principle involved in next

below rule cannot be said to be inapplicable.

10. Although, it was contended on behalf of the petitioners that they could not make any immediate challenge in respect of their grievance, as they

were not aware about the existence of the order dated 8/ 10.6.1992, but from the writ petitions, what has transpired is that both the petitioners

were aware about the said order. As noticed above, the petitioners made individual representations after issuance of the aforesaid order dated

8/10.6.1992. This order is not under challenge in the writ petitions. What has been challenge is the consequential gradation list. The private

respondents have not derived higher seniority over the petitioners because of any wrong committed by the official respondents in publishing the

provisional and the final seniority list. They have derived their higher seniority from the aforesaid order dated 8/10.6.1992.

11. The aforesaid order dated 8/10.6.1992 continued to hold the field for long 6 years when the writ petitions were filed without, however, making

any challenge to the said order. During this entire period, the petitioners have all along been treated as juniors to the private respondents and the

rights inter-se has crystallized which in our considered opinion cannot now be re-opened after a lapse of such a long period. It is well settled that in

service matters the question of seniority should not be re-opened after a lapse of a reasonable period because that results in disturbing the settled

position which is not justifiable. There was inordinate delay in making the grievance by the petitioners. As has been held by the Apex Court in B.S.

Bajwa and Another Vs. State of Punjab and Others, such delay alone is sufficient to decline interference under Article 226 of the Constitution of

India.

12. In P.S. Sadasivaswamy Vs. State of Tamil Nadu, the Apex Court dealing with the question of delay and laches in raising grievance relating to

seniority observed thus:

...A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of

such promotion. It is not that there is any period of limitation for the courts to exercise the powers under Article 226 nor is it that there can never

be a case where the courts cannot interfere, in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of

discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it

expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle

settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the court.

It clogs the work of the court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the

High Court was right in dismissing the appellant's petition as well as the appeal.

13. There is another aspect of the matter. The petitioners have claimed seniority over the private respondents. In the final gradation list, the

positions of the petitioners vis-a-vis the private respondents are at serial Nos. 90 and 87 and 68 and 69. If the petitioners are allowed seniority

over the private respondents, they will score a march over many others, who are not party to this proceeding. Same is the position in respect of the

challenge made to the final gradation list. As has been held by the Apex Court in Prabodh Verma and Others Vs. State of Uttar Pradesh and

Others, a High Court ought not to decide a writ petition under Article 226 of the Constitution of India without the persons who would be vitally

affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if

their number is too large. Thus, the writ petition is also bad for non-joinder of necessary party.

14. The decision on which Mr. Talapatra, Learned Counsel for the petitioners has placed reliance Hemani Malhotra Vs. High Court of Delhi, has

no application to the facts and circumstances involved in this case. That was a case relating to changing rules of the game during selection process

or when it was over. It has been held by the Apex Court that such course of action was not permissible. Same is not the position in the instant

case, which is amply evident from the facts and circumstances discussed above.

15. For all the aforesaid reasons, we do not find any reason to interfere with the final gradation list of LDC published as on 1.11.1996 vide

memorandum dated 26.2.1998 and/or to issue any direction to grant retrospective regularization of service to the petitioners with effect from

26.8.1982 with consequential benefit of seniority over the private respondents.

16. The writ petitions are dismissed, without, however, any order as to costs.