

25.07.2023
Item No.141
Ct. No. 238
AKG

WPA 21111 of 2017
Shyamal Kumar Neogi
Vs.
The State of West Bengal & Ors.

Mr. Sankar Prasad Dalapati
Mr. Sofik Dewan,
Mr. Sourav Mondal

...for the Petitioner

Ms. Tapati Samanta

...for the State

In this writ petition, the petitioner has challenged an order dated November 22, 2016, passed by the Director of Library Service in compliance with an order dated July 26, 2016 passed by a Co-ordinate Bench of this Court in a previous round of litigation.

It is the grievance of the petitioner that he was entitled to be promoted to the post of Assistant Librarian but due to laches on the part of the respondents, he was not given his due promotion.

Learned advocate appearing for the petitioner submits that pursuant to a direction passed by a Co-ordinate Bench of this Court, a gradation list was published on December 14, 2015, where the name of the petitioner appeared at serial no. 25. The petitioner retired from service on August 31, 2016. Since the respondents did not promote the petitioner to the relevant post despite his name being included in the gradation list, he should be given the benefit of

promotion notionally with effect from date of publication of the gradation list.

The order impugned and the affidavit in opposition filed by the State suggest that the petitioner initially joined as Darwan-cum-Night Guard (Group-D) at the relevant library in Hooghly and he retired on August 31, 2016. The petitioner subsequently, became eligible to be considered for promotion to the post of Library Assistant but the promotion was contingent upon the position in the final gradation list and the available vacancies.

In this case, the provisional gradation list for Group-D employee was published on December 14, 2015 with the name of the petitioner at serial no. 25. The final gradation list, however, was not published by the District Library Officer and Secretary, Local Library Authority which was a prerequisite for considering the promotion of the petitioner.

The final gradation list was published on November 22, 2016 but the name of the petitioner was not incorporated in the said list since the petitioner had retired prior to the publication of the final gradation list.

As per the applicable rules contained in the notification dated October 24, 1997, out of total vacant posts, 50 per cent shall be available for being filled up for promotion from the serving employees.

For promotion, a panel is prepared by a selection committee constituted by the Local Library Authority by evaluating the candidates within the zone of consideration and upon consideration of the various factors as mentioned in the said notification. The panel so prepared is required to be considered thereafter by the Local Library Authority for approval and the promotion can be given only after the approval is accorded by the Director of Library Service, West Bengal.

In this case, on account of administrative difficulties, no panel for promotion to any post was prepared and no selection committee was constituted prior to the retirement of the petitioner in the Hooghly District..

The selection committee was, however, constituted only on July 31, 2018.

Learned advocate appearing for the petitioner strenuously argued that since the name of the petitioner was in the gradation list and due to the laches of the administration, the process of promotion could not be completed, the petitioner should be treated to be promoted from the date of publication of the draft gradation list.

In support of his submission, Learned advocate for the petitioner relied upon following judgments :

1. **“(1998) 2 SCC 624 (H. P. State Electricity Board Vs. K. R. Gulati.**
2. **1991 Supp (2) SCC 363 (Nirmal Chandra Bhattacharjee & Ors. Vs. Union of India & Ors.)**
3. **(1995) 1 ALD 184 (P. Kalavathi Vs. The Director, Nizam Institute of Medical Sciences & Anr.)”**

Mere inclusion of the name in the draft gradation list automatically does not guarantee the promotion. If a person's name appears in the gradation list, he may be entitled to be considered for the promotion, but without successfully completing the selection procedure he is not entitled to get promotion.

The facts of the case clearly reveals that the selection committee was not even constituted before the retirement of the petitioner.

I do not find any substance in the argument put forth as advanced by the learned advocate for the petitioner that the petitioner should be granted retroactive promotion from the date of publication of the draft gradation list.

The judgments relied upon by the learned advocate for the petitioner pertain to completely different factual sceneries and do not have any applicability in the present case.

Accordingly, **WPA 21111 of 2017** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)