

Form No. J(2)

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

Present:

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**WP.ST 212 of 2015**

**State of West Bengal & ors.**

**VS.**

**Sri Goutam Sural**

For the Petitioners : Mr. Tapan Kr. Mukherjee, Sr. Advocate  
Mr. Pinaki Dhole, Advocate  
Mr. Avishek Prasad, Advocate

For the Respondent : Mr. Subir Sanyal, Advocate  
Mr. Suthirtha Das, Advocate  
Ms. Chandrani Bhattacharya, Advocate

Hearing on : 09.08.2023

Judgment on : 09.08.2023

**DEBANGSU BASAK, J.:-**

1. The writ petition is directed against an order dated May 11, 2015 passed by the West Bengal Administrative Tribunal in O.A.1280 of 2013.

2. By the impugned order, the Tribunal, directed the authorities to grant the private respondent herein, notional seniority with reference to his junior in the merit list for the purpose of Career Advancement Scheme (CAS) benefit and promotion and also pay protection with reference to his junior.

3. The writ petition is at the behest of the State.

4. Learned Senior Advocate appearing for the State submits that, the writ petitioner initially participated in a selection process. He was found to cross the upper age limit. Consequently, his candidature was rejected. Subsequently, after litigation, by the judgement and order dated April 29, 2011 passed by the Hon'ble High Court in W.P.S.T.599 of 2009, the writ petitioner was directed to grant the private respondent employment forthwith. He submits that such judgment and order was complied with and appointment letter was issued on December 15, 2011 to the private respondent.

5. Learned Senior Advocate appearing for the writ petitioners submits that, the seniority of the private respondent will commence from his appointment and not from anterior date. In support of his contention he relies upon **(2000) 7 Supreme Court Cases 561 (Suraj Parkash Gupta and others vs. State of J & K and others)**.

6. Learned Senior Advocate appearing for the writ petitioners submits that, never ever, did the private respondent agitate the point of seniority before any forum. Consequently, the claim for seniority or the claim that the writ petitioner should be treated in service from an anterior date than the date of his appointment is barred under the principles of *res judicata* and/or principles akin to Order II Rule 2 of the Code of Civil Procedure, 1908.

7. Learned advocate for the private respondent submits that, the private respondent participated in a selection process. He was unfairly treated in the selection process by denying the appointment on the basis of private respondent allegedly breaching the upper age limit. He submits that, litigation ensued which ultimately resulted in the judgment and order dated April 29, 2011 passed by the High Court in W.P.S.T.599 of 2009. The writ petitioners were directed to grant appointment to the private respondent. However, appointment letter was not issued, although, the private respondent was allowed to join the services. The private respondent approached the Tribunal once again, by way of O.A.1574 of 2012, where, two primary prayers were made namely, issuance of formal appointment letter and secondly, protection of seniority notionally. He draws attention of the Court to the order dated June 26, 2013 passed by the West Bengal Administrative Tribunal in O.A.1574 of 2012. He submits that, during the pendency of the O.A., formal appointment letter was issued. The Tribunal, directed the authorities to consider the prayer for seniority as a representation and to pass final order after holding that the private respondent was with the legitimate claim of pay protection and seniority against his juniors. He refers to the reasoned order passed by the Commissioner of Police which negated the claim for seniority of the private respondent. He submits that, the private respondent thereafter approached the Tribunal by way of O.A.1280 of 2013 which was disposed of by the impugned order

granting relief of seniority and pay protection. He submits that, the private respondent was in serial no.15 in the merit list. The serial no.18 was appointed. He submits that the private respondent is entitled to seniority notionally, from the date of appointment of Serial no.18 in the merit list, at the barest minimum.

8. The private respondent participated in the selection process for the post of Constable in the Kolkata Police. He was called for interview on August 13, 1988. Private respondent was empanelled as serial no.15 in the selection process. There was an issue with regard to the upper age limit prescribed in the selection process. According to the authorities, the private respondent breached the upper age limit prescribed in the selection process and therefore, his candidature was rejected.

9. Assailing the rejection of such candidature, the private respondent filed an original proceeding before the West Bengal Administrative Tribunal being O.A.225 of 2009. Such original proceeding was dismissed by an order dated August 10, 2009. Assailing the order dated August 10, 2009 of the Tribunal, a writ petition was filed being W.P.S.T.599 of 2009. Such writ petition was disposed of by a judgment and order dated April 29, 2011, the relevant portion of which is as follows:-

*“The petitioner herein was admittedly selected to the post of constable in Kolkata Police on the basis of the interview held on 13<sup>th</sup> August, 1998 i.e. long after the issuance of the memorandum*

*dated 19<sup>th</sup> May, 1998 by the Finance Department, Government of West Bengal notifying the policy decision of the State Government with regard to the relaxation of the upper age limit for direct recruitment to posts/service. The petitioner herein therefore, is entitled to enjoy the benefit of the aforesaid policy decision of Government of West Bengal with regard to relaxation of the upper age limit.*

*In the aforesaid circumstances, the decision of the Additional Chief Secretary Government of West Bengal rejecting the prayer of the petitioner by the written communication dated 30<sup>th</sup> December, 2008 cannot be sustained and the same is accordingly quashed. For the identical reasons, the judgment and order dated 10<sup>th</sup> August, 2009 passed by the learned West Bengal Administrative Tribunal in O.A. No.225 of 2009 cannot be sustained and the same is therefore, set aside.*

*The respondents herein are, directed to issue formal letter of appointment to the petitioner to the post of Constable in Kolkata Police forthwith since the said petitioner was declared selected by the competent authority of the Kolkata Police on the basis of the interview held on 13<sup>th</sup> August, 1998. The petitioner will however, comply with other official*

*formalities, if there be any, for the purpose of joining the post of constable.”*

10. Pursuant to the judgment and order dated April 29, 2011, the private respondent was allowed to join the services in the post of Constable. Formal appointment letter was not issued. Private respondent, approached the Tribunal for the second time by way of O.A.1574 of 2012 which was disposed of by an order dated June 26, 2013. There he sought issuance of formal appointment letter as prayer (a) and seniority and pay parity with his junior in prayer (b).

11. During the pendency of the O.A.1574 of 2012, formal appointment letter was issued. Therefore, prayer (a) was taken care of.

12. O.A.1574 of 2012, was disposed of by the Tribunal, by observing as follows:

*“Thus, we hold that the petitioner has a legitimate claim of pay protection and seniority against his juniors which should be determined by the respondents who are sole authorities to take appropriate decision in such matter.*

*Therefore, we find that there is sufficient merit in this application so far as prayer (b) is concerned. Accordingly, we dispose of this application and direct the respondents to consider prayer (b) of the instant application treating the same as a representation and to pass a reasoned order in accordance with law and in light of*

*the direction given by the Hon'ble High Court in the aforesaid judgment and order passed in WPST 599 (W)/2009 as claimed by the petitioner within a period of **four months** from the date of communication of this order and the decision so taken shall be communicated to the petitioner within **three weeks** thereafter. On receipt of such decision, petitioner will, however, be at liberty to approach this Tribunal if he is aggrieved by such decision.”*

13. The Commissioner of Police, pursuant to the order dated June 26, 2013 of the West Bengal Administrative Tribunal, considered the prayer for seniority of the private respondent and negated the claim.

14. Aggrieved thereby, the private respondent filed the third proceeding before the West Bengal Administrative Tribunal being O.A.1280 of 2013 which was disposed of by the impugned order dated May 11, 2015.

15. By the impugned order, the Tribunal, directed as follows:-

*.....“Accordingly, we allow the application and direct the respondent authorities to grant the petitioner due seniority with reference to his junior in the merit list for the purpose of CAS benefit and promotion and also pay protection with reference to his junior. Where, however, successful completion of training or passing of any examination is required for the*

*purpose of confirmation/promotion/CAS benefit, such promotion/CAS benefit shall actually be granted with effect from the date of completion of training or passing of examination and till then, protection of pay shall be on notional basis. The order in this regard must be issued within a period of four months from the date of communication of this judgment.”*

16. Candidature of the private respondent was wrongfully rejected despite the private respondent being empanelled as serial no.15 of the selection process on the ground of alleged breach of the upper age limit. The stand of the petitioners, stood resolved by the judgment and order dated April 29, 2011 of the High Court.

17. In the selection process, a candidate who was empanelled as serial no.18 was granted appointment. Private respondent herein seeks seniority on the same strata as that of serial no. 18 in the panel.

18. A candidate cannot be deprived his entitlement due to an action taken by the authorities which was wrong and held to be wrong by a Court of law, in denying his candidature in the selection process. On such prayer, by the impugned order, Tribunal directed the authorities to restore the seniority and cash benefit as that of the junior of the private respondent.

19. **Suraj Parkash Gupta and others (supra)** considered a different scenario. There, the issue was with regard to antedating and

appointment. It was held that direct recruitment can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date, when he was not born in the service.

20. In the facts and circumstances of the present case, the private respondent was denied his rightful appointment, wrongfully by the authorities and was held to be so by the High Court. The Tribunal by the impugned order directed grant of notional benefit to the private respondent. We find no error in the impugned order of the Tribunal.

21. In such circumstances, we find no merit in the present writ petition.

22. **WP.ST 212 of 2015** is **dismissed** without any order as to costs.

**(Debangsu Basak, J.)**

23. I agree.

**(Md. Shabbar Rashidi, J.)**