

S/L 5
28.11.2023
Court No.25
SD

WPA 20138 of 2011

Mahadev Pakhira
Vs.
The State of West Bengal & Ors.

Mr. Sanajit Kr. Ghosh
Mr. Raja Ghosh

...for the Petitioner.

Affidavit of service filed by the petitioner in Court today be kept with the record.

Despite service, none appears on behalf of the respondents.

This writ petition has been instituted primarily praying for the following relief:

“(a) A writ in the nature of Mandamus be issued calling upon the respondents to show cause as to why the retiral benefit of the petitioner has not been calculated considering that the petitioner as promoted in the post of Cashier for his long time operation in the post of cashier”.

The capsulated form of the facts, as unfurled in the writ petition and supplementary affidavit are that while working as ‘Assistant Cashier’ (Grade-IV) in Hooghly District Central Co-operative Bank(in short, the bank) the petitioner was transferred to another branch of the Bank at Mogra, Hooghly where he discharged the function of a cashier. Since the petitioner discharged the duties of the cashier, the petitioner approached the competent authorities of the bank with a plea that he should have been paid the salary payable to a

cashier of the bank but despite being so approached, the competent authority of the bank maintained deceptive silence and hence, the petitioner was constrained to prefer a writ petition being W.P. no. 11432(W) of 2006 which was disposed of by a coordinate Bench of this court by an order dated 04.03.2010 directing the Board of Directors of the bank to consult the rule and the law and to give a decision whether on the basis of the work done by the petitioner, he was entitled to higher remuneration after affording opportunity of hearing to all concerned parties within the time stipulated therein.

In compliance with the order dated 04.03.2010 passed in W.P. no. 11432(W) of 2006 by the Chief Executive Officer of the bank by passing a reasoned order dated 16.04.2010 negated the petitioner's claim was .

Record reveals that petitioner preferred another writ petition being W.P. no. 24297(W) of 2005 seeking a direction upon the concerned respondents to give him promotion from grade IV to grade –III in terms of extant rules and in W.P. no. 24297(w) of 2005 , it was pleaded that the petitioner was given promotion to the Grade-III earlier. However, by an order dated 16.01.2010, the petitioner's case was directed to be considered by another coordinate Bench of this Court. In compliance with the order dated 16.01.2006, the Chief Executive officer by passing an order dated 8.4.2006 turned down the petitioner's prayer for promotion from Grade-IV to Grade-III.

Record further reveals that on attaining the age of superannuation, the petitioner has retired from service w.e.f. 1.5.2009.

Without assailing the order dated 16.04.2010, the present writ petition has been filed to renew the prayer for promotion to the Grade-III from the Grade-IV.

Drawing my attention to Annexure-P/8 to the supplementary affidavit, Mr. Ghosh, learned advocate for the petitioner strenuously contends that while being transferred to the Mogra Branch of the bank, the petitioner discharged the duties of a cashier and hence, he is entitled to get higher remuneration and he shall be deemed to have been promoted to the post of cashier from the date he joined as cashier in Mogra Branch.

According to Mr. Ghosh, pension and other related benefits are to be calculated afresh and difference of amount is to be paid to the petitioner.

From the order *vide*. no. 339/739 dated 06.05.2005 dated 06.05.2005 issued by the Chief Executive Officer of the bank (Annexure –P-9 to the supplementary affidavit), it is explicit that though the petitioner was addressed as Cashier but it was specifically mentioned therein that the petitioner belonged to Grade-IV and he would draw scale of pay applicable to the staffs belonging to Grade-IV i.e. Rs.3020- 8980/- and he was not given the scale of pay applicable for Grade-III (Rs. 5490- 12630/-).

In the hierarchy of employment in any organization, 'Grade' refers to a particular level within a specific job function or department. A promotional post is a

higher post with a higher grade. Facts remained that in Mogra Branch of the bank, the petitioner was in Grade-IV level. Memo. no. 83 dated 08.04.2006 speaks that in 1988, the petitioner was promoted from Grade-IV to Grade-V and in 1992, Grade-IV and V were merged w.e.f. 1.4.1992 and the petitioner was placed in Grade-IV. The Staffs belonging to Grade-IV would officiate the posts of Jr. Supervisor, Assistant Cashier etc. whereas the staffs belonging to Grade-II would hold the post of Supervisor, Cashier etc. For upward movement from one level to another level, one employee is to get promotion and such promotion is to be given as per the service rules applicable for the employee. It is well-settled proposition of law that no employee can claim promotion to a higher post as a matter of right yet he can legitimately claim that he has a right to be considered for promotion.

In 1996, one selection process was undertaken by the bank for giving promotion from Grade-IV to Grade-III as per extant rules. The petitioner participated in the selection process and he appeared in written examination and interview but he could not succeed. Again in 2005, another selection process was initiated for giving promotion from the level of Grade-IV to Grade-III but the petitioner did not participate in the selection process.

Mr. Ghosh laid immense emphasis on Rule 7(4) of the West Bengal Co-operative Societies Rules, 1987 to convince the court that since the petitioner discharged the duties of cashier, he shall be deemed to have been promoted to the post of Cashier i.e. Grade-III level.

Rule 7(4) is reproduced for better appreciation of the issue raised on behalf of the petitioner:-

“7(4) All appointments shall be temporary for a period of two years. Thereafter if there is any permanent post the appointment shall be on probation for one year. On satisfactory completion of probation and on completion of training or passing the examination, if any, an employee may be confirmed against any permanent post.”

This rule will not come in rescue of the petitioner. Since the petitioner was transferred in Mogra Branch of the bank as Cashier and he discharged the duties of cashier in that branch, the petitioner was/is under the wrong impression that he was promoted to the post of Cashier i.e to the level of Grade-III as the promotion cannot be given by issuing an order of transfer and/or posting. Which post one staff is officiating is immaterial and what is to be considered that whether he has been promoted from one level to another level and whether he has been drawing scale of pay of higher level. Suffice it to observe that unless and until an employee is promoted from one grade to another grade following the extant rules of the bank, such employee cannot claim to have been promoted by mere discharging duties of a particular post and despite being insisted by the Court, could not produce any rule or any document to show that if any employee of the bank discharged the function of any promotional post, he will either get higher remuneration or he will be treated to have been promoted to that post. In the Memo. no. 83 dated 08.04.2006 , it was clearly stated that since the staff who was officiating the post of Cashier in

Mogra Branch of the bank was transferred and hence, the petitioner was asked to handle the cash of the bank.

In view thereof, I am not inclined to extend the compass of judicial review to direct the respondents to treat the petitioner to have been promoted to the post of Cashier with retrospective effect even after his retirement and to release consequential benefits as prayed for in the writ petition.

Accordingly, WPA 20138 of 2011 is dismissed.

However, there will be no order as to costs.

(Partha Sarathi Chatterjee, J.)