

31.08.2023
Item No.2
Court No.550
Saswata

W.P.A. 27540 of 2012
with
CAN 3489 of 2017
Mohitosh Kumar Sarkar
-vs-
The State of West Bengal & Ors.

Mr. Victor Chatterjee

...For the petitioner

Mr. Arindam Chattopadhyay

Ms. Lipika Chatterjee

...For the State

Mr. Arjun Ray Mukherjee

...For the respondent no. 4

1. The present writ application has been filed, inter alia, questioning the action taken by the respondent authorities in ignoring the petitioner for promotion and in promoting the private respondents to the post of Lower Division Clerk.
2. It is the petitioner's case that the petitioner was appointed by the then managing committee of the Zoological Garden, Kolkata. Such fact would corroborate from the letter dated 5th October 2000. While in service, the petitioner came to learn that on 4th July 2011 at a meeting of the West Bengal Zoological Authority, a resolution was adopted to fill up vacant posts of Zoological Garden at Alipore, through departmental promotion. Subsequently, on 19th August 2011 a notice was issued inviting applications from the employees of the Zoological Garden, Alipore belonging to the Group-D category

Name of the post	SR of vacancy	Qualification	Education Qualification
✓ LDC	10/100	10 th / 12 th / 3000 The Under 18 8, 2000	A. 10 th / 12 th B. Passed Madhyamik Pariksha or Passed equivalent examination from recognized board of Secondary Education.
			C. Able to read & write English and Bengali.
			D. 10 th / 12 th E. Knowledge of type writing at a speed of 10 words per minute
✓ T. H. Clerk	02/02	10 th / 12 th	F. Passed Madhyamik Pariksha or its equivalent examination from recognized board of Secondary Education.
			G. Able to read & write English and Bengali.
SR. Clerk Assistant	02/02	10 th / 12 th	H. Passed Madhyamik Pariksha or its equivalent examination from recognized board of Secondary Education.
			I. Able to read & write English and Bengali.

3. Since, according to the petitioner he was otherwise eligible to participate in the aforesaid promotional process, the petitioner had applied before the Director of the Zoological Garden for consideration of his candidature for promotion to the post of Lower Division Clerk, on 18th November 2011.
4. It is the petitioner's case that although, the notice dated 19th August 2011, inter alia, provided that the mode of selection for departmental promotion would be notified in due course, no such notification had been published by the respondents. Incidentally, on 4th December 2012,

the petitioner came to learn that the private respondents had been promoted against two of the three vacant posts of Lower Division Clerk. Insofar as the posts of Ticketing Clerks are concerned, the same were also filled up by the respondents. According to the petitioner, promotions were given in an arbitrary manner, whimsically, no procedure was followed at all.

5. Being aggrieved, the present writ application was filed. At the ad interim stage a Coordinate Bench of this Court by an order dated 20th December 2012, while directing exchange of affidavits was, inter alia, pleased to pass an interim order thereby restraining the respondents from filling up the third vacant post of the Lower Division Clerk as mentioned vide notice dated 19th August 2011, till disposal of the writ application.
6. After exchange of affidavits, the present writ application has come up for consideration.
7. Today, Mr. Mukherjee, learned advocate appearing for the respondent no. 4, by relying on a supplementary affidavit, which has been filed in Court today and has been retained with the record, claims that at present, there are seven posts which have fallen vacant in respect of the Lower Division Clerk. According to him, the petitioner is otherwise eligible to be considered for promotion.

8. Since, it has been the consistent stand of the respondent no. 4 that promotion had been granted on the basis of seniority without holding any departmental examination and taking into consideration the fact that the petitioner is the senior-most candidate, as acknowledged by Mr. Mukherjee, I am of the view that no fruitful purpose will be served in keeping the writ application pending.
9. Having regard to the aforesaid, I direct the respondent no. 4 to consider the petitioner's candidature for promotion to the post of Lower Division Clerk in terms of the notice dated 19th August 2011 against the post which was directed to be kept vacant in terms of the order dated 20th December, 2012.
10. It is, however, made clear that if the respondent no.4 considers the petitioner eligible and is found to be successful, he shall be entitled to notional benefits from the date when the similarly placed candidates had been granted promotion pursuant to the aforesaid notification dated 19th August 2011, without any actual financial liability, insofar as differential payment of salary from the date of grant of promotion to such similarly placed candidates, till such time the decision is taken.

11. The aforesaid decision shall be taken within a period of 8 weeks from the date of communication of this order.
12. With the above direction and observations, the writ application being WPA 27540 of 2012 along with the connected application being CAN 3489 of 2017 are ***disposed of***.
13. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)