

IN THE HIGH COURT AT CALCUTTA

(Appellate Side)
(CONSTITUTIONAL WRIT JURISDICTION)

Reserved on: 07.01.2021

Judgment on: 04.03.2021

WPST 108 of 2020

Sujyoti Kumar Chattopadhyay

...Petitioners

-versus-

The State of West Bengal & Ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE ANIRUDDHA ROY**

Present:- Mr. Tapash Kumar Bhattacharyya and
Mr. Aviroop Bhattacharyya, Advocates

...for the petitioners

Mr. Swapan Kumar Datta and
Mr. Dipankar Das Gupta, Advocates

...for the respondents

ORDER

1. This writ petition had been filed challenging the impugned order dated November 21, 2019 passed by the West Bengal Administrative Tribunal (for short, 'the Tribunal') in OA No. 1218 of 2016 (Sujyoti Kumar Chattopadhyay -versus- The State of West Bengal whereby OA No. 1218 of 2016 (for short, the Original Application) filed by the writ petitioner, was dismissed.
2. On or about April 3, 1968 the writ petitioner was appointed as Milk Recorder in the Department of Animal Husbandry, Government of West Bengal and subsequently was promoted and designated as Director of Animal Resources and Animal Health, West Bengal. The petitioner was promoted as an Upper Division Clerk on February 3, 1990 w.e.f. April 1, 1981. On and from April 3, 1989 he was placed in pay scale of

₹1260-2610 by way of conferment of Carrier Advance Scheme (C.A.S) benefit after completion of 20 years of service. The writ petitioner claims that he is entitled to get 25 years Carrier Advancement (C.A.) benefit, which the petitioner was denied without any reason being assigned to him. The writ petitioner was further discriminated by the State employer as he was not granted the scale of U.D.C. i.e. ₹4000-8850 after grant of the C.A.S. Benefit on completion of 25 years of service, though the same was granted to other similarly placed employees. The writ petitioner claims that he was eligible for the post of Head Clerk in his department during his period of service.

3. The writ petitioner retired from service on March 31, 2006 after serving the State employer for 38 years without any interruption. The petitioner did not suffer any complaint during his service carrier.
4. Though the said post of Head Clerk in the department was lying vacant for substantial period of time, the petitioner being the most eligible candidate during the said period was not promoted to the same.
5. Further grievance of the writ petitioner is that another similarly placed employee namely Gauri Chakraborty, who retired from service on July 31, 2010, was promoted to the post of Head Clerk with retrospective effect vide office order dated December 13, 2012 issued by the Director, Animal Husbandry Veterinary Service West Bengal. The writ petitioner despite having requisite qualification was denied such promotion and the consequential benefits due to him. Thus, the petitioner was discriminated. Ventilating his grievance the petitioner filed several representations before the respondent employer from November 20, 2012 to December 15, 2012 but none was responded to.
6. Finding no other alternative the writ petitioner filed Original Application before the Tribunal on December 5, 2016.
7. In the said Original Application following reliefs were claimed:-

“(a) A direction upon the respondents to promote the applicant to the post of Head Clerk with retrospective

effect and to pay the applicant all consequential service benefits accordingly.

(b) A direction upon the respondents to pay the applicant 25 years C.A.S. Benefits w.e.f. 01.04.1994 as per revised order of C.A. Benefits scheme and to pay all consequential service benefits after fixation of ROPA and also low pensionary benefits accordingly.”

8. Mr. Tapash Kumar Bhattacharyya, with Mr. Aviroop Bhattacharyya, Learned Advocates appearing for the writ petitioner submitted that the State respondent, who was the employer of the writ petitioner, had acted in a discriminatory manner by denying the petitioner promotion to the post of Head Clerk with retrospective effect and grant C.A.S. Benefits w.e.f. April 1, 1994 under the revised order of C.A. Benefits Scheme, despite the writ petitioner having the requisite qualifications and fulfilling other requirements. Similarly placed candidate was granted such promotion in December, 2012 whereas the writ petitioner being a senior employer than the said person was illegally denied such promotion. The writ petitioner retired in March 2006, whereas the said similarly placed candidate who was granted the promotion had retired in July, 2010. The writ petitioner could have been granted promotion as the said post of Head Clerk remained vacant at the relevant point of time.
9. It was submitted on behalf of the writ petitioner that by the said impugned order dated November 21, 2019 the Learned Tribunal erred in law and also on facts while dismissing the Original Application filed by the writ petitioner, without appreciating the provisions of the applicable law. The writ petitioner submits that the impugned order is clearly perverse and the Tribunal while considering the Original Application failed to take into consideration the relevant material on record and failed to appreciate the material placed before it showing the illegal, arbitrary and discriminatory use of power and authority by the State employer.

10. Mr. Swapan Kumar Dutta, Learned Senior Advocate, and Mr. Dipankar Dasgupta Additional Government Pleader appearing with Mr. Dipankar Dasgupta, advocate, at the outset submitted that the application filed before the Learned Tribunal was clearly and hopelessly barred by the law of limitation as provided under Section 21 of the Administrative Tribunals Act (for short, the said Act). He drew attention of this Court to the issues framed by the Tribunal, as mentioned in the said impugned order, of which, the first issue was on the point of limitation and the second was as to the entitlement of the petitioner for grant of promotion to the post of Head Clerk with retrospective effect together with the consequential reliefs.
11. Mr. Dutta, Learned Senior Counsel, submitted that the petitioner retired from service on March 31, 2006 and filed the Original Application before the Tribunal on December 5, 2016, which was after a period of about more than 10 years. He submitted that the explanations sought to be offered by the petitioner in support of such delay in filing the Original Application are, firstly, not to be taken into any consideration as the relevant provision of the statute does not permit to recognize such explanations being the sufficient cause for condonation of delay and secondly, the explanations are also not tenable in law. Mr. Dutta, further submits that even otherwise the writ petitioner was also not discriminated by his State employer and he had received all the service benefits during his employment and after his retirement to which he was entitled to. Therefore, he submits that, the impugned order passed by the Learned Tribunal is just, lawful and should not be interfered with.
12. Mr. Tapash Kumar Bhattacharyya, appearing for the writ petitioners in reply to the submissions made on behalf of the State respondents submitted that, the said Original Application filed before the Tribunal was not barred by law of limitation as the writ petitioner made various

representations during the period from November, 2012 to December, 2012 which were never redressed by the state respondents and as such the cause of action for the writ petitioners continued.

13. Mr. Bhattacharyya, in support of his contention, that submission of representations by the writ petitioner saves the limitation in filing the Original Application before the Tribunal as the cause of action continues, in reply, relied upon a judgment of the Hon'ble Supreme Court *in the matter of: K.C. Sharma & Ors. -versus- Union of India & Ors., reported in (1997) 6 Supreme Court Cases 721.*
14. From perusal of the material before this court and after hearing the parties, it is evident, that at least three dates are extremely relevant for consideration and the same are, the date of retirement of the petitioner being March 31, 2006, the date of the Office Order being December 13, 2012 issued by the Director of the concerned department where under the said Smt. Chakraborty who was allegedly a similarly placed candidate was promoted to the post of Head Clerk with retrospective effect and the third relevant date being December 5, 2016 when the writ petitioner filed the said Original Application before the Tribunal. From the above it is, thus, evident that the writ petitioner waited for more than ten years from the date of his retirement to ventilate his grievance before the Tribunal to avail of the remedy provided under the law. Meanwhile from time to time during the period from November to December, 2012 the writ petitioner made representations before his employer for redressal of his grievance. No heed was paid thereto by the concerned employer.
15. The relevant provision of the Administrative Tribunal Act, 1985 (for short, 'the said Act') contains a provision for limitation for filing an Original Application before the Tribunal. Section 21 of the said Act reads as follows:-

“ 21. Limitation.-

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

16. From a true and proper construction of the aforesaid provision of section 21 of the said act it appears, that in the facts and circumstances of the case the writ petitioner would have got the benefit of limitation for a cumulative period of maximum one year and six months for filing Original Application before the Tribunal. One year and six months from the date of its representation, in case if is not disposed of by the concerned employer or one year from the final order of redressal of grievance. In the instant case, the petitioner admittedly applied before the Tribunal far beyond such period and more specifically after more than a period of ten years from retirement.
17. The Original Application having been filed more than after ten years of retirement of the petitioner, seeking certain benefits, which according to

the petitioner were due to him during his service carrier deserves to be dismissed being barred by limitation in terms of section 21 of the said Act.

18. The judgment of the Hon'ble Supreme Court *in the matter of: K.C. Sharma and others (supra)*, relied upon on behalf of the writ petitioner is clearly distinguishable in the facts of the instant case. There, the Original Applicants before the Tribunal were aggrieved by a notification dated December 5, 1988 which had adversely affected the monetary service benefit of the Original Applicants therein. The said notification was challenged initially before the Tribunal, which was declared to be invalid. The matter ultimately travelled up to the Apex Court. The Apex Court by its judgment dated July 25, 1997 upheld the decision of the Tribunal holding the said notification to be invalid. The original applicants therein made representation before the Railway Administration. The employer having failed to redress the grievance, application was filed before the Central Administrative Tribunal and the same was dismissed as barred by limitation. However, since the Apex Court was pleased to affirm the decision of the Tribunal that the said notification was invalid by its judgment dated July 25, 1997, on the same day passed the said order, relied upon by the writ petitioner setting aside the impugned judgment of the Tribunal by which the Original Application filed by the original applicants was dismissed on the ground of limitation. In the present case, the Original Application filed by the writ petitioner on the face of it was barred by the law of limitation in terms of Section 21 of the said Act as held by the Learned Tribunal in its impugned order, being a delayed application filed by the writ petitioner. Thus, the ratio of the said judgement/order has no application in the present case.
19. Submission of representations time and again by an aggrieved litigant before the authority and its consideration or non consideration by such

authority, will not extend the limitation prescribed under the statute or erase the same. Repeated representations will not keep the issues alive. A stale or a dead issue/dispute cannot be renewed, even if it remains not considered or even considered by the concerned authority. The provisions laid down under Article 14 of the Constitution of India, in a case of that nature will not be attracted, as it is well known that, the law leans in favour of the those who are alert and vigilant. Even equality must be claimed at the right juncture and not on expiry of the prescribed time for limitation or after lapse of a reasonable time.

20. In the facts and circumstances of the instant case, to give promotion to a similarly placed candidate depriving or superseding the eligible one as claimed by the writ petitioner should have been challenged immediately without causing inordinate delay beyond the period of limitation prescribed under the statute. Anyone who sleeps over his rights suffers the consequences therefor. Accordingly, the relief of the petitioner was rightly rejected by the Learned Tribunal.
21. In view of the fore going discussions and the reasons stated above, the present writ petition being W.P.S.T. 108 of 2020 stands dismissed. The order of the Tribunal is not interfered with.
22. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)

I agree.

(Rajesh Bindal, J.)

