

(2006) 06 GAU CK 0046

Gauhati High Court (Agartala Bench)

Case No: None

Tripura Physical Education
Employees Association and
Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: June 14, 2006

Acts Referred:

- Constitution of India, 1950 - Article 309

Citation: (2007) 1 GLR 725 : (2006) GLT 185 Supp

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Judgement

I.A. Ansari, J.

I have heard Mr. A.K. Bhowmik, learned senior counsel, appearing on behalf of the petitioners, and Mr. R.B. Sinha, learned State counsel, appearing for the respondents.

2. The controversy, in the present writ petition, lies a very narrow compass : Following their promotion, vide order, dated 31.12.1984, from Physical Instructor Grade-II to Physical Instructor Grade-I, re-designated as Senior Physical Instructor, the petitioner Nos. 2 to 9 have been functioning in the grad of Senior Physical Instructors with effect from 1.1.1985. The names of the petitioner Nos. 2 to 9 also appear in the tentative seniority list published, on 11.4.197, in respect of the Senior Physical Instructors. The Physical Instructors, working under the Department of Education, Government of Tripura, originally, consisted of two grades, These two grades being Physical Instructor Grade-I and Physical Instructor Grade-II. By virtue of the Revision of Pay Rules, 1988, (the ROP Rules, 1988) published in exercise of powers under the proviso to Article 309 of the Constitution of India, the pay scale of Physical Instructor Grade-I re-designated as Senior Physical Instructor, stands revised with effect from 1.1.1986. Prior to the coming into force of the ROP Rules,

1988, the pay scale of the petitioners, as Physical Instructors Grade-I, was Rs. 560-1300. By Entry No. 29, embodied in Part B of the ROP Rules, 1988, Physical Instructor Grade-I, which carried the pay scale of Rs. 560-1,300, was granted the graded pay scale mentioned at serial NO. 19 and the post of Physical Instructor Grade-I, as already indicated hereinabove, stood re-designated as Senior Physical Instructor. Under the graded scale at Serial No. 19, the Senior Physical Instructor was given revised pay scale of Rs. 1,450-2,710 with effect from 1.1.1986. By office memorandum, dated 17.12.1992, published by the Finance Department, Government of Tripura, the Governor of Tripura, granted the next graded pay scale of Rs. 1,700-3,980 to Senior Physical Instructors, who complete 10 years of continuous service in the grade of Senior Physical Instructor.

3. It is in the backdrop of the above facts that the case of the petitioners needs to be considered. The petitioners' case is, in brief, thus : Since the petitioners have completed 10 years of continuous service in the grade of Senior Physical Instructor, No. 1.1.195, they became entitled to receive the next graded pay scale of Rs. 1,70-3,980 in terms of the Office Memorandum, dated 7.12.1992, aforementioned. However, by a Memorandum, dated 28.4.1997, published by the Department of Finance, Government of Tripura, a clarification has been given that the graded pay scale of Rs. 1,700-3,980 shall be available only in respect of those Senior Physical Instructors, who were directly recruited in the pay scale of Rs. 560-1,300. Relying on the Memorandum, dated 28.4.1997, aforementioned, the respondents have declined to give to the petitioners the graded pay scale of Rs. 1,70-3,980. It is the Memorandum, dated 28.4.1997, aforementioned, which is the subject-matter of challenge in the present writ petition.

4. While considering the Memorandum, dated 28.4.197, what is pertinent recall is that the Memorandum, dated 7.12.1992, whereby the graded pay scale of Rs. 1,70-3,980 was made available to the Senior Physical Instructors, who have completed 10 years of continuous service in the grade of Senior Physical Instructor, does not stipulate that the pay scale of Rs. 1,70-3,980 shall be made available to only those persons, who are directly recruited to the post of Senior Physical Instructor and/or that the pay scale of Rs. 1,70-3,980 shall not be available of those persons, who become Senior Physical Instructor by promotion from the grade of Physical Instructor Grade-II or Junior Physical Instructor. It is, therefore, abundantly clear that what had been granted and guaranteed under the Office Memorandum, dated 7.12.1992, is sought to be withdrawn and taken away by the Memorandum, dated 28.4.1987. In this regard, it is also of great significance to note that the Office Memorandum, dated 7.12.1992, was published in the name of the Governor of Tripura : whereas the Memorandum, dated 28.04.197, which is clarificatory in nature, has not been issued in the name of the Governor of Tripura. In the absence of anything showing to the contrary, the Office Memorandum, dated 7.12.1992, has to be held as an order published by the Governor of Tripura in exercise of powers under the proviso to Article 309 of the Constitution of India and what has been

granted and guaranteed thereunder cannot be nullified or withdrawn on the strength of a mere departmental clarificatory memorandum issued by the Department of Finance, Government of Tripura. This apart, the Office Memorandum, dated 28.4.1997, gives no indication at all as to why, while granting the pay scale of Rs. 1,700-3,980 to those persons, who have, on being directly recruited to the posts of Senior Physical Instructor, completed 10 years of continuous service in the grade of Senior Physical Instructor, the respondents have, at the same time, denied the said pay scale to those persons, who have put in, on being promoted to the grade of Senior Physical Instructor, 10 years of continuous service in the said grade, i.e., in the grade of Senior Physical Instructor. In the absence of any explanation offered by the respondents in this regard and in the complete absence of any plausible explanation discernible from the materials on record, in this regard, one cannot help, but hold the Memorandum, dated 28.4.1997, as arbitrary as well as discriminatory.

5. It may also be pointed out that nothing could be submitted, on behalf of the respondents, at the time of hearing of the present writ petition, to show that the service conditions of the present petitioners have rendered them ineligible to receive the graded pay scale of Rs. 1,700-3,890. In these circumstances, the pay scale of Rs. 1,700-3,890 shall be treated to be available to every Senior Physical Instructor, who completes 10 years of continuous service in the grade of Senior Physical Instructor irrespective of the fact whether the service so put in be as a direct recruit or as a promotee.

6. Because of what have been pointed out and discussed above, I am firmly of the view that the Office Memorandum, dated 28.4.1997, cannot, to the extent that the same adversely affects the rights of the present petitioners, be allowed to survive.

7. In the result and for the foregoing reasons, this writ petition succeeds. The respondents are hereby directed that the graded pay scale of Rs. 1,700-3,890 shall be made available to the petitioners with effect from 1.1.1995, i.e., the date on which the petitioners have become entitled to receive the said scale as indicated hereinbefore. So far as the present petitioner Nos. 2 to 9 are concerned, the impugned Memorandum, dated 28.4.1997, shall have no bearing or effect. The benefits granted to the petitioners aforementioned shall remain confined to the present petitioners only.

8. Before parting with this writ petition, it is made clear that the respondents shall make available the arrears, in the payment of dues of the petitioners, within a period of six months from today.

9. With the above observations and directions, this writ petition shall stand disposed of.

10. No order as to costs.