

**FMA 822 of 2021
With
CAN 1 of 2021**

**The Managing Director, South Bengal State Transport
Corporation**

-Vs-

**Madhusudan Datta & Ors.
(Via Video Conference)**

Mr. Subir Sanyal
Mr. Ayan Banerjee
Ms. Debarsee Dhamali

... for the appellant

Mr. Bikash Ranjan Bhattacharya
Mr. Nilanjan Bhattacharjee
Mr. Arpan Guha ... for the respondents

Ms. Munmun Tewary
... for the respondent no.1

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

Under challenge in this appeal is the judgment
and order dated 3rd March, 2021 of the Hon'ble Single
Bench in WPA 5377 of 2021.

The Hon'ble Single Bench took judicial notice of
the fact that the present appellant, i.e. the South
Bengal State Transport Corporation (for short, the
Corporation), had granted benefits to a section of its
employees who had *wholeheartedly* performed duties
during the peak of the pandemic situation. Such

employees had, even to the risk of the lives, ferried migrant workers from outside the State, ailing victims from one part of the State to another including numerous other instances of outstanding service.

The Board of Director of SBSTC (*BOD*) therefore granted benefits to such employees primarily in three ways. Illustratively and literally, the benefits were in the nature of spouses' passes, upgradation of benefits and promotion from their previous posts to higher posts.

The Hon'ble Single Bench accepted the benefits granted across-the-board by the *BOD*, in view of the fact that they had performed exemplary service beyond the call of normal duty.

Accordingly, the Hon'ble Single Bench stayed the subsequent order of the *BOD* dated February 1, 2021 unilaterally withdrawing the benefits granted.

It is submitted on behalf of the appellant/SBSTC that although there can be recognition of exemplary work by way of granting spouses' passes and upgradation of other existing facilities, however, statutorily promulgated promotional rules being the Service Rules of the employees cannot be bended, even by the *BOD*, to grant promotion in deviation of the settled principle of seniority-cum-merit.

It is submitted that the primary grievance of the

SBSTC is not with the award of benefits affirmed by the Hon'ble Single Bench connected to the spouses' pass and upgradation of other existing facilities but, with the affirmation of the promotional benefit in deviation of the statutory rules.

It is submitted that the *BOD* is subject to the statutory rule and cannot override the same.

On behalf of the Respondents/the writ petitioners, it is submitted that admittedly the pandemic has been an once-in-a-century situation. Taking notice of the contribution of such employees, the *BOD* undertook a detailed evaluation exercise and granted benefits of promotion to the deserving employees.

It is not the case of the employees who have been left out of the promotional exercise that they are aggrieved by the same. The *BOD* is deemed to be acting under the aegis of the State, since the State nominates a representative to the *BOD*.

It is further submitted that the argument that the decision of *BOD* again requires a ratification by the State is unsustainable since all actions of the *BOD* shall be deemed to have been concurred by the State.

It is submitted that the benefit of promotion granted to the employees *vide BOD's* order dated 24th of November, 2020 have already been acted upon and such employees have accepted their promotional

posts. Cancellation of such benefits is not by the *BOD* but by the Managing Director alone acting as a signatory for the *BOD* and hence, the cancellation of the benefits *vide* the order dated 1st February, 2021 be struck down.

It is submitted that in exercise of the Doctrine of Necessity, the *BOD* has taken a step in terms of the Order dated 24th of November, 2020 and such Doctrine of Necessity is an onetime exercise which is recognised by law. It is pointed out that the employer-employee relationship in a public sector employment is one which starts in contract and rises to a status. In the event the order of cancellation of benefits dated 1st of February, 2021 is given effect to, there will be a diminution of the status of such employees which is ultimately prejudicial to their service conditions mandating protection of status.

Having heard the parties and anxiously considering the materials placed, this Court accepts the arguments of the parties that the benefits in terms of the spouses' passes and upgradation of other existing facilities as affirmed by the Hon'ble Single Bench requires no intervention.

Therefore, the writ petitioners/the present respondents shall be entitled to receive such benefits in terms of spouses' passes and upgradation of other existing facilities as provided for by the Order dated

24th of November, 2020.

Next, this Court is of the view that with regard to the promotional benefits, the matter is an arguable one requiring deeper consideration on technical merits by the Hon'ble Single Bench itself.

At the same time, this Court is of the view that since the promotional benefits already granted by the Order dated 24th of November, 2020 which have been given effect to are required to be continued until the writ petition is finally heard on the point whether such promotional benefits are in excess of the statutory Service Rules.

This Court therefore finds that the withdrawal of the promotional benefits at this stage will have a deleterious effect on the status of the respondents/the writ petitioners in public service.

Accordingly, the *status quo* ante prevailing immediately prior to the Order dated February 1, 2021 and post the Order dated 24th of November, 2020 *qua* the respondents/writ petitioners shall continue till disposal of the writ petition.

It will be open to the parties to complete their affidavits as directed by the Hon'ble Single Bench.

Time to file Affidavit-in-opposition is extended by three weeks from this date; reply within one week thereafter.

The Hon'ble Single Bench is requested to hear

out the matter expeditiously, subject to its convenience.

FMA 822 of 2021 with **CAN 1 of 2021** stand accordingly **disposed of**.

All parties to act on a server copy of this order duly obtained 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.

(Krishna Rao, J.)

(Subrata Talukdar, J.)