

(2009) 04 GAU CK 0029

Gauhati High Court (Agartala Bench)

Case No: None

Nirmalendu Mukherjee

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision: April 1, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2009) 5 GLR 17 : (2009) 3 GLT 186

Hon'ble Judges: T.N.K. Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

T.N.K. Singh, J.

Heard Mr. S. Deb, learned senior Counsel assisted by Mr. Somik Deb, learned Counsel for the petitioner as well as Mr. N. Majumder, learned Counsel for the State-respondents.

2. A short factual panorama, for deciding the present writ petition, is recapitulated as under:

The petitioner joined the service under the Tripura Khadi and Village Industries Board ("Board") on 28.12.1974 and as per the inter se final seniority list of the Supervisors prepared by the Board as on 1.11.1981, the name of the petitioner was appeared at Sl. No. 1. One Shri Amal Krishna Ghosh, whose name appeared at Sl. No. 7 of the said Final seniority list of the Supervisors as on 1.11.1981, was promoted to the post of Assistant Organisor (Extension) ("AO") by a letter dated 29.7.1987. Shri C.R. Dasgupta, whose name appeared at Sl. No. 5 in the said final seniority list of the Supervisors, challenged the said appointment of Sri Amal Krishna Ghosh to the post of AO by filing a writ petition being C.R. No. 211 of 1996 before this Court and by a judgment and order dated 8.7.1997 this Court allowed the writ petition directing the Board to promote Shri C.R. Dasgupta to the post of AO from

the date on which his junior Shri Amal Krishna Ghosh was promoted, i.e., from 29.7.1987. Pursuant to the said judgment and order of this Court dated 8.7.1997 passed in C.R. No. 211 of 1996, the authority issued a Memorandum under reference No. TKB/2(235)/81-82/379-86, dated 18.05.1998, whereby the seniority list of the Supervisors as on 1.11.1981 stood modified to the extent mentioned in the Memorandum. Later on, Shri Tapan Kumar Shil and Shri Rabindra Poddar filed the writ petition bearing C.R. No. 321 of 1998 for a direction to give effect of their promotions to the post of AO with effect from the date on which their juniors were promoted and this Court allowed the said writ petition by a judgment arid order dated 27.09.1999. In compliance of the said judgment and order dated 27.09.1999 passed in C.R. No. 321 of 1998, the Board by issuing an order gave effect of promotions to the petitioners (the petitioners of C.R. No. 321 of 1998) to the posts of AO w.e.f. 29.7.1982.

3. It is also stated that the post of Assistant District Development Officer ("ADDO") is equivalent to the post of AO. The petitioner was promoted by an order dated 26.06.1987 to the post of ADDO from the Supervisor, but his juniors whose names appeared in the inter se final seniority list of the Supervisors as on 1.11.1981 at Sl. Nos. 3, 4, 5 and 7 were promoted to the post of AO by issuing a subsequent order by giving retrospective promotion w.e.f. 29.7.1982. Admittedly, prior to the coming into force of ROP Rules 1988, the post of AO and ADDO were of equal pay scales of Rs. 1,450 - 3,710, i.e. the revised pay scales under ROP Rules 1988 and the feeder posts of both the posts, i.e., ADDO and AO are the Supervisors. Under ROP Rules 1999, the existing pay scale, i.e., Rs. 1,450 - 3,710 was revised to Rs. 5,000 - 10,300 w.e.f. 1.1.1996. It is the admitted fact that the pay scale for the post of AO, i.e., Rs. 1,450 - 3,710 (revised pay scale under ROP Rules 1988) was revised to Rs. 5,000 - 10,300 under ROP Rules 1999 w.e.f. 1.1.1996. The relevant portion of the revised pay scales under ROP Rules 1999 is quoted herein below:

Existing Scales of pay	Detailed Break up	Revised Scales w.e.f 1.1.1996	Detailed break up
1	2	3	4
9.1450-60 -1930-65- 2450-70- 3710	1450-1510-1570-1630- 1690-1750-1810-1870- 1930-1995-2060-2125- 2190-2255-2320-2385- 2450-2520-2590-2660- 2730-2800-2870-2940- 3010-3080-3150-3220-	10.5000- 130-6690- 150-8940- 170-10300 2450-2520-2590-2660- 2730-2800-2870-2940- 3010-3080-3150-3220-	5000-5130-5260-53 5780-5910-6040-61 6560-6690-6840-69 7440-7590-7740-78 8340-8490-8640-879 9280-9450-9620-979 10130-10300

3290-3360-3430-3500-

3570-3640-3710

But the pay scale for the post of ADDO, enjoying scale of pay of the AO, i.e., Rs. 1,450 - 3,710, was revised to Rs. 4,200 - 8,650 by the Finance Department for providing the benefit under ROP Rules 1999.

4. Pursuant to the communication from the Finance Department, the Director (Industries & Commerce) under his letter being No. VI-8(10)/PLG/DI/99/Part-I/12486 dated 13.08.2001 intimated the view of the Finance Department to the Executive Officer, Tripura Khadi & Village Industries Board, Agartala. The said letter of the Director (Industries & Commerce) is quoted hereunder:

No. VI-8(10) PLG/D1799/Part-I/12486

Government of Tripura
Directorate of Industries & Commerce
Tripura-799000

Dated, Agartala, the 13th August, 2001

To

The Executive Officer,
Tripura Khadi & Village Industries Board, Agartala.

Sub: Introduction of ROP'99 to the employees of TKVIB for the left out posts.

Sir,

I am to inform you that proposal was initiated to the Finance Deptt. for providing the benefit of ROP'99 to the employees of TKVIB for the left out posts in turn. Finance Deptt. has furnished their views as follows:

(i) The Post of PA to the Chairman was not accorded continuation. Therefore, the Department is requested to submit continuation order for further examination of the case.

(ii) Regarding the post of Asstt. District Development Officer, Finance Department agrees to allow revised pay scale of Rs. 4,200-8,650.

You are, therefore, requested to take necessary action accordingly.

Yours faithfully,

Sd/- Y. Kumar
Director (Industries & Commerce)
14.8.2001.

5. The Executive Officer, Tripura Khadi & Village Industries Board, Agartala under his letter dated 6.11.2001 informed the Director of Industries & Commerce, Government of Tripura, Agartala that the pay scales for the posts of (i) Extension Officer, (ii) Assistant Organisor (Extension) and (iii) Assistant District Development Officer were revised from Rs. 560-1,300 to Rs. 1,450 - 3,710 under ROP Rules 1988 and that the Finance Department vide its letter No. F.6(5)-FIN(PC)/99 dated 5.7.1999 allowed the pay scale of Assistant Organiser (Extension), Assistant Organisor (Khadi) to Rs. 5,000 - 10,300 and by the said letter dated 6.11.2001, the Executive Officer, Tripura Khadi & Village Industries Board, Agartala requested the Director of Industries & Commerce, Government of Tripura to take necessary action as the petitioner (ADDO) refused to accept the revised pay scale of Rs. 4,200 - 8,650 under ROP Rules 1999.

6. The Commissioner (Industries & Commerce), Government of Tripura under his letter being No. VI-8(10)/PLG/DI/99/Part-I(B)/10074 dated 30.7.2002 requested the Executive Officer, Tripura Khadi & Village Industries Board, Agartala to produce documentary support to the effect that the pre-revised pay scale of Rs. 1,450 - 3,710 was allowed to the post of ADDO under ROP Rules 1988 for finalizing the revised pay scale of ADDO. The said letter of the Commissioner (Industries & Commerce) dated 30.7.2002 reads as follows:

No. VI-8(10)/PLG/DI/99/Part-I(B)/10074

Government of Tripura Department of Industries & Commerce

Dated, Agartala, the 30th July, 2002

To

The Executive Officer,
TKVIB, Agartala.

Sub: Introduction of POP, 99 to the left-out Posts of TKVIB.

Sir,

I am to refer your letter No. TKB/ESTT/4th Pay Comm/2(92)-2001-01/1864 dated 9.11.2001 and subsequent letter of even file dated 27.4.2002 on finalizing the revised pay scale of the Asstt. District Development Officer and also for the post of PA. to Chairman.

2. The proposal was sent to Finance Deptt. again and observation of the Finance Deptt. is furnished below:

The Department is requested to produce documentary support to the effect that the pre-revised pay scale of Rs. 1,450-3,710 was allowed to the post of Asstt. District Dev. Officer under the ROP Rules, 1988.

Regarding the post of P.A. to the Chairman the Deptt. is requested to initiate the proposal to create the post afresh as the post was created earlier for one year only and further continuation was not obtained and hence this post in the meantime has lapsed.

3. You are, therefore, requested to take further necessary steps in this regard.

Yours faithfully,

Sd/- 29.7.2002

L.K. Gupta

Commissioner (Industries & Commerce).

7. In reply to the said letter of the Commissioner (Industries & Commerce), the Executive Officer, Tripura Khadi & Village Industries Board Agartala under his letter being No. TKB/ESTT/4th Pay Comm/2(92)-2001-01/85 dated 8.4.2003 informed the Commissioner (Industries & Commerce) that the Government of Tripura vide F.D. Notification dated 16.9.1988 informed the said Corporation that "For, the employees in the regular scale of pay in Municipality, Notified Area Authorities, State Corporations. Autonomous bodies, etc., the respective authorities will take decisions for the revision of pay scales of their respective employees in consideration of their resources and in consultation with their respective administrative deptt. and the F.D." and that the Board had proposed to revise the pay scale of ADDO as Rs. 1,450 - 3,710 against the pre-revised scale of Rs. 560 - 1,300 and accordingly, the Board revised the pay scale of ADDO as Rs. 1,450 -3,710. However, no appropriate approval of the State Government was obtained for the proposed revised scale of pay.

8. The petitioner being aggrieved by the said fixation of the revised pay scale of the ADDO under ROP Rules 1999 as Rs. 4,200 - 8,650 pursuant to the direction of the Finance Department, which was intimated to the Executive Officer, Tripura Khadi & Village Industries Board, under the said letter of the Director (Industries & Commerce), Government of Tripura dated Office 13.08.2001, filed the present writ petition for a direction to the respondents to allow him to enjoy the revised pay scale of Rs. 5,000 - 10,300 under ROP Rules 1999 which was the revised pay scale of the AO under ROP Rules 1999 and also for quashing the said letter dated 13.08.2001 intimating the Executive Officer, Tripura Khadi & Village Industries Board, Agartala that the Finance Department allowed to revise the pay scale of ADDO as Rs. 4,200-8,650.

9. The respondent No. 1, i.e., the State of Tripura represented by the Commissioner-cum-Secretary to the Government of Tripura, Department of Finance, Agartala did not file the affidavit-in-opposition in the present writ petition. By following the principle of non-traverse and also the decision of the Apex Court in Bir Singh Chauhan Vs. State of Haryana and Another, it is constrained to accept the case of the petitioner pleaded in the writ petition so far as the respondent No. 1, State of Tripura, is concerned. In other words, it is also constrained to observe that the State

of Tripura, Finance Department admitted the pleaded case of the writ petitioner in the present writ petition. Para 4 of the SCC in Bir Singh Chauhan (supra) reads as follows:

4. We wanted to examine the record to ascertain whether there is any (sic) against the appellant. The respondents have neither filed (sic) produced the record. Under these circumstances, we are (sic) accept, the case of the appellant that he is entitled to be considered for promotion under the Rules. We direct the Government to consider his case for promotion on the basis of his service record within four months from the receipt of this order. While doing so, the Government will exclude the material relating to his inspection report.

10. The respondent No. 2 filed the affidavit-in-opposition admitting that the post of ADDO and AO were the equivalent posts and the revised pay scales for both the posts under ROP Rules 1988 was Rs. 1,450 - 3,710 and also prior to ROP Rules 1988 the pay scales for both the posts was Rs. 560 - 1,300. But the only reason, *inter alia*, for not revising the pay scale of the post of ADDO as that of the AO, i.e., Rs. 5,000 - 1,300 under ROP Rules 1999 are that the Board is not in a position or resources without the assistance of the Administrative Department and the Finance Department to take decision regulating the pay scale of their employees and that the Board has no authority to allow the revision of pay of Rs. 5,000 - 10,300 w.e.f. 1.1.1996 for the post of ADDO. The relevant portion of the affidavit-in-opposition filed by the respondent No. 2 read as follows:

The post of A.D.D.O and A.O. were equivalent prior to revision of pay, 1999. The respondent No. 2 have no authority to allow the revision of pay scale of Rs. 5,000 - 10,300 with effect from 1.1.1996 to the petitioner. Unless it was approved by the respective Administrative Department and the Finance Department, though there was a notification in the year 1988 wherein Finance Department given instruction to the respective Autonomous bodies to the effect that they will take decision for revision of pay scale of their respective employees in considering of their resources and in the consultation with the respective administrative department and the Finance Department. It is to be mentioned here that Tripura Khadi & Village Industry Board presently is not in such a position or resources by which they can individually take decision regulating the pay scale of their employees without the assistance of the administrative department and Finance Department.

11. The Apex Court in Roshan Deen Vs. Preeti Lal, that purpose of power conferred in High Court under Articles 226 and 227 of the Constitution of India is to advance justice, not to thwart it. Even when justice is the by-product of an erroneous interpretation of law, High Court ought not to wipe out such justice in the name of correcting the error of law. The Apex Court in *Air India Statutory Corporation v. United Labour Union and Ors.* (1997) 2 SCC 165 held that the founding father placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self imposed limitation. The arm of the court is long enough to

reach injustice wherever it is found. In State of Maharashtra Vs. Digambar, the Apex Court held that the power of the High Court to be exercised under Article 226 of the Constitution if it is discretionary, its exercise must be judicious and reasonable admits of no controversy.

12. Mr. S. Deb, learned senior Counsel, in order to substantiate the case of the petitioner, submits that there should not be discrimination at the time of revision of pay of the employees/officers and also the employees/officers, who are carrying the same scale of pay before the revision of pay, shall be allowed to enjoy the same scale of pay, has heavily relied on the decision of the Apex Court in the following cases:

1. State of U.P. and Others Vs. U.P. Sales Tax Officers Grade II Association,
2. State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another,
3. K.T. Veerappa and Others Vs. State of Karnataka and Others,

13. Mr. Deb, learned senior Counsel for the petitioner submitted that the financial recourses of the Autonomous Body/employers cannot be the ground for revising the pay scale of the equivalent posts carrying the same pay scale to different pay scale by revising the pay scale of some section of the posts to higher scale and by prescribing lower pay scale for other section of the posts; and in support of his contention, he referred to the decision of the Apex Court in Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, In Haryana State Minor Irrigation Tubewells Corporation (supra) the Corporation prescribed the different pay scale for the Engineers of the Corporation and the Engineers of the PWD, who were on deputation in the same Corporation on the basis of financial constraint and financial recourses of the Corporation even though the employees of the Corporation since inception in the year 1970 had been getting the same scale of pay as that of the employees of Haryana Government, i.e., PWD of the Haryana Government and also the Board of Directors already equated the pay scale of the Engineers of the Corporation commensurate the pay scale of the Government employees even if the State Government has not concurred with the decision of the Board of Directors. The Apex Court in Haryana State Minor Irrigation Tubewells Corporation (supra) held that where any pay revision extended to the Government servants has already been extended to the employees of Corporation also, it follows that any correction of anomaly in revised pay scale given to Government servants should also be made in the case of those who were earlier given parity by extending the pay scale. The Apex Court in para Nos. 21 and 33 of the SCC in Haryana State Minor Irrigation Tubewells Corporation (supra) rend as follows:

21. There is no dispute nor can there be any to the principle as settled in the above cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative

decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. See [K.T. Veerappa and Others Vs. State of Karnataka and Others,](#)

33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in [M.M.R. Khan and others etc. Vs. Union of India and others, etc., and Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another,](#) However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events discussed above clearly shows that the employees of the Corporation have been treated on a par with those in Government at the time of revision of scales of pay on every occasion.

14. Mr. Deb, learned senior Counsel further contended by referring to the decision of the Apex Court in [State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, and K.T. Veerappa and Others Vs. State of Karnataka and Others,](#) that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited and it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. Para 13 of the SCC in K.T. Veerappa and Ors. (supra) reads as follows:

13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on [State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, and Union of India \(UOI\) and Another Vs. S.B. Vohra and Others,](#) There is no dispute nor can there be any to the principle as settled in [State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association,](#) that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is

also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay purity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

15. This Court keeping in view on the decisions of the Apex Court in the cases discussed above has considered the rival contentions of the parties. It is admitted by both the parties that the pay scale of ADDO and AO were same, i.e., Rs. 560 - 1,300 prior to ROP Rules 1988 and revised to Rs. 1,450 - 3,710 after coming into force of ROP Rules 1988 and also both the posts of ADDO and AO were equivalent posts. It is also an admitted fact that the pay scale of Rs. 1,450 - 3,710 has been revised to Rs. 5,000 - 10,300 under ROP Rules 1999 with effect from 1.1.1996 at Annexure-A(ii) of the ROP Rules 1999. The only justification for prescribing different pay scales while revising the pay scales of the ADDO and AO was the financial resources for which the Finance Department revised the pay scale for the post of ADDO to a pay scale lower than that of the AO. Such justification in view of the decision of the Apex Court, more particularly, the decisions of the Apex Court in Haryana State Minor Irrigation Tubewells Corporation (supra) K.T. Veerappa and Ors. (supra) is unreasonable, unjust and prejudicial to a section of employees and also is in ignorance of material and relevant factors. This court is also of the considered view that only because of the financial resources of the Corporation, higher pay scale cannot be denied to a section of employees whereas the other section of employees are allowed to enjoy the higher pay scale while revising the pay scale of the employees of the same Corporation.

16. For the reasons discussed above, para (ii) of the impugned letter dated 13.08.2001 that "Regarding the post of Asstt. District Development Officer, Finance Department agrees to allow revised pay scale of Rs. 4,200 - 8,650" is hereby quashed. The respondents are directed to revise the pay scale of the ADDO to a scale equivalent to the revised pay scale of the AO and pass appropriate orders within a period of one month from the date of receipt of the certified copy of this judgment and order.

17. The writ petition is accordingly allowed. There shall be no order as to costs.