

State Of Tripura & Ors vs Nikhil Ranjan Chakraborty & Ors on 20 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 697, 2017 (3) SCC 646, 2017 LAB. I. C. 912, AIR 2017 SC (CIVIL) 979, (2017) 1 ESC 144, (2017) 2 JLJR 1, (2017) 153 FACLR 329, (2017) 2 PAT LJR 161, (2017) 2 SCT 131, (2017) 2 SERVLR 650, (2017) 1 SCALE 599, 2017 (2) KCCR SN 144 (SC), 2017 (7) ADJ 72 NOC

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Adarsh Kumar Goel

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 691-693 OF 2017
(ARISING OUT OF SLP (CIVIL) Nos. 21462-64 OF 2013)

State of Tripura & Ors.

...Appellants

Versus

Nikhil Ranjan Chakraborty & Ors.

... Respondents

WITH

CIVIL APPEAL Nos. 694-698 OF 2017
(ARISING OUT OF SLP (CIVIL) Nos. 21465-69 OF 2013)

J U D G M E N T

Uday Umesh Lalit, J.

Delay condoned. Leave granted.

These appeals challenge the common Judgment and Order dated 30.08.2012 passed by the Division Bench of Guwahati High Court, Agartala Bench dismissing Writ Appeal Nos.62, 63 and 64 of 2012 and confirming the decision of the Single Judge in Writ Petition (Civil) Nos.104, 105, 106, 153 and 181 of 2012.

The Tripura Civil Service Rules, 1967 (hereinafter referred to as the “Rules”) made in exercise of power conferred by Article 309 of the Constitution, deal inter alia with constitution of Tripura Civil Service and its classification. Part III deals with “Method of Recruitment” while Part-V deals with “Recruitment by Selection”. Rule 13 contemplates constitution of a “Selection Committee” to consider from time to time the cases of officers eligible to be considered for selection. Under Schedule IV to the Rules, names of posts are set out which are feeder posts for Tripura Civil Service.

State of Tripura was desirous of amending the aforesaid Schedule IV by including certain other posts as feeder posts in “Group A” and “Group B” and a proposal to that effect was forwarded to Tripura Public Service Commission on 23.08.2011. The Commission accepted the proposal vide its communication dated 26.09.2011. On 24.11.2011, in pursuance of Rule 13 of the Rules, a Selection Committee was constituted for considering cases of eligible officers holding feeder posts in “Group A” and “Group B” of Schedule IV of the Rules for appointment to the post of Tripura Civil Service Gr.II against promotional quota. On 24.12.2011 a Notification dated 19.12.2011 was published in the Gazette amending the Rules by 28th Amendment including additional posts in Group A and Group B of Schedule IV to the Rules, which was in conformity with the proposal accepted by the Commission.

Soon thereafter, a communication was addressed by General Administration (Personnel & Training) Department of State of Tripura to all the concerned departments that information/particulars of all eligible officers holding feeder posts of TCS (Groups- A&B) as amended by 28th Amendment be sent to the Department for taking necessary action.

The action on part of State of Tripura in relying upon the amended Rules and thereby expanding the feeder posts was immediately challenged by 22 interested candidates by filing Writ Petition Nos.104, 105, 106, 153 and 181 of 2012. It was submitted that the Notification dated 24.11.2011 having constituted a Selection Committee for filling up posts of TCS Gr.-II against promotional quota and information/particulars of eligible officers having already been called for, 28th Amendment effected in December, 2011 could not be pressed into service; that the instant selection ought to be governed by pre-amendment situation and as such a direction be issued to the State to confine the selection to those categories which were mentioned in Schedule IV to the Rules as they existed before the amendment. The Advocate General appearing for the State relied upon certain decisions of this Court including *Deepak Agarwal & Anr. v. State of Uttar Pradesh & Others*[1] to contend that a vacancy ought to be filled in terms of the amended Rules. The Single Judge of the High Court allowed the petitions holding that the selection in the present case ought to be undertaken in terms of pre-amended Rules.

The aforesaid decision was questioned by interested candidates, who as a result of the 28th Amendment were entitled to be considered, by filing Writ Appeal Nos.62, 63 and 64 of 2012. These appeals were dismissed by the Division Bench of the High Court at the preliminary stage. The submission that the Single Judge had not considered the ratio of the decision of this Court in *Deepak Agarwal* (supra) was dealt with by the Division Bench as under:

“17. Mr. Bhowmik has tried to convince us that though the learned Single Judge took note of Deepak Agarwal (supra), but did not give any reason why the ratio of the said decision would not apply in the case in hand.

18. There is no doubt that the learned Single Judge did not go for detailed reasoning, but it cannot be said that he has not discussed the said decision while passing the impugned judgment. However, as the said decision is placed before us again, we have also gone through the paragraph- 26 of the said decision.....” The Division Bench however, confirmed the view taken by the Single Judge and dismissed the appeals at the admission stage, which decision is presently under appeal.

We heard Mr. J.P. Cama, learned Sr. Advocate appearing for State of Tripura and Shri R. Basant, learned Sr. Advocate and Ms. Vandana Sehgal, learned Advocate appearing for the concerned respondents who were the original writ petitioners.

In Deepak Agarwal (supra) the appellants were Technical Officers who along with Assistant Excise Commissioners were eligible to be considered for promotion to the post of Deputy Excise Commissioner. Two days before the DPC was scheduled to meet to consider the cases of all eligible officers for promotion, the concerned Rules were amended and Technical Officers stood excluded as the feeder post for the next promotional post of Deputy Excise Commissioner. The challenge to such exclusion having been negated by the High Court the matter reached this Court and the relevant paragraphs of the decision were:

“2. The old vacancies have to be filled under the old rules is the mantra sought to be invoked by the appellants in support of their claim that the vacancies arising prior to 17-5-1999, ought to be filled under the 1983 Rules as they existed prior to the amendment dated 17-5-1999. The claim is based on the principle enunciated by this Court in Y.V. Rangaiah v J. Sreenivasa Rao[2]

23. Could the right of the appellants, to be considered under the unamended 1983 Rules be taken away? The promotions to the 12 vacancies have been made on 26-5-1999 under the amended Rules. The High Court rejected the submissions of the appellants that the controversy herein is squarely covered by the judgment of this Court in Y.V. Rangaiah. The High Court has relied on the judgment of this Court in K. Ramulu (Dr.) v Dr. S. Suryaprakash Rao[3].

24. We are of the considered opinion that the judgment in Y.V. Rangaiah case would not be applicable in the facts and circumstances of this case.

The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976.

Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

25. In the present case, there is no statutory duty cast upon the respondents to either prepare a yearwise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr. Rajeev Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules.

26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V. Rangaiah* case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.” The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of *Deepak Agarwal* (supra), in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24.11.2011.

In our view, the instant case is fully covered by the law laid down by this Court in *Deepak Agrawal* (supra) and the High Court was completely in error in allowing the writ petition and in dismissing the writ appeals. We, therefore, allow these appeals, set aside the judgment under appeal and dismiss the Writ Petition (Civil) Nos.104, 105,106 153 and 181 of 2012.

Before we part, we must also express that a selection contemplated in the year 2011 in which the original writ petitioners did not stand excluded has been stalled as a result of challenge raised and litigation initiated by the original writ petitioners. In our view the challenge was totally uncalled for and avoidable. However, it resulted in putting in abeyance the entire process of selection and adversely affected the administration. We, therefore, feel compelled to impose exemplary costs of Rs.10,000/- on each of the writ petitioners which shall be deposited with the High Court within six weeks from the date of this order and upon such deposit, the entire amount shall be made over to the Chief Minister's Relief Fund for State of Tripura.

.....J. (Adarsh Kumar Goel)J. (Uday Umesh Lalit) New Delhi, January
20, 2017

- [1] (2011) 6 SCC 725
- [2] (1983) 3 SCC 284
- [3] (1997) 3 SCC 59