

2.9.2022
Sl.No.4
sn

WPA 9841 of 2022

Tapan Kumar Bhattacharya
Vs.
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharyya
Mr. Tarapada Halder
Ms. Poulami Bhowmick
..for the petitioner

Mr. J. L. De
Ms. Smita Das Dey
..for the State

Mr. Tapas Kr. Mondal
..for the Zilla Parishad

Mr. Mir Anuruzzaman
.for the respdt. 7

The petitioner retired from the post of Sub Assistant Engineer of South 24 Parganas Zilla Parishad. The petitioner retired from service on May 31, 2020. The petitioner applied for payment of his retiral benefits in the prescribed form and described himself as the Sub Assistant Engineer.

The petitioner moved this Court on an earlier occasion claiming appointment and pay protection. By orders of this Court, the petitioner was given appointment and pay protection. The petitioner continued in service and thereafter retired. The Pension Payment Order was issued and the pension was fixed in terms of the order of this Court. The same has been released in favour of the petitioner.

It is submitted by the petitioner that although benefits under the Carrier Advancement Scheme

(CAS) with effect from July 22, 2014 was granted in his favour, the promotion to the post of Assistant Engineer was denied. The petitioner claims such promotion with effect from July 22, 2014 and notional fixation of his pay, as also the retirement benefits upon such pay fixation.

Learned advocate for the Zilla Parishad submits that although an order granting CAS benefits was passed in favour of the petitioner with effect from July 22, 2014, the petitioner was not willing to avail of such benefit. There was no vacancy in the post of Assistant Engineer in the Zilla Parishad, to which the petitioner could be promoted.

It is the specific contention of the petitioner that when the petitioner completed 10 years of service, a vacancy to the post of Assistant Engineer in the Zilla Parishad had arisen. The petitioner was entitled to the said post. The promotion was granted to the respondent no.7, illegally.

According to the respondent no.7, the promotional post of Assistant Engineer was a reserved post as per the 50 point roster and the respondent no.7 was granted the promotion, as a reserved candidate.

Learned advocate for the Zilla Parishad relies on an order dated October 20, 2009 issued by the Additional Executive Officer, Zilla Parishad &

Additional District Magistrate, South 24 Parganas. The order stated that the temporary appointment of the petitioner to the post of Sub Assistant Engineer (Civil) would take effect from the date of his joining. Post facto police verification was allowed as a special case. It was further ordered that the petitioner would draw salary @ Rs. 9,000/- in the pay band – 4, plus grade pay of Rs.4,400/- with other allowances, as admissible. The petitioner was placed on probation for three years. The petitioner accepted the said order and the offer.

Subsequently, on September 29, 2020, the Additional District Magistrate and Additional Executive Officer, South 24 Parganas Zilla Parishad, passed an order, stating that the petitioner would be treated as a Sub-Assistant Engineer (Civil) with effect from July 22, 2004 and all the service benefits would be given.

Mr. De, learned advocate for the State respondents submits that pay fixation of the petitioner was made as per the order of the Court and on the application of the petitioner. That the issues which have been raised in this writ petition are hit by the principles of constructive *res judicata*.

Having heard the learned advocates for the respective parties, this Court finds that the only controversy herein, is whether a post of Assistant

Engineer was vacant and whether the petitioner was entitled to be promoted to the post of Assistant Engineer in the Zilla Parishad, prior to the date of his retirement.

The authorities recognizing that the petitioner was entitled to get CAS benefits after 10 years in the post of Sub-Assistant Engineer, granted the same. The authority rejected the claim for promotion. The reasons for such rejection ought to have been disclosed. The petitioner had not accepted such decision. It is also submitted that the pay fixation has not been made upon counting the CAS benefits granted to the petitioner. It is further submitted that if a post of Assistant Engineer for general category candidates was vacant during the tenure of service of the petitioner, the authorities ought to have granted such promotion to the petitioner in accordance with law, instead of granting benefits under CAS. It appears that litigations with regard to the service of the petitioner, were pending for several years. It has been specifically contended by the respondents that till now, benefits were given to the petitioner as per the directions of this Court and the same were accepted by the petitioner. None of the Courts had directed grant of promotion. The petitioner was also not aggrieved by the orders of the court.

The Pension Payment Order was issued and the petitioner has been granted the retirement benefits as per the order of the court.

Under such circumstances, this writ petition is disposed of with a direction upon the District Magistrate & Ex Officio Executive Officer, South 24 Parganas Zilla Parishad, to grant a hearing to the petitioner and dispose of the representation of the petitioner dated March 16, 2020 by passing a reasoned order, in accordance with law. All interested parties shall be heard, including the Additional District Magistrate & Ex Officio Additional Executive Officer, who had passed the order granting the CAS benefit, and by denying the claim for promotion.

The above exercise shall be completed within a period of two months from the date of communication of this order. A reasoned order shall be passed and communicated to all.

Parties are at liberty to raise all points before the District Magistrate, including the point of constructive *res judicata*.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)