

52.
6.7.2023
S.D.

W.P.A. 23592 of 2022

**Sourav Chatterjee
Vs.
The State of West Bengal & Ors.**

Mrs. Pampa Dey Dhabal
Mr. Nikhil Kumar Gupta
... For the petitioner

Mr. Debnak Ganguly
Mr. Aranya Saha
Mr. Supriyo Dutta
Ms. Aishwarya P. Ganguly
....For the Respondent No. 7

Mr. Rajat Dutta
...For the Respondent No. 3

The petitioner has challenged an Office Order dated July 6, 2022 passed by the learned District Judge, Bankura vide Order No. 95. The grievance of the petitioner is that he has been superseded by his juniors to the post of Sheristedar (Junior). The petitioner was appointed as a Lower Division Clerk. His service was confirmed with effect from September 26, 1997.

Ms. Dhabal, learned counsel appearing on behalf of the petitioner draws the attention of this Court to Schedule B,

Part-I (Rule 7) to contend that promotion to the post of Sheristedar would be from the post of Upper Division Clerks. The petitioner was working as an Upper Division Clerk with effect from August 2, 2010. Therefore, he should have been considered for promotion to the post of Sheristedar. It is submitted that the private respondents whose names appear from serial nos. 70 to 74 at page 53 of the writ petition despite being juniors to the petitioner have been promoted to the post of Sheristedar with effect from November 1, 2021 in supersession to that of the petitioner. The petitioner has been rendering his service as a Bench Clerk-I with effect from December 1, 2018 whereas the said private respondents have been performing their duties as Bench Clerk-I on and from several dates in 2019, 2020 and 2021.

By an order dated December 14, 2022, this Court directed the learned District Judge, Bankura/respondent no. 3 to file a Report on Affidavit. Several extensions were sought for on behalf of the learned District Judge. Finally, a Report on Affidavit has been handed over in Court today. Such Report on Affidavit is retained with the records.

Mr. Dutta, learned counsel appears on behalf of the respondent no. 3 and submits that all the records relating to the promotion/gradation list published vide order dated July

6, 2022 is with the predecessor-in-interest of the present District Judge, Bankura. There is no record, note-sheet, information or opinion available as to the reason why the juniors of the petitioner were allowed to supersede him.

The Report filed on behalf of the respondent no. 3 is unsatisfactory, to say the least.

Mr. Ganguly, learned counsel appears on behalf of the private respondent and files his affidavit-in-opposition to the writ petition. He contends that the Gazette Notification dated July 6, 2021 is applicable in case of the petitioner. The effective date of the said Notification is July 6, 2021. He submits that for promotion to the post of Upper Division Clerks, an incumbent must be a holder of a degree granted by a University established in India. The issue whether such promotion can be granted to the petitioner can only be decided after the learned Registrar General of this High Court takes a decision with regard to the question from when such Notification would be applicable for the purpose of recruitment (Promotion/Direct Recruitment) to the post of Upper Division Clerk.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the opinion that the petitioner has been posted as an Upper Division Clerk

with effect from August 2, 2010. The effective date of the Notification is July 6, 2021. Therefore, the said Notification dated July 6, 2021 can only be held to be applicable to the promotions, which have already been granted after to the effective date.

Since the petitioner was discharging his duties as an Upper Division clerk since 2010 being promoted to the said post, he should have been considered for promotion to the post of Sheristedar (Junior) which is based on seniority-cum-merit vide Order No. 95 dated July 6, 2022. The learned District Judge has not made any attempt to provide any explanation as to why the impugned gradation list dated July 6, 2022 was published by superseding THE PETITIONER despite a reasonable opportunity being provided to him.

In such view of the matter, the order dated July 6, 2022 vide Order No. 95 passed by the learned District Judge, Bankura is set aside and/or quashed to the extent which the juniors of the petitioner have been allowed to supersede him. The petitioner will be considered for promotion within one month from the date of the order upon compliance of all the necessary formalities.

With the directions aforesaid, **W.P.A. 23592 of 2022 is disposed of.**

Report on Affidavit along with the Affidavit-in-Opposition filed by the private respondent along with the Affidavit-in-Reply filed by the petitioner are retained with the records.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)