

05. 17.05.2022
BD Ct.15

W.P.A. 17424 of 2010

Ajit Kumar Jana

-vs-

The State of West Bengal & Ors.

Mr. Asok Kumar Janah

Mrs. Pampa Dey Dhabal

Mr. Krishna Deo Das

... for the petitioner.

Mr. Tapan Kumar Mukherjee

Mr. Shamim- Ul-Bari

... for the State

By presenting this writ petition petitioner has claimed promotion from the post of Seal Bailiff to the post of Lower Division Clerk if necessary by demoting the candidates who are presently working in the post of Lower Division Clerk under the Judgeship of Purba Midnapore from Lower Division Clerk to process server based on the gradation list which is at page 33 of the writ petition. It has also been prayed for that if necessary designation of the petitioner as Seal Bailiff which has been conferred on him on promotion may be cancelled and he should be promoted to the post of Lower Division Clerk. Prayer made in the writ petition runs infra:-

“ (a) A writ in the nature of Mandamus commanding the Respondents, their agents, servants and associates and each one of them not to give any effect or further effect of the

impugned Memo No. 138/XIV-3 dated 7.4.2010 issued by the Learned District Judge, Purba Medinipur and further commanding them to withdraw, cancel and rescind the same.

b) A writ in the nature of Mandamus commanding the Respondent No. 5 that Learned District Judge, Purba Medinipur to give effect of G.O. No. 7065-F dated 22.6.1995 and to act in terms of gradation list prepared by him and promote the petitioner to the post of Lower Division Clerk by reverting the incumbents who are promoted to the post of Lower Division Clerk by breaking the seniority gradation list and by giving promotion to the juniors to the petitioners by canceling the re-designation of the petitioner as Seal Bailiff.”

Another limb of submission made on behalf of the petitioner is had the petitioner been promoted to the post of Lower Division Clerk from the post of process server it would have been open to him to participate in further promotional process for his promotion to the higher post from the feeder post of Lower Division Clerk.

In this writ petition the decision of the District Judge, Purba Medinipur, dated 7th April, 2010 issued under Memo No. 138/XIV-3 has been assailed whereby case of the petitioner for promotion to the post of Lower Division Clerk from the post of Seal Bailiff has been spurned.

Mr. Tapan Kumar Mukherjee, learned additional Government Pleader, appears on behalf of the respondent authorities and has drawn attention of this Court to the order dated 15th January, 2010 whereby the then District Judge, Purba Medinipur, redesignated the petitioner as Seal Bailiff and before such re-designation petitioner was working as process server. It has further been submitted that the scale of pay of the Seal Bailiff at the relevant point of time was Rs. 3350-6325/- (pre-revised) and in addition thereto travelling allowance of Rs. 200/- was sanctioned in favour of Seal Bailiff. According to the respondent authorities the scale of pay which was being enjoyed by the petitioner being the Seal Bailiff is identical to the scale of pay of Lower Division Clerk. On placing reliance on page 38 of the writ petition it has further been submitted that in terms of Memo dated 6th January, 2010 issued by the District Judge, Purba Medinipur, only the process server and Group- D employees having requisite qualification are eligible to be considered for promotion to the extent of 25% vacancies in Lower Division Cadre in the ratio of 1:2 (Process Server 1 and other Group – D employees 2). It is contended that in view of such order dated 6th January, 2010

there is no scope of granting promotion to the petitioner from the post of Seal Bailiff to the post of Lower Division Clerk.

This Court has heard learned advocates representing the parties and perused the relevant documents available on record.

It is found that petitioner was appointed under the Judgeship of Purba Medinipur on 9th December, 1996 as it appears from the gradation list and subsequently redesignated as Seal Bailiff with effect from 1st April, 2003 as per the order of the then District Judge, Purba Medinipur, dated 15th January, 2010. Presently petitioner is working in the post of Seal Bailiff with the identical scale of pay as the same is applicable to the employees manning the post of Lower Division Clerk. In addition thereto, petitioner is enjoying Rs. 200/- towards travelling allowance.

Considering the prayer made in the writ petition this Court has posed query to the learned advocate representing the petitioner whether there is any extant rules or provision which permit the petitioner to be promoted to the post of Lower Division Clerk from the post of Seal Bailiff. This Court does not get any satisfactory answer. On the contrary it appears that in compliance with the

direction of the Hon'ble Supreme Court of India dated 11th February, 2009 passed in I.A. No.71-A,135-136,137-138 and 142 in W.P. (Civil) No. 1022 of 1989 Judicial Department, Government of West Bengal passed Order No. 5140-J dated 20th July, 2009 and No. 5141-J dated 20th July, 2009 for implementation of the recommendation of the Shetty Commission for the Staff attached to the Process serving Establishment in the subordinate Courts in the State relating to recruitment, promotion policies and qualification etc.

Based on such order of the Hon'ble Supreme Court it has been specifically provided in the said order dated 6th January, 2010 that only the process servers along with other categories of Group- D employees having requisite qualification shall be considered for promotion to the extent of 25% available vacancies in the cadre of Lower Division Clerk in the ratio as delineated therein.

It appears to this Court on consideration of this order dated 6th January, 2010 that at present since the petitioner is working as Seal Bailiff there is no scope to grant any relief to the petitioner by giving direction upon the respondent authorities to promote the petitioner from the post of Seal Bailiff to the post of Lower Division Clerk. It also appears

on perusal of the writ petition that such order dated 6th January, 2010 has not been questioned in the present writ petition.

In view of the aforesaid position and on placing reliance on the order dated 6th January, 2010 this Court is not inclined to interfere with the order dated 7th April, 2010 which is subject matter of challenge in the present writ petition.

Accordingly, the writ petition stands dismissed. 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.)