

MI- 28.08.2023
62 Ct.15
rkd

W.P.A. 24069 of 2018
(IA NO: CAN 1/2022)

Subir Kumar Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Himadri Barua

....for the petitioner.

Mr. Arujut Ray Mukherjee

....for the State.

Mr. Somnath Roy

....for Bhadreswar Municipality.

Petitioner was appointed in Bhadreswar Municipality as Superintendent and Overseer. Considering the appointment of the petitioner on 15th February, 2001 the post of the petitioner was redesignated as Sub-Assistant Engineer and accordingly the petitioner was given promotion to the post of Assistant Engineer which impacted the right of another candidate, namely, Soumendu Bose to get the benefit of promotion to the post of Assistant Engineer since it was contended by the said candidate that he was appointed as Superintendent and Overseer in Bhadreswar Municipality prior to the appointment of the petitioner i.e. 26th June, 1997. Therefore, according to said Soumendu Bose he was to be promoted to the post of Assistant Engineer on redesignation of his post as Sub-Assistant Engineer and promotion of the petitioner herein to the post of Assistant

Engineer was erroneous and the same issue was decided by a coordinate Bench vide order dated 8th January, 2016 passed on the writ petition being WPA 29510 of 2014 which was filed by said Soumendu Bose.

The writ petition was allowed vide order dated 8th January, 2016 by the coordinate Bench with the following direction:

“Thereafter, the respondent no.2 may choose and act accordingly either of the two alternatives given below:

- a. Since there were two posts of Superintendent and Overseer, he may create another post of Assistant Engineer and promote the petitioner to that post, within twelve weeks from date, considering his seniority.*
- b. Alternatively, the promotion of the respondent no.7 is to be cancelled upon redesignation of the post of the petitioner as stated above and both the petitioner and the private respondent be considered for promotion to the post of Assistant Engineer, by a reasoned order to be*

passed within twelve weeks from date.

This writ application is allowed to the above extent”.

The order of the coordinate Bench dated 8th January, 2016 was assailed before the Hon’ble Division Bench by the petitioner herein. However, the said challenge failed and the matter travelled before the Supreme Court and ultimately the SLP being Special Leave to Appeal (C) No.15582/2016 was dismissed vide order dated 5th July, 2016.

Subsequently, it is admitted position that the present writ petitioner has accepted the steps taken by the concerned respondent authorities in granting promotion to said Soumendu Bose to the post of Assistant Engineer upon redesignating his post.

However, Mr. Barua, learned advocate representing the petitioner submits that there is alteration of position so far staff pattern of Bhadreswar Municipality is concerned. It needs to be recorded herein that pursuant to the order of the coordinate Bench dated 8th January, 2016 Director of Local Bodies, Government of West Bengal passed order on 14th March, 2016 thereby permitting said Soumendu Bose to be promoted to

the post of Assistant Engineer upon cancellation of the promotion of the petitioner herein.

However, today the situation is different as it is found by this Court based on the order dated 24th September, 2010 of the Special Secretary to the Government of West Bengal, Department of Municipal Affairs. The said order dated 24th September, 2010 is annexed to the writ petition being Annexure P-8.

It appears from the relevant part of the said order dated 24th September, 2010 that in terms of Section 53(3) of the West Bengal Municipal Act, 1993 the Governor after careful consideration of the matter was pleased to notify the Staff Norm of the Municipalities and notified Area Authorities.

From the relevant documents annexed to the said order dated 24th September, 2010 it appears that another post of Assistant Engineer can be sanctioned if the population of the Urban Local Body is more than one lakh but less than two lakh fifty thousand. Placing reliance on this order dated 24th September, 2010 and the norms which is required to be followed by the concerned authority of the State Government in the matter of creation of post of Assistant Engineer it has been contended on behalf of the petitioner that at

present the population under Bhadreswar Municipality is more than one lakh therefore said municipality is entitled to get the benefit of creation of another post of Assistant Engineer.

Such contention raised on behalf of the petitioner has not been opposed by the learned advocate representing Bhadreswar Municipality and who has also submitted that necessary recommendation has been made to the concerned authority of the Municipal Affairs Department for creation of the post based on the order dated 24th September, 2010 and the issue is pending before the appropriate authority.

State respondents are also represented by learned advocates today and who has filed affidavit-in-opposition which is taken on record.

In consideration of the submission made on behalf of the respective parties to this writ petition this Court finds it apt to direct the Secretary to the Municipal Affairs Department, Government of West Bengal being the respondent no.1 herein to take decision whether another post of Assistant Engineer needs to be created in view of the present population as per the Office order dated 24th September, 2010.

Let such exercise be carried out by the

Secretary, respondent no.1 within a period of eight weeks from the date of communication of this order and the decision to be taken by the respondent no.1 shall be communicated to the petitioner and the Bhadreswar Municipality within one week thereafter.

The recommendation made by the Bhadreswar Municipality for creation of post is to be considered by the respondent no.1 before taking such decision in terms of the order passed by this Court today.

With the aforesaid direction the writ petition stands disposed of.

Application, if any pending, also stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)