

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Saugata Bhattacharyya

W.P.A. 3789 of 2019

Sri Goutam Ghosh & Ors.

-vs-

Kolkata Metropolitan Development Authority (KMDA) & Ors.

For the Petitioners : Mr. Tulsidas Ray,
Mr. Tirthankar Ray

For the Respondent
Nos.5 to 19 & 21 to 29 : Mr. Arup Kumar Lahiri,
Mr. Udayan Dutta

For the KMDA : Mr. Satyajit Talukdar,
Mr. Abhisek Sarkar

For the State : Mr. Narayan Chandra Bhandari,
Ms. Sujata Ghosh

Heard on: 24.03.2022

Judgment on: 24.03.2022

Saugata Bhattacharyya, J.:

Writ petitioners have approached this Court with this writ petition seeking benefit of promotion which has been

extended to 25 Accounts Assistants as described in order dated 8th January, 2019 with effect from 1st January, 2019.

Mr. Tulsidas Roy, learned advocate appears on behalf of the writ petitioners and submits that the writ petitioners were appointed on compassionate ground on different dates starting from 30th September, 2009 and the last appointment was made in favour of the writ petitioner on 10th August, 2012. The dates of appointment of the writ petitioners have been delineated in paragraph 2 of the writ petition and in addition thereto the appointment letters have been annexed to this writ petition from page 21 up to page 38. On perusal of this writ petition it appears and it has also been contended on behalf of the writ petitioners that they were appointed in the posts of Accounts Assistant in the Pay Band of Rs. 7100-37600/-(PB-3) with a grade pay of Rs. 3,600/- corresponding to unrevised scale of pay of Rs. 4000-8850/-. It has further been submitted that though under the heading 'Sub' (sic) in the appointment letter the appointment of the petitioners was described as appointment in Group "C" but on mere reading of contents of the appointment letters it goes to show that they were appointed in the posts of Accounts Assistant with grade pay of Rs. 3,600/- which is applicable for an entrant in

Group-B cadre not in Group-C cadre. Since petitioners were appointed on probation for two years which could have been extended for another one year, subsequently the appointment of the petitioners got confirmed vide order dated 16th July, 2012 issued by the Secretary Kolkata Metropolitan Development Authority (for short “KMDA”). One list containing names of candidates is also attached to such order of confirmation dated 16th July, 2012 wherefrom it appears that five (5) writ petitioners have been confirmed on the dates as indicated against their names and the candidates who were last confirmed was on 9th April, 2012. Subsequently by another order dated 19th March, 2013 Secretary of KMDA confirmed two of the writ petitioners with effect from 13th July, 2012. It is submitted on behalf of the petitioners that vide order dated 8th January, 2019, (25) twenty five Accounts Assistants were promoted to the post of senior Accounts Assistants with effect from 1st January, 2019 and according to the petitioners all these twenty five (25) Accounts Assistants are juniors to the writ petitioners in consideration of the respective dates of appointment of the writ petitioners in the posts of Accounts Assistant. In this regard statement has been made in paragraph 12 of the writ

petition wherein it has been specifically stated that two Accounts Assistants namely Amalendu Bikash Mallick, being the respondent no.8, and Smt. Gopa Som, being the respondent no.6, were appointed as Accounts Assistants on 14th August, 2012 and other private respondents were appointed long after the appointment of the writ petitioners in the said post of Accounts Assistant. It is the specific contention of the petitioners that since they are equally placed and is working as Accounts Assistants at the material point of time like the private respondents therefore ignoring their seniority the private respondents should not have been promoted to the posts of senior Accounts Assistant.

Mr. Satyajit Talukdar, learned advocate, appears on behalf of KMDA being the principal respondent and has submitted upon placing reliance on the appointment letter issued in favour of the writ petitioners that though the writ petitioners were appointed as Accounts Assistants which is Group-B post and granted grade pay of Rs. 3,600/- which is applicable to the employees who are holding Group-B post but petitioners should have been appointed in the posts classified under Group-C. That being the position, in the appointment letter under 'Sub' (sic) it has been specified that

appointment of the petitioners were made in the base level that is Group-C. It is also the contention of the KMDA that the mistake which occurred at the time of appointment of the petitioners needs to be rectified. It is stated that on behalf of the KMDA a letter dated 2nd March, 2017 has been sent to the Special Secretary to the Government of West Bengal, Urban Development Department seeking clarification with regard to the appointment of the writ petitioners as Accounts Assistants who have been confirmed. However, it has been submitted till date no clarification has been received by the KMDA in response to such letter dated 2nd March, 2017. In the same breath it has also been submitted on behalf of the KMDA that in connection with the one candidate namely Surajit Das, KMDA has received letter dated 2nd February, 2015 from the Joint Secretary to the Government of West Bengal whereby it has been clarified that the appointment of Sri Das should have been corrected by appointing him in a Group-C post and it has been further clarified specifically by the Joint Secretary that such demotion from Group-B post to Group-C post in respect of service of Sri Das can be made as he was not confirmed at the relevant point of time.

Having heard the submission made on behalf of the KMDA this Court posed question to Mr. Talukdar, learned advocate, why steps could not be taken for making necessary corrections with regard to appointment of the writ petitioners at the time of their confirmation but this Court is unable to get any satisfactory answer except the submission being made that letter has been sent on 2nd March, 2017 to the concerned authority of the State Government seeking guidelines and clarification.

State respondents are represented by Mrs. Sujata Ghose, learned advocate. The State respondents have not filed any affidavit controverting the averments made by the writ petitioners in the present writ petition.

However, private respondents are represented by Mr. Arup Kumar Lahiri, learned advocate, it is submitted that the writ petitioners were wrongly appointed in the posts of Accounts Assistant and the appropriate course which ought to have been taken by the KMDA was to appoint them in Group-C post. It has further been contended that now by filing this writ petition petitioners are desperately trying to take advantage of the mistake which has been committed by KMDA while appointing them in Group-B post. Therefore,

according to the private respondents they are not similarly placed like the writ petitioners since they are fresh entrants in the Group-B cadre and they are required to be treated separately and there is no anomaly in promoting them to the higher post ignoring the seniority of the writ petitioners in the cadre of Accounts Assistant.

This Court has heard the learned advocates representing the parties and has perused the relevant documents available on record. It is indisputable that the writ petitioners excepting the petitioner no.8 were confirmed on successfully completing probationary period in the posts of Accounts Assistant by two separate orders of KMDA dated 16th July, 2012 and 19th March, 2013. It has also been found from record and the pleadings that petitioner nos. 1 to 7 are senior in the cadre of Accounts Assistant to the private respondents. It further appears that Amalendu Bikash Mallick, being the respondent no.8, and Smt.Gopa Som, being the respondent no.6, were appointed in the posts of Accounts Assistant on 14th August, 2012 which appears to be after the date of confirmation of some of the petitioners.

This Court is at a loss how after placing two groups of employees, who are appointed in the posts of Accounts Assistant, on the same platform can be further classified while giving benefit of promotion by promoting them from the post of Accounts Assistant to the post of Senior Accounts Assistant. It is trite law that after putting two groups of employees on the same platform there can be no further classification amongst the equals.

In this regard reliance is placed on judgment of the Apex Court, reported in AIR 1999(SC) page 647 (State of Punjab & Ors. -vs- Dr.R.N.Bhatnagar & Anr.), in paragraph 10 it has been observed that “It is well settled that once recruitment is made, from two sources i.e., departmental promotees and direct recruitment from open market and once the concerned candidates enter into any cadre through entry point reserved for them, they get fused and blended into one single cadre and their birth marks get obliterated”.

Same view has also been reiterated by the Apex Court in the judgment reported in (1999) 4SCC page 756 (Kamalakar & Ors.-vs- Union of India & Ors.) in paragraph 12.

KMDA during course of hearing of this writ petition has not been able to impress upon this Court that on what basis such classification has been made except the submission being made to the extent that petitioners were appointed under compassionate ground whereas private respondents were appointed as new entrants. Therefore, this Court finds there is no bar in giving promotion to the candidates who are appointed on compassionate ground if they are found otherwise eligible.

In the present case at the time of issuing promotional order dated 8th January, 2019 indisputably writ petitioners were senior in the cadre of Accounts Assistant to the private respondents therefore before giving effect to the promotion of the private respondents writ petitioners' case ought to have been considered by the respondent authorities which has not been done in the present case.

In the above conspectus this Court directs the concerned authorities of KMDA to give the benefit of promotion to the writ petitioners excepting writ petitioner no.8 from 1st January, 2019 notionally and actual benefit to be accrued from April, 2022 by promoting them to the posts of Senior Accounts Assistant. The benefit of this order shall not be

extended to the writ petitioner no. 8 since till date he has not been confirmed in the post of Accounts Assistant.

The above exercise shall be completed by the concerned authority of KMDA within a period of eight (8) weeks from the date of communication of this order.

With the above direction the writ petition stands disposed of. However there shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)