

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Rai Chattopadhyay

WP.ST 343 of 2013

Nishi Kanta Maity

Vs.

The State of West Bengal & Ors.

For the petitioner

: Mr. S.P. Dalapati

Mr. Asumdipta Santra

For the State

: Mr. Tapan Kumar Mukherjee, Ld. AGP

Mr. Somnath Naskar

Heard on : July 04, 2023

Judgment on : July 04, 2023

DEBANGSU BASAK, J.:-

1. The writ petitioner assails an order dated January 18, 2012 passed in O.A.-1732 of 2009.
2. By the impugned order, the Tribunal directed the authority to grant both 10 years and 20 years benefit to the writ petitioner with effect from 1989 and such benefit to be given on notional fixation with corresponding revision of pay according to existing rule and on the basis of revised basic

pay. The retiral benefits and pension were also directed to be revised accordingly.

3. Learned Advocate appearing for the writ petitioner submits that, the promotion committee recommended the petitioner to be promoted to the post of Assistant Store Keeper/Sub-Inspector of Food and Supply. A criminal proceeding was initiated as against the writ petitioner in 1984. The same was quashed in 1995. The writ petitioner approached the Tribunal for the grant of promotion by way of OA-438 of 1998. Such original application was disposed of on July 13, 2000. The authorities were directed to grant the writ petitioner promotion to the post. Even, thereafter, such promotion was not granted. The writ petitioner thereafter superannuated from service. The writ petitioner approached the Tribunal by way of O.A.-2005 of 2005. Such original application was disposed of by an order dated February 5, 2009 by directing the authorities to consider such original application as a representation and to dispose of the same. An order dated April 30, 2009 was passed rejecting the representation. Aggrieved thereby, the writ petitioner

approached the Tribunal where the impugned order was passed.

4. Learned Advocate appearing for the writ petitioner relies upon *2005 SCC OnLine P&H 1151 (Madalsa Rani vs. State of Haryana and others)* for the contention that, the writ petitioner should be granted promotion and consequential monetary benefits from 1982 onwards.
5. Learned Advocate appearing for the writ petitioner relies upon *1991 Supp (2) Supreme Court Cases 363 (Nirmal Chandra Bhattacharjee & Others vs. Union of India & Others)* for the proposition that, mistake or delay on the part of the department should not be permitted to recoil on the writ petitioner. He relies upon *(2000)7 Supreme Court Cases 210 (Delhi Jal Board vs. Mahinder Singh)* for the proposition that, the right to be considered by a departmental promotion committee is a fundamental right guaranteed under Article 16 of the Constitution of India.
6. *Delhi Jal Board (supra)* lays down held that, right to be considered for a promotion by the departmental promotion committee is a fundamental right. In the facts of the present

case, the writ petitioner was considered for promotion and was recommended for promotion on November 6, 1982. The writ petitioner was not given the promotion as recommended in 1982. The writ petitioner did not challenge such inaction of the administration. There was a criminal proceeding initiated against the writ petitioner in 1984 which was subsequently quashed in 1995. Thereafter, in 1998, the writ petitioner approached the Tribunal for promotion. Tribunal passed an order dated July 13, 2000 in OA-438 of 1998 directing the authorities to confirm the writ petitioner in the post of Assistant Store Keeper/ Sub-Inspector of Food & Supply within sixty days from the date of communication of the order. Again the writ petitioner was not given the promotion as directed. Again the writ petitioner took no steps till 2005 when he filed O.A.-2005 of 2005. Such original application was disposed of on February 5, 2009 by directing the respondents to consider such original application as a representation and to decide on the same. The authorities decided the representation on April 30, 2009 rejecting the claim made by the writ petitioner.

7. In the facts of the present case, there was delay on the part of the writ petitioner in availing of his rights at the material point of time. There was a delay from 1982 when he was recommended for promotion till 1998 when he approached the Tribunal. There was also a delay from 2000 till 2005 subsequent to the passing of the order of the Tribunal in 2000. The writ petitioner superannuated in 2002.
8. *Nirmal Chandra Bhattacharjee & Ors. (supra)* held that an employee cannot be made to suffer on account of intervening events with regard to promotion. In the facts of the present case, the writ petitioner did not avail of his rights and is guilty of unexplained delay over a large period of time.
9. In *Madalsa Rani (supra)*, the writ petitioner therein was alive to her rights and was agitating the same within a reasonable period of time. The facts scenario in the present case are different.
10. The impugned order directed notional benefits to be granted to the writ petitioner. In the facts and circumstances of the present case, we do not find that the writ petitioner is entitled to the monetary benefits for the period he claims.

Writ petitioner never joined the promotional post. There is unexplained delay on the part of the writ petitioner in availing of his rights at the relevant point of time.

11. In such circumstances, we find no ground to interfere with the impugned order.
12. The authorities are directed to comply with the impugned order dated January 18, 2012 within a period of four weeks from date.
13. This judgment and order being passed in presence of the learned Senior Advocate appearing for the State, his junior is requested to communicate this judgment and order to the appropriate authority for compliance. In addition thereto, the writ petitioner is liberty to communicate this order for compliance.
14. **WP.ST 343 of 2013** is disposed of accordingly.

(Debangsu Basak,J.)

15. I Agree.

(Rai Chattopadhyay, J.)