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Court 21.12.2020
No. 5
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**MAT 805 of 2020
with
CAN 1 of 2020**

**West Bengal State Electricity Board
Engineers' Association and Ors.
-Vs-
The West Bengal State Electricity
Distribution Co. Ltd & Ors.**

Mr. Soumya Majumder
Ms. Sanjukta Dutta

... Appellants

Mr. Srijan Nayek
Mr. S. S. Koley

... WBSEDCL

Mr. Subrata Mukhopadhyay
Mr. Bandhu Bratin Bhula
Mr. Shamit Sanyal
... for the Respondent Nos. 20, 25, 26 and 37

Mr. Partha Sarathi Bhattacharjee
Ms. Anikta Dey
... for the Respondent Nos. 21, 24, 27, 34, 38, 86

Mr. Puspall Chakraborty
... for the Added Respondents

Party/Parties is/are represented in the
order of their name/names as printed above in
the cause title.

The appellants file certified copy of the
judgment and order under appeal. The appeal

thus stands regularised and is taken up for hearing along with its application.

Registry to take the usual steps.

Under challenge in this appeal is the order dated 9th December, 2020 passed in the writ petition being WPA 10270 of 2020 in the matter of West Bengal State Electricity Board Engineers' Association & Ors –Vs- The West Bengal State Electricity Distribution Company Limited & Ors.

The appellants represented by Mr. Majumdar, Learned Counsel, argue that at the first stage the refusal of the interim order by the Hon'ble Single Bench has the effect of crystallising the rights of the parties to the prejudice of the writ petitioners/the present appellants.

It is submitted that under challenge in this writ petition is the promotional exercise from the cadre/grade of Divisional Engineers (DEs) to the post of Superintending Engineers (SEs) in which the writ petitioners, being the Graduate Engineers and the Private

Respondents viz. the Diploma Engineers, who are also the present private respondents in the appeal, were made co- participants. Therefore, Learned Counsel for the appellants submits that with the refusal of the interim order and the subsequent communication by the official respondents/the WBSEDCL to the private respondents to appear in the interview, the cause-of-action ventilated in the writ petition itself stands to be frustrated to the prejudice of the present appellants.

In such view of the matter the refusal to pass an interim order has the effect of settling the *inter se* rights between the parties, again to the prejudice of the writ petitioners/the present appellants. Hence, it is argued that the present appeal is maintainable.

It is submitted that the refusal of the interim order was required to be backed up with sufficient reasons, which again is a ground in favour of maintainability of the present appeal. Since the future of so many individuals represented by the writ

petitioner/Association is involved in the adjudication, it would be appropriate that the Hon'ble Single Bench laid out reasons in support of the same.

With the order impugned dated 9th December, 2020, standing in the manner as it is, the ultimate success, if any, in the writ petition would provide no succour to the writ petitioners/the present appellants.

Next, going to the merits of the challenge, Mr. Majumdar, Learned Counsel, refers to a communication dated 8th September, 2020 issued by the Respondents/the Company/the West Bengal State Electricity Distribution Company Limited (WBSEDCL) which is a 'State' within the meaning of Article 12 of the Constitution of India.

By the said impugned communication dated 8th September, 2020, the appropriate authority of WBSEDCL invited the concerned officers belonging to the SC and ST categories to bring their original caste certificates for participating in the promotional exercise from

DEs to SEs following the provisions of the Office Order (O.O.) No. 283 dated March 25, 2010.

It is submitted that the invitation to participate in the promotional exercise from DEs to SEs covers Engineers, i.e. the private respondents/the Diploma Engineers and, such coverage defeats the Assured Career Progression Scheme (ACP) which is mandated to be followed under the Revision of Pay and Allowances Rules, 2020 (ROPA 2020).

Particular emphasis is given by Mr. Majumdar to paragraph 18 and 34 of ROPA 2020. Paragraph 18 provides for the existing ACP to be extended to Class-I Officers, i.e. the present appellants/the Graduate Engineers within a span of 16 years of entry into service and, for the below Class-I Officers (i.e. the Diploma Engineers) within a span of 25 years of entry into service.

Paragraph 34 of ROPA 2020 prescribes the overriding effect of the Rules, meaning thereby ROPA 2020, repealing all

provisions/regulations/orders relating to Revision of Pay and Allowances as previously and earlier applicable to WBSEDCL.

Therefor, the crux of the arguments advanced by Learned Counsel for the appellants is that the impugned communication dated 8th September, 2020 declaring the promotional exercise from DEs to SEs revives the O.O. number 283 dated 25th March, 2010 which, since it purports to follow ROPA 2009, is *non-est* in the light of the clear prescription of Rule 34 of ROPA 2020.

It is argued that the assurance contained in paragraph 18 of ROPA 2020 (*supra*) that a section of Graduate Engineers are entitled to be promoted from DEs to SEs after a span of further 8 years out of the total 16 years as provided in the ACP stands frustrated.

Thus, the Memo dated 8th September, 2020 could not have been issued in the face of the clear prohibition of ROPA 2020 and such ought to have been taken notice of by the Hon'ble Single Bench before refusing the

interim order.

Mr. Bhattacharjee, Learned Senior Counsel appearing for a section of the private respondents and Mr. Mukhopadhyay, Learned Counsel appearing for another section of private respondents/Diploma Engineers, refer to a Chart which purports to show the respective career progression of the Degree and Diploma Engineers respectively.

The basis of the Chart stems from the fact that post-entry into service, the Diploma Engineers, at the end of 25 years of service under the existing ACP, reach up to the level of DEs. Upon reaching the level of DEs the assurance in paragraph 18 of the *existing ACP* as recognised by ROPA 2020 stands exhausted and the promotional policy of WBSEDCL takes over. Such promotional policy is spelt out for the Diploma holder in the O.O. dated 25th March, 2010 (*supra*) providing that the selection to the next higher post of SEs be made on the basis of a departmental examination.

In so far as the Graduate/Degree Holders/the appellants are concerned the said Chart further purports to show that the assurance of 16 years under the existing ACP extends to the level of Superintending Engineers which, in other words, means that at the level of DEs the Graduate/Degree-holders still have eight years of ACP left to be promoted to the post of SEs.

Upon exhaustion of their ACP of a further eight years, the full cycle of ACP under paragraph 18 stands complete and thereafter the Graduate Engineers can proceed to the next higher categories.

It is thus argued by the private respondents that there is no conflict in the promotional exercise at the level of DEs between the two sections/categories and all that the impugned O.O. dated 25th March, 2010 has done is to maintain the promotional policy *beyond ACP*, i.e. the period not covered by either the 16 year or the 25 year assurance of promotion confirmed to either category

under the existing ACP.

Learned Counsel for the private respondents therefore seeks to distinguish the separateness between the existing ACP and the promotional policy *beyond ACP* submitting that at the stage where the assurance ends, the next higher stage of the promotional policy takes over.

Paragraph 18 of ROPA 2020 and the communication impugned in the writ petitioner, i.e. dated 8th September, 2020 are not inconsistent with each other since the promotional exercise sought to be implemented by the Memo dated 18th September, 2020 relates to a period when the 25-year ACP provided to the Diploma Engineers/the private respondents stands exhausted and the 16-year period provided to the Graduate Engineers/the appellants is yet to be exhausted and therefore assured.

It is accordingly argued that the impugned action neither offends Article 14 nor Article 16 of the Constitution of India.

Mr. Nayek, Learned Counsel, appearing for the Company/WBSEDCL submits that the promotional policy is designed to provide a level playing field in their respective categories to all Engineers across-the-board. The Graduate Engineers/the appellants, at the end of 16 years enjoy an assured promotion to the level of SEs which is not the case for the Diploma Engineers/the private respondents. The Diploma Engineers/the private respondents enjoy an assured promotion till the level of DEs at the end of 25 years of service. For the next higher grade of SEs, the Diploma Engineers/the private respondents are guided by the promotional policy as framed by the O.O. dated 25th March, 2010 and executed by the Memo dated 8th September, 2020.

Having heard the parties and considering the materials placed, this Court is required to remind itself that this is an appeal directed against the refusal of an interim order passed by the Hon'ble Single Bench at the first stage.

This Court must further remind itself of the fact that for a complete adjudication, the parties should be permitted to avail of their court/forum at the first stage. Accordingly, in the absence of a complete adjudication on merits by the Hon'ble Single Bench, the above recorded discussion stands confined to the consideration of the requirement of an interim order as pressed by the appellants.

This Court further finds that the appellants have been unable to establish a *prima face* case based on ROPA 2020 on the tests of respective ACPs provided to both the categories. This Court, in the light of the above discussion, underscores the distinction between the time bound career assurance followed by the respective ACPs and the promotional policy which kicks in for either category after their respective ACP period ends.

For the above reasons, this Court does not interfere with the refusal by the Hon'ble Single Bench to pass an interim order in

favour of the present appellants/the writ petitioners.

The writ petition thus goes back to the Hon'ble Single Bench to decide on merits by calling affidavits.

It is clarified that the discussion of this Court, as recorded above, is strictly confined to the requirement of an interim order. It needs no reiteration that the Hon'ble Single Bench enjoys the freedom to decide the writ petition on merits.

Accordingly, the appeal as well as its connected application are not detained, Affidavits are not invited against and for the application. Thus, the allegations made, apart from the contentions necessary to be dealt with while passing this order, are deemed to be denied and disputed.

MAT 805 of 2020 with **CAN 1 of 2020** stand thus **disposed of**.

Mr. Puspall Chakraborty, Learned Counsel, appears for another section of Diploma Engineers and prays for impleadment

in the appeal as added respondents.

Liberty is accordingly granted to take steps before the Hon'ble Single Bench.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(ANIRUDDHA ROY, J.)

(SUBRATA TALUKDAR, J.)