

DL. September  
12. 7, 2021

Through Video Conference

W.P.S.T. 66 of 2021

State of West Bengal & ors.

Vs.

Shri Sukanta Paul & ors.

Mr. Sirsanya Bandyopadhyay,

Mr. Arka Kumar Nag,

...for the petitioners.

Mr. Arjun Roy Mukherjee,

Ms. Saheli Mukherjee,

...for the respondents no. 1 and 2.

Mr. Abhratosh Majumdar,

Mr. Rahul Kumar Singh,

...for the respondents no. 3, 4 and 7.

The writ petition is directed against an order dated January 20, 2020 passed by the West Bengal Administrative Tribunal, by which an ad interim order was passed directing the writ petitioners to maintain status quo with regard to draft gradation list published on December 19, 2019 till the next date of hearing of the Miscellaneous Application No. 13 of 2020 arising out of Original Application No. 224 of 2019.

It appears that the said interim order was mechanically extended from time to time and is still subsisting.

Mr. Sirsanya Bandyopadhyay, learned advocate appearing on behalf of the writ petitioners submits that the respondents no. 1 and 2 cannot be the persons aggrieved by the said draft gradation list as on earlier occasion they have accepted the

said gradation list. It is submitted that by reason of continuation of the interim order, the department is suffering. It is further submitted that by way of draft gradation list published in the year 2012, Shri Amit Kumar Sarkar was placed above the respondents no. 1 and 2. As such, the rectification made vide memo dated December 19, 2019 would not affect the respondents no. 1 and 2 in any manner whatsoever, since their position remained same in the draft gradation lists for the year 2012 and 2019. It is also submitted that in compliance with the order passed by a co-ordinate bench of this court on July 27, 2017 in W.P.S.T. 184 of 2016, the position of Amit Kumar Sarkar has been restored by making rectification in the draft gradation list of the year 2012 and the said rectification did not affect the position of the respondents no. 1 and 2 in the draft gradation lists.

Mr. Arjun Roy Mukherjee, learned advocate appearing on behalf of the respondents no. 1 and 2, submits that in the draft gradation list for the year 2019 juniors have been placed above the respondents no. 1 and 2 as it would be clearly evident from the draft gradation list for the year 2019 that the candidates, who have joined in the post of Assistant Engineer in the year 2000, have been placed above the respondents no. 1 and 2, who have been selected in the year 1999.

Our attention is drawn to a gradation list published on March 22, 2018. In drawing our attention to the memo being No. PHE/Estt/585/2E-42/16 dated March 22, 2018, it is submitted by Mr. Roy Mukherjee that the Assistant Secretary, Department of Public Health Engineering, Government of West Bengal, has

forwarded a copy of the final gradation list of the Assistant Engineers (Mech/Elect) borne in the cadre of the West Bengal Public Health Engineering Service with effect from January 1, 2001, which is now being sought to be nullified by publishing the gradation list in the year 2019 where the position of the respondents no. 1 and 2 in the gradation list published in the year 2018 has been altered. It is submitted that such change in the gradation list would be detriment to their status.

While granting the ad interim order of status quo the tribunal merely recorded that since the applicants, who are the respondents no. 1 and 2 before us, had contended that they would be prejudiced by the publication of draft gradation list dated December 19, 2019 in compliance with the order of the Hon'ble High Court in W.P.S.T. 184 of 2016 and the order of the tribunal itself in Original Application No. 523 of 2015 and since the applicants were not parties to the said proceedings, the respondents before the tribunal should maintain status quo with regard to draft gradation list till the next date of hearing of the miscellaneous application, that is, till February 25, 2020.

The idea behind the said order appears to be that the matter should be reviewed on the adjourned date. However, unfortunately the said application is still pending. The tribunal did not consider the well settled principles with regard to granting of an order of injunction, particularly, in respect of matters where public employment is involved. The court is required to find out apart from the prima facie case whether the order of injunction would cause undue hardship to any of the parties and the balance of convenience

and inconvenience is likely to result from the order being passed. There is no reflection as such in the order of the tribunal granting an interim order of status quo with regard to draft gradation list. By reason of the interim order large number of employees would be deprived of their service benefits. Applying the principle of comparative hardship in the facts and circumstances of the case, we are of the view that the applicants before the tribunal would have been easily compensated in the event the proceeding is ended in their favour and the tribunal could have passed an order so that finalisation of the draft gradation list for the year 2019 would not create any equity in favour of the persons, who are likely to be appointed in terms of the finalized gradation list. It could also be directed that while giving appointment on the basis of the draft gradation list, the promotees should be informed in writing that such promotion would not create any equity in their favour in the event the applicants succeed in the said proceeding.

On such consideration, we modify the interim order by giving direction to the State to finalise the draft gradation list after taking into consideration the objections, if any, raised by the respondents no. 1 and 2. In the event, the objection raised by the applicants are accepted, then suitable changes are required to be made in the gradation list to be finally published. However, if the objections are rejected and the State proposes to finalise the draft gradation list as published in the year 2019, it may proceed with the said gradation list by giving promotions to the deserving candidates, however, with clear communication in writing to such promotees that such appointments shall abide by the result of Original

Application No. 224 of 2019 and shall not create any equity in their favour.

Needless to mention that in the event the respondents no. 1 and 2 succeed before the tribunal, they will be entitled to all notional emoluments and consequential benefits.

At this juncture, Mr. Roy Mukherjee submits that Amit Kumar Sarkar has been appointed de hors the finalisation of draft gradation list for the year 2018. Mr. Bandyopadhyay, learned advocate appearing on behalf of the petitioners submits that the said draft gradation list published in the year 2018 has been cancelled and the said document has been produced before the tribunal. Mr. Roy Mukherjee contended that final gradation list as mentioned in the memo dated March 22, 2018 is still in operation and the respondents no. 1 and 2 are entitled to be placed in the seniority list in terms of finalised gradation list dated March 22, 2018. Mr. Bandyopadhyay representing the State/petitioners has vehemently denied such submission as it is clearly stated that the said gradation list was obtained by practising fraud.

However, we are not deciding the said issue in this proceeding. Needless to mention, in the event the applicants succeed and the final gradation list as published on March 22, 2018 is upheld, the tribunal would require to pass consequential orders and the State would be obliged to carry out rectification in the draft gradation list for the year 2019.

In view of the aforesaid, nothing remains to be decided in Miscellaneous Application No. 13 of 2020 and the said application stands disposed of.

As observed earlier, the final gradation list, if it affects the respondents no. 1 and 2, can be challenged in Original Application No. 224 of 2019 by amending the grounds in the original application.

The final gradation list is to be published within two weeks from date without prejudice to the rights and contentions of the respondents no. 1 and 2 as also the respondents no. 3 to 8 in this proceeding, after considering the objections, if any, raised by the respondents no. 1 and 2. The tribunal is requested to dispose of Original Application No. 224 of 2019 within a period of six months after reopening of the court after puja vacation. In disposing of the original application, the tribunal shall permit the respondents no. 1 and 2 to challenge such gradation list if it affects their legal right.

The writ petition is, thus, disposed of without, however, any order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

**( Soumen Sen, J. )**

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**( Hiranmay Bhattacharyya, J. )**

