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151/CL

09.11.2021
SL-03
Ct.04
(S.R.)

CAN No.1 of 2019 (Old CAN No.5835 of 2019)
Md. Majed Jahangir Laskar & Ors.
v.
State of West Bengal & Ors.
in
WPST No.24 of 2017

Mr. Samiran Giri ... for the petitioners.

Mrs. Chaitali Bhattacharya ... for the State.

The present writ petition has been preferred challenging an order dated 22nd December, 2015 passed by the learned West Bengal Administrative Tribunal in OA No.369 of 2013. The application for early hearing being CAN No.1 of 2019 (Old CAN No.5835 of 2019) is allowed and the writ petition is taken up for final hearing.

Mr. Giri, learned advocate appearing for the petitioners submits that the learned Tribunal erred in law not in considering the fact that persons similarly situated and appointed to Group-D posts were granted promotion to LDC posts. The authorities have illegally applied a different yardstick in the case of the petitioners. In support of such contention, Mr. Giri has drawn our attention to the averments made in paragraph 26 of the writ petition.

According to Mr. Giri, after the petitioners were appointed to Group-D post, the State authorities invited option from the petitioners for consideration of their candidature in promotional posts. Pursuant thereto, the petitioners exercised option but the same was not

considered and illegally kept in abeyance. However, the authorities have granted promotion to the private respondents to the post of upper division clerk though they were engaged subsequent to the petitioners.

According to Mr. Giri, the learned tribunal ought to have interfered with the order dated 10th January, 2013 passed by the respondent no.4 since the same was passed without taking into consideration the discrimination practiced against the petitioners. In support of his arguments, Mr. Giri has placed reliance upon a judgement delivered in the case of ***Surya Kant Kadam v. State of Karnataka & Ors***, reported in ***(2002) 9 SCC 445***.

Per contra, Ms. Bhattacharya, learned advocate appearing for the respondents submits that the private respondent nos.17 to 23 were initially appointed to the post of LDC whereas the petitioners were appointed in Group-D cadre and as such they are not similarly situated. The petitioners willingly accepted their compassionate appointment to Group-D post and they cannot claim direct promotion to the LDC post in derogation to the existing government circular, as referred to in the reasoned order passed by the respondent no.4.

She further submits that the instance of promotion as referred to paragraph 26 of the writ petition does not create any right in favour of the petitioners. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument of Mr. Giri that discrimination has

been practised by the respondents and there had been violation of Article 14 of the Constitution of India is not acceptable to us in as much as the private respondents were initially appointed to Group-C posts, as would be explicit from the documents on record. Even if, any irregular promotion had been granted to any incumbent, as referred to paragraph 26 of the writ petition, the same does not create any right in favour of the petitioners for promotion. Article 14 of the Constitution which guarantees equality is a positive concept and it cannot be applied in a negative manner. The judgment delivered in the case of ***Surya Kant Kadam (supra)***, as cited on behalf of the petitioners, is also distinguishable on facts.

The learned tribunal upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the same. The impugned order also does not suffer from any jurisdictional error or any substantial failure of justice warranting interference of this Court.

In view thereof, we are unable to grant the relief, as prayed for by the petitioners and the writ petition being WPST No.24 of 2017 is dismissed.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)