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W.P.A. 28154 of 2016
(Sukumar Jana vs. State of West Bengal & Ors.)

Mr. Krishnendu Bera
Ms. Debolina Chakraborty
.... For the Petitioner
Mr. Kishore Dutta
Ms. Nandini Mitra
.... For the University

The petitioner was appointed as a Junior Assistant at the University of Calcutta on October 15, 1990. Subsequently he was promoted to the post of Senior Assistant on March 30, 2004. After serving in the said post for more than seven years, the petitioner became entitled to be promoted to the post of Junior Superintendent for which an interview was conducted on July 12, 2012. Following the interview a list of successful candidates was published by the University. The name of the petitioner figured in the merit list along with other candidates.

The petitioner was, however, not given any promotion to the said post of Junior Superintendent following his empanelment and ultimately he retired on September 30, 2012 as a Senior Assistant.

Interestingly, after retirement of the petitioner, the panel for promotion was given effect to by the University by an order dated November 1, 2012 with effect from January 1, 2011.

The petitioner was not given any promotion following the said order dated November 1, 2012. The petitioner approached this Court seeking his notional promotion with effect from January 1, 2011 by filing a writ petition.

The said writ petition was disposed of by a co-ordinate Bench of this Court by order dated April 5, 2016 with a direction upon the State to consider his prayer.

Following the said direction of this Court, by an order dated August 1, 2016 the State rejected the case of the petitioner. In this writ petition the petitioner has impugned the said order dated August 1, 2016.

It appears that the case of the petitioner was rejected on the ground that for promotion to a higher post, assumption of charge is necessary and for drawal of the pay in the same begins from the date of assumption or joining. The petitioner could not assume the charge of the post to which he was promoted.

Mr. Krishnendu Bera, learned advocate appearing for the petitioner places reliance upon the judgment reported at **(2014) 3 SCC 670(Major General H. M. Singh vs. Union of India)** to argue that

even after retirement an order of promotion can be effected.

I am of the view that the order dated 1st August, 2016 cannot be sustained. The promotion order dated November 1, 2012 was given a retrospective operation with effect from January 1, 2011, meaning thereby the employees were given promotional benefits from January 1, 2011 to November 1, 2012 though they did not function or discharge their duty in the promotional post for the said period.

The petitioner's promotional benefit cannot be denied on the ground that he did not assume the charge of the post. When the authority granted promotional benefit for the aforesaid period to the other employees, without assumption of the charges, the petitioner cannot be discriminated against.

It has been pointed out by Mr. Bera, learned advocate appearing for the petitioner that pursuant to the order passed by a Co-ordinate Bench of this Court, a similarly circumstanced employee namely, Biswaranjan Samanta has been given his promotion even after his retirement. The syndicate of the University by a resolution dated August 5, 2022 granted him promotion with financial benefit for promotion from Senior Assistant to Junior Superintendent with retrospective effect from November 30, 2012.

There is no dispute that the petitioner is similarly circumstanced with Sri Biswaranjan Samanta and there cannot be any ground to deny the similar benefit to the petitioner.

Accordingly, this writ petition is allowed with a direction upon the University to give consequential financial benefits in favour of the petitioner treating him to be promoted from Senior Assistant to Junior Superintendent with effect from 1st January, 2011, within a period of two months from the date of communication of this order.

W.P.A. 28154 of 2016 is allowed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)