

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.33/2024

Sri Keshab Chakraborty

..... Appellant(s).

V E R S U S

The Secretary-cum-Commissioner, Department of Forest & others

.....Respondent(s).

For Appellant(s) : Mr. D.C. Roy, Advocate.

For Respondent(s) : Mr. Dipankar Sarma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

23/04/2024

Heard Mr. D.C. Roy, learned counsel for the appellant and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

The writ petition was preferred for a direction upon the respondents to promote the petitioner with retrospective effect to the post of Assistant Accounts Officer/Marketing Officer or any other equivalent post.

The petitioner had earlier approached the Gauhati High Court in Civil Rule No.45 of 1998 with same relief. The writ petition was disposed of on 29.05.2003 by the learned Single Bench of the Gauhati High Court without any specific direction to promote the petitioner but with an observation that since the petitioner is waiting in expectation for long, the respondents would actively consider his case and do the needful in terms of the observations and directions in an expeditious manner. The second writ petition has been preferred in the year 2024 by the petitioner with the same reliefs. Learned Writ Court has also taken into note the minutes of the agenda of the 64th Board Meeting relating to

the claim of regularization of services of the petitioner which was questioned by the writ petitioner. The learned Writ Court after hearing learned counsel for the parties, however, dismissed the writ petition as being badly barred by principles of delay and laches. The opinion of the learned Writ Court is extracted hereunder:

"Having heard learned counsel appearing on behalf of the parties, in my opinion, the instant writ petition badly suffers from delay and laches. The cause of action for filing the instant writ petition arose in the year 1993 when the Chairman disapproved or disagreed the decision of the Board of Directors. The present writ petition cannot be entertained on other grounds also. The petitioner was first appointed as Management Trainee under the respondents. There is nothing on record to show that the post of Management Trainee is a sanctioned post. The 64th Board meeting was held for consideration of regularization of the service of the petitioner or for regularization of the pay scale of the petitioner.

I find that the statements made in paragraph 8 of the instant writ petition are contradictory itself because at one stage the petitioner has stated that 64th Board Meeting was held for consideration of regularization of his pay scale, but later on it is stated that the said Board Meeting was held for consideration of regularization of his service.

A query has been made to the learned counsel appearing for the petitioner as regards the feeder post of Assistant Accounts Officer. In reply, learned counsel appearing on behalf of the petitioner could not indicate the name of the feeder post. I also do not find any such statement made in the writ petition indicating the name of the feeder post. Furthermore, it is also transpired that the service of the petitioner has not been regularized in the post against which he was appointed. Unless and until the appointment of the petitioner is not regularized with the creation of the post, he is not entitled to claim further promotion.

I have considered that the then Gauhati High Court had disposed of the writ petition vide judgment and order dated 29.05.2003 with the above direction to actively consider the case of the petitioner. Mr. Roy, learned counsel has submitted that in pursuance of the said order, the petitioner had submitted so many representations to the department concerned for implementation of the directions passed by the court, but, till today the same has not been disposed of.

What I have already observed earlier that the instant writ petition is badly barred by the principle of delay and laches. The order was passed in the year 2003 and the petitioner had preferred to sleep for a long time and suddenly he woke up from slumber. If the petitioner is not conscious about his rights, then, this court cannot help him. Moreover, *promotion is not a matter of right and it is a right to be reconsidered*. Another interesting feature is that already the post to which the petitioner seeks promotion has already been settled. The settled proposition of law is that *the settled position cannot be unsettled*.

In the light of above discussion, the instant writ petition is found devoid of any merit. Accordingly, dismissed."

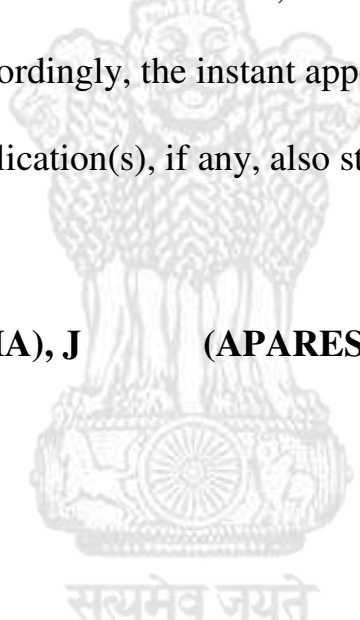
We have considered the submissions of learned counsel for the petitioner. However, we do not find any error in the impugned judgment. Not only the fact that the same cause of action and the prayer has been reagitated after 21 years of the disposal of the first writ petition by judgment dated 29.05.2003 by the Gauhati High Court but the learned Writ Court has also observed that the services of the petitioner had not been regularized in the post in which he was appointed to claim further promotion.

In such a view of the matter, we do not find any error in the impugned judgment. Accordingly, the instant appeal is dismissed.

Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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