

18.09.2023
DL-106
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 23926 of 2022

Mridul Kanti Bhunia
Vs.
State of West Bengal & Ors.

Mr. Asit Kumar Bhattacharya,
Ms. Mousumi Biswas
.....for the petitioner.

Ms. Kalpita Paul
.....for the State.

Mr. Susanta Pal,
Ms. Ananya Neogi
....for the respondent nos. 2 & 3.

The petitioner is working as a Lower Division Assistant (LDA) in the City Civil Court at Calcutta since his appointment on June 20, 2014. As per the merit list published on December 7, 2013, four candidates, who were placed below the petitioner, were promoted to the post of UDA (Upper Division Assistant), with effect from February 1, 2018.

The petitioner's grievance is that the petitioner has not been considered for promotion with effect from February 1, 2018, arbitrarily and with mala fide intent.

Mr. Bhattacharya, learned counsel appearing on behalf of the petitioner submits that since the petitioner was higher in the merit list that was published on December 7, 2013, he has been unfairly discriminated against the candidates who have been

promoted to the post of UDA, despite being lower in the merit list.

Mr. Pal, learned counsel appearing on behalf of the respondent nos. 2 and 3 submits that the petitioner did not produce the necessary certificate from a recognised university in support of his contention that he was a graduate candidate. Therefore, there was no unfair discrimination against the petitioner. He draws the attention of this Court to the gazette notification published on July 6, 2021 relating to the West Bengal District Court (Constitution of Service, Recruitment, Appointment, Probation and Discipline of Employees) Rules, 2015. He submits that it was necessary for the UDA/Clerks to be holder of a degree granted by a university established by law in India.

Considering the rival submissions of the parties and the materials placed on record, this Court finds merit in the submission of the learned counsel appearing on behalf of the petitioner on the issue that there was no such requirement of being a degree holder from a recognised university under the Rules regarding recruitment, appeal and discipline of clerical and inferior establishments of civil courts in Bengal, dated February 16, 1943. The petitioner was to be considered for promotion in 2018. The new

2015 Rules were to be applicable from the date of publication in the official gazette, i.e. on and from July 6, 2021. Therefore, on the date of consideration of the petitioner's case for promotion to the post of UDA, the 2015 Rules did not come into effect. Therefore, it was not relevant whether or not the petitioner was a graduate from a recognised university. The only thing that was required to be considered was the petitioner's seniority and special fitness for the post. The petitioner's seniority and special fitness to the post are not in dispute.

This Court has also not lost sight of the fact that the petitioner was a graduate from a recognised university since 2014. Such fact may not have been brought to the notice of the respondent nos.2 and 3 authorities by the petitioner by submitting the certificate showing him to be a degree holder as it was not required under the 1943 Rules. As there was no requirement of the petitioner to be a degree holder, the authorities concerned acted with perversity by failing to consider the petitioner for promotion with effect from February 1, 2018.

How the Gazette Notification of 2021 be relied upon to justify an action of 2018, is beyond the comprehension of this Court. Admittedly, the effective date of such Notification was July 6, 2021.

The same was not applicable with retrospective effect. Therefore, this Court finds perversity in the decision making process of the respondent authorities.

Accordingly, it directs the respondent nos.2 and 3 to consider the petitioner's case for promotion to the post of UDA in accordance with the merit list published on December 7, 2013, within a period of 4 weeks from date.

In the event the petitioner is found to be eligible upon compliance of all the necessary formalities, all the notional benefits will be given to the petitioner with effect from February 1, 2018. The actual benefits will be released to the petitioner with effect from October 18, 2023.

With the directions aforesaid, **WPA 23926 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *Website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)