

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

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

WPST 157 of 2019

The Government of West Bengal & Ors.

Vs.

Dr. Amal Satpathi & Ors.

Appearance:

For the Appellant : **Ms. Chaitali Bhattacharya, Adv.
Mr. Subhendu Roy Chowdhury, Adv.**

For the Respondents : **Mr. B.N. Ray, Adv.
Ms. Shetparna Ray, Adv.**

Judgment On : **01.02.2023**

Prasenjit Biswas, J. :

Point to be considered in the present writ petition is as to whether the respondent, who retired on superannuation is entitled for notional promotion and consequential monetary benefits or not.

The facts giving rise to the instant writ petition are within the narrow compass and are briefly noted hereafter. The Respondent joined

the post of Principal Scientific Officer on officiating basis dated 24.03.2008 and he was eligible for promotion to the post of Chief Scientific Officer after amendment of Recruitment Rules on January 6, 2016. The Department moved before the Public Service Commissions for filling up the post of Chief Scientific Officer on April 13, 2016 and the PSC recommended the name of the Respondent for promotion to the post of Chief Scientific Officer on December 29, 2016. The final approval for promotion of the respondent to the post of Chief Scientific Officer was given on January 4, 2017 i.e. after retirement of the respondent.

Learned Counsel Ms. Chaitali Bhattacharya appearing on behalf of the petitioners submitted that the final approval for promotion to the post of Chief Scientific Officer was received on January 4, 2017 after retirement of the respondent from service on December 31, 2016. So, the effect of promotion could not be given to the applicant as he was already superannuated. In support of her submission Learned Counsel cited a decision of Hon'ble Apex Court in case of Union of India and others vs. N.C. Murali and Others reported in (2017) 13 SCC 575 wherein Hon'ble Apex Court observed *inter alia* that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystalise on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected.

Another decision by Hon'ble Apex Court in case of Sunaina Sharma and Others vs. State of Jammu and Kashmir and Others reported in (2018) 11 SCC 413 has been cited by learned Counsel which

virtually says that normally no person can be promoted with retrospective effect from date he was not borne in the cadre as that would violate Articles 14 and 16 of the Constitution.

Learned Counsel appearing on behalf of the Public Service Commission submitted that there is no delay on the part of PSC in considering the promotion of the respondent to the post of Chief Scientific Officer and recommendation was made prior two days of date of superannuation of the respondent from the service.

It is submitted on behalf of the respondent that if he got promotion to the post of Chief Scientific Officer he would have moved to scale 5 with Grade Pay Rs.8,700/- and one increment. This respondent not only has been deprived of holding the promotional post but has been made financial loss in terms of fixation of higher scale of pay. The Respondent has been deprived of promotion in due time because of laches and negligence on the part of the authorities in delaying the process of promotion in not taking decision by issuing order of promotion.

Insofar as the present controversy is concerned, there is no doubt whatsoever, that a clear vacancy against the post of Chief Scientific Officer became available with effect from 06.01.2016. At that juncture, the appellant had about 11 months of service remaining. It is not as if the vacancy came into existence after the respondent had reached the age of retirement on superannuation.

The only question which calls for our consideration is whether the respondent is entitled to be promoted on notional basis to the post of

Chief Scientific Officer. The admitted position is that the respondent stood retired on December 31, 2016 i.e., before the date of promotion order dated January 4, 2017. We are not unmindful that it is a settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is also not incumbent that all posts should be filled up but the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary.

In the present case on hand, the petitioner's service was not extended, after the date of superannuation. Therefore, it is clear that the facts involved in the case cited supra (H.M. Singh's case) relied by the learned counsel appearing for the respondent is entirely different from the facts of the case on hand, hence seeking notional promotion by relying upon the aforesaid judgement will not apply to the facts of the case.

The petitioner had not disputed the fact that the name of the respondent has been included in the panel from the date of vacancy arose. Since, the respondent had retired from service on attaining the age of superannuation on 31.12.2016 i.e. before finalising the promotion panel, he was before the tribunal claiming notional promotion on the ground of delay by the petitioner authority.

Before proceeding to the law on the subject, from the foregoing discussion, it is clear that to the normal rule of law nobody can be promoted with a retrospective effect except the exception is that when there exist facts which necessitates so or there is a rule which permits

so. In this context, to decide further, it is useful to rely upon the provision of Rule 54(1) of the West Bengal Service Rules, Part-1 which entails that promotion can never be given in a retrospective manner.

There are no materials to establish that the petitioner authority has wantonly delayed the respondent's promotion and there is no taint of malice for the delay. The claim of the respondent seeking promotion cannot be considered on the ground of delay due to administrative reasons at the hands of the Petitioner Department, as contended by the learned counsel for the Respondent and the same is liable to be rejected. No materials have been placed before this Court to prove the mala fide or illegality on the part of the authority for the delay in finalising the promotion panel.

After a post falls vacant for any reason whatsoever, a promotion to the post should be from the date the promotion is granted and not from the date on which such post falls vacant. The recommendation for promotion of the respondent was forwarded to the Department by PSC on December 29, 2016 and the final approval of the authority concerned could not be obtained for issuance of order of promotion of the respondent before his superannuation on December 31, 2016. Service Jurisprudence does not recognize retrospective promotion i.e., a promotion from a back date and if there exists a rule authorising the department to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

View taken by the tribunal is that under the circumstances the respondent could not be granted benefit of retrospective promotion to the post of Chief Scientific Officer but he should be given financial benefits of promotional post of Chief Scientific Officer notionally on the date of his retirement from service on December 31, 2016 and actual financial benefits in terms of pension and other retirement benefits.

Concurring with the view taken by the tribunal we dismiss the writ petition *in limine*.

No costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)