

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 19495 of 2021

Saikat Chowdhury
Vs.
The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Ekramul Bari, Adv. Sk. Imtiaj Uddin, Adv.
For the KMDA	:-	Mr. Satyajit Talukdar, Adv.
For the State	:-	Mr. Biswabrata Basu Mallick, Adv. Mr. Sayan Ganguly, Adv.
Hearing concluded on	:-	10.05.2023
Judgment on	:-	18.05.2023

Amrita Sinha, J.:-

The facts of the case are recorded in the order dated 28th March, 2023. Pursuant to the direction passed by the Court on the aforesaid date, a report dated 20th April, 2023 signed by the Assistant Secretary, Department of Urban Development and Municipal Affairs, Government of West Bengal has been filed in Court.

It appears therefrom that the department relies upon the memorandum of the Finance Department being no. 3741-F dated 18th July, 1964 on the subject – propriety of cancellation of orders in connection with erroneous appointment/confirmation/promotion of government servants. The same mentions that in cases of erroneous appointments, the appointment order should be cancelled as soon as it is brought to the notice of the appointing authority that such appointment resulted from a factual error and the government servant concerned should immediately, on such cancellation, be brought to the position which he would have held but for the incorrect order of appointment. All cases of erroneous appointments should be viewed with serious concern and suitable

disciplinary action should be taken against the officers and staff responsible for such erroneous order.

As per the policy for appointment on compassionate ground in statutory bodies and development authorities under the administration department, appointment on compassionate ground can be made only in a Group-C or Group-D post. The petitioner's appointment, on compassionate ground, in Group-A post was held to be erroneous. On account of such erroneous appointment on 11th October, 2010, the service of the petitioner is yet to be confirmed.

The petitioner has annexed documents in support of his submission that according to the Service Regulations of KMDA as he already completed two years' of continuous satisfactory service, the employer is bound to confirm his service. In support of the same the petitioner relies upon Regulation 11 of the Service Regulations.

It has been submitted that the petitioner was in no way responsible for any error that may have cropped up at the time of his appointment more than thirteen years ago. After having rendered continuous and satisfactory service in Group-A post, the employer ought not to refuse his prayer for confirmation.

It has been submitted that there are several recommendations in favour of the petitioner for confirmation of his service. Similarly circumstanced employees with erroneous appointments have already been appointed and subsequently promoted to the higher post.

Prayer has been made for passing necessary direction upon the employer to confirm the service of the petitioner.

The prayer of the petitioner has been opposed by the learned advocate representing KMDA and the State respondents.

It has been submitted that, admittedly, the petitioner has been appointed on compassionate ground in a group 'A' post. The same is impermissible in view of the relevant Government Order. It is not possible for the respondent authority

to confirm the service of an employee whose initial appointment is found to be erroneous. As per the finance department memo the erroneous appointment of the petitioner is liable to be cancelled.

The respondents pray for cancellation of the illegal appointment of the petitioner.

I have heard and considered the respective submissions made on behalf of both the parties.

There is no doubt that the petitioner was appointed under compassionate appointment scheme in group 'A' post. The Government Order clearly mentions that appointment on compassionate ground can be made only in a group 'C' or group 'D' post. Compassionate appointment cannot be made in a group 'A' post.

As per the memo dated 18th July, 1964, appointment of a government servant is liable to be cancelled as soon as the issue of erroneous appointment comes to the notice of the appointing authority. The aforesaid memo mentions that all cases of erroneous appointment is to be viewed with serious concern and suitable disciplinary action is to be taken against the officers and staff responsible for such erroneous order.

In the present case, the petitioner was appointed in October, 2010 in the post of Technical Assistant (mechanical). He is still now working in the said post. He has been recommended for promotion to the post of Assistant Engineer (mechanical), but the promotion cannot be given as the petitioner is yet to be confirmed in service.

The petitioner contends that as he has served in the said post for more than thirteen years, his service is liable to be confirmed as per the Service Regulations of KMDA. The Court cannot accept such submission made on behalf of the petitioner. If the initial appointment of an employee is erroneous, then steps are liable to be taken to rectify the error in accordance with the law applicable in the

field. If the same is not done, then the error gets perpetuated, which ought not to be permitted.

Submission that similar relief has been granted in favour of a separate employee, cannot be a ground to regularize the erroneous appointment made in favour of the petitioner. One wrong committed in favour of an employee does not give any right in favour of the petitioner to seek for the same relief that was erroneously granted in favour of an employee. Law does not promote negative equality.

Despite satisfactory performance in a group 'A' post the Court cannot convince itself to pass any order in favour of the employee to continue in the said post, as his initial appointment to the post was erroneous. As per the relevant Regulation, the petitioner is required to be appointed in a proper position under the group 'C' or group 'D' category. As the petitioner has the experience of performing in a group 'A' category, accordingly, his service may be utilized in the group 'C' post, rather than in a group 'D' post.

The respondent authority has relied upon the judgment delivered by this Court on 24th March, 2022 in WPA 3789 of 2019 in the matter of **Goutam Ghosh & Ors. vs. Kolkata Metropolitan Development Authority (KMDA) & Ors.** where the Hon'ble Court was pleased to dismiss the petition filed by the petitioners. The respondent also relies upon the decision of this Court dated 31st March, 2022 in WPA 3790 of 2019 in the matter of **Sri Surajit Das & Anr. vs. Kolkata Metropolitan Development Authority (KMDA) & Ors.** where the Hon'ble Court was pleased to dismiss the writ petition.

In both the aforesaid two petitions the appointment of the petitioners was made wrongly in a group in which they ought not to have been appointed. The Court after hearing the parties was pleased to dismiss the writ petitions.

In view of the above, the instant writ petition is disposed of by directing the Secretary, KMDA to take a decision with regard to the prayer of the petitioner

seeking confirmation of his service in accordance with the relevant rules/regulations/circular/ memorandum guiding the field and in the light of the observations made herein above within a period of twelve weeks from the date of communication of this order. As the petitioner has already rendered service in a Group A post, accordingly, the petitioner should not be directed to refund the amount received by him on account of his salary in Group 'A' post.

The Secretary, KMDA is also directed to take appropriate steps against the erring officer who issued the order of appointment in favour of the petitioner contrary to the law governing the field and for whose error the petitioner is facing such legal complication in his service career.

Writ petition stands disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)