

(1997) 02 GAU CK 0010

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No. 207 of 1994

Buddha Dev Roy

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: Feb. 14, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1997) 2 GLR 48

Hon'ble Judges: H.K. Sema, J

Bench: Single Bench

Advocate: K.N. Bhattacharjee, S.B. Dutta and S. Bhattacharjee, for the Appellant; S. Das, G.A. and P. Dutta and S.M. Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

H.K. Sema, J.

By this writ petition the Petitioner is aggrieved by the impugned notification dated 10th October, 1977 (Annexure-8) regularising the services of the Respondent Nos. 4 to 19 as Assistant Engineer (Civil) on regular basis with retrospective effect. This writ petition has been filed on 13.4.1994.

2. I have heard Mr. K.N. Bhattacharjee, the learned Counsel for the Petitioner, Mr. S. Das, learned Government Advocate for Respondent Nos. 1 to 3, Mr. S.M. Chakraborty, learned Counsel for the Respondent Nos. 5, 6, 8, 11, 12, 13, 14, 16 and 17 and Mr. P. Dutta, learned Counsel for the Respondent No. 18.

3. The facts giving rise to the filing of the present writ petition is summarily recited as under:

Pursuant to the advertisement dated 24.2.73 for filling up the post of Assistant Engineer by the Tripura Public Service Commission, the Petitioner applied for the post. Thereafter, Petitioner appeared before the Interview Board and the name of

the Petitioner was also recommended by the Commission by its selection list dated 18.6.73. Pursuant to the aforesaid selection, the Petitioner was appointed to the post of Assistant Engineer with effect from 23.8.73. Petitioner came from direct recruitment quota and the Respondent Nos. 4 to 19 were promotees. The Respondent Nos. 4 to 19 were holding the post of Assistant Engineers on adhoc basis from 1971 and onwards, the Respondent No. 19 being promoted to the post on adhoc basis with effect from 1.1.1973. By the impugned notification dated 10th October, 1977 the services of Respondent Nos. 4 to 19 have been regularised with effect from the date they were holding the post on adhoc basis.

4. In this writ petition the Petitioner prayed, inter alia, the following reliefs:

- (a) Respondent Nos. 4 to 19 be declared juniors to the Petitioner;
- (b) Petitioner be promoted to the post of Executive Engineer with effect from 30.8.79 when his juniors were so promoted, instead of 9.3.81; and.
- (c) Petitioner thereafter be promoted to the post of Superintending Engineer with effect from 20.6.87 when his juniors were so promoted and treat him senior to the Respondents.

I may at this stage state that the Petitioner was further promoted to the post of Executive Engineer with effect from 9.3.1981. It is also pertinent, to mention here that no where in the writ petition the notification dated 10th October, 1977 regularising the services of the Respondents as Assistant Engineers with retrospective effect has been assailed. From the reliefs prayed for by the Petitioner as quoted above there is no prayer for quashing the notification dated 10th October, 1977 regularising the services of die Respondent Nos. 4 to 19 as Assistant Engineers with retrospective effect. As already said, Respondent Nos. 4 to 19 were promotees and they were holding the post of Assistant Engineers on adhoc basis prior to the appointment of the Petitioner from the direct recruitment quota. The Respondent Nos. 4 to 19 became the seniors to the Petitioner by virtue of the notification dated 10th October, 1977 which has not been assailed in this writ petition and therefore, no effective relief can be given to the Petitioner. It appears that this writ petition has been filed well and after thought and at belated stage after the Respondents have been promoted to the post of Executive Engineer and thereafter to the post of Superintending Engineers.

5. In the meantime, Respondent Nos. 4 to 19 were promoted to the post of (sic) E between 1979 to 1981. Respondent Nos. 5 and 9 further promoted to the post of Supdt. Engineers in 1987. Respondent Nos. 6 and 8 also further promoted to the post of Superintending Engineers in 1988 and 1989 respectively.

6. In the back ground of the facts as stated above the main question which is to be determined is whether the Petitioner is entitled to any relief as prayed for because of delay in approaching this Court in the facts and circumstances of this case.

7. On this point Mr. K.N. Bhattacharjee, learned Counsel for the Petitioner submits that the delay in approaching the Court under Article 226 of the Constitution would not defeat the justice if otherwise the case is meritorious. In this connection he has referred to the following decisions of the Supreme Court:

(a) P.C. Sethi and Others Vs. Union of India (UOI) and Others, wherein the Supreme Court has observed that the petition should not be dismissed on account of delay and laches because the Respondents gave hopes to the Petitioner which caused the delay. This principle is not applicable in the facts of the case at hand.

(b) In Arunoday Barman, Petitioner v. the State of Tripura and Ors. Respondents (1986) 2 GLR 195 it was pointed out by the Division Bench of this Court following the decision of the Supreme Court that limitation under Article 226 of the Constitution is one of the discretions and it has to be followed from case to case.

(c) In Shri Anil Kumar Chowdhury Vs. State of Assam and Others, the Supreme Court observed that if one has a right to relief his petition should not be dismissed in limine on preliminary objection with regard to delay.

(d) In Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, the Apex Court has appreciated the practice of setting up a plea of limitation by the public authority if otherwise the claim was just and meritorious.

8. From the aforesaid decisions of the Supreme Court it clearly appears that whether the petition should be dismissed in limine on the ground of limitation is the discretionary power of the Court and exercise of this discretion depends upon the facts and circumstances of each case, merit of the case being one of the considerations.

9. In the instant case, Petitioner prayed that he be promoted to the post of Executive Engineer retrospectively with effect from 30.8.79, instead of 9.3.81. The date, namely, 30.8.79, as prayed for by the Petitioner is an artificial date and therefore, it is not sustainable. The prayer of the Petitioner for promotion with retrospective regularisation with effect from 30.8.79 was that since the Fourth Respondent has also given promotion with effect from 30.8.79 only by an order dated 19.11.93 retrospectively with effect from 30.8.79, the Petitioner also should be given.

10. At the time of hearing this writ petition learned Government Advocate produced the file to show that, in fact, the case of Fourth Respondent for promotion to the post of Executive Engineer was considered in 1980. But his case was kept in a sealed cover because of pendency of a vigilance case against him. It was only after the clearance of the vigilance case the sealed cover was opened in 1993 and he was given retrospective promotion with effect from 30.8.1979. This was not the case of the Petitioner and therefore, he cannot claim to be promoted with effect from 30.8.79 which is an artificial date. Therefore, even from the point of merit there is absolutely no merit in this writ petition.

11. Now coming to the point of limitation, as already stated, this writ petition has been filed on 13.4.1994 after almost lapse of about 18 years. The Respondent Nos. 4 to 19 were promoted to the post of Executive Engineer in 1979-81. Thereafter, Respondent Nos. 5 and 9 further promoted to the post of Superintending Engineers in 1987. The Respondent Nos. 6 and 8 further promoted to the post of Superintending Engineers in 1988 and 1989 respectively. To dislodge them at this belated stage would un-settle the settled position, which has been deprecated by the Supreme Court in a catena of decisions.

12. To avoid multiplicity I may refer to a decision of the Apex Court in P.S. Sadasivaswamy Vs. State of Tamil Nadu, It was pointed out by the Apex Court in paragraph 2 of its judgment as under:

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 their 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 extra-ordinary 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 state 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. Further in State of M.P. and Others Vs. Nandlal Jaiswal and Others, it was pointed out by the Apex Court under paragraph 23 of its judgment as under:

It is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party

rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

14. Remedy in exercise of powers under Article 226 of the Constitution is equitable, remedy and therefore, people seeking for equity must approach the Court as expeditiously as possible. Delay defeats equity is an accepted principle of rule of law, more so when the case is ineritless as in the case at hand.

15. For the reasons aforestaied and keeping in view of the principles laid down by the Apex Court and in the facts and circumstances of tins case, there is no merit in this writ petition and the same is dismissed. However, without costs.