

S/L 25
04.08.2023
Court. No. 29
Suwayan

WPA 12611 of 2012
Sri Sukumar Auddi
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Ziaul Islam

...for the petitioner.

Mr. Alak Kr. Ghosh

Mr. Swapan Kr. Debnath

...for the K.M.C..

1. Both the writ petitioner and the respondents/Kolkata Municipal Corporation are represented by their respective learned Advocates.

2. The supplementary affidavit-in-opposition and the affidavit-in-reply to the supplementary affidavit-in-opposition as filed on behalf of the respondents/Kolkata Municipal Corporation and the petitioner respectively be taken on record.

3. I have heard the learned Advocate for the petitioner and learned Advocate for the respondents/Kolkata Municipal Corporation at length. The instant writ petition is now taken up for passing appropriate order.

4. By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioner has prayed for issuance of writ of mandamus against the respondent No.1/K.M.C. and its officials directing them to withdraw and/or cancel and/or rescind the office order No. DMC (P)/PT/191/2002-03 dated 31.07.2002 whereby and whereunder the promotion order of the present writ petitioner as issued by the respondent No.1/K.M.C. an

08.01.1999 was recalled and cancelled with retrospective effect.

5. In support of the instant writ petition learned Advocate for the writ petitioner at the very outset draws attention of this Court to the Page No. 52 being Annexure P-9 which is the copy of the office order dated 31.07.2002 which has been impugned in the instant writ petition. It is contended that the said impugned order of cancellation of promotion of the writ petitioner is not justifiable in the eye of law since it has been cancelled without giving any opportunity of hearing to the writ petitioner as well as without serving any show-cause notice upon the present petitioner. It is contended that for such illegal, unilateral act on the part of the respondent No. 1/K.M.C. appropriate relief(s) may be granted as prayed for.

6. Mr. Ghosh, learned Advocate duly assisted by Mr. Debnath, learned Advocate for the respondents/K.M.C. and its officials at the very outset draws attention of this Court to the circular No. 103 of 1997-98 dated March 10, 1998 as issued by the respondent No. 1/K.M.C. and which has been annexed with the mark 'R-1' with the supplementary affidavit-in-opposition as filed today. It is submitted by Mr. Ghosh that on perusal of the aforesaid circular it would reveal that the present writ petitioner cannot come under consideration zone on the relevant day, i.e., on 08.01.1999 since on the said day it was found that he was delinquent in two disciplinary proceedings which started on 22.11.1997 and 03.09.1998 respectively. It is further argued by Mr. Ghosh that since circular No.

103 of 1997-98 dated March 10, 1998 is still in force and has not been set aside by any competent Court of law there cannot be any justification to interfere with the impugned office order dated 31.07.2002.

7. I have gone through the entire materials as placed before me, I have also given due consideration over the submissions of the learned Advocates for the contending parties.

8. For effective disposal of the instant writ petition, paragraph No. 1 of the circular No. 103 of 1997-98 dated March 10, 1998 as issued by K.M.C. is required to be looked into and the same reads as under:

“1) The Confirmation/ Promotion/ Efficiency Bar Crossing/Selection Grade of C.M.C. employees shall not be considered in case a Disciplinary Proceedings is pending or contemplated against such employee or if such employee has been placed under suspension. However, such Confirmation/Promotion/Efficiency Bar Crossing/Selection Grade Appointment of, C.M.C. employee may be considered in case where D.P. has been started and continued for more than 3 years, unless the delay in disposal of the U.P. is due to any dilatory tactics by the C.M.C. employee concerned or due to proceedings in a Court of law started at the instance of the concerned C.M.C. employee. However, in such cases the Confirmation/ Promotion/Efficiency Bar Crossing/

Selection Grade Appointment to such C.M.C. employees will be allowed against whom a D.P. is pending only on “Provisional Basis”.

9. On perusal of the aforementioned portion of the aforesaid circular it reveals to this Court that an employee of the K.M.C. cannot come under consideration zone for promotion if against such employee a disciplinary proceeding has been started and the same is continuing for not more than three years.

10. From the materials as placed before this Court it reveals that the first departmental proceeding against the writ petitioner was commenced on 22.11.1997 and the second department proceeding against the writ petitioner was commenced on 03.09.1998. Such being the position as per aforementioned circular dated March 10, 1998 the writ petitioner cannot come under consideration zone as on 08.01.1999.

11. May be due to some inadvertence or due to lacuna on the part of the concerned employee of the K.M.C. the aforementioned provision of the circular was not considered while giving effect to the promotion order dated 08.01.1999 but since it has been detected in the year 2002, the K.M.C. authority has recalled its earlier order dated 08.01.1999 in view of the provision of Clause 1 of the aforementioned circular dated March 10, 1998.

12. This Court, thus, finds no illegality and/or irregularity on the part of the K.M.C./respondent No. 1 in issuing the impugned office order No. DMC

(P)/PT/191/2002-03 dated 31.07.2002 thereby canceling the promotion of the writ petitioner as issued vide its order dated 08.01.1999 since on the said day the present writ petitioner cannot come under consideration zone because of the pendency of two departmental proceedings for less than three years against him.

13. In view of the discussion made hereinabove this Court finds no merit in the instant writ petition.

14. Accordingly, the instant writ petition being WPA 12611 of 2012 is dismissed but considering the facts and circumstances of the instant case without any order as to costs.

15. Parties to act on the server copies of this order.

16. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)