

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 10737 of 2018

Pradip Kumar Naiya

-Vs.-

State of West Bengal & Ors.

With

FMA 488 of 2004

With

IA No. CAN 1 of 2004 (Old No.: CAN 4080 of 2004)

With

WPA 11142 of 2021

With

WPA 18548 of 2018

For the Petitioner : Mr. Indrajeet Dasgupta

Ms. Puspita Bhowmick

For the High Court Admn. : Mr. Joydeep Kar

Mr. Sukanta Chakrabarty

Heard on : 07.08.2023

Judgment on : 06.10.2023

Partha Sarathi Chatterjee, J.:-

1. By an order dated 07.04.2022 passed in WPA no. 18548 of 2018, a Coordinate Bench of this court directed that the writ petition being WPA 18548 of 2018 should be heard along with WP no. 10737(W) of 2018 and WPA 11142 of 2021. From the order dated 18.08.2022 passed in W.P. no. 10737(W) of 2018, it is explicit that the respondents had referred to the order passed in FMA 488 of 2004 and MAT 1967 of 2004 in support of their stand and hence, FMA 488 of 2004 has been tagged with the writ petitions.
2. Assailing the resolution adopted by the selection committee on 12.05.2016 and an order *vide*. no. 128 dated 30.4.2018 whereby the final gradation lists for the years 2016 and 2017 were accepted and directed to be published, the writ petition being WP no. 10737(W) of 2018 was preferred. Praying for cancellation of order no. 196 dated 10.08.2018, whereby the five employees being the private respondent nos. 5 to 9 to the writ petition were promoted to the posts of BC, Gr.-I, WPA 18548 of 2018 was instituted whereas in WPA no. 1142 of 2021, the petitioner questions the defensibility of the order *vide*. no. 114 dated 19.3.2021 passed by the Learned Chief Judge, City Sessions Court,

Calcutta whereby a direction was given to publish the final gradation lists for the years 2018, 2019 and 2020.

3. The conundrum posited in all those three writ petitions is as to whether in respect of the promotion to the posts of BC, Gr-I in the City Sessions Court (hereinafter referred to as the Court), the reservation policy and/or the 50-point roster were required to be adhered to and/or applied and what norms should have been followed for giving such promotion, is it '*only merit*' or is it '*merit-cum-seniority*' or '*seniority-cum-merit*' or '*seniority only*'.
4. Capsulated form of facts as depicted in W.P. No. 10737(W) of 2018 and its accompanying documents is as follows:-
 - a. The petitioner belongs to Scheduled caste community. At the time of taking out W.P. no. 10737(W) of 2018, he was working as a Bench Clerk-Grade-II in the Court. Pursuant to the order passed by a Hon'ble Division of this Court in FMA no. 488 of 2004 and MAT 1967 of 2004 and for implementation of the Justice Shetty Commission, certain rules and/or guidelines governing the case of promotion of its employees were framed by the City Sessions Court on 22.1.2014. As per that rules/guidelines, the norms of the '*merit/suitability-cum-seniority*' subject to observation of the norms relating to reservation according to 50-points roster were required to be followed in the matter of promotion to the post of Group-A. Suffice it to observe that posts

of Serestadar, Assistant Registrar & BC-Gr.-I belonged to Group-A posts in the Court.

b. By an order *vide.* no. 43 dated 10.05.2016, the selection committee called for an interview for promotion to the posts of BC, Gr.-I on 12.5.2016. The petitioner participated in the interview but could not emerge to be a successful candidate. By making application under the relevant provision of Right to Information Act, 2005, he sought for certain information which were furnished to him by a letter dated 20.6.2016.

c. By a letter dated 21.7.2016 addressed to the Registrar General, High Court at Calcutta, the petitioner ventilated his grievances that some of the employees who participated in the interview had been given preference illegally and there was no rules in conducting interview to give promotion to the posts of BC, Gr.-I.

d. However, a draft gradation list was published under order no. 54 dated 12.2.2018. The petitioner raised certain objections against such gradation list. The petitioner's objection was referred to the Gradation Objection Disposal Committee but the committee rejected the petitioner's objections. By an order dated 30.4.2018, the Chief Judge accepted and/or published the final gradation lists for the years 2016 and 2017 giving effect thereto from 1.1.2016 and 1.1.2017 respectively.

- e. The petitioner again submitted application under the Right to Information Act, 2011⁵ seeking certain information regarding filling up the posts of BC, Gr.-I. By a letter dated 14.5.2018, the Chief Judge of the Court provided information wherefrom it transpired that in compliance with the orders passed in FMA no. 488 of 2004 & MAT no. 1967 of 2004, a committee was formed to formulate a policy for promotion to the posts of BC, Gr.-I and a committee was formed for conducting a selection process for filling up the posts of Gr.-A posts. The committee selected 7 candidates out of 13 candidates on the basis of merit i.e. on the basis of the marks obtained in Open Performance Report (in short, OPR) and interview. The 50-point roster had not been adhered to. Out of 100 marks, 80 marks was allotted for OPR and 20 marks was allotted for interview.
- f. In such chronological events, the petitioner has preferred W.P. no. 10737(W) of 2018 assailing the order vide. no. 128 dated 30.4.2018 and the resolution adopted by the selection committee on 12.05.2016. The respondent nos. 1,3 & 5 used exception to this writ petition which is kept with the record.

5. Synopsized facts projected in the WPA 18548 of 2018 and its accompanying documents are as follows:-

- i) The Chairman of the Selection Committee *vide*. his orders dated 14.06.2018 and 5.7.2018 called for OPRs of all the staff members

of Additional Supervisory Head Clerk/Grade-II for the period commencing from 1.6.2016 to 31.5.2018 from the learned Registrar, the learned Chief Metropolitan Magistrate and the learned Sr. Metropolitan Magistrate(in short, SMM).

- ii) The then SMM joined to this assignment only on 29.6.2018 and as such, he was not posted during the period commencing from 1.1.2016 to 31.5.2018 and the petitioner was transferred to the post of BC-I, FTC-II, Bichar Bhawan, Calcutta on 15.1.2018. As per memo. *vide.* no. 1062-F dated 19.12.2000, the Reporting Officer , Countersigning Authority or the Accepting Authority, as the case may be, should record their comments on the OPR of any officer or employee only if he/she had observed the performance of that employee for at least six months and if any of such authorities had not seen the performance of the officer/employee for at least six months, then it should be sent to the next superior authority who had observed the performance of that employee for at least six months. Though the SMM did not get occasion to observe performance of the petitioner for six months yet the SMM in consultation with the Registrar concerned forwarded the petitioner's OPR on perusal of his service book and other documents. Initially, the petitioner did not sign on such OPR for this reason. However, ultimately, he signed on the OPR with objection on 9.7.2018.

- iii) According to the petitioner, as per the rules/guidelines dated 22.01.2014, the policy of merit/suitability–cum-seniority subject of observation of the other guidelines and norms relating to reservation according to 50-point roster should have been adhered to in the matter of the promotion to Gr.-A posts.
- iv) By an order dated 10.5.2016, the selection committee called for an interview for promotion to the posts of Gr.-A (BC, Gr.-I). The petitioner appeared in the interview but since the respondents acted arbitrarily and illegally in giving promotion to the posts without adhering to the 50-point roster, the petitioner has been deprived and hence, he was constrained to prefer W.P. no. 10737(W) of 2018 which was pending for final adjudication.
- v) Despite pendency of the above writ petition being W.P. no. 10737(W) of 2018, the selection committee again called for interview on 23.7.2018. Giving a letter to the Chief Judge on 23.7.2018 contending that he was appearing in the interview without prejudice to his right and contentions canvassed in W.P.no. 10737(W) of 2018, the petitioner appeared in the interview.
- vi) Eight candidates appeared in the interview. Out of them 5(five) candidates were selected. The petitioner could not emerge to be a successful candidate. The petitioner again submitted application under Right to Information Act, 2005 seeking information as to

whether the 50-point roster was followed or not. The answer came in negative. From the information provided, it was explicit that the OPR for the period from 1.6.2016 to 12.4.2018 was considered though the OPR for the period from 1.6.2016 to 31.5.2018 was called for and it was claimed that the guidelines dated 22.1.2014 was followed in giving promotion to the posts of BC, Gr.-I and by an order *vide.* no. 196 dated 10.8.2018, the Chief Judge promoted the aforesaid five candidates to the posts of GR.-A (BC-I, Gr.-I).

vii) The petitioner alleged that he was victim of bias. He was awarded average marks in OPRs. The 50-point roster had not been adhered to and despite having no power to hold interview, the selection committee conducted interview to give promotion to the posts of BC, GR.-I and consequently, the petitioner was constrained to institute WPA 18548 of 2018 seeking cancellation of the recommendation of the selection committee and its consequential order *vide.* no. 196 dated 10.8.2018.

6. Facts enumerated, save and except the facts unfurled in above two writ petitions, in WPA 1142 of 2021, in brief, are as follows:-

a. The petitioner was promoted to the post of BC-Gr.II by an order dated 9.6.2014. As on 1.1.2016, two posts of Gr.-I were vacant in City Sessions Division, Calcutta and had the 50-point roster been followed, one post was kept reserved for SC candidate. The

respondents do not maintain 50-point roster. Abhijit Bhattacharya, respondent no. 7 to the writ petition being W.P. no. 10737(W) of 2018 was promoted to the post of Administrative Officer during pendency of the aforesaid writ petition.

- b. By an order dated 14.10.2020, a committee was formed to scrutinize the Draft Common Gradation List prepared for the years 2018, 2019 and 2020. The petitioner's learned advocate requested the Chief Judge to withdraw the order dated 14.1.2020 but in vain.
- c. By an order dated 5.1.2021, learned Chief Judge directed the committee to publish draft gradation lists for circulation among the employees of the judgeship. The employees were invited to submit their objections in respect of the draft gradations lists.
- d. By giving two letters, the petitioner raised an objection that one employee namely, Partha Pratim Paul, who happened to be one of respondents in one writ petition and two other employees who were juniors to the petitioner were appointed a members of the committee but the objection raised by the petitioner was turned down by the Chief Judge by his letter dated 18.2.2021.
- e. However, by an order dated 10.3.2021, the Chief Judge accepted the report of the committee and approved the common gradation lists for the years 2018,2019 and 2020 and those gradation lists were directed to published.

f. The petitioner intended to file another writ petition challenging the order dated 10.3.2021 but due to his illness and Covid-19 pandemic, he could not file the same.

g. Challenging the order dated 10.3.2021, the present writ petition was preferred.

7. Mr. Dasgupta, learned advocate for the writ petitioner contends that the reservation policy is applicable in case of promotion to the posts of BC, Gr.-I(Gr.-A). The Court while giving promotion and while preparing gradation lists did not follow reservation policy and did not maintain 50-point roster rather adopted a policy which is contrary to the law. He submits that since the reservation policy has not been followed, the petitioner has been deprived of his promotion to the post of BC, Gr.-I. Placing his reliance upon a judgment delivered in W.P. NO. 22752(W) of 2010 (Dulal Chandra Sarkar & Ors. –vs- The State of West Bengal & Ors.), he contends that a Coordinate Bench of this Court has held that the State has made provisions for reservation both in respect of direct recruitment and promotion of the supporting staffs of the District Courts in West Bengal. Drawing my attention to one *e-mail* (kept with the record) sent to the learned District Judge, Murshidabad by the Joint Commissioner for Reservation & ex-office Joint Secretary, Backward Classes Welfare Department, Govt. of W.B. and one Memo. *vide*. no. 4550-F(P) dated 11th June, 2015, he strenuously contends that the posts of BC-Gr-I shall be filled up either by transfer from the cadre of officials holding pre-revised scale of pay no. 12 or by promotion from the feeder cadre of officials holding pre-

revised pay scale no. 10 as per the memo. dated 20.07.2009 and he vociferously contends that as per the stand of the Govt. in every step of promotion, the 50-point roster is to be maintained and/or followed. Placing his reliance upon a Memo. *vide*. no. dated 17th June, 2005 issued by Special Secretary to the Govt. of W.B., Finance Department, Mr. Dasgupta submits that the Govt. extended the benefits of promotion to the common cadres of Lower Division Asst. (LDA_, UDA , Head Assistants and Section Officers of its Secretariat Department as per the norms of ‘*seniority-cum-merit*’ and hence, such norms should have been followed by the Selection Committee.

8. Mr. Kar, learned Sr. advocate being assisted by Mr. Chakraborty, learned advocate for the High Court Administration submits that the High Court Administration had and/or has no role to play in respect of the subject matter of the *lis* . According to Mr. Kar, State is the appropriate authority to throw some light on the issue.

9. Despite receipt of notice, none has turned up to represent the State.

10. Article 16(4A) of the Constitution of India lays down as follows:-

‘Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State’.

11. It is noteworthy that Article 16(4A) of the Constitution is an enabling provision and it conferred a discretion upon the State to make provision for reservation in the matters of promotion.

12. Section 5 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 (in short, Act of 1976) provides that the reservation for members of the Scheduled Castes(in short, SC) and Scheduled Tribes(in short, ST) in vacancies to be filled up by promotion in any establishment shall be regulated in the following manner, namely ,---

a) There shall be reservation at twenty-two per cent for members of the SC and six percent for members of the ST in the manner set out in schedule –II

.....

b) There shall be no reservation in any post carrying the grade pay exceeding Rs. 8700/-

c) A separate fifty-point roster shall be maintained by every establishment in the manner set out in the Schedule.

13. The paragraph-(i) of the Schedule-II appended to the Act of 1976 mandates that the 50-point roster shall be followed in giving promotion. Point no. (ii) of Schedule-II directs that a register shall be maintained for giving effect to the instructions contained in paragraph (i) and point no. (iii) says that before giving promotion, the appointing authority shall ascertain by consulting the

register whether the vacancy is reserved or unreserved and if it is reserved, for whom it is so reserved. Immediately after a promotion is given, the particulars thereof shall be entered in the register and signed by the appointing authority.

14. From the circular vide. dated 20th July, 2009 issued by the Secretary-in-charge of the Judicial Department, Govt. of West Bengal, it transpires that the Govt. of W.B. decided to implement the following recommendations of the Justice Shetty Commission w.e.f. 1.4.2003 :-

1) There will be three grades of Bench Clerks for the three levels of Courts, namely-

i) Bench Clerk- Grade-III, attached to the Court of Civil Judge(Jr. Division/Magistrate);

ii) Bench Clerk- Grade-II , attached to the Court of Civil Judge (Sr. Divn/CJM/CMM);

iii)Bench Clerk- Grade-I, attached to District Court/Additional Judge Court.

2) Mode of Recruitment:-

The Bench Clerks are to be appointed generally from the respective cadres in the service and not by respective channel of promotion from Bench Clerk Grade-III to Bench Clerk Grade-II and from Bench Clerk Grade-II to Bench Clerk –I.

15. From the Memo. vide. no. 4550-F(P) dated 11th June, 2015 issued by the Pr. Sec. to the Govt. of West Bengal, Finance(Audit) Department , it is explicit that the posts of BC, Gr.-I may be filled up by transfer from the cadre of officials holding the pre-revised Pay Scale no. 12 or by promotion from the feeder Cadre of officials holding pre-revised Pay Scale no. 20 as per the provision of Memo. No. 5142-J dated 20.07.2009.
16. From the e-mail referred above it can easily concluded that the stand of the Govt. is that in every step of promotion, the 50-point roster is to be maintained.
17. Suffice it to note that a Coordinate Bench of this court in WP no. 22752(W) of 2010 has held that in the matter of promotion of the supporting staffs of District Courts in West Bengal, the provisions of Section 5 of Act of 1976 and Schedule-II appended to Act of 1976 i.e. the 50-point roster will be applicable and I did not find any justification to disagree with such view.
18. In such conspectus, there is an irresistible conclusion that the reservation policy and the 50-point roster are applicable in the matter of promotion of the supporting staffs of District Courts in West Bengal and it goes without saying that the reservation policy and the 50-point roster are required to be adhered to while giving promotion to the posts of BC Gr.-I from its feeder posts. Suffice it to observe that Justice Shetty Commission had not been called upon to decide as to whether the reservation policy will be applicable in respect of promotion of the supporting staffs of the District Courts and since there was no whisper regarding applicability of the reservation policy in the

recommendation of Justice Shetty Commission, it cannot be construed that the reservation policy is not applicable in respect of the appointment and promotion of the supporting staffs of the Court.

19. In FMA 488 of 2004 with MAT no. 1967 of 2004, the subject matter of the *lis* was a recruitment in the post of Head Asst. in the office of CMM, Calcutta. The Learned Single Bench basing upon the submission made on behalf of the State-respondent that there was no rules and/or guidelines in respect of promotion to the post in question directed the concerned authority to frame guidelines and/or rules and such decision was upheld by the Hon'ble Division Bench. It would not out of context to note that the Hon'ble Division Bench did not direct the Court not to follow the reservation policy in case of promotion.

20. The committee formed by the Chief Judge to consider the promotional aspects of the supporting staffs of the Court observed that the Chief Judge had no competence to frame rule or promotional policy and hence, in the matter of promotion, West Bengal Service Rules, Part-I and Part-II and the Govt. Circulars are followed. However, in respect of promotion, no such rules and/or guidelines of Govt. of West Bengal were found.

21. The committee concluded that the promotion to the post of BC, Gr.-I (Group-A) should not be automatic on the basis of ranking in the gradation list and hence, the committee recommended that the 'policy of merit/suitability-cum-seniority subject to observance of the other guidelines and norms relating to reservation according to the 50-point roster' should be followed in the matter of promotion to Gr. A posts.

- 22.** From the information provided to the writ petitioner by a letter dated 14.5.2018 (page-58 to the writ petition being W.P. no. 10737(W) of 2018), it transpires that although the committee resolved that policy of merit/suitability-cum-seniority would be followed but actually from 2016 and onwards the promotions to the posts of BC, Gr.-I were given on the basis of merit only i.e. on the basis of the OPR and interview.
- 23.** No documents have been placed before me to show that the reservation policy was followed and the 50-point roster was maintained in respect of giving promotion to the posts of BC, Gr.-I in the Court and no document has been submitted to show that the Note-(iii) of the Schedule-II of Act of 1976 was followed by the City Sessions Court while giving promotion to the posts of BC, Gr.-I.
- 24.** From the memo. *vide*. no. 4982-F dated 17th June, 2005, it reveals that the Govt. adopted the norms of seniority-cum-merit in respect of promotion of the cadres of LDA, UDA, Head Assistant, Section Officers of its Secretariat Departments. The notification *vide*. Memo. no. 9135-F dated 10.09.2002 (relevant part of which has been annexed to the writ petition being WPA 18548 of 2018) speaks that to improve performance, efficiency, accountability and integrity of the employees of the Govt. of W.B., a system of performance appraisal was implemented and the District Courts of West Bengal have adopted such system. As per this system, the employees under Gr.-A shall be guided by Annual Confidential Report system whereas the employees of Gr.-B, Gr.-C and Gr.-D would be governed by Open Performance Report (OPR)

System and the employees belonging to Gr.-B who will be considered for promotion to Gr.-A shall be guided by the reporting on Annual Confidential Report System.

25. The memo. *vide.* no. 9135-F dated 10.09.2002 further speaks that the employees of Gr.-B who are to be considered for promotion to the post of Gr.-A will additionally have to score 70% on attendance to become eligible for promotion and such employees will have to score 60% marks on the whole to earn eligibility for promotion. Suffice it to note that the memo. *vide.* no. 9135-F dated 10.09.2002 mandates that the promotion will be given in terms of the seniority from amongst those who have obtained minimum qualifying marks.

26. The Court can take judicial notice that The West Bengal District Court (Constitution of Service, Recruitment, Appointment, Probation and Discipline of Employees) Rule, 2015 (hereinafter referred to as the Rule of 2015), which has been given effect to from 6.7.2021, directs that post of BC, Gr.-I will be filled up by promotion on the basis of the seniority only. From the notification *vide.* dated 08.05.2015 (Annexure-P/7 to the affidavit-in-opposition to the W.P. No. 10737(W) of 2018), it would be explicit that the mode of recruitment for the post of Sheristedar , Senior Sheristedar, Chief Administrative Officer ,which are also Gr.-A posts, was by promotion on the basis of 'seniority-cum-merit'.

27. Hence, from the discussion made hereinabove, it can be stated that prior to the date of coming into effect of the Rule of 2015, the promotion of the supporting staffs of the District Courts of West Bengal to the post of Gr.-A

should have been given on the basis of 'seniority-cum-merit' from amongst those who have obtained minimum qualifying marks either in ACR or OPR, as the case may be.

28. It is trite law that no employee has a vested right to promotion but he has right to be considered for promotion in accordance with the extant rules and since reservation policy had not been strictly adhered to and norms of 'seniority-cum-merit' had not been followed while giving promotion to the posts of BC, Gr.-I the petitioner's rights enshrined under Article 16 of the Constitution of India had been violated.

29. Hence, it is quite vivid and luminescent that the selection committee of the Court has committed mistake in not maintaining the 50-point roster and in not applying the provision of Section 5 of Act of 1976 and also in following the norms of merit/suitability-cum-seniority while considering the case of promotion to the posts of BC, Gr.-I and/or Gr.-A but at such distance of time, it would not be apposite to direct cancellation of the gradation lists prepared and published for the year 2016 and onwards and the promotions given basing upon such gradation lists.

30. In view thereof, the W.P.no. 10737(W) of 2018, WPA 18548 of 2018 and WPA 11142 of 2021 are disposed of with following directions :-

- i) The Chief Judge, City Sessions Court shall act in accordance with the provisions of Section 5 of the West Bengal Scheduled Castes and Schedule Tribes (Reservation of vacancies in Services and

Posts) Act, 1976 while considering the case of promotion of its employees;

- ii) The Chief Judge shall maintain a register for giving effect to the instructions contained in paragraph-(i) of the Schedule-II of the West Bengal Scheduled Castes and Schedule Tribes (Reservation of vacancies in Services and Posts) Act, 1976, if it is not maintained and before giving promotion, the Court shall follow the instructions contained in the Schedule-II appended to the Act of 1976 and the notes inserted thereunder;
- iii) The Chief Judge, City Sessions Court shall form a committee consisting of three members of his choice under the chairmanship of one senior judicial officer;
- iv) The committee upon scrutiny of all relevant documents including the contemporaneous OPRs of the petitioner shall ascertain as to whether the petitioner had earned the eligibility for promotion having scored 70% in attendance and 60% on the whole in OPR;
- v) Upon application of the reservation norms, as discussed above and if on the basis of seniority-cum-merit, the petitioner comes within the zone of consideration for promotion, the committee shall make recommendation for the petitioner's promotion to the post of BC, Gr.-I to the Chief Judge, who in turn shall take necessary steps to extend the benefits of promotion in favour of the petitioner with retrospective effect and shall also take

appropriate steps to extend all the consequential benefits including arrears of pay, seniority etc.

- vi) The entire exercise shall be completed within four months from the date of receipt of a copy of this order.

31. The writ petitions are accordingly disposed of, without any order as to the costs.

32. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

33. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)