

(2011) 04 GAU CK 0040

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) No. 531 of 2000

Sudhir Chandra
Debbarma

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: April 28, 2011

Hon'ble Judges: Biplab Kumar Sharma, J

Bench: Single Bench

Advocate: P.K. Paul, for the Appellant; A.S. Lodh, Addl. PP, for the Respondent

Judgement

B.K. Sharma, J.

Heard Mr. P. Roy Baman, learned Counsel for the Petitioner as well as Ms A.S. Lodh, learned Addl. Government Advocate for the State Respondents.

2. By means of this writ petition, the Petitioner has questioned the memorandum dated 1-6-2000 by which he was released from service with effect from 31-5-2000. As indicated in the order he had attained the age of superannuation at 58 years as on 22-6-99 and thus he overstayed in service. It is on that ground the order for recovery of the salary the Petitioner had drawn by virtue of his overstaying in service was also passed. As per the order for recovery the amount to be recovered is Rs. 63,021/-.

3. While entertaining the writ petition by order dated 6-12-2000 an interim order was passed allowing the deduction of Rs. 30,000/- subject to decision in the writ petition.

4. The short question that falls for consideration is as to whether the Petitioner should be treated as a Group-C employee or a Group-D employee. If the Petitioner is considered to be a Group-C employee his retirement age is 58 years. However, if he is considered to be a Group-D employee his retirement age is 60 years. According to the Petitioner, his date of birth being 22-6-41 and he being a Group-D employee he would have retired from service on attaining the age of superannuation on 22-6-2001 but he was illegally made to retire by the impugned order dated 1-6-2000

with effect from 31-5-2000 indicating therein that his age of superannuation at 58 years fell due on 22-6-99.

5. The Petitioner who was initially appointed as a Group-D employee was later on promoted to the post of Blue Printer. As per Annexure-G notification dated 6-2-99 there was a classification of the Government employees under the head Group-A, Group-B, Group-C and Group-D. The employees who were enjoying the pay scale of Rs. 850-2130/- (treated as Group-C) but were enjoying all the facilities admissible for Group-D employees as per existing orders of the Government were treated as Group-D employees with effect from 1-1-99. However, they were given the opportunity to submit option within one month from the date of the notification as to whether they would like to retain the status of Group-C or Group-D employees. It was further provided that if they would opt to retain the status of Group-C, in that case, they would not be entitled to enjoy any facilities such as retirement benefit, washing allowance, Liveries, GIS etc prescribed for Group-D employees with effect from 1-1-99.

6. Annexure-H communication dated 24-3-2000 made to the District Magistrate and Collector, West Tripura by the Executive Engineer, Rural Development Division reflects that the Petitioner while was serving as Blue Printer did not avail of any of the facilities admissible to the Group-D employees during the tenure of his service as Blue Printer. Accordingly, in reference to the option exercised by the Petitioner it was requested to take a decision as to whether the Petitioner should be allowed to continue upto the age of 60 years or should be made to retire at 58 years. The letter further reflects that the Petitioner was served with notice of superannuation intimating that he would retire from service in the afternoon of 30-6-99.

7. In the counter affidavit filed by the Respondents it has been stated that the Petitioner on his promotion to the post of Blue Printer all along enjoyed the status of Group-C employee for 20 years till the ROP Rules, 1999 came into force. The Petitioner never submitted his option within the stipulated period of one month from the date of notification by which the ROP Rules was published. The Petitioner also did not enjoy any of the facilities such as washing allowance, liveries, GIS etc during the incumbency as Blue Printer, a Group-C post. It has also been stated that exercising option within one month to retain Group-D status is subject to further condition that the Group-C employee is enjoying the benefits available to Group-D employees under the existing order of the Government.

8. The Petitioner has not denied the aforesaid stand of the Respondents by filing any rejoinder affidavit. From the materials on record what has transpired is that the Petitioner on promotion to the post of Blue Printer, a Group-C post continued to enjoy the status of Group-C employee and did not take the benefits available to Group-D employees, a fact which has been categorically stated in para 14 of the counter affidavit. He also did not exercise the option within the stipulated period of one month. Thus, there was no question of treating him to a Group-D employee so

as to entitle him to continue in service upto the age of 60 years. He being the Group-C employee was to retire from service at the age of 58 years on 22-6-99 for which notice was also served on him. But somehow he managed to continue in service beyond the age of superannuation and eventually by the aforementioned memorandum dated 1-6-2000 he was made to retire from service with effect from 31-5-2000.

9. It is in the above background the authorities ordered for recovery of the aforesaid amount of Rs. 63,021/-. From the materials on record what is seen is that there was contributory negligence on both the parties. Although the Petitioner was served with notice of superannuation and he did not demit office it was incumbent on the part of the authorities to implement the notice of superannuation but instead they allowed the Petitioner to continue in service.

10. Above being the position and in terms of the interim order passed on 6-12-2000, it is hereby ordered that the Respondents will not be entitled to recover the entire amount of Rs. 63,021/-. But the recovery shall be limited to the amount of Rs. 30,000/- as was provided for in the interim order dated 6-12-2000.

11. The writ petition stands disposed of.