

W.P.A. 10628 of 2020

Sri Subhash Chandra De

-vs-

The State of West Bengal & Ors.

Mr. Tulsidas Roy,
Mr. Tirthankar Roy

....for the petitioner.

Mr. Satyajit Talukdar,
Mr. Abhishek Sarkar

....for the KMDA.

Mr. Bipin Ghosh,

....for the State.

The matter relates to promotion of the petitioner from the post of Accountant to the post of Section Officer (Accounts).

Mr. Ray, learned advocate appears on behalf of the petitioner and submits that admittedly it appears from page 30 of the writ petition that private respondents whose names are appearing against serial nos.23 to 26 though are juniors to the petitioner in terms of their respective dates of appointment have been promoted to the post of Section Officer (Accounts) from the feeder post of Accountant. But the right of the petitioner to be promoted to the higher post i.e. Section Officer (Accounts) has been denied. Petitioner prays for his promotion to the post of Section Officer (Accounts) since his juniors have been promoted to the said post.

Mr. Talukdar, learned advocate appears on behalf of the Kolkata Metropolitan Development Authority (KMDA) and has submitted that since the petitioner was appointed under compassionate ground in the post of Accounts Assistant he is not entitled to get the benefit of promotion as it has been extended to the junior candidates being the private respondents herein.

In addition thereto, Mr. Talukdar has placed reliance on the judgment of the Hon'ble Apex Court, report in (2006) 5 SCC 493 Paragraphs 13 & 18 (National Fertilizers Limited & Ors. -vs- Somvir Singh).

Mr. Ray submits that on a similar issue this Court has passed an order on 24th March, 2022 on a writ petition being W.P.A. 3789 of 2019 (Sri Goutam Ghosh & Ors. -vs- Kolkata Metropolitan Development Authority (KMDA) & Ors.). According to the petitioner such order of this Court dated 24th March, 2022 squarely applies in case of the present petitioners.

Having considered the rival submissions made on behalf of the parties to this writ petition, it appears that the ratio of the judgment in National Fertilizers Limited (supra) does not apply in the present case since on reading of paragraphs 13 &

18 of the said judgment it appears that the Hon'ble Apex Court decided that right of confirmation of the appointed candidate can be denied if such candidate has been appointed *de hors* the recruitment rules. However, in the present case petitioner has been duly appointed under compassionate ground in the post of Accounts Assistant and his service has already been confirmed by the concerned respondent authority.

In consideration of the order passed by this Court on 24th March, 2022, it appears that the said order of this Court is applicable in the present case. Accordingly, upon placing reliance on the said judgment dated 24th March, 2022 this Court directs the concerned authorities of KMDA to give the benefit of promotion to the petitioner from the date the candidates junior to the petitioner were promoted to the post of Section Officer (Accounts) notionally and actual benefit to be accrued from May, 2022 by promoting the petitioner to the said post of Section Officer (Accounts).

The above exercise shall be completed by the concerned authority of KMDA within a period of eight 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.

The copy of the order passed by this Court on W.P.A. 3789 of 2019 dated 24th March, 2022 shall be retained on the record of this writ petition.

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

(Saugata Bhattacharyya, J.)