

77.
8.6.2023
S.D.

W.P.A. 24111 of 2022

**Debpal Kundu
Vs.
The State of West Bengal & Ors.**

Mrs. Pampa Dey Dhabal
Mr. Nikhil Kumar Gupta
Mr. Krishna Deo Das

... For the petitioner

Mr. Victor Chatterjee

....For the Respondent No. 2

Mr. Swapan Kumar Dutta
Mr. Rajat Dutta

...For the Respondent No. 3

W.P.A. 24111 of 2022 is de-tagged from W.P.A. 23592 of 2022, W.P.A. 23630 of 2022, W.P.A. 23636 of 2022 and W.P.A. 24068 of 2022.

Exception handed over in Court today is retained with the records.

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 The grievance of the petitioner is that he has been superseded by his juniors to the post of Bench Clerk, Grade-II. The petitioner was appointed on September 3, 2012 under Group 'C' category as a Lower Division Clerk (LDC) in the District Judgeship of Bankura.

Ms. Dhabal, learned counsel appearing on behalf of the petitioner draws the attention of this Court to Clause 12 of the Notification dated July 6, 2021 regarding the West Bengal District Court (Constitution of Service, Recruitment, Appointment, Probation, Discipline of Employees) Rules, 2015. Clause 12 of the said 2015 Rules reads as thus:-

“12. Method of recruitment of Sheristedar, Grade-II, Bench Clerk, Grade-II and Nazir or other equivalent posts.- The method of recruitment of Sheristedar, Grade-II, Bench Clerk, Grade-II and Nazir in the Court of Civil Judge (Senior Division) or the Chief Judicial Magistrate or the Chief Metropolitan Magistrate or the Additional Chief Judicial Magistrate or the Additional Chief Metropolitan Magistrate or any other court in equivalent rank, shall be such as specified in Part II of Schedule D and the recruitment shall be conducted by the District Recruitment Committee constituted under rule 5 and by the Other Recruitment Committee constituted under rule 6, as the case may be.”

She then relies on Part-II of Schedule B of the said Notification to contend that promotion from the cadre of Head Clerk cum Translator, Cashiers, Accountants and Nazirs to the post of Bench Clerk, Grade-II is based on seniority cum merit. Thereafter, she relies on the order dated July 6, 2022 whereby in the internal page 2 of the order, it has been stipulated that the promotion is to be based on seniority for the said post of Bench Clerk, Grade-II. The contention of the petitioner is that the names of the private respondents

which appear in serial nos. 100 & 103 of internal page no. 10 & 11 of the order dated July 6, 2022 could not have been placed in the gradation list above that of the petitioner.

An opportunity was given by this Court to explain the supersession of the petitioner by his juniors. From the report on affidavit filed on behalf of the learned District Judge, it appears that the learned District Judge has sought to contend that since the decision of the predecessor-in-interest/office was dated July 6, 2022 prior to the date on which the present District Judge assumed, the charges of his office on February 28, 2023, he is not aware of the reason why such gradation list was drawn for promotion to the post of Bench Clerk-II. Furthermore, it has been stated in the said report on affidavit affirmed on March 21, 2023 that no record, note-sheet, information or opinion is available as to the process adopted for the supersession of the of the petitioner by his juniors. The reason for which the impugned office order dated July 6, 2022 was published was not known to the present District Judge.

Considering the submissions of the parties and the materials placed on record, this Court is of the view that the fact that the juniors of the petitioners have been promoted in supersession of the petitioner vide impugned order dated

July 6, 2022 has been practically admitted by the learned District Judge. No attempt was made to provide any explanation for such illegality and/or arbitrariness, despite a reasonable opportunity being provided to him.

The reason behind publication of such a gradation list remains completely unexplained.

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 to which the juniors of the petitioners have superseded him.

The petitioner has to 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. 24111 of 2022 is disposed of.**

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 necessary formalities.

(Lapita Banerji, J.)

