

39. 26.09.2023
bd. Ct.15

WPA 23432 of 2017

Swapan Patua

-vs-

The State of West Bengal & Ors.

Mr. Washef Ali Mondal ... for the petitioner.

Mr. Tapan Kumar Mukherjee

Mr. Syed Nazmul Hossain ... for the State.

The writ petition has been instituted, inter alia, challenging the promotional order dated 6th July, 2017 issued by the Executive Officer, Birbhum Zilla Parishad and District Magistrate, Birbhum, whereby according to the petitioner similarly circumstanced other Gram Panchayat Karmees were promoted to the posts of Gram Panchayat Sahayak ignoring the seniority of the petitioner as indicated in the District Level Final Combined Gradation List of Gram Panchayat Karmees in the district of Birbhum as on 1st January, 2017.

According to the petitioner, had the gradation list been properly evaluated in that event petitioner would have been promoted to the post of Gram Panchayat Sahayak along with other candidates vide promotional order dated 6th July, 2017. It has also been submitted that petitioner is a Scheduled Tribe candidate, therefore, posts must have been kept reserved in the cadre of Gram Panchayat Sahayak and petitioner ought to have been considered against such reserved post.

State respondents are represented by Mr.

Mukherjee, learned Additional Government Pleader who has made an endeavour to defend the decision taken by the Executive Officer, Birbhum Zilla Parishad dated 6th July, 2017 whereby some other candidates were promoted to the posts of Gram Panchayat Sahayak. It has been submitted that under 50 point roster vacancies were identified and based on which such promotional order was issued on 6th July, 2017 thereby promoting the candidates from the post of Panchayat Karmee to the post of Panchayat Sahayak taking into consideration the gradation list dated 1st January, 2017.

Having considered the submissions made on behalf of the petitioner as well as State respondents this Court has made a query to Mr. Mukherjee, learned Additional Government Pleader representing the respondent authorities that what are those posts which were reserved under 50 point roster for Scheduled Tribe candidates which were considered for passing promotional order thereby promoting the available Scheduled Tribe candidates from Gram Panchayat Karmee to Panchayat Sahayak. This Court does not get any satisfactory reply with regard to identification of vacancy under the 50 point roster which were reserved for Scheduled Tribe candidates.

It further appears on perusal of gradation list of Gram Panchayat Karmee in the district of Birbhum as on 1st January, 2017 that the name of the petitioner was appearing at serial no. 193 in consideration of his date of appointment on 28th November, 2005 as Scheduled Tribe candidate. On

comparing the description of candidates as contained in the promotional order dated 6th July, 2017 with the gradation list dated 1st January, 2017 it appears that had there been identification of vacancy under 50 point roster in favour of Scheduled Tribe candidates petitioner would have been promoted to the post of Panchayat Sahayak from the post of Panchayat Karmee at the time of promoting other candidates upon issuing promotional order dated 6th July, 2017. It appears that the right of the petitioner for being promoted to the post of Panchayat Sahayak being Scheduled Tribe candidate has been overtly breached.

In view of aforesaid scenario the Executive Officer, Birbhum Zilla Parishad and District Magistrate, Birbhum, being the respondent no. 3 is directed to promote the petitioner from his present post of Panchayat Karmee to the post of Panchayat Sahayak by issuing appropriate order within a period of three weeks from the date of communication of this order.

It further transpires that had the petitioner been appointed vide promotional order dated 6th July, 2017 in that event by this time he would have served as Panchayat Sahayak from the year 2017 till date, in effect petitioner has lost the benefit of service as Panchayat Sahayak being the promotional post approximately for a period of more than 6 years. Keeping in view of the plight of the petitioner this Court directs the concerned respondent authorities including respondent no. 3 to give notional benefits from 1st August, 2017 till

30th September, 2023 and actual benefits to be extended in favour of the petitioner from 1st October, 2023.

The respondent no. 3 is also directed to issue necessary order while issuing promotional order in favour of the petitioner in order to give effect to the service benefits as indicated above.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)