

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Lapita Banerji

MAT 498 of 2021

With

IA No. CAN 1 of 2021

Sk. Samual Hossen & Ors.

Versus

State of West Bengal & Ors.

For the Appellants : Mr. Jayanta Samanta

Mr. Karunamoyee Samanta

For the High Court : Mr. Siddhartha Banerjee

Administration Mr. Soumajit Majumder

For the State : Mr. Pantu Deb Roy
Mr. Pannalal Bandopadhyay

Heard on : 04.05.2023

Judgment on : 22.06.2023

Subrata Talukdar, J:- Under challenge in this appeal is the final order dated 18th March, 2021 in the Writ Petition being WPA 21787 of 2018, passed by the Hon'ble Single Bench dismissing the writ petition. The writ petitioners are the appellants before this Court. The Respondents are the State of West Bengal and the High Court Administration (for short, referred to only as the High Court), who are also the respondents to the writ petition.

The writ petitioners/the present appellants hold Group-D Posts in the City Civil and Sessions Court, Calcutta. The writ petitioners are aggrieved by their non-consideration for promotion to Group-C Posts. The prayers made in the writ petition are as follows:-

“A) Let a rule do issue out of and under the deal of this Hon'ble Court asking the respondents and each one of them to show cause as to why a writ of or a writ in the nature of Mandamus should not

go commanding the respondents to consider the claim of petitioners for promotion with effect from 1.8.2015 on the basis of representation submitted by the petitioners on 25.6.2018 as well as the demand of justice submitted by the learned Advocate on behalf of petitioners on 24.9.2018 and to act in accordance with law.

B) Let a rule do issue out of and under the seal of this Hon'ble Court asking the respondents and each one of them to show cause as to why a writ of or a writ in the nature of Mandamus should not go commanding the respondents to recast the draft gradation list prepared on 1.1.2016 and 1.1.2017 in terms of contention raised by the petitioners and to act in accordance with law.

C) Let a rule do issue out of and under the seal of this Hon'ble Court asking the respondents and each one of them to show cause as to why a writ of or a writ in the nature of Mandamus should not go commanding the respondents to fill up the posts to be filled up by promotion for Lower Division Assistant and Process Server from amongst petitioners and on the basis of vacancies which are earmarked in terms of recommendation of Shetty Commission and to act in accordance with law.

D) Let a rule do issue out of and under the seal of this Hon'ble Court asking the respondents and

each one of them to show cause as to why a writ of or a writ in the nature of Mandamus should not go commanding the respondents not to supersede the case of petitioners who are entitled to promotion on and from 1.8.2015 and to act in accordance with law.

E) Let a rule do issue out of and under the seal of this Hon'ble Court asking the respondents and each one of them to show cause as to why a writ of or a writ in the nature of Mandamus should not go commanding the respondents to consider the representation submitted by the petitioners dated 25.6.2018 on the basis of points raised in representation and thereafter to take a decision and communicate the decision to the petitioners by taking consequential steps for grant of promotion to the petitioners on and from 1.8.2015 and to act in accordance with law.

F) Let a rule do issue out of and under the seal of this Hon'ble Court asking the respondents and each one of them to show cause as to why a writ of or a writ in the nature of Certiorari should not go commanding the respondents there by to certify and transmit all relevant records of this case pertaining to the case of the petitioner before this Hon'ble Court so that conscionable justice may therein be administered.

G) An interim order be issued restraining the respondents from filling up the post of Lower Division Assistant and Process Server superseding the case of petitioners until disposal of writ application.

H) An order of injunction be issued restraining the respondents from giving effect and/or any further effect to the draft gradation list as on 1.1.2016 and 1.1.2017 to various posts of Lower Division Assistant and Process Server superseding the case of petitioners until disposal of writ application.

I) Rules in terms of prayers (A) to (F) above be issued.

J) Interim Order in terms of prayers (G) and (H) above be granted.

K) Costs of or incidentals to this application be borne by the respondents.

L) Any other further order or orders, direction or directions as to your Lordships may deem fit and proper.”

With regard to the prayer of the appellants/ writ petitioners for not being correctly placed in the Draft Gradation List, the Hon'ble Single Bench held that a Draft Gradation List was published and circulated in 2014 amongst all Group-D

employees, including the appellants/writ petitioners. No objection was raised by the appellants/writ petitioners to the Draft Gradation List, although in the year 2014-2015 they were found to be ranked below the persons who, the appellants/writ petitioners claim to have been originally placed below them in the Draft Gradation List.

The Hon'ble Single Bench further found that the Second Draft Gradation List was circulated among the employees in 2016, including the appellants/ writ petitioners. The ranking of the appellant/writ petitioners in the 2016 Draft Gradation List remained unchanged.

For the third time on 1st January, 2017, the City Civil and Sessions Court, Calcutta published the Draft Gradation List and the position of seniority *vis a vis* the writ petitioners/ appellants and their colleagues remained unchanged from the earlier Draft Gradation List.

For the first time, the appellants/writ petitioners raised their objection to the Draft Gradation List by filing a representation on the 12th of March, 2018. The representation was decided by the employer by holding that the Draft Gradation List was prepared after take into account the 100-point roster for

filling up vacancies in Group-C posts both by direct recruitment as well as by promotion.

The Hon'ble Single Bench ultimately found that in order to sustain their claim for promotion on the basis of the Draft Gradation List, the appellants/the writ petitioners were required to conclusively demonstrate that right from the preparation of the Draft Gradation List in 2014, the appellants had exercised their right of objection to the Draft Gradation List. The Hon'ble Single Bench found the prayers of the appellants/the writ petitioners to be considered for promotion on the basis of the Draft Gradation List, particularly the promotion granted to their colleagues who they claimed to be in a position below them in terms of seniority to be untenable since such alleged inconsistency in preparation of the Draft Gradation List was not brought to the notice of their employer/the Judgeship by the appellants/writ petitioners for a period of five years from the first publication of the Draft Gradation List and its subsequent revision.

The Hon'ble Single Bench was therefore of the view that the appellants/the writ petitioners have been unable to make out a case for correction of the Draft Gradation List. However, at the same time, the Hon'ble Single Bench also found that although

the respondents/Judgeship has been unable to indicate the basis for preparing the Draft Gradation List in Group-D Posts, insofar as the appellants/the writ petitioners are concerned, the Hon'ble Single Bench did not find merit in their stand that they were diligent in raising objections to the Draft Gradation List.

Mr. Samanta, Learned Counsel appearing for the appellants/the writ petitioners, submits that they have been unjustly treated at the threshold of entry into the service itself. It is pointed out that the promotion from Group-D to Group-C posts was notified by the Judgeship in September, 2014. Although, the appellants were appointed in service in the year 2012, they were confirmed in their service in November, 2014 with effect from August, 2014.

Mr. Samanta submits that with the confirmation of the appellants/the writ petitioners with effect from August, 2014, they were eligible to be considered for promotion *vide* the Notification of September, 2014. The fact that the appellants were unjustly left out of consideration for the promotion from Group-D to Group-C posts in terms of the Notification of September, 2014, although being confirmed with effect from August, 2014, has not been redressed by the Judgeship.

A further point of grievance raised by the appellants/the writ petitioners pertains to their colleagues in service who joined Group-D posts in 2012 and placed above them in the Draft Gradation List. It is submitted that the Judgeship has been unable to satisfactorily explain the reason for placing their colleagues above them in the Draft Gradation List.

A further point of challenge raised in this appeal pertains to the recruitment policy for Group-C Posts. The appellants submit that 75 per cent of the Group-C Posts shall be directly filled up and the remaining 25 per cent shall be from the promotional quota. The appellants assert that the 25 per cent promotional quota has not been followed by the Judgeship.

Appearing for the High Court Administration, Mr. Banerjee, Learned Counsel, submits that as on the date of the Notification, i.e. on 1st, September, 2014, the appellants/the writ petitioners were not eligible. They were made eligible only in November, 2014 retrospectively to take effect from August, 2014, by which time the Notification of 1st September, 2014 had already been acted upon.

Learned Counsel for the High Court Administration further submits that objections raised to the Draft Gradation List for the

years 2014 and 2015 were considered and reasoned orders were passed by the Judgeship.

After consideration of the said objections on 15th March, 2016, the Draft Gradation List was finalised. Following the finalisation of the Draft Gradation List, the common Gradation List for the years 2016 and 2017 was published on 13th February, 2018. In view of the fact that no objections were received from the appellants/the writ petitioners, the common Gradation List for 2016 and 2017 very much reflected the same position as in the Draft Gradation List of 2014 and 2015.

It is pointed out that the appellants filed a complaint to the Draft Gradation List by way of a representation on 12th March, 2018. The said representation was duly considered by the Common Gradation Objection Disposal Committee by passing a reasoned order on 24th April, 2018. It is further submitted that there is no evidence on record to show that the reasoned order of the Committee dated 24th April, 2018 (*supra*) was ever challenged by the appellants.

Learned Counsel for the High Court Administration next points out that on 30th April, 2018, the Learned Chief Judge, City Sessions Court, Calcutta passed an order for finalisation of the

Common Gradation List. Such order was also not challenged by the appellants.

The High Court Administration therefore takes the position that the appellants/ the writ petitioners have sat over their rights, if any. The appellants/the writ petitioners have now resorted to technicalities such as non-grant of 30 days for raising objections, which are not sustainable for the simple reason that right from the 2014 Draft Gradation List to the 2017 Draft Gradation List, neither any substantive objection was taken by the appellants/the writ petitioners to the same, nor at any stage the appellants/writ petitioners challenged the Draft Gradation List along with the reasoned orders (*supra*) passed by the Judgeship in connection therewith.

Having regard to the conspectus of facts and circumstances enumerated above in this discussion, this Court is of the view that the appellants/writ petitioners have been unable to make out a clear case for grant of reliefs at this stage. Accordingly, the order impugned of the Hon'ble Single Bench calls for no interference.

However, the appellants/ writ petitioners shall not be prejudiced from ventilating their stand *qua* any recast of the

Gradation List in future as well as participating in accordance with law in any future promotional exercise.

MAT No. 498 of 2021 with **IA No. CAN 1 of 2021** stands thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)