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Court
No. 11 07.03.2022
G.S.Da
s

MAT 238 of 2022
With
CAN 1 of 2022
Supriya Gangopadhyay & Ors.
-vs-
Coal India Limited & Ors.

(Via Video Conference)

Mr. Soumya Majumder
Mr. Victor Chatterjee
Mr. Barnamoy Basak

... for the Appellants

Mr. Varun Kedia

... for the respondent no.1

Mr. Manik Das

... for the respondent nos. 6 to 8

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 order of the Hon'ble Single Bench dated 18th February, 2022 in the writ petition.

The appellants, who are the writ petitioners, challenge the promotional exercise from the non-executive to the executive grade conducted by the respondents/Coal India Limited (*CIL*) and its subsidiaries, one of which, the Eastern Coalfields Limited (*ECL*), is represented before this Court.

The appellants/the writ petitioners argue that the Hon'ble Single Bench ought to have granted an interim protection to them on the ground that the promotional

exercise from the non-executive to the executive grade is based on the principle of seniority-cum-merit and therefore, the consideration of the private respondents on the basis of their position in the non-executive Grade A-1 which has been carved out of the feeder Grade - A defeats the fundamental promotional principle of first seniority and then merit.

The attention of this Court is drawn by Mr. Mazumdar, Learned Counsel appearing for the appellants/writ petitioners, to the eligibility conditions governing the promotion in issue *vide* Notification of the *CIL* dated 17th of December, 2020.

It is submitted that the eligibility conditions only refer to three years experience in the non-executive Grade-A. However, the determination of seniority by referring to a category within Grade-A, which is A-1, makes the basis of ascertainment of the seniority violative of the fundamental promotional policy of *CIL* and its subsidiaries which is first seniority and then merit.

It is submitted that although a change in the composition of Grade-A was sought to be introduced by *CIL* *vide* its Notification dated 28th of November, 2003 by creating a category A-1 within Grade-A, such promotional policy of 2003 was not given effect to for all these years till the 21st of May, 2020. The reason for keeping the 2003 promotional policy on hold was the pendency of a challenge to the policy before the Hon'ble Chhattisgarh High Court and, on withdrawal of the writ petition before the Hon'ble Chhattisgarh High Court, the present promotional exercise is being carried out beginning May, 2020.

The further attention of this Court is drawn to the Memorandum of *CIL* dated 21st of May, 2020 whereby the seniority for the purpose of promotion from the non-executive grade to the executive grade is sought to be confined only to those candidates such as the private respondents within Grade-A1.

It is, accordingly, submitted that confining the promotional exercise to employees such as the private respondents in Grade-A1 on the purported ground of A1 being senior to A defeats the fundamental promotional basis for going higher up from the non-executive to the executive grade, which is seniority within Grade-A alone.

Per contra, Learned Counsel for *ECL*, Mr. Manik Das and for *ECL*, Mr. Varun Kedia, submit that the promotional policy was challenged in 2003 (*supra*). The 2003 Notification dated 28th November, 2003 clearly refers to creation of a superior Grade A-1 out of Grade-A and the mode of promotion is by Departmental Promotion Committees (*DPC*).

It is further submitted that the appellants/the writ petitioners accepted the promotional policy of 2003 recognising the co-existence of both Grade –A and Grade-A1 and, having done so, are hit by the principle of Estoppel from challenging the promotional exercise of 2020 on the basis of the accepted promotional policy of 2003.

It is submitted that the appellants participated in the promotional exercise pursuant to an advertisement dated 17th of December, 2020 and, after preparation of the promotional list as well as its scrutiny, the appellants were placed below the vacancy limit of 276.

Relying on the unreported authority of a judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos. 2491-2492 of 2021 (Union of India and Others -vs- N Murugesan)***, the respondents submit that the appellants/the writ petitioners cannot enjoy an interim order now, particularly when such interim order will have the effect of unsettling an all - India promotional exercise under *CIL* and its subsidiaries.

Having heard the parties and anxiously considering the materials placed, this Court *prima facie* finds that although the contention of Mr. Mazumdar referring to the advertisement dated 17th of December, 2020, to the effect that the eligibility criterion of three years in Grade-A requires consideration; at the same time, having referred to the co-existence of the two grades *A-1* and *A* simultaneously from 2003 onwards, such eligibility may be considered to be a minimum eligibility condition and reference to Grade-A would imply and mean a reference to Grade-*A1* within *A* also.

This Court cannot be oblivious of the fact that this writ petition has been filed after the publication of the merit list in which the appellants/the writ petitioners participated and, particularly from the averments at paragraphs 3 and 4 of the writ petition, it transpires that the existence of Technical *A-1* Grade in the Survey Discipline as a Grade in respect of which the feeder grade is Technical Grade *A* stands recognised by the appellants

For the benefit of this discussion the specific pleadings at paragraphs 3 and 4 of the writ petition are set out below:

“3. Your petitioners state that Technical B Grade (Deputy Surveyor) is the entry level post in the Survey Discipline in the various subsidiaries under the respondent no.1. All the petitioners joined in the Technical B Grade between 09.03.2002 and 18.07.2008. Upon completion of 3 years of qualifying service in Technical B Grade the petitioners were promoted to Technical A Grade (Surveyor) between 27.03.2005 and 13.12.2012. The said promotion from Technical Grade B to Technical Grade A is based on the principle of seniority. In this regard a copy of the revised notification dated 18.12.1997 prescribing the parameter for promotion in the Survey Cadre is annexed hereto and marked as “P-1”. Copies of the promotion orders of the promotion petitioners are annexed hereto and marked as “P-2” collectively.

4. Your petitioners state that the highest non-executive grade in Survey Discipline is Technical A-1 Grade (Senior Surveyor) for which the feeder grade is Technical Grade A. The modality of promotion from Technical A to Technical A-1 had been arrived at on the basis of National Coal Wage Agreement VI and was subsequently communicated to all the subsidiaries by an office order dated 28th November, 2003 for implementation of the same. The Memorandum of Settlement provides that promotion in A-1 grade should be given to all those who are in Grade A for

5 years. Therefore the promotion from A to A-1 is an automatic promotion and all incumbents serving 5 years in grade A shall be eligible to be promoted to A-1 grade from the date of implementation that is 28.11.2003. Further the order dated 28.11.2003 grants 1 year relaxation in the qualifying service period for the candidates who are matriculate with diploma. Therefore, the petitioners ought to have been promoted to A-1 grade between 2009-2010 to 2016-2017. Copies of the office order dated 28th November, 2003 and the relevant portion of the National Coal Wage Agreement VI are annexed hereto and marked as "P-3" collectively."

Therefore, having recognised the creation of Grade-A-1 by way of promotion from Grade-A throughout from 2003 till this date, this Court, at the first stage, is persuaded not to accept the contention of the appellants/the writ petitioners that they have an absolute right to claim an interim protection. However, such interim protection can be qualified by conditions for the following reasons.

This Court finds that the appellants/the writ petitioners ventilated their grievances at the first available opportunity when the impugned promotional policy was enforced by way of a Memorandum dated 21st May, 2020. Therefore, the issue raised by the appellants/the writ petitioners of seniority for the promotion covering Grade-A alone cannot *ipso facto* mean Grade-A1, requires a complete interpretative examination before a judicial forum.

Having regard to the above discussion, this Court remands the matter before the Hon'ble Single Bench to be ultimately heard out on Affidavits with the interim direction that the promotional exercise *qua* the writ petitioners/the present appellants shall abide by the result of the writ petition.

It will be open to the appellants/the writ petitioners to claim equity at the appropriate stage in the event of grant of final relief(s) by Court.

The respondents/*CIL* and its subsidiaries including *ECL* shall conduct the promotional exercise upon declaration of the pendency of the writ petition and the fact that the promotion of the persons found eligible in the promotional exercise shall be governed by the ultimate decision in the writ petition.

Since the private respondents have not contested this appeal, the terms of this order shall be given appropriate publicity/notice by *CIL qua* the promotional exercise in issue.

It is however clarified that the opinion expressed in this order are necessary only for considering the prayer for interim relief by the appellants/the writ petitioners and the Hon'ble Single Bench shall not be constrained to decide the issue otherwise on merits.

In view of the above directions, it would be superfluous to keep the appeal and the application pending.

MAT 238 of 2022 and CAN 1 of 2022 stand thus disposed of.

All parties to act on the gist of the communication of

this order.

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 Photostat 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.)