

W.P.A. 26160 of 2018

**Sudipto Bandyopadhyay @ Banerjee
Vs.
The State of West Bengal & Ors.**

Mr. Srikanta Paul
Mr. Priyabrata Batabyal
Ms. Ankita Chaudhury
...for the petitioner

Sk. Md. Galib
...for the State

Mr. Tapas Kr. Ghosh
Mr. Tanmoy Chowdhury
...for the respondent nos. 3 to 5

Petitioner is working in the post of Conservancy Supervisor who is desirous to be promoted to the post of Sanitary Inspector.

Learned advocate representing the petitioner submits that permission was accorded by the Director of Local Bodies vide a memo dated 21st/22nd September, 2010 addressed to the Chairman of Hooghly Chinsurah Municipality (hereinafter referred to as the 'said municipality') whereby the municipality was allowed to recruit in the post of Sanitary Inspector along with three other posts. While according permission the Director directed the said municipality to follow the relevant provisions of the West Bengal Municipal Employees' (Recruitment) Rules, 2005. Subsequently, steps were taken by the municipality for recruiting in the post of Sanitary Inspector by promotion and to that extent a

gradation list was prepared as it emanates from the resolution dated 10th March, 2015. At the relevant portion of the said resolution it was resolved that as per the said gradation list the candidate against serial no. 1 was not found to be ineligible and petitioner was at the second position of the gradation list and it was decided that on verification of his certificate relating to qualification he is to be recruited in the post of Sanitary Inspector on obtaining necessary approval from the Director of Local Bodies. In terms of said resolution dated 10th March, 2015 vide a letter dated 15th July, 2016 prayer was made to the Director of Local Bodies for according approval to the promotion which is to be granted to the petitioner from the post of Conservancy Supervisor to Sanitary Inspector. On receipt of such prayer from the said municipality Director of Local Bodies took decision as contained in memo dated 10th January, 2018 whereby prayer of the municipality for granting promotion to the petitioner was spurned on the ground that promotion from the post of Conservancy Supervisor to the post of Sanitary Inspector is impermissible since the same was found to be in breach of West Bengal Municipal Employees' (Recruitment) Rules, 2005 as amended. The said decision of the Director of Local Bodies which was communicated vide a memo dated 10th January, 2018 is the subject matter of challenge in the present writ petition.

The learned advocate representing the petitioner draws attention of this Court to the relevant provisions as contained in the West Bengal Municipal Employees' (Recruitment) Rules, 2005 vis-a-vis the provisions relating to promotion to the post of Sanitary Inspector as provided under West Bengal Municipal Employees' (Recruitment) Rules, 2005 as amended vide a notification dated 28th November, 2008. According to the petitioner in terms of substituted Entry 30 (Sanitary Inspector) promotion from the post in connection with which lower pay scale is attached to the post of Sanitary Inspector is permissible provided other eligibility criteria in terms of qualification clause against Entry 30 clause (b) are fulfilled. It is also submitted that since permission was accorded on 21st/22nd September, 2010 and the selection was made complete by adopting resolution of the municipality dated 10th March, 2015 the West Bengal Municipal Employees' (Recruitment) Rules, 2005 as amended vide a notification dated 28th November, 2008 is applicable in case of promotion of the petitioner to the post of Sanitary Inspector. Therefore, the subsequent Rules of 2017, according to the petitioner, is not applicable in the present case. Reliance has also been placed on clause (a) of Entry 30 of the aforesaid amended Rules of 2008 in order to substantiate that though in terms of unamended Rules of 2005 promotion was impermissible but in terms of amended Rules of 2008

promotion needs to be given first preference and in absence of suitable candidate direct recruitment would be the next option. While throwing challenge to the order of the Director dated 10th January, 2018 it is contended that the ground taken therein in refusing the prayer of the petitioner for promotion to the post of Sanitary Inspector since the petitioner was holding the post of Conservancy Supervisor is misconceived consideration and which is contrary to the provisions as contained in amended Rules of 2008. Petitioner prays for cancellation of the impugned memo dated 10th January, 2018 of the Director thereby permitting him to be promoted to the post of Sanitary Inspector.

Mr. Galib, learned advocate representing the State-respondents has strenuously argued to defend the decision of the Director of Local Bodies dated 10th January, 2018 by making an attempt to explain the differences in provisions as contained in amended Rules of 2008 which were brought in vide a notification dated 28th November, 2008. It has been urged that though promotion has been provided as method of recruitment under clause (a) of Entry 30 in the amended recruitment Rules of 2008 but qualification clause as contained under clause (b) does not provide for promotion and according to the State-respondents only option which is left open to the municipality is to initiate fresh recruitment process where at best departmental

candidates can be permitted to compete with the outsiders provided these departmental candidates are possessing requisite eligibility criteria as contemplated under said clause (b) of Entry 30. Therefore, according to the State-respondents initiation of recruitment process following method of promotion is faulty.

It has also been submitted that on behalf of the said municipality prayer was made to the Director to re designate the post of the petitioner as Sanitary Assistant thereby permit the petitioner to be promoted to the post of Sanitary Inspector. Another limb of submission which has been advanced on behalf of the State-respondents is granting opportunity to the petitioner to be promoted to the post of clerk in the said municipality which has been turned down by the petitioner.

Said municipality is represented by learned advocate who has drawn attention of this Court to the averments made in paragraph 4(e) of the affidavit-in-opposition used wherein it has been averred that the petitioner is eligible to get promotion to the post of Sanitary Inspector since being Conservancy Supervisor he draws salary below the pay scale which is attached to the aforesaid promotional post.

This Court is required to appraise the decision of the Director of Local Bodies dated 10th January, 2018 on the anvil on the submissions made on behalf of the parties.

Mere reading of the impugned decision of the Director dated 10th January, 2018 depicts that the sole ground which has been taken while denying promotion to the petitioner is Conservancy Supervisor was not found to be a feeder post for being promoted to the post of Sanitary Inspector. Nowhere in the impugned order of the Director it has been spelled out that promotion to the post of Sanitary Inspector is impermissible but it has been indicated therein that promotion from the post of Conservancy Supervisor to the post of Sanitary Inspector is impermissible. It is also revealed from the said impugned memo that if the petitioner were holding the post of Sanitary Assistant he might have been permitted to be promoted to the post of Sanitary Inspector.

On the contrary, while advancing argument on behalf of the State-respondents it has been submitted that in view of the provision as contemplated under Entry 30 clause (b) of the amended recruitment Rules of 2008 promotion is not permissible from any lower post and municipal authority is required to fill up the post of Sanitary Inspector by fresh recruitment. In juxtaposing the submission made on behalf of the State-respondents and the ground which has been taken by the Director while refusing to grant promotion to the petitioner it appears that those are contrary to each other.

Another aspect is required to be delved into while considering the case made out in this writ petition since

it has been submitted on behalf of the State-respondents upon placing reliance on clauses (a) and (b) under Entry 30 of the amended recruitment Rules of 2008 that the promotion from any feeder post to the post of Sanitary Inspector is impermissible. In order to comprehend the issue agitated on behalf of the State-respondents this Court finds it apt to quote Entry 30 under the amended recruitment Rules of 2008 below:-

“30. Sanitary Inspector :	
<i>(a) Method of recruitment</i>	<i>: by promotion, and in case of non-availability of suitable candidate, by direct recruitment;</i>
<i>(b) Qualification</i>	<i>: For direct recruitment the candidate shall be at least Higher Secondary passed from a Board or Council recognised by the Government, and also have Diploma in Sanitary Inspectorship from any Institution recognized by the Government, The Departmental candidates, having requisite qualifications and fulfilling other criteria for direct recruitment, working in the pay scales below to that of Sanitary Inspector, shall be eligible to compete along with the other candidates. The minimum age limit for such recruitment shall be 21 years;”</i>

Clause (a) of Entry 30 as set out above reveals permissibility of promotion and which would be the first option so far as municipality is concerned and in case of non availability of suitable candidate direct recruitment would be the second option. In the backdrop of this

provision as couched under clause (a) if this Court accepts the contention of the State-respondents that in view of the provision as contained under clause (b) promotion is impermissible that would lead to an anomalous situation which would make the avenue of promotion as has been provided in clause (a) as nugatory. Moreover, the ground which has been urged upon placing reliance on aforesaid Entry 30 is not the ground taken by the Director while refusing the prayer for permitting the petitioner to be promoted to the post of Sanitary Inspector. Therefore, by taking a ground which is foreign to the reasons disclosed in the impugned order, the order of the Director cannot be improved.

In aforesaid conspectus the impugned decision of the Director as contained in the memo dated 10th January, 2018 stands set aside.

The concerned respondent authorities are directed to promote the petitioner to the post of Sanitary Inspector within a period of 4 (four) weeks from the date of communication of this order.

After petitioner is promoted to the post of Sanitary Inspector it would be open to the petitioner to make representation to the concerned respondent authorities praying for arrear benefits which is connected to his promotion. If, such representation is made, same shall be considered in accordance with law within a period of eight weeks thereafter by passing a reasoned order.

With the aforesaid observations the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)