

25.04.2023
Ct. No.7
S/L No.2
KS

W.P.A. 13098 of 2007
Tapan Kar
-Vs.-
The Calcutta Municipal Corporation & Ors.

Mr. Arijit Dey
.....For the Petitioner
Mr. Alok Kumar Ghosh
Mr. Dilip Kumar Chatterjee
Mr. Swapan Kumar Debnath
.....For the K.M.C.

1. The petitioner has filed writ petition being, W.P.A. 13098 of 2007 praying for issuance of a mandamus to make necessary corrections in the service book thereby treating the petitioner to have been appointed as Electrician (Grade – I). An ad interim relief was prayed for to make payment of arrear salary from the date of appointment.
2. The case of the petitioner is that he was appointed as Electrician (Grade – I) on 14th July, 1990 under Kolkata Municipal Corporation but, the authorities have paid him salaries with effect from the date of his joining i.e.

from 14th July, 1990 in the scale of pay applicable to Electrician (Grade – II).

3. Learned advocate appearing for the petitioner refers to various documents annexed to the supplementary affidavit affirmed on 22nd March, 2023 in support of his contention that the petitioner had the requisite qualification at the relevant point of time viz. in the year 1990 for being appointed as Electrician (Grade – I). He also referred to various other documents where it was recorded that the petitioner was appointed as Electrician (Grade – I).
4. Mr. Ghosh, learned advocate appearing for the Kolkata Municipal Corporation submits that the petitioner was appointed on 14th July, 1990 as Electrician (Grade – II) and subsequently, he was promoted to the post of Electrician (Grade – I) on 22nd May, 2008. He further submits that the petitioner got further promotion to the post of Sub-Inspector (Grade – I) (Crematorium) on 27th December, 2018 and he

ultimately retired from service on 31st October, 2022 as Sub-Inspector (Grade – I) (Crematorium).

5. Heard the learned advocates for the parties and perused the materials on record.
6. Record reveals that under order of the Municipal Commissioner dated 06.04.1990, the writ petitioner was appointed to the post of Electrician. He, however, joined his service on 14.07.1990.
7. It is not in dispute that the petitioner received the salaries in the pay scale applicable to the Electrician (Grade – II) on and from 14th July, 1990. Thereafter he was extended the benefits of 10 years Career Advancement Scheme with effect from 14.07.2000. It is not in dispute that the petitioner also received the salaries applicable to Electrician (Grade – I) on and from 22nd May, 2008 till he was subsequently promoted to the post of Sub-Inspector (Grade – I) (Crematorium) on 27th December, 2018.
8. Record reveals that pursuant to an order passed in W.P.O. 882 of 2000, the Municipal Commissioner

passed an order on 29th May, 2002 wherefrom it appears that the seniority position of the petitioner has been shown in the gradation list at Serial No.10 as per the date of his joining in the C.M.C. as Electrician (Grade – II). It was further recorded in the said order that due to increase of work load in the Crematorium, the post of Sub-Inspector (Grade – I) (Crematorium) were created and these posts have opened up the scope of promotion for the electricians and promotions have been awarded strictly following the recruitment rules. It was further stated therein that the petitioner will be promoted as and when his turn of promotion will arise due to vacancies in the post of Sub-Inspector (Grade – I) (Crematorium) subject to fulfillment of other criteria of promotion. The petitioner has not challenged the said order. On the contrary, the petitioner accepted his promotion to the post of Sub-Inspector (Grade – I) (Crematorium) on 27th December, 2018.

9. In view of the aforesaid, this Court is not inclined to accept the contention of the petitioner that he was appointed as Electrician (Grade – I) on 14th July, 1990.

The conduct of the petitioner shows that he accepted his appointment as Electrician (Grade – II) on and from 14th July, 1990 and thereafter accepted the promotions to the post of Electrician (Grade – I) with effect from 22.05.2008 and Sub-Inspector (Grade – I) (Crematorium) with effect from 27.12.2018.

10. The writ petitioner after accepting his appointment to the post of Electrician (Grade – II) and enjoying salaries applicable to such post on and from 14.07.2020 and the benefits of 10 years Career Advancement Scheme with effect from 14.07.2000 has filed the writ petition sometimes in June, 2007. Such delay in filing the writ petition remain unexplained. The prayer for release of arrear salary by treating the petitioner to have been appointed as Electrician (Grade – I) with effect from 14th July, 1990 in a writ petition filed in the year 2007 is ex facie barred by the laws of limitation, such being a monetary claim.

11. For all the above reasons, this Court is not inclined to grant any relief in favour of the petitioner.

12. Accordingly, the writ petition stands dismissed.

13. There shall be no order as to costs.

14. In case any amount is due to the petitioner on account of retiral benefits, the same shall be released by the Kolkata Municipal Corporation as expeditiously as possible subject to compliance of all formalities.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)