

06.01.2022

WPCT 101 of 2021

Court : 04
Item : 34
Matter : WPCT
Status : ALLOWED
Transcriber: nandy

Union of India & Ors.
Vs.
Malabika Ghosh & Anr.

Mr. M. M. Verma, Advocate

Mr. Anuran Samanta, Advocate

.....for the Petitioner/UOI

Mr. Pinaki Ranjan Mitra, Advocate

Mr. Birendra Nath Manna, Advocate

.....for the Respondent No. 1

The instant writ-petition is filed against the order dated June 13, 2019 passed by the Central Administrative Tribunal, Kolkata Branch in OA No. 350/1401/2014 whereby and whereunder the petitioner was directed to treat the private respondent as regularly appointed from the date when she was granted ad hoc promotion with all consequential benefits.

The Union of India – the petitioner herein, has challenged the said order on the solitary ground that the Tribunal has miserably failed to take into consideration the proposition of law laid down by the Supreme Court in the ***State of Uttaranchal & Ors. Vs. Dinesh Kumar Sharma*** reported in ***2007 (1) SCC 683*** that the person cannot claim any benefit from the date when the vacancy arose to the promotional post but is entitled to all admissible benefits from the date when he has been appointed at the promotional post.

The facts involved in the instant case are more or less undisputed. The private respondent was initially appointed in the post of Laboratory Assistant in the year 1978 in the National Library, Kolkata and was subsequently promoted to the post of Assistant Chemist on ad hoc basis in the year 1986 and such appointment was subsequently regularized on 03.07.1987. The private respondent thereafter officiates to the post of Assistant Library & Information Officer (Laboratory) with effect from 10.04.1997 and subsequently vide order dated 24.01.2003, she was given regular appointment.

The Recruitment Rules published on November 8, 2002 provides that an employee after completion of eight years of regular service in the post of Assistant Library and Information Officer (Laboratory) is entitled to get promotion to the post of Library & Information Officer (Science & Technology). After completing eight years, the private respondent was found eligible for a further promotional post of Library & Information Officer (Science & Technology).

The petitioner/authority published a seniority list of the feeder post on 30.12.2011 of the post of Assistant Library & Information Officer (Laboratory) indicating the position of the private respondent as the sole eligible candidate

possessing requisite degree for such post. Subsequently, recommendation was made to the concerned Ministry to conduct a DPC so that the private respondent may be considered at the promotional post but there was no resolution or decision taken by the UPSC immediately.

It was all along the stand of the private respondent that once she has been promoted to such post on ad hoc basis, she is entitled to all benefits attached to such post and the authority must treat her as regularly appointed person to such post for all consequential and financial benefits.

It is no doubt true that the private respondent was found eligible and there was no competitor and the list was published. Since Rule provides the meeting of the DPC to be conducted and the decision to be taken by the UPSC, there was a delay in taking such decision though the private respondent was officiating the said promotional post on ad hoc basis. Since the private respondent attained superannuation as regular promotee and her appointment was subsequently made, she approached the Tribunal for a direction that her appointment to the promotional post must be reckoned from the date she promoted on ad hoc basis and not from the date when she was promoted on regular basis.

The private respondent might have faced certain financial loss because of the stand of the petitioner that she is entitled to have all benefits attached to the said post from the date when she was appointed on regular post and not on ad hoc post.

The Tribunal noticed the judgment of the Delhi High Court delivered in ***WP (C) 5549 of 2007 (Dr. Sahadeva Singh Vs. UOI & Ors.)*** and accepted the proposition of law laid down therein that although the employee has no vested right for promotion but the authorities cannot act arbitrarily and without any reasonable excuse by deferring the meeting of the DPC and deprive the employee of legitimate expectation. It is further held that direction should have been passed upon the DPC to convene the meeting for the vacancy year and if the employee comes within the zone of consideration and ultimately found eligible, must be given the benefits of the said vacancy year.

Solely on the basis of the above observations, the Tribunal proceeded to allow the Tribunal Application filed by the private respondent directing the petitioner authority to treat the private respondent as regularly appointed from the date she was granted ad hoc promotion with all consequential benefits.

The question which boiled down in the instant writ-petition is whether the ad hoc promotee can claim the benefit of the post which he/she was officiating in such capacity as a continuous service at the said promotional post even if he/she was subsequently appointed on a regular post. The law as it stands is somewhat settled that the employee can claim right to be considered for such promotional post but has no right to claim appointment to such posts. The statutory rules and norms which are applicable for appointing a suitable candidate to the promotional post are in place. The authority has to adhere the aforesaid provision, as any action in departure therefrom may not be found legal. The concept of ad hoc appointment to a post is to mitigate the exigencies or in other words as a stopgap measure without creating any substantive right in the employee to such post. It is intended to discharge the functions attributable to such posts for the administrative convenience and not to be construed as the right conferred upon such employee to such post.

The present case is unique for the reason that the private respondent was the only candidate for such eligible post. There was no competition or contender and, therefore, a notion has developed in the private respondent that she

must get all the benefits of the said promotional post on the date when she was appointed on ad hoc basis.

The judgment of the Supreme Court in case of ***Dinesh Kumar Sharma (Supra)*** was not noticed by the Delhi High Court where it has been categorically held that for the purpose of calculation of seniority and extending any benefit, the promotion cannot be compared from a retroactive date i.e. from the date when the vacancy arose but such benefit can be extended when the employee was substantively appointed on the promotional post. The relevant observations of the Apex Court in this regard is reproduced as under:-

“26. Therefore it is clear that unless a selection is made in accordance with the rules and in the absence of rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the Government and there can be no automatic promotion or appointment to any post on the recommendation of the Public Service Commission, unless the government sanctions such promotion and appointment.

28. It is clear from the above that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment is made. Therefore, in the present fact situation the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively

appointed i.e. from 1999. Likewise, the seniority also will be counted against the promotion/appointment in the cadre from the date of issuance of order of substantive appointment in the said cadre, i.e. from 19.11.1999.”

The law expounded as above leaves no ambiguity that the right is created to the promotional post on the date of the substantive appointment and not from the date anterior thereto nor the employee can claim the seniority or other financial benefits taking advantage of the period rendered on ad hoc basis. Such being the position, we find that the decision of the Tribunal is unacceptable and runs counter to the ratio of the judgment rendered in ***Dinesh Kumar Sharma (Supra)***.

The impugned order is thus set aside. As a consequence whereof the Tribunal Application **O.A. 350/1401/2014** filed by the private respondent is **dismissed**.

The writ-petition being **WPCT 101 of 2021** is **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

