

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 6471 of 2019

Sri Santanu Kumar Ghosh & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Surajit Samanta, Adv. Mr. Balai Lal Sahoo, Adv. Mr. Biswajit Samanta, Adv.
For the KMC	:-	Mr. Alok Kumar Ghosh, Adv. Mr. Arijit Dey, Adv.
For the respondent nos. 5 to 19	:-	Mr. Sandip Kundu, Adv.
Hearing concluded on	:-	13.01.2023
Judgment on	:-	02.02.2023

Amrita Sinha, J.:-

The petitioners are serving as Deputy Chief Engineer (Civil) under the Kolkata Municipal Corporation. They are aggrieved by the final modified gradation list published by the Chief Manager (Personnel), Kolkata Municipal Corporation on 1st March, 2017 for the post of Executive Engineer (Civil).

The petitioners applied for appointment to the post of Assistant Engineer (Civil) and participated and qualified in the selection process against the 6th and 7th vacancies in the year 1997. After appointment as Assistant Engineer (Civil) the petitioners, in due course of time, got promoted to the post of Executive Engineer (Civil) and thereafter Deputy Chief Engineer (Civil).

The petitioners contend that the gradation list was re-fixed allegedly in accordance with the direction in the judgment passed by this Hon'ble Court on 15th May, 2013 in WP No. 21394 (W) of 2000 (Ashok Kumar Guha & Ors. Vs. Calcutta Municipal Corporation & Ors.).

It has been submitted that the re-fixation was done not in accordance with the direction passed by the Court in the above writ petition, but contrary thereto.

The judgment dated 15th May, 2013 in Ashok Kumar Guha (supra) has been relied upon in extenso to contend that the fixation was not in accordance with the direction passed in the aforesaid matter.

It has been submitted that in Ashok Kumar Guha (supra) the Corporation was directed to re-fix the seniority of the promotees/ writ petitioners notionally above the person who was appointed against the 9th vacancy for the post of Assistant Engineer (Civil) by way of direct recruitment during the period 15th July, 1996 to 15th July, 1998 and to act on such seniority for all purpose in future.

In Ashok Kumar Guha (supra) the Court recorded the names of the appointees and promotees to the post of Assistant Engineer (Civil) during 16th July, 1996 to 15th July, 1997. The name of the petitioners appears in the said list at serial no. 6 and 7 respectively.

The petitioners argue that as the Corporation was directed to re-fix the seniority against the 9th vacancy, accordingly, the gradation list of the employees from the first to the eighth position, ought not to have been altered.

The petitioners also rely upon the judgment passed in appeal by the Hon'ble Division Bench on 16th March, 2016 in Ashok Kumar Guha (supra) wherein the Hon'ble Division Bench directed that the promotees are entitled to receive monetary and other benefits incidental to such promotion with effect from the date of notional promotion.

It has been represented that the Hon'ble Division Bench affirmed the order passed by the learned Single Judge in Ashok Kumar Guha (supra).

The Kolkata Municipal Corporation, in the garb of re-fixation of the gradation list, disturbed the position of the petitioners which is bad in law and prayer has been made for setting aside the same. It has been submitted that the promotees who were not borne in the cadre during the period 15th July, 1996 to 15th July, 1998 have been

given the benefit, whereas the petitioners who are serving long prior to the promotes, have been deprived the benefit of the direction passed in Ashok Kumar Guha (supra).

It has been argued that the Kolkata Municipal Corporation erroneously applied the Circular no. 13 of 1984 in the present case, which ought not to have been done in view of the judgment passed by the learned Single Judge affirmed by the Hon'ble Division Bench.

It has been submitted that because of the impugned re-fixation of the gradation list, the employees who were junior to the petitioners have been placed on top which is not permissible and the gradation list is liable to be re-fixed.

Learned advocate representing the Kolkata Municipal Corporation defends the action of the respondent authority. It has been submitted that the Corporation took steps in compliance of the judgment passed by the learned Single Judge and the Hon'ble Division Bench and acted according to their own interpretation and wisdom. It has been denied that the re-fixation is contrary to the judgments passed by this Court.

Reliance has been placed on the Circular no. 13 of 1984-85 dated 23rd April, 1984 issued by the Personnel Department, Kolkata Municipal Corporation which mentions that the promotees shall be en bloc senior to the direct recruit of the same year. It has been submitted that the Municipal Commissioner approved the re-fixation of the gradation list.

Learned advocate representing the private respondent submits, upon instruction that, his clients have retired on attaining their age of superannuation. It has been submitted that the financial benefit consequent to promotion was granted to the promotees in accordance with the direction passed by the Hon'ble Court and it has been prayed that the gradation list may not be altered.

A further prayer has been made by the private respondents to the effect that, in the event the gradation list is required to be altered, then the financial benefit enjoyed by the private respondents may not be directed to be refunded or adjusted as

the private respondents were no way responsible in the decision making process of promotion. It will be highly iniquitous and harsh if the financial benefit enjoyed by the private respondents is directed to be refunded or adjusted at this stage.

I have heard and considered the rival submissions made on behalf of all the parties.

The impugned gradation list was published after re-fixation allegedly in compliance of the direction passed by the learned Single Judge in the matter of Ashok Kumar Guha (supra) duly affirmed by the Hon'ble Division Bench. The learned Single Judge in the judgment quoted the names of the employees, both direct recruits and promotees to the post of Assistant Engineer (Civil), wherein the names of the petitioners appear at serial no. 6 and 7 respectively. The learned Single Judge after threadbare discussion of the facts with the corresponding provision of law was pleased to direct that the seniority of the promotees shall be re-fixed above the person appointed against the 9th vacancy. The same implies that the learned Single Judge was pleased not to disturb the gradation list till the 8th employee. As the petitioners were positioned in the 6th and 7th place, accordingly, their position in the seniority list ought not to have been altered. Assuming the Corporation acted in accordance with the Circular no. 13, even then, the en bloc promotion as mentioned in the said circular is liable to be implemented from the 9th position onwards in the gradation list and not prior thereto.

The Hon'ble Division Bench affirmed the direction passed by the learned Single Judge and held that the promotees are entitled to receive monetary and other benefits incidental to such promotion with effect from the date of notional promotion.

The Corporation erroneously changed the position of the employees who were ranked above the vacancy no. 9 from where the illegality crept in. When both the learned Single Judge and the Hon'ble Division Bench were of the opinion that there was no illegality till the 8th position in the vacancy list, accordingly, the gradation list till the 8th position, should not have been upset by the Corporation. Steps were required to be taken for re-fixation from the 9th vacancy onwards.

Had the Corporation faced any difficulty in implementing the direction passed by this Court, the proper approach would have been to seek clarification/ variation/ modification of the judgment passed by the Court. Till the judgment of the Court is not varied or modified, the Corporation is bound to act in accordance with the same and not contrary thereto.

This Court is convinced that, the Corporation, have misread and misinterpreted the judgment of the Court and on the plea of implementing Circular no. 13, have taken steps contrary to the direction passed by this Court and re-fixed the gradation list in a manner that the employees who were junior to the petitioners have been placed on top. Due to the above, the petitioners have been deprived of the financial benefit which they ought to have received consequent to the direction passed by this Court in the matter of Ashok Kumar Guha (supra).

In view of the above, the impugned gradation list is liable to be set aside and is, accordingly, set aside. The Corporation is directed to re-fix the gradation list in strict compliance of the direction passed by the learned Single Judge on 15th May, 2013 duly affirmed by the Hon'ble Division Bench on 16th March, 2016 and in the light of the observations made herein above. The Corporation is also directed to extend all benefits which the petitioners are entitled consequent to the judgments passed by this Court. The Corporation is directed to act in accordance with such seniority for all purpose in future.

It is made abundantly clear that, under no circumstances, the Corporation shall alter the seniority position of the employees whose names appeared in positions one to eight in the list indicated in the judgment dated 15th May, 2013.

As regards the prayer of the private respondents restraining the Corporation to seek refund or adjustment of the financial benefit already disbursed in their favour consequent to the re-fixation of the gradation list, the same not being an issue to be decided in the present writ petition, is not being adjudicated by the Court. The Corporation shall take steps with regard to the prayer of the private respondents in accordance with law.

The Corporation is directed to take steps in the matter in accordance with the direction passed in the matter of Ashok Kumar Guha (supra) at the earliest but positively within a period of eight weeks from the date of communication of this order.

Writ petition stands disposed of.

There shall be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)