

28.11.2023
Item No.1
Court No.550
Saswata

W.P.A. 2566 of 2009
Sk. Abdul Kuddus
-vs-
The State of West Bengal & Ors.

Mr. Rudranil De
Mr. Himadri Kumar Mahata
Mr. Z. Haque
Mr. Aishwaryya Mukherjee

...For the petitioner

Ms. Sutapa Sanyal
Mr. Debrup Bhattacharjee
Mr. Pradeep Tulsyan

...For the respondent no. 3

Mr. Supriyo Chattopadhyay
Mr. Suman Dey

...For the respondent nos. 10 & 11

1. The present writ application has been filed, inter alia, praying for a direction upon the respondents to release service benefits of the petitioner as also for being considered for promotion to Group-C. When the aforesaid writ application had earlier come up for consideration, this Court by order dated 30th March 2023, by taking note of the submission made by the parties and considering the materials on record as also taking into consideration the fact that the workers deployed with the respondent no. 11, being the Purba Burdwan Zilla Regulated Market Committee cannot be made to stagnate without any promotional avenue especially when the service conditions of the petitioner in the erstwhile Katwa Regulated Market Committee provided for promotional avenue was, inter alia, pleased to direct preparation of a gradation list by observing as follows:-

“The petitioner was appointed as a casual worker in Katwa Regulated Market Committee in the year 1988. Subsequently, he was absorbed as Market Worker in the Katwa Regulated Market Committee vide letter of appointment dated 8th July 1996 with effect from 11th March 1986. The petitioner complains that

despite there being a promotional avenue in Katwa Regulated Market Committee, the petitioner was ignored while preparation of the gradation list. Although other employees were given service benefits and arrears in the petitioner's case, despite his regularization as Market Worker, his pay has not been fixed notionally with effect from 1986. Similarly circumstanced workers despite having lesser qualification are working in Group-C, in the petitioner's case, despite the petitioner improving his qualification and becoming matriculate, with due permission of the competent authority, he was not considered for promotion, for the post of Group C from Group D post which is a feeder post. His representation has also not been adhered to

In the given facts the present writ application has been filed, inter alia, praying for release of service benefits and for being considered for promotion from Group-D to Group-C.

During pendency of the writ application, in pursuance of a notification dated 17th October 2014 issued by the Principal Secretary, Agricultural Marketing Department, Government of West Bengal, the Governor had been pleased to dissolve Katwa Regulated Market Committee along with Kalna, Burdwan Sadar and Assansol Regulated Market Committees with effect from 17th October 2014 and at the same time the Governor had been pleased to declare the entire area of Burdwan District as market area and specify the name as Burdwan Zilla Regulated Market Committee with effect from 17th October 2014, vide notification of even date issued by the Principal Secretary, Agricultural Marketing Department, Government of West Bengal.

Subsequently, in pursuance of a notification dated 27th October 2014 issued by the Principal Secretary, Agricultural Marketing Department, Government of West Bengal, the Burdwan Zilla Regulated Market Committee headed by the District Magistrate, Burdwan as Chairman of the Market Committee had been constituted.

In pursuance of a notification dated 31st October 2014 issued the Principal Secretary, Agricultural Marketing Department, Government of West Bengal, the Governor had been pleased to deem it fit and proper to utilize the services of the employees of the dissolved Katwa, Kalna, Burdwan Sadar and Assansol Regulated Market Committees by way of deployment, at newly constituted Burdwan Zilla Regulated Market Committee with effect from 17th October 2014. It is in pursuance of the aforesaid notification that the Burdwan Zilla Regulated Market Committee had prepared a note sheet and had identified the employees of dissolved Katwa, Kalna, Burdwan Sadar and Assansol Regulated Market Committees, who had joined the Burdwan Zilla Regulated Market Committee by submitting their

individual joining letter to the Secretary of Burdwan Zilla Regulated Market Committee.

Mr. De, learned advocate appearing for the petitioner by placing reliance on the aforesaid note sheet submits that the petitioner as an employee of the erstwhile Katwa Regulated Market Committee, had been deployed at the newly constituted the Burdwan Zilla Regulated Market Committee and his name features in serial number 30 as a market worker. He says that the petitioner has not only been denied his promotional benefits but also has been denied the 16 years and 25 years service benefits as are made available to his counter parts.

Since, during pendency of the aforesaid writ application, the Katwa Regulated Market Committee had been dissolved and the petitioner had been deployed in the Burdwan Zilla Regulated Market Committee, which was later sub-divided as the Purba Burdwan and Paschim Burdwan Zilla Market Regulated Committee and since the petitioner has consequent upon reorganisation of the Burdwan Zilla Regulated Market Committee has been deployed at the Purba Burdwan Zilla Regulated Market Committee, pursuant to leave granted by this Court on 5th July 2022, the Chairman, Purba Burdwan Zilla Regulated Market Committee has been added as respondent no. 10 in the present writ application.

Inasmuch as, in terms of Section 14 of the West Bengal Agricultural Produce Market Regulation Act, 1972, the Board is the authority to prescribe the terms and conditions of service and allowances, inter alia, including promotion of the employees of the Regulated Market Committee, pursuant to the leave granted by this Court on 17th January 2023, the Chief Executive Officer of the West Bengal State Agricultural Marketing Board was added a respondent no. 12 in the present proceedings. Since then, the matter has come up for further consideration.

In course of hearing of the present writ application, Ms. Sanyal, learned advocate representing the respondent no. 12 by placing reliance on a note sheet issued by the Katwa Regulated Market Committee submits that the Katwa Regulated Market Committee, at all material times had prepared gradation list and it is on the basis of such gradation list which was prepared on the basis of seniority, performance, qualification, integrity and other terms and conditions, appointment to the post of Accountant, Grade-II, Inspector Grade-II, Section Officer, Senior Market Worker, Cash Sarkar had been made. By placing reliance on a note sheet dated 18/19th March, 2010 issued by the erstwhile Katwa Regulated Market Committee, which is taken on record, she submits that the petitioner's name does not feature in such gradation list. She, however, submits that at present no gradation list has been prepared by the respondent no. 10 and unless the gradation list is prepared, there is no question of

sanctioning promotion to any of the employees working or deployed with the respondent no. 10.

Mr. Chattopadhyay, learned advocate, ably assisted by Mr. Dey appearing for the respondent nos. 10 and 11 submits that at present there is no gradation list in respect of the workers working with the respondent nos. 10 and 11. By relying on the draft gradation list of erstwhile Katwa Regulated Market Committee prepared on 30th June 2009, it is submitted that the petitioner's name features as the name in list, with a remark that since he is a casual worker and later though absorbed as a market worker, grant of promotion to him to any higher post does not arise.

It is, however, candidly submitted by Mr. Chattopadhyay, learned advocate that at present there is no gradation list prepared by the respondent nos. 10 and 11 and unless such gradation list is prepared, no promotion can be granted.

Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that the petitioner had been appointed as a market worker vide letter of appointment dated 8th July 1996 with effect from 11th March 1996.

I also find from the note sheet prepared by the erstwhile Katwa Regulated Market Committee dated 18/19th March, 2010 that the minimum qualification for a senior market worker is class VIII pass. I also find that the petitioner claims himself to be matriculate. Unfortunately, in the draft gradation list prepared by the then Katwa Municipality, the petitioner has been ignored.

It is also not clear, why the erstwhile Katwa Regulated market Committee had declined to make available the promotion avenue to the petitioner.

Be that as it may and having regard to the submissions made by the respondents, it is apparent and clear that at present there is no gradation list in the Purba Burdwan Zilla Regulated Market Committee.

I am of the view that the workers deployed with the respondent no. 11, being the Purba Burdwan Zilla Regulated Market Committee, cannot be made to stagnate without any promotional avenue, especially when the service conditions of the petitioner in the erstwhile Katwa Regulated Market Committee provided for promotional avenue. I also find that the petitioner has only been deployed with the Purba Burdwan Zilla Regulated Market Committee as such he cannot be treated differently with his counter parts. Promotional avenue cannot be denied to him as well.

Having regard to the aforesaid, I am of the view that the respondent nos. 10 and 11 should forthwith prepare a gradation list having regard to seniority, performance, qualification, integrity and / or any other terms and conditions

that the respondent no. 12 may specify in writing.”

2. Pursuant to the aforesaid direction, the respondent no. 11 on 22nd June, 2023 had placed before this Court the gradation list of the staff of Purba Bardhaman Zilla Regulated Market Committee. The petitioner is placed in serial number 20 of the aforesaid list and is now posted as market worker, in the pay scale of Rs.17600/- to Rs.45200/- at the pay level of L-2. Since, then in terms of the direction passed by this Court, the respondent nos. 10 and 11 had disclosed the vacancy position/staff strength of Purba Burdwan Zilla Regulated Market Committee category wise. Particulars of the aforesaid disclosure are set out hereinbelow:-

“Sanctioned Staffs strength of Purba Bardhaman Zilla Regulated Market Committee categorically are as follows:-

Employee category	Regular	Memo No. of WBSAMB & Dated		
	Sanctioned		Existing	Vacant
Group A	2	Memo no. 1427(14) dt.25/11/1993	2	Nil
Group B	11	Memo no. 2295 dt.20/10/2009 Memo no. 145/Estab-27/15dt.22/05/1989 Memo no. 1342 dt.17/08/2010 Memo no. 335 dt.01/02/2011 Memo no. 411 dt.10/02/2011	5	6
Group-C	14	Memo no. 145/Estab-27/15dt.22/05/1989 Memo no. 755 (40) dt.11/03/1996	4	10
Group-D	35	Memo no. 145/Estab-27/15dt.22/05/1996 Memo no. 755 (40) dt.11/03/1996 Memo no. 1011 dt.28/02/2011	20	15

3. Since then, the matter has come up for further consideration.

4. Mr. De, learned advocate appearing for the petitioner submits that the petitioner has been stagnating in the post of market worker for the last 27 years. He submits that though in respect of other similarly placed persons, the erstwhile employer being the Katwa Regulated Market Committee by relaxing the criteria for educational qualification had granted

promotion to such similarly placed persons, but in the case of the petitioner, despite the petitioner being otherwise qualified the authorities had not granted him promotion. By placing reliance on the supplementary affidavit filed on behalf of the petitioner, it is submitted that the petitioner having completed more than 25 years of service is at least entitled to Career Advancement benefits as per the Career Advancement Scheme.

5. In any event, he submits that at this stage, there cannot be any bar in granting promotion to the petitioner, especially in the light of the gradation list, already prepared by the respondents. By referring to the vacancy position, disclosed by the respondents, it is submitted that at present there are 10 posts, which are lying vacant in Group-C and on the basis of the gradation list, prepared by the respondents, the petitioner is otherwise eligible to be promoted to a Group-C post.
6. Mr. Chattopadhyay, learned advocate appearing for the respondent nos. 10 and 11 on the other hand submits that in compliance with the direction passed by this Court on 30th March 2023, the respondents have prepared a gradation list having regard to the seniority, performance, qualification, integrity, roster and other terms. By referring to the aforesaid gradation list, he submits that the petitioner who is placed in serial no. 20 is holding a Group-D post in the scale of pay of Rs.17600/- – Rs.45200/-. According to Mr. Chattopadhyay, although the person whose name features in serial no. 19 is less qualified than that of the petitioner, however, by dint of other

considerations, he is placed in higher position than that of the petitioner.

7. He acknowledges the fact that at present there are 31 posts which includes 10 vacant posts in Group-C. According to him although, the gradation list has been prepared, since, the matter is pending consideration before this Court, the authorities have not filled up the aforesaid posts. Accordingly, he prays that this Court may grant necessary leave to the respondents, for them to give effect to the aforesaid gradation list and to consequentially grant promotion to the eligible candidates as per the gradation list and with a further direction upon the respondent nos. 3 and 12 to accord approval to the same in accordance with law.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. Taking note of the stagnation of the petitioner and other similarly placed persons, this Court by order dated 30th March 2023 had directed the Purba Burdwan Zilla Regulated Market Committee to prepare a gradation list having regard to the seniority, performance, integrity and other terms & conditions that the respondent no. 12 may specify in writing.
10. The respondent nos. 3, 11 and 12 acknowledge the fact that the aforesaid gradation list has been prepared on the basis and in terms of the order passed by this Court. Having regard to the aforesaid, I am of the view that there cannot be any impediment in giving effect to the aforesaid gradation list, which has been prepared by respondent nos. 10 and 11 for the purpose of filling up of vacant posts as indicated by the Secretary of

Purba Burdwan Zilla Regulated Market Committee in his disclosure dated 1st August, 2023, which forms part of the report in the form of an affidavit affirmed on 2nd August 2023, by way of promotion.

11. In view thereof, let the aforesaid gradation list be given effect to by the respondent nos. 10 and 11. The respondent nos. 10 and 11 are further directed to complete the process of promoting the candidates in terms of the gradation list, so prepared by them by considering the eligible candidates. While conducting such exercise the petitioner's candidature shall also be considered.
12. Consequent upon the aforesaid, necessary recommendation may be forwarded by the respondent nos. 10 and 11 to the respondent nos. 3 and 12 for them to take appropriate steps in accordance with law.
13. The entire exercise in this regard must be completed within a period of three weeks from the date of communication of this order.
14. Insofar as the claim made by the petitioner for grant of Career Advancement Scheme benefits is concerned, in the light of the direction made hereinabove, the same is not being considered for the present, with liberty to the petitioner to reagitate the same upon completion of the aforesaid process.
15. The writ application is accordingly disposed of.
16. Urgent photostat certified copy of this order if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)