

A.K. Bhattacharyya

Vs

Union of India and Others

Writ Petn. No.1428 of 1979

(Kuldip Singh, K. Ramaswamy JJ)

06.12.1990

JUDGMENT

KULDIP SINGH J

1. The petitioner joined Tripura State Civil Service in the princely State of Tripura in the year 1948. The posts of Magistrates, Collectors, Munsiffs and Sub-Divisional Officers were en-cadred in the said service. The princely State was merged with the Union of India on October 15, 1949. In 1953 the lien of the petitioner was fixed against the post of Sub-Divisional Officer with effect from April 1, 1950. The said post was later on re-designated as Deputy Collector. The petitioner was appointed as Additional District Magistrate on January 21, 1963. A new service called "Tripura Civil Service" was constituted with effect from March 4, 1967. The petitioner was not found suitable for induction in the Tripura Civil Service at the time of its initial constitution due to adverse remarks in his confidential reports. The petitioner challenged his nonselection to the Tripura Civil Service by a writ petition before the Judicial Commissioner, Tripura. The writ petition was finally heard on February 2, 1970 when the State of Tripura agreed to consider the petitioner for appointment to the Tripura Civil Service after reviewing the adverse remarks in the character rolls of the petitioner. Thereafter by an order dated October 25, 1973 the State of Tripura appointed the petitioner to the Tripura Civil Service with effect from March 4, 1967 the date of initial constitution of the service.

2. Meanwhile, with effect from January 1, 1968 a common cadre of the Indian Administrative Service for all the Union Territories including Tripura and the North East Frontier Agency was constituted. In 1968 the petitioner was holding the post of Additional District Magistrate which was a cadre post under the I.A.S. Cadre Rules, 1954. Since the petitioner was a non-cadre officer he was appointed to officiate in the cadre post from January 1, 1968 to June 16, 1969 and again from September 11, 1970 to November 30, 1970 with the approval of the Union Public Service Commission and the Union of India. The petitioner was sent on deputation to the Government of India on November 30, 1970 where he remained till his retirement on March 30, 1975.

3. Under Regulation 5(1) of the I.A.S. (Appointment by Promotion) Regulations 1955 only the members of the State Civil Service are eligible for selection to the Indian Administrative Service. Till October 25, 1973 the petitioner was not considered for appointment to the Indian Administrative Service on the ground that he was not a member of the Tripura Civil Service. The State Government, in the counter affidavit filed before this Court has also taken the stand that the petitioner could not be considered for appointment to the Indian Administrative Service because he was not selected to the Tripura Civil Service when it was initially constituted on March 4, 1967.

4. Mr. Tapash Ray, learned counsel for the petitioner has contended that the adverse remarks having been expunged from the character rolls of the petitioner and he has been appointed to the Tripura Civil Service with effect from March 4, 1967 the petitioner was entitled to be considered for appointment to the Indian Administrative Service with retrospective effect.

5. The contention in the abstract is unexceptionable, but in the facts of this case we are not inclined to interfere. The petitioner filed writ petition under Art. 226 of the Constitution, being Civil Rule No. 23 of 1974, before the Gauhati High Court seeking promotion to the selection grade of the Tripura Civil Service with effect from January 30, 1970 and also promotion to I.A.S. with effect from February 2, 1971. The High Court disposed of the writ petition on January 25, 1979 with the following order:-

"This is an application by the petitioner under Art. 226 of the Constitution. The petitioner at the relevant time was in the service of the Tripura Government, but he has since been superannuated. In view of the order we are going to pass it is not necessary to narrate the entire facts of the case. Suffice it to say that the petitioner felt that he was superseded by the pro forma respondents and that he ought to have been promoted before them. He, therefore, prays in the petition for issue of a writ of mandamus directing the authorities concerned to give his proper place. He also prays for a declaration that he was entitled to prior promotion to the pro forma respondents.

We have heard the petitioner in person at some length as well as the learned Advocate General of the State of Tripura. In the light of the decision by their Lordships of the Supreme Court in the case State of Mysore v. Mahmood reported in AIR 1968 SC 1113, the learned Advocate-General has in fairness proposed that the Government would consider the suitability of the petitioner for promotion to the selection grade of the T.C.S. in 1970 and if the finding be in favour of the petitioner, necessary reliefs would be given to him. On account of this proposal, the petitioner does not want to press this application.

In the result, the petition is rejected and the rule is discharged. Parties will bear their own costs-

Sd/- Baharul Islam,

Judge

Sd/- K. Lahiri

Judge."

6. The petitioner was thus satisfied with the Government undertaking to the effect that he would be considered for promotion to the selection grade of the Tripura Civil Service. He did not press for any other relief. He cannot, in this petition under Art. 3'A' of the Constitution, ask for the same relief which he had himself given up in the High Court. Even otherwise it would not be in the interest of justice, under the circumstances of this case, to put the clock back by over twenty years.

7. The Writ Petition is, therefore, dismissed with no order as to costs.

Petition dismissed.

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