

5th August, 2021
(D/L 08)
(SKB)

W.P.A. 11638 of 2021
With
W.P.A. 9457 of 2021
(Via Video Conference)

Pritam Das and others
Versus
State of West Bengal and others

Mr. Shamim Ahmed,
Mr. Arka Maiti,
Ms. Saloni Bhattacharya
... for the petitioners.

Mr. Alope Ghosh,
Mr. Subhrangshu Panda
... for the Municipality.

Mr. Ranajit Chatterjee,
Mr. Arijit Dey
... for respondent nos.34 & 35.

Mr. Soumya Majumder,
Mr. Victor Chatterjee
... for respondent nos.13 to 18, 21,
22, 24-31, 35-38.

Mr. Rajarshi Basu,
Mr. Abdus Salam
... for the State.

Affidavit of service filed in Court today be kept with
the records.

The petitioners are direct recruits, who were
appointed for the post of Assistant Engineers, under the
Kolkata Municipal Corporation. The petitioners are
aggrieved because of the alleged closure of their
promotional avenues for the post of Executive Engineer in
view of the gradation list prepared by the Kolkata

Municipal Corporation. It is alleged that those Assistant Engineers, who were appointed against supernumerary posts, have been placed at a higher position than the petitioners. The petitioners submit that the Assistant Engineers, who are direct recruits, stand on a different footing and belonged to a different cadre. They cannot be treated at par with such persons who were given the benefit of promotion to the post of Assistant Engineer by creation of supernumerary posts. These persons were appointed as Assistant Engineers against supernumerary posts, as a special measure, to avoid stagnation, as they had rendered services for a long time without any promotion. The petitioners pray that the Kolkata Municipal Corporation may be injuncted from giving effect to the gradation list and a prayer has been made for stay of operation of the said list.

Mr. Chatterjee and Mr. Majumder appear for some of the persons who were appointed in supernumerary posts and subsequently absorbed in the cadre of the Assistant Engineers. According to Mr. Chatterjee and Mr. Majumder, the matter is required to be heard on affidavits as there is no scope for any interim order. It is submitted that the petitioners have not served the minimum years required in the post of Assistant Engineer to be considered for promotion to the next post of Executive Engineer. It is further contended that the Assistant Engineers, who were appointed against supernumerary

posts and were ultimately absorbed in the main cadre of Assistant Engineer as and when the vacancy arose, have served the organisation from 2012.

Mr. Ghosh, learned advocate appearing for the Kolkata Municipal Corporation submits that there is no scope for passing any interim order at this stage, as the Kolkata Municipal Corporation had not contemplated any promotional selection for the time being. He further submits that even if these persons were appointed against supernumerary posts, they had rendered service against the supernumerary posts in the position of Assistant Engineers. Their services as Assistant Engineers cannot be dis-regarded just because they had been appointed to supernumerary posts. It is further contended that the Division Bench of this court had upheld the decision of the Kolkata Municipal Corporation to create these posts in order to prevent the stagnation of their employees. According to Mr. Ghosh, the promotional avenue shall be considered from the feeder posts of the Assistant Engineers and all persons who have served in the said feeder posts for a the minimum period as per the rule would qualify for promotion to the post of Executive Engineer upon compliance of other requirement in accordance with the service rules.

Having heard the rival contentions of the parties, the petitioners, who have been appointed only in 2017-2018, are not due for promotion to the post of Executive

Engineer for the next couple of years. Whereas, the Assistant Engineers represented by Mr. Chatterjee and Mr. Majumder belong to the 2012 cadre and had started discharging their duties as Assistant Engineers on and from the date the supernumerary posts were brought into the establishment. Under such circumstances, there is no scope to pass any interim order. The writ petition shall be decided on affidavits.

Accordingly, affidavit-in-opposition be filed within six weeks from date, reply, if any; be filed within two weeks thereafter.

Liberty to mention after exchange of affidavits by the respective parties.

Re: W.P.A. 9457 of 2021

This writ petition has been wrongly printed in today's list as W.P.A.4957 of 2021 in stead of W.P.A.9457 of 2021.

Accordingly, the correct number is W.P.A.9457 of 2021.

It is submitted by the learned advocate appearing for the petitioners that the writ petition has become infructuous in view of the order passed in WPA 11638 of 2021.

Accordingly, the writ petition being W.P.A. 9457 of 2021 is dismissed as infructuous.

(Shampa Sarkar, J.)