STATE OF TRIPURA AND ORS. A

*v.*

K.K. ROY

DECEMBER 12, 2003

[V.N. KHARE, CJ., AND S.B. SINHA, J.] B

*Service Law :*

*Promotion—Assured Career Promotion—Promotional avenues—Single post cadre—Government employee appointed to a single post cadre with no promotional avenues—Validity of—Held: State should have created promotional avenues for its employees—Such employees entitled to one higher scale of pay after completion of 12 years and another upon completion of 24 years if not promoted in the meanwhile—Constitution of India, 1950, Arts. 14 and 16.* C D

**The respondent was appointed as Law Officer-cum-Draftsman in the appellant's establishment. There was only one post in the cadre with no promotional avenues. The respondent filed a writ petition before the High Court for a direction to the appellant to provide at least two promotional avenues, which was allowed. Hence the appeal.** E

**Disposing the appeal, the Court**

**HELD : 1.1. The appellant being a 'State' within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of appointment, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that other States in India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period** F G H

**of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. [784-E-H; 785-A]**

*Council of Scientific and Industrial Research* v. *K.G.S. Bhatt,* **[1989] 4 SCC 635 and** *Dr. Ms. O.Z. Hussain* v. *Union of India,* **[1990] Supp. SCC 688, relied on.**

**1.2. It is directed that the respondent be given two promotions in the next higher scale of pay upon his completion of 12 years and 24 years in service. [785-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6253 of 1998.

From the Judgment and Order dated 7.4.97 of the Assam High Court at Gauhati in W.A. No. 10 of 1997.

Navin Prakash, Anurag Sharma for Gopal Singh for the Appellants.

S.V. Deshpande for the Respondent.

The Judgment of the Court was delivered by

**S.B. SINHA, J. :** Having been selected by the Tripura Public Service Commission, the respondent herein was appointed as Law Officer-cum-Draftsman in the Directorate of Cooperation, Government of Tripura. There was only one post in the same Cadre and it had no promotional avenues. He filed a representation that his post be upgraded or two promotional avenues be provided to him. Several representations made by him having not received consideration at the hands of the appellants, the respondent herein filed a writ petition seeking for a specific direction upon the appellant herein to provide at least two promotional avenues. The said contention of the respondent was accepted by the High Court and by reason of its impugned judgment the appellant was directed to provide 'the graded scale' to the appellant by providing three grades, the initial being Grade III which is the Post of Law Officer-cum-Draftsman and thereafter Grade II and Grade I. Officer of Tripura Judicial Service. It was further directed:

"The scale of pay of Grade II Law officer-cum-Draftsman shall

be same as Grade-II officer of the Tripura Judicial Service. The scale of pay of Grade-I Law Officer-cum-Draftsman shall be equal to the scale of pay of Grade-I officer of Tripura Judicial Service." A

Questioning the said direction, the appellants are before us. B

The learned counsel appearing on behalf of the appellant would submit that the High Court went wrong in issuing the aforementioned direction. The learned counsel would urge that the respondent herein did not have any legal right to be promoted to a higher post far less the right to get the scale of pay of Grade I officer of the Tripura Judicial Service. C Such a direction by the High Court, the learned counsel would contend, is wholly without jurisdiction. The learned counsel, appearing on behalf of the respondent, however, has supported the said order.

Indisputably, the post of Law Officer-cum-Draftsman is a single cadre D post. It is also undisputed that there does not exist any promotional avenue therefor. The respondent is holder of a Master Degree as also a Degree in Law. He was appointed in the year 1982. If the contention of the appellant is to be accepted, the respondent would be left without being promoted throughout his career. In almost an identical situation, a Bench E of this Court in *Council of Scientific and Industrial Research and Another* v. K.*G.S. Bhatt and Another*, [1989] 4 SCC 635, held:

> "...It is often said and indeed, adroitly, an organisation, public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, F but for a whole career, One must, therefore, be given opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : *Principles of Personnel* G *Management by Flipo Edwin B.*, 4th edn., p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of person- H

A nel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." (See : *Personnel Management by Dr. Udai Pareek,* p. 277). There cannot be any modern management much less any career planning, manpower development, management development, etc., which is not related to a system of promotions..."

B

The matter came up for consideration again in *Dr. Ms. O.Z. Hussain* v. *Union of India,* [1990] Supp SCC 688 wherein this Court in no uncertain terms laid down the law stating:

C "...Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare D State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers..."

E

It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adum- F brated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion appointment, he cannot resile therefrom. It is not a case where the G principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted H within a period of 12 years is granted one higher scale of pay and another

upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle..

We are, thus, of the opinion that the respondent herein is at least entitled to grant of two higher grades, one upon expiry of the period of 12 years from the date of his joining of the service and the other upon expiry of 24 years thereof.

The learned counsel appearing for the appellant, is, however, correct in his submission that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could not have issued a writ of or in the nature of Mandamus directing the appellant herein to grant a scale of pay which would be equivalent to Grade II or Grade I of the Judicial Service of the State.

For the reasons aforementioned, we direct that the respondent herein be paid two promotions in the next higher scale of pay upon his completion of 12 years and 24 years in service. This appeal is disposed of with the aforementioned directions. No costs.

V.S.S. Appeal disposed of.