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WPA 12996 of 2023

Asish Kumar Das
Vs.
The University of Calcutta & Ors.

Mr. Krishnendu Bera
... For the petitioner.

Mr. Nilotpal Chatterjee
Mr. Sourabh Sengupta
... For the University.

The petitioner seeks his promotion to the post of Senior Superintendent after his retirement from the post of Junior Superintendent on October 31, 2016.

It appears that the petitioner was initially promoted as a Senior Assistant on January 01, 1998 and thereafter he was promoted as Junior Superintendent on August 19, 2010. After serving for five years in the said post of Junior Superintendent, the petitioner became eligible for promotion to the next post of Senior Superintendent.

It also appears that the Establishment Committee of the University in its meeting dated February 15, 2016 resolved to consider the issue of promotion of existing incumbents for the posts, including the post of Senior Superintendent on the basis of annual performance report of the relevant employee.

The process of promotion to the post of Superintendent, however, could not be completed before the retirement of petitioner. The University ultimately promoted 24 employees from Junior Superintendent to the post of Senior Superintendent with effect from August 19, 2015 by a letter dated January 25, 2017. I have already noted that the petitioner had retired on October 31, 2016.

Learned advocate appearing for the petitioner submits that due to the laches and delay on the part of the University the petitioner could not be promoted to the post of Senior Superintendent, despite being eligible for the same well before his retirement. He submits that since similarly circumstanced Junior Superintendents had been granted promotion with retrospective effect, the same benefit should be extended to the petitioner even after his retirement. The petitioner's eligibility cannot be negated for non-assessment of his annual performance report during his service career.

It has been submitted by the learned advocate for the petitioner that it was the policy of the university to grant promotion on Seniority-cum-Merit principle.

In support of his submission, he relies upon a judgment reported at **(2014) 3 SCC 670 (Major General H.M. Singh, VSM -versus- Union of India**

and Another) to argue that a promotion can be given even after retirement of an employee.

I am unable to accept the contention of the petitioner. No doubt, the petitioner was within the zone of consideration during his service tenure. Unfortunately, no promotions were made to the similarly circumstanced employees before his retirement on October 31, 2016. The promotion does not depend on the seniority only, but takes into account various factors including the annual performance report. It cannot be said that on the basis of seniority or length of service the petitioner was automatically entitled to be promoted. Without the determination of the eligibility, it cannot be said that the petitioner had a right to get promotion even after his retirement.

The judgment of the Supreme Court relied upon by the petitioner does not support the case of the petitioner since it will be evident that in paragraph 34 of the said judgment the Supreme Court took note of the fact that the relevant selection committee recommended promotion of the officer on the basis of his service record, past performance, qualities of leadership as well as vision, out of a panel of four names.

In the present case, the petitioner's eligibility for promotion could not be determined during his service

tenure and the same cannot be done after his retirement.

Accordingly, **WPA 12996 of 2023** is dismissed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)