

11.5.2023

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WPA 22270 of 2017
with
IA CAN 2 of 2022

Asit Roy & Ors.
Vs.
University of Calcutta & Others

Mr. Krishnendu Bera
Ms. Debolina Chakraborty
... For the petitioners.

Mr. Nilotpal Chatterjee
Mr. Satyaki Banerjee
... For the University.

It is the grievance of the petitioners that they should have been promoted to the post of Senior Assistant on May 01, 2006 like certain other employees of the University standing on same footing with the petitioners.

The petitioners have been given promotion on May 01, 2007.

The petitioners were initially appointed as Junior Assistants on March 13, 1995. After completion of nine years of service, they became eligible for promotion to the post of Senior Assistant. The University sought to fill-up sixty-three posts of Senior Assistant considering the available vacancies upto April 30, 2006.

While other Junior Assistants were promoted to the said posts on May 01, 2006 against the said

vacancies, the petitioners could not be promoted on that date due to lack of available vacancies.

The University in its affidavit has disclosed, inter alia, as follows:

“4(a) The petitioners have filed this instant writ application praying, inter alia, a writ in the nature of mandamus commanding the respondents and each one of them, their agents, servants and/or subordinates to give effect of the promotion to the petitioners to the post of Senior Assistant w.e.f. 01.05.2006 from the date on which the other similarly situated employees, Sri Debasish Mishra and Sri Tapan Kanti Pal were granted promotion to the post of Senior Assistant who joined alongwith the petitioner in the post of Junior Assistant on the same date i.e. on 30th march, 1995 which was denied to the petitioners taking the fraudulent stand of unavailability of vacancy when such vacancy occurred on 28.02.2006 which is within the calculation of resultant vacancies as on 30.04.2006 in terms of the decision of the Establishment Committee of re-fixing their pay accordingly immediately and forthwith.

(7) With regard to the statements made in paragraphs 6,7,8,9 and 10 of the application I do not admit any statement and/or averment contrary to and/or inconsistent with the records. I deny that the petitioner have suffered loss of

seniority and financial benefits or that they are entitled to notional effect of promotion w.e.f. 1st May 2006. I say that promotion does not merely depend upon the eligibility of the candidates, but also depends upon the availability of a vacant promotional post. Though the vacancies in which the petitioners were ultimately promoted occurred on 28th February 2006, that is prior to 1st May 2006, the vacancies were intimated by the concerned Department to the University authority after 1st May 2006 and were therefore filled up while considering promotions on 1st May 2007. It may be noted that at that time the University had not introduced the Reservation Roster and that appointment and promotions were made considering regular or resultant accumulated vacancies which were at variance with the existing point based on vacancy position and mechanism of filling such posts by appointment and/or promotion. I deny that the University authority acted with intentional malafied and discriminating attitude or that the petitioners were motivatedly deprived from their promotion for more than one year or in any manner whatsoever.”

The aforesaid stand of the University unambiguously indicates that though there were two more vacancies as of April 30, 2006, due to some lack of coordination or communication, the said vacancies,

despite being available, were not considered for promotion. Therefore, it is apparent if the said vacancies had been considered, the petitioners would have been appointed as Senior Assistant with effect from May 01, 2006.

The petitioners cannot be discriminated against in granting promotion to the laches of the University.

Accordingly, this writ petition is allowed with a direction upon the University to treat the petitioners as promoted to the post of Senior Assistant as of May 01, 2006 notionally and re-fix their pay scale accordingly.

There will not be any arrear claim since the petitioners did not serve as Senior Assistant for the period May 01, 2006 to May 01, 2007.

Accordingly, **WPA 22270 of 2017** along with **CAN 2 of 2022** is disposed of

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)