

Item No.3
27.04.2023
Court. No. 19
GB

WPA 16182 of 2022

Tarun Samaddar
Vs
The State of West Bengal & Ors.

*Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Gulsanwara Pervin,
Ms. Ambiya Khatun*

...for the Petitioner.

*Mr. Naba Kumar Das,
Mr. Subhabrata Das*

...for the State.

The petitioner was appointed as a Sub-Assistant Engineer (Electrical) at Birbhum Zilla Parishad. The petitioner was discharging his duties at the Sriniketan, Santiniketan Development Authority, Tarapit Rampurhat Development Authority, Bolpur Municipality, Shaithian Municipality, etc., in the absence of a regular Sub-Assistant Engineer (Electrical) in those organizations.

By Memo No.5768 (37)/P.N/OIII/2E-51/10 dated July 27, 2010, the Joint Secretary, Department of Panchayats and Rural Development, Government of West Bengal, created two posts of Assistant Engineer in the Birbhum Zilla Parishad, in terms of the West Bengal Panchayat (Recruitment and Condition of Appointment of Employees of Zilla Parishad) Rules 1997. 40% of the post of Assistant Engineers were to be filled up by promotion from amongst Sub-Assistant Engineers having not less than 10 years qualifying service. The feeder cadre for such promotion,

according to the petitioner, was that of Sub-Assistant Engineer.

Allegedly, a gradation list was accordingly prepared by the Zilla Parishad and the petitioner's name appeared at serial no.2. The first name in the gradation list was of one Md. Mukther Alam. The name of Isaac Murmu appeared at serial no.3. Subsequently Isaac Murmu got promotion to the higher post of Assistant Engineer having the requisite qualification and experience in terms of the memorandum. It is alleged that as the petitioner was holding a diploma in civil engineer, he was not promoted to the Assistant Engineer, though he was senior to Isaac Murmu. By virtue of the promotion given to Isaac Murmu, Murmu's pay was upgraded to Scale No. 16 in Pay Band-4 with Grade Pay of Rs.5,400/-. Isaac Murmu was receiving the revised pay of level 16, that is, (56,100/- to 1,44,300/-) in terms of ROPA-2019. As on June 30, 2021, the pay of Isaac Murmu was fixed at Rs.57,800/-.

The petitioner contends that the petitioner and Isaac Murmu belong to the same cadre and the existing pay structure should be applicable to both. It is further contended that the petitioner and Isaac Murmu were enjoying the said pay structure until ROPA-2019 and before Isaac Murmu was promoted to the post of Assistant Engineer. The petitioner made several representations before the authorities for fixation of his pay at par with that of Isaac Murmu. The petitioner based his claim on the memorandum dated January 27, 1999 issued by the Deputy Secretary to the

Government of West Bengal, Department of Panchayats and Rural Development, by which the benefit of Career Advancement Scheme was to be given to the employees of panchayat bodies. After several rounds of letters and representations, the government asked the Zilla Parishad to supply the documents. Accordingly, the Zilla Parishad prepared the documents and transmitted the same to the Joint Secretary to the Government of West Bengal, Department of Panchayats and Rural Development by a letter dated December 14, 2021. Such letter was issued by the Additional District Magistrate, Birbhum and Additional Executive Officer, Birbhum Zilla Parishad.

The petitioner contends that before Isaac Murmu was promoted to the post of Assistant Engineer, the petitioner and Isaac Murmu were enjoying the same grade pay.

Under such circumstances, as the matter is now pending before the concerned authority for final decision, the writ petition is disposed of with a direction upon the Joint Secretary to the Government of West Bengal, Department of Panchayats and Rural Development to take necessary action on the communication mentioned hereinabove and pass necessary orders after consulting all the documents available. A reasoned order shall be passed and communicated to all concerned. Such decision will be taken within a period of eight weeks from date of communication of this order.

Needless to mention, if it is found that the petitioner was entitled to the pay protection and/or career advancement in terms of the memorandum of 1998, even

though he was not promoted to the post of Assistant Engineer, such order shall be passed and the pay of the petitioner shall be fixed accordingly. Arrears shall be released in accordance with law.

If there are other reasons for not allowing such benefit, the same shall be disclosed to the petitioner.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)