

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 1448 OF 2019

Sri Priyatosh Das Chowdhury,

Son of Late Manindra Das Chowdhury, resident of Udaipur Dak-Bungalow Road, P.O. RK Pur, District Gomati, PIN-799120.

....Petitioner

Vrs.

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Revenue Department, having its office at New Capital Complex, Gurkhabasti, Agartala, P.O. Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura, PIN-799006.

2. District Magistrate & Collector, Gomati, Government of Tripura, Having its office at Udaipur, P.O. RK Pur, District-Gomati.

3. Joint Transport Commissioner, Government of Tripura, Transport Department, having its office at Paribahan Bhavan, P.O. Agartala, District-West Tripura.

.....Respondents.

Present:

For the petitioner (s) : Mr. T. Datta Majumder, Sr. Advocate.
Ms. K. Debbarma, Advocate.

For the respondent (s) : Mr. R. G. Chakraborty, Advocate.

Date of hearing & date : 29.11.2021
of delivery of
judgment & Order

Whether fit for : No.
reporting

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment and Order (Oral)

Heard Mr. T. Datta Majumder, learned Sr. counsel assisted by

Ms. K. Debbarma, learned counsel appearing for the petitioner. Also heard

Mr. R. G. Chakraborty, learned counsel appearing for the State-respondents.

2. By way of filing the present writ petition, the petitioner has approached this court for granting him the pay scale of 'Driver' for the reason that the respondents had utilized his services as 'Driver' since 1989. This is the 3rd time litigation on the part of the petitioner. The petitioner initially filed a writ petition registered as WP(C) No. 1369/2016 claiming his promotion to the post of 'Driver'. The petitioner was initially engaged as 'Peon' in the year 1989. Thereafter, the services of the petitioner were being utilized by the respondents as 'Driver'. The court while disposing of the writ petition No.1369/2016 had passed the following direction at Para 8 which read thus:-

"8. Be that as it may, the respondents are directed to recommend the name of the petitioner for consideration of his case for promotion to the post of the Driver, Group-C under the 30% quota as stated above and such recommendation shall be made within a period of six weeks from the day when the petitioner shall submit a copy of this order. Thereafter, the petitioner shall be allowed to participate in the driving test as usually taken for consideration for appointment on promotion to the post of Driver, Group-C under that 30% quota as created by the said Memorandum dated 14.05.2012(Annexure-R/1 to the reply filed the respondents). If the petitioner qualifies the screening test he shall be promoted against the available vacancy under the said 30% quota having due regard to his seniority. It is expected that the said driving test be conducted within a period of six months positively from the day of this order."

3. In pursuance of the aforesaid order of the court, the District Magistrate and Collector, South Tripura, Belonia had passed an order of promotion in the manner as under:-

“No.F.2(8)-DM/S/ESTT/2012/1281
GOVERNMENT OF TRIPURA
OFFICE OF THE DISTRICT MAGISTRATE & COLLECTOR
SOUTH TRIPURA, BELONIA

Dated, Belonia the 9th July, 2018.

ORDER

As per the recommendation of Circular DPC Proceedings to follow up Order/Judgment of Hon'ble High Court, Tripura in WP(C) No.1369/2016 for consideration of promotion in respect of Sri Priyatosh Das Chowdhury, Peon (attached to Gomati District) to the post of Driver (Group-C) under District (Rev) Administration read with its approval of the Government in the Revenue Department vide letter No.F.10(216)-REV/01.P.VII dated 14.06.2018 and communicated by the District Magistrate & Collector, West Tripura District vide letter No.F.1(18)-DM/W/ESTT/VOL-I/2015/1708-15 dated 25.06.2018, now Sri Priyatosh Das Chowdhury, Peon (attached to Gomati District) is hereby temporarily promoted to the post of Driver (Group-C) against promotional vacant UR post of South Tripura District Administration in the scale of under Pay Band-2 ₹5700-24000 with Grade pay ₹2200/- plus other allowances as admissible time to time and posted to the DM's office, South Tripura District.

2. The aforesaid incumbent should report for duties to his respective place of posting on promotion.
3. The promotion will take effect from the date of his formal joining.
4. Pay on promotion will be fixed as per normal rules.
5. The expenditure on this account will be debitable to the existing Head of Account from which he has been drawing salaries.

(Debapriya Bardhan, IAS)
District Magistrate & Collector,
South Tripura, Belonia.”

4. Thereafter, the petitioner had filed another writ petition registered as WP(C) 1020/2018 claiming the following reliefs:-

“(i) Issue rule in the nature of mandamus or like nature upon the respondents and each one of them to show cause as to why a rule as prayed for, for payment of pay & allowances attached with the post of Driver, Group-C shall not be made for driving the official vehicle since 1989 till 18.7.2018 with interest at the Bank rate.

(ii) Issue writ of certiorari or like nature to show cause upon the respondents and each one of them as to why they shall not transmit

records relevant to the subject matter of proceedings before this Hon'ble Court for rendering conscious able justice to the petitioner by interfering with the promotion order allowing arrear pay & allowances attached to the post of Driver, Group – C over and above, pay & allowances received by the petitioner for holding the post of peon, Group – D substantively.

(iii) Upon hearing the parties, rule be made absolute in terms of prayer No.(i)."

5. While passing the order in connection with WP(C)

No.1020/2018, learned Judge had observed thus:-

"Essentially it is the petitioner's grievance that even though the respondents have promoted/appointed him as a 'Driver' in terms of order dt.21st July, 2018(Annexure- 11) yet the difference in salary that of 'Peon'and 'Driver' has not been released.

*This Court is of the considered view that through the judgment dt.8th August, 2017 in WP(C) No.1369/2016 titled as **Shri Priyatosh Das Chowdhury Vrs. The State of Tripura and two others** (Annexre-7/P-22) the Court had only directed the respondents herein to recommend the name of the petitioner for consideration of his case for promotion to the post of the 'Driver' which was so done through the impugned order. As to whether the petitioner was entitled to salary that of driver or not was never an issue in the earlier writ petition.*

At this stage, counsel for the writ petitioner states that the writ petition (sic petitioner) shall represent to the authorities with regard to release of salary.

Counsel for the State states that decision thereupon shall be taken within a period of eight weeks from the date of receipt of the order clarifying that all issues are left open

Accordingly, the petition stands disposed of reserving liberty to the writ petitioner to independently assail the order qua non-release of the difference in salary, if so required and desired."

6. Thereafter, the petitioner had filed a representation which was received by the respondents on 02.01.2019. The prayer made by the petitioner in the said representation is reproduced hereunder for convenience, *in extenso*:

“Under the circumstances, it is most humbly and respectfully prayed that, your goodself will be kind enough to allow the payment of pay and allowances attached with the post of Driver, group-C since 1989 till 18/07/2018, with interest at the bank rate.”

7. After receipt of the said representation, the District Magistrate & Collector, Gomati District, Udaipur had made a communication addressed to the Joint Secretary, Revenue Department, Govt. of Tripura, Agartala, wherein he stated inter alia that –

“In this context, it is worthy to mention that Sri Das Choudhury, Peon was simply utilized for quite a few months/years as a stop gap arrangement on the basis of his verbal consent/willingness to run the vehicle as he was having driving license. Utilization of his service in plying vehicle was done as per verbal consent and in exception that he would be a Driver on being promoted from Group-D against promotion quota through DPC on approval of Transport Deptt. as per norms. As such, in context of absolute truth he was appointed as Group-D(Peon) and was never appointed as Driver before his subsequent promotion to the post of Driver, question of payment of pay & allowances as Driver from 1989 to prior to his actual promotion i.e. upto 17.07.2018 does not arise as he was simply utilized in driving Govt. vehicle on the basis of his verbal consent/willingness to keep him in practice of driving so that he can come out successful in driving test conducted by Transport Deptt.

Relevantly, it may be mentioned here that as per recommendation of DPC followed by the judgment/order dated 08.08.2017 of the Hon'ble High Court of Tripura in WP(C) No.1369/2016, Sri Priyatosh Das Choudhury has been promoted to the post of Driver (Group-C) vide order No.F.2(28)/S/ESTT/2012/1281 dated 09.07.2018 (copy enclosed) of the DM & Collector, South Tripura, Belonia and accordingly Sri Das Choudhury has joined on 18.07.2018 as Driver on being released from the O/O the DM & Collector, Gomati District. The joining of Sri Das Choudhury has been accepted by the DM & Collector, South Tripura, Belonia vide order No.F.2(1)-DM/S/ESTT/2012/1302 dated 21.07.2018 (copy enclosed) and as per the instant judgment /order dated 15.11.2018 of the Hon'ble High Court of Tripura, the question of release of pay & allowances of the promotion post of Driver (Group-C) is related to the DM & Collector, South Tripura, Belonia and accordingly a correspondence in this regard has already been made vide this office letter No.F.1(12)/DM/G/ESTT/2017/37 dated 15.01.2019 (copy enclosed)

in reference to the earlier prayer submitted by said Sri Das Choudhury to this office.

In view of the above fact & circumstances, I am to send herewith a prayer of Sri Priyatosh Das Choudhury along with copy of judgment/order dated 15.11.2018 of the Hon'ble High Court of Tripura with request to communicate a suitable instruction on the claim of Sri Das Choudhury for payment of pay & allowances w.e.f. from 1989 to till 17.07.2018 at an early date."

8. Thereafter, it was considered by the concerned respondents and on the basis of such consideration the office of the DM & Collector, Gomati District, Udaipur had made a communication dated 27th August, 2019 addressed to the petitioner rejecting the prayer of the petitioner for payment of pay & allowances as that of 'Driver' w.e.f. 1989 till the date of his promotion. The said communication stated thus:-

"Sir, with reference to the subject cited above, I am directed to inform you that, your prayer reg. allowing the payment of pay and allowances attached with post of Driver, Group-C since 1989 to 18.07.2018 with interest at the bank rate was sent to the Govt. in the Rev. Department. Accordingly, the matter was taken up with Finance (G) Department for views by the Rev. Department.

In this regard observation of the Finance (G) Department are as follows, which has received from the Govt. in the Rev. Department.

It is informed that the claim of petitioner cannot be accepted as there is no evidence to the effect that he was working as Driver on full time as well as regular basis. Occasional or driving as stop-gap arrangement cannot entitle him a higher post and pay scale. The Memo of Sub-Divisional Magistrate dated 06.01.2003 merely indicates utilization of services but does not state whether on full time or otherwise. Moreover, memorandum on 06.01.2003 for position prior to this date is administratively questionable and not based on any record. Hence the prayer of the incumbent may be regretted."

9. Being aggrieved of the said decision of the Government, regretting his prayer for allowing payment of pay and allowances as that of 'Driver' w.e.f. 1989 till the date of his promotion to the post of 'Driver',

the petitioner has approached this court praying for a direction upon the respondents to make payment of pay and allowances for the said period i.e. since 1989 to 18.07.2018.

10. Mr. Datta Majumder, learned Sr. counsel has submitted that it was not in dispute in WP(C) 1369/2016 that the respondents had utilized the services of the petitioner as 'Driver' since 1989. In view of such undisputed facts, according to Mr. Datta Majumder, learned Sr. counsel, the respondents are under obligation to grant/allow the petitioner the difference of pay and allowances as fixed for 'Peon' and 'Driver'.

11. To buttress his submission, Mr. Majumder, learned Sr. counsel has relied upon a decision of the Apex Court in ***Selvaraj Vrs. Lt. Governor of Island, Port Blair & Ors., (1998) 4 SCC 291.***

12. On the other hand, Mr. Chakraborty, learned State counsel appearing for the respondents submits that the respondents had utilized the services of the petitioner as 'Driver' only when he expressed his desire to drive the vehicle so that he could appear in the driving test meant for promotion to the post of 'Driver'. It is further submitted that this court in response to earlier writ petition[WP(C) No.1369/2016] had only passed a direction upon the respondents to consider his promotion to the post of 'Driver' against 30% quota through DPC.

13. I have considered these submissions of the learned counsels appearing for the parties.

14. It is the case of the petitioner that the respondents had utilized his service as 'Driver' since 1989, though, the petitioner was engaged as 'Peon'. It is also a fact that the petitioner had been receiving his salary prescribed for the post of 'Peon'. Only in the year 2016 he approached this court for consideration of his promotion to the post of 'Driver' on the plea respondents had been utilizing his services as 'Driver' during that period. In my opinion, the petitioner had miserably failed to approach the court in time to raise his claim and it was serious laches on the part of the petitioner.

15. The Apex Court in *Selvaraj (supra)* had laid down a principle that if a person works in higher post, then, such person is entitled to the pay and allowances fixed for such higher post since he officiated the said post. In the instant case, the petitioner did not come forward during the period he was officiating the post of 'Driver'. He has come forward before this court raising his claim for pay and allowances for the post of 'Driver' with effect from 1989 till the date of his promotion only in the year 2019 and that too, after his promotion to the post of 'Driver' by the respondents. As such, in the opinion of this court, this claim suffers from serious delay and laches. Another aspect to be considered is that the question of allowing pay and allowances equal to the post of 'Driver' could have been raised in his first writ petition i.e. WP(C) No.1369/2016, but, he did not raise. In this

situation, the claim of the petitioner is barred by the doctrine of constructive *res judicata*.

16. Having viewed so, I find no merit in the writ petition and accordingly, the same stands dismissed.

JUDGE

