

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR
And
HON'BLE JUSTICE SUBHASIS DASGUPTA

FMA 136 of 2019
With
CAN 1 of 2015
(Old CAN 4989 of 2015)

Sisir Kumar Biswas & Anr.
-Vs.-
The State of West Bengal & Ors.

For the Appellants : Mr. Partha Sarathi Bhattacharyya,
Mr. Raju Bhattacharyya,
Mr. Tanweer J. Mondal

For the Respondents. : Mr. Pantu Deb Roy,
Mr. Subrata Guho Biswas,
Mr. Anand Fermania

Heard on : 08/01/2021

Judgment on : 27/04/2021

Subrata Talukdar, J:

The short question which arises for consideration in this appeal is as to whether the appellants are entitled to claim seniority on promotion to Group-C posts over and above their alleged juniors who were also promoted to Group-C posts in the District Judgeship of Alipore, South 24-Parganas.

The original writ petition from which this appeal arises and numbered as WP 16066 (W) of 2009 (for short the writ petition or the

said writ petition) was filed by Mr. Sisir Kumar Biswas, Mr. Samir Baran Chakraborty and Mr. Ranjan Das Gupta being the Writ Petitioner Nos. 1, 2 & 3 respectively.

Being aggrieved by the order impugned of the Hon'ble Single Bench dated 18th December, 2014 in the said writ petition, the present appeal has been however filed by only the writ petitioner No.1, Mr. Sisir Kumar Biswas and, the Writ Petitioner No.3, Mr. Ranjan Das Gupta, now being the Appellant Nos.1 & 2 respectively.

The Respondent Nos. 1 to 4, both in the writ petition and in the present appeal, are the State Respondents and the District Judgeship of Alipore, South 24 Parganas. The Respondent Nos. 5, 6, 7 & 8 are the Private Respondents (for short the *PRs*) to both the writ petition and the present appeal.

The appellants contend that being senior in Group-D level, such seniority ought to have been maintained on promotion to the next higher Group-C posts. Arguing for the appellants, Mr. Bhattacharaya, Ld. Senior Counsel, submits that the *PRs* were granted promotion *w.e.f.* 1st of June 2009 and the appellants *w.e.f.* 1st of September, 2011.

In doing so, the *PRs* were placed senior to the appellants in the higher Group-C grade. The appellants want that their respective seniority positions *vis-a-vis* the *PRs* at the entry level and feeder Group-D posts be restored.

Per contra, Mr. Deb Roy, Ld. Additional Government Pleader (*AGP*), submits that promotions to all the parties was granted purely on the basis of the governing Rules as notified by the Finance Department,

Government of West Bengal *vide* Memo No. 1062-F dated 19th February, 2000 (for short referred to as *Memo-I*) and Memo No. 9135-F dated 10th September, 2002 (for short hereinafter referred to as *Memo-II*). It is submitted that *Memo-I* segregates the promotional Group-C posts into two types, namely: (a) Functional, where on promotion higher responsibility and duties are to be performed and; (b) Non-functional, where on promotion the duties and responsibilities of the basic post may remain unchanged.

The category to which the appellants and the PRs fall is the category of *Functional Promotion* which requires the willing candidate employees to participate in an Open Performance Report (for short the *OPR*) system.

Under the *OPR* system an assessment is made of the participating candidates on the following basis namely: *attendance, integrity, performance, efficiency* and *seniority*. Marks have been provided in the promotional policy *vide Memo-I (supra)* and, ultimately promotion will be granted according to seniority to those candidates who will obtain qualifying marks.

By the subsequent *Memo-II*, the promotional policy as framed by *Memo-I* was sought to be refined, however, preserving the basic principles of the *OPR* system. Ld. AGP submits that *Memo-II* requires that a candidate employee must score 60% marks on the whole in the *OPR* to be eligible for being considered for promotion. Promotion will be thereafter granted in terms of seniority from amongst those who have obtained the qualifying marks.

Having regard to the above stated promotional policy, this Court is given to understand that upon a candidate employee in the Group-D category reaching the minimum threshold of qualifying marks, promotion to the next higher Group-C/*LDC* category will finally rest on the relative seniority of the competing candidates.

Therefore, before this Court, the only question remains as to whether the appellants are senior to the *PRs* in the gradation list. A copy of the Provisional Gradation List (for short the *PGL*) in the feeder Group-D category appears at pages 46 to 66 of the Informal Paper Book(s) prepared by the appellants.

It would be now relevant at this juncture of the discussion to quote *verbatim* the prayers in the Writ Petition which read as follows:-

“a) A Writ in the nature of Mandamus, commanding the respondents, their men, agents, assigns and subordinates not to give any effect and/or further effect to the impugned merit list made Annexure P-2 herein and further to act in accordance with law;

b) A Writ in the nature of Mandamus, commanding the respondents, their men, agents, assigns and subordinate to give the petitioners promotion to the existing vacant posts of Lower Division Clerk under the Judgeship of South 24-Parganas forthwith by treating the petitioners as Senior to the Respondent Nos. 5, 6, 7 & 8 herein;

c) A Writ in the nature of Certiorari, directing the respondents to transmit and authenticate the records of the case to this Hon’ble Court so that conscionable Justice may be administered by quashing the impugned merit list made Annexure P-2 herein and by passing appropriate order and direction;

d) A Writ in the nature of Prohibition, Prohibiting the respondents, their men, agents, assigns and

subordinate from giving effect to the impugned merit list made Annexure P-2 herein and also from interfering with the grant of promotion to the petitioners to the existing vacant posts of Lower Division Clerk under the Judgeship of South 24-Parganas in any manner whatsoever;

e) Rule in terms of prayers (a), (b), (c) and (d) and to hear the parties and make the Rule absolute;

f) An interim order of injunction, directing stay of operation of impugned merit list made Annexure P-2 herein as well as directing the respondent authorities, their men, agents, assigns and subordinates to give the petitioners promotion to the existing vacant posts of Lower Division Clerk under the Judgeship of South 24-Parganas, by treating the petitioners Senior to the Respondent Nos. 5, 6, 7 & 8 till the disposal of the Rule;

g) To pass such other and further order or orders, directing or directions as to your Lordships may deem fit and proper.”

Qua the prayers in the Writ Petition (*supra*), Paragraph 7 thereof reads as follows:-

“7. The Respondent No.2 by office Order No.75-M dated 27.5.2009 had published a List of Ten Group ‘D’ employees who had been selected for such interview. In the said list, the names of the writ petitioners are not appearing and four candidates, being Mohit Mohan Adhikary, Bimal Kanti Banerjee, Hari Prosad Mokhrel (Sharma) and Pradip Majumdar, whose names are appearing at Serial Nos. 7, 8, 9 and 10 in the said list, are all Juniors to all the three petitioners herein.

Xerox copy of the Office Order dated 27.5.2009 is annexed herewith as Annexure P-2.”

It would thus stand on record that the promotion of the PRs is being resisted by the appellants on the ground that the said PRs are juniors to the appellants. However, from the PGL as disclosed by the

appellants themselves (*supra*), the following relative positions of seniority would transpire:-

Name	Private Respondent (PR)/Appellant (A)	Serial No. In The Gradation List
Sri Mohit Mohan Adhikary	PR 5	95
Sri Bimal Kanti Banerjee	PR 6	96
Sri Hari Sharma	PR 7	97
Sri Pradip Mazumder	PR 8	100
Sri Sisir Kr. Biswas	A 1	114
Sri Ranjan Das Gupta	A 2	110

From the *PGL* chart as printed above on the basis of the data provided by the appellants themselves at pages 46 to 66 of the Informal Paper Book(s) (*supra*) as prepared and submitted to the Hon'ble Court for hearing with copy supplied to Ld. Counsel for the State respondents, it does transpire that in the *PGL* the appellants are placed junior to the *PRs*.

The relative status as shown in the *PGL* (*supra*) *inter se* the appellants and the *PRs*, is further relied upon on behalf of the appellants in their Written Submissions filed at the end of the hearing.

As already discussed above in this judgement, the reliefs in the Writ Petition is confined to staying the operation of the merit list for promotions from Group-D to Group-C posts. The *inter se* seniority status of the parties in the *PGL* is not directly the subject matter of challenge in the Writ Petition.

Consequently, although the appellants have, pleaded by way of a corollary point that the seniority of the parties must be re-fixed following their respective dates of appointment/entry into service in Group-D posts, such does not comprise the reliefs claimed in the Writ

Petition. Accordingly, such a corollary argument (*supra*) can neither be considered nor granted in this appeal.

Furthermore, looking into the merits of the appeal from the state of facts relied upon by the appellants, there appears to be no dispute to the proposition stated by the appellants at *Paragraph 22* of their Written Submissions (*supra*). *Paragraph 22* reads as follows:

“22) There is a Memorandum dated 19.12.2000 issued by the Finance Department, Audit Branch, Writers’ Buildings, Kolkata at page 31 of the Paper Book and paragraph 2(v) indicates that the promotion will be awarded according to seniority amongst those who will obtain qualifying marks.”

In view of their own stand *vide Paragraph 22 (supra)*, upon the candidates attaining the zone of consideration for promotion from Group-D to Group-C posts on the basis of qualifying marks in all categories namely, *attendance, integrity, performance and efficiency* in terms of *Memos-I and II (supra)*, the ultimate promotion shall be considered on the basis of seniority alone.

The principle of seniority-cum-merit has been clearly noticed by the Hon’ble Supreme Court *In Re: Sarva Uttar Pradesh Gramin Bank and others versus Manoj Kumar Chak* decided with other analogous Civil Appeals which are collectively reported in 2013 (6) SCC 287. The Hon’ble Bench noticed with approval the ratio laid down in *B.V. Sivaiah Versus K. Addanki Babu* as reported in 1998 (6) SCC 720 as follows:

“40. In B.V. Sivaiah this Court laid down the broad contours defining the term “bare minimum merit” in the following words: (SCC p. 730, para 18)

“ 18. We thus arrive at the conclusion that the criterion of ‘seniority-cum-merit’ in the matter of promotion postulates that given the minimum

necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit. ”

In view of the foregoing discussion, applying the law as laid down *In Re: Sarva Uttar Pradesh (supra)* and *In Re: B.V. Sivaiah (also supra)* this Court cannot avoid the conclusion that the appellants along with the *PRs* having crossed the minimum threshold marks, are next required to be offered promotion as per their respective positions in the seniority list.

Additionally, the State respondents have taken this Court to the promotion granted to the parties on the basis of decisions taken by a specially appointed Committee in this regard. It is the Committee which had recommended that the Government guidelines as prescribed by *Memo-I* and *Memo-II (supra)* are adhered to while granting promotions from Group-D to Group-C categories. The Committee had in 2009 advised appointment of qualified persons on compassionate grounds to Group-C/LDC category. The appellants were appointed subsequently in 2011 and, at this distance of time, neither equity nor law permits unsettling of a settled state of affairs. Besides, the appellants have been

unable to establish arbitrariness in conducting the promotional exercise from Group-D to Group-C category.

For the above reasons, the appeal fails.

FMA 136 of 2019 with **CAN 1 of 2015 (Old CAN 4989 of 2015)** stand thus **dismissed**.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subhasis Dasgupta, J.)

(Subrata Talukdar, J.)