

Item- 5 20-07-2021

WP.ST 136 of 2019

Kalidas Kushari
Versus
The State of West Bengal & Ors.

sg

Ct. 16

(Through Video Conference)

Mr. Piush Chaturvedi, Adv.
Mr. Tarun Kumar Das, Adv.
Mr. Pradip Paul, Adv.
...for the petitioner

Mr. Sirsanya Bandyopadhyay, Adv.
Ms. Sudeshna Das Majumder, Adv.
...for the State

The petitioner is aggrieved by the order dated 18th July, 2019 passed by the learned West Bengal Administrative Tribunal in O.A. No. 125 of 2016. In the said proceeding the applicant who is the writ petitioner in this proceeding, has prayed for direction upon the respondent authorities for granting promotion to the applicant in the post of Upper Division Clerk (in short 'UDC') in terms of the gradation list prepared under Memo No. 628/Estt. dated 8th August, 1996 and for implementation of G.O. dated January 19, 1996 in terms of the order dated 3rd July, 2009 passed by the learned West Bengal Administrative Tribunal in O.A. No. 1094 of 2004.

The sheet anchor of the claim of the petitioner is the order passed in O.A. No. 1094 of 2004. The writ petitioner was initially appointed as Mohurrior under the establishment of the Special Land Acquisition Officer in the District of South 24 Parganas in the year 1984. He was re-designated as Lower

Division Clerk (in short 'LDC') with effect from 1st July, 1989 in terms of the Government Order dated 8th August, 1996 issued by the Collector, South 24 Parganas in compliance with the direction laid down in Memo No. 861-F dated 19th January, 1996 of the Finance Department, Government of West Bengal, which was issued in compliance with the direction given by the Hon'ble Supreme Court in the case of *State of West Bengal & Ors. vs. S.C. Das & Ors.* (CA No. 11566 of 1995 arising out of SLP (C) No. 16867 of 1994). The applicant got promotion to the post of UDC in the establishment of Collector, South 24 Parganas with effect from 1st May, 2008 in terms of the order issued by the Collector, South 24 Parganas on 1st October, 2008.

It is interesting to note that the issue canvassed before the learned Tribunal was based on an order dated 19th December, 2013 passed in O.A. No. 925 of 2013, in which Sri Ashoke Kumar Paul prayed for service benefit by granting promotion to the post of UDC to him in terms of the order dated 1st October, 2008 issued by the Collector, South 24 Parganas. In the said proceeding, Mr. Paul alleged that the issue decided by the learned Tribunal in O.A. No. 1094 of 2004 in which the order of promotion for 44 directly recruited LDC to the post of UDC was issued by the Collector, South 24 Parganas under Memorandum dated June 11, 2004, was set aside and the authorities concerned were directed to consider the re-designated LDCs and directly recruited LDCs of the Collectorate for promotion to the post of UDC on the basis of 1:1 as mandated under Memorandum No. 861-F dated January 19, 1996.

It is an admitted fact that Ashoke Kumar Paul is much

senior to the applicant as per the gradation list and was not granted promotion to the post of UDC by the order dated 1st October, 2008 issued by the Collector, South 24 Parganas. The petitioner has not contemplated to challenge the gradation list of 1st October, 2008. The petitioner was promoted to the post of UDC with effect from 1st June, 2008 in terms of the order dated 1st October, 2008 issued by the Collector, South 24 Parganas. The said order of promotion was apparently issued not only in terms of the Memorandum No. 861-F dated 19th January, 1996 issued by the Finance Department, Audit Branch, Government of West Bengal but also in compliance with the order passed by the Hon'ble Supreme Court in *CA No. 11566 of 1995* arising out of *SLP (C) 16867 of 1994 (State of West Bengal vs. Subal Chandra Das & Ors.)*.

It further appears from record that by virtue of an order of the Tribunal passed in O.A. No. 925 of 2013, Ashoke Kumar Paul was granted promotion to the post of UDC with effect from 1st September, 1997. The present applicant is junior to Ashoke Kumar Paul in the gradation list. In view thereof, he cannot claim that he is similarly circumstanced with said Ashoke Kumar Paul, when the name of Ashoke Kumar Paul appears in the serial no. 5 of the gradation list, whereas the name of the applicant appears in serial no. 36 of the said gradation list. In absence of any challenge being thrown to the alleging supersession in the matter of grant of gradation list for promotion to the applicant, we feel that the learned Tribunal, by relying upon the decisions of our Court in the case of *Sristidhar Biswas & Anr. vs. State of West Bengal & Ors.* reported in 2001

(1) *CHN 524* and the judgment of the Hon'ble Supreme Court in *Kakali Basu Chatterjee vs. The State of West Bengal & Ors.* (in Special Leave to Appeal (C) No. 11597 of 2018), denied such benefit to the writ petitioner. It is elementary that any discrimination must emanate from the record and it is the duty and responsibility of the applicant to show that there has been discrimination. The petitioner cannot ride on the shoulder of Ashoke Kumar Paul to obtain a benefit after a lapse of almost eight years since the preparation of the initial gradation list without making out any case of supersession or illegalities in the preparation of the gradation list.

We feel that the learned Tribunal has rightly observed that the applicant has not challenged the order of promotion to the post of UDC which was issued in compliance with the aforesaid circular and the order of the Hon'ble Supreme Court as mentioned above. The applicant has already been promoted to the post of Head Clerk with effect from 1st August, 2015. The applicant appears to have approached the learned Tribunal on 29th January, 2016 i.e. almost eight years after grant of his promotion to the post of UDC. There has been no explanation offered for such long delay. For the sake of argument, even if it is contented and held that he may have a legitimate claim, it would cause prejudice to all the persons who have been promoted in the meantime to the post of UDC from the year 2008.

On such consideration, we do not find any reason to interfere with the order passed by the learned Tribunal.

The writ petition stands dismissed.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)