

02.03.2023
Sl. No.53
sdas

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

M. A. T. 22 of 2021
(CAN 1 of 2021)

[The Union of India & Ors. -Vs- Sri Prabhat Kumar Manna]

Mr. Sudipto Kumar Mazumdar .. Dy. Solicitor
General of India
Mr. Ajoy Kumar Singhania
... .. for the appellants

Mr. Jagriti Mishra
Mr. Ashit Kumar Das
Mr. Santosh Kumar Dhar
Mr. Devayan Goswami
Mr. Suvam Gupta
... .. for the respondent

On consent of the parties, the appeal is taken up for hearing.

Learned Deputy Solicitor General of India submits that the appellants-Union of India did not have opportunity to place its case before the learned single Judge. The learned single Judge proceeded on the premise that the promotional posts, namely, Assistant Commandant (Technical) and Deputy Commandant (Technical) were in existence. But the said posts had been deemed to have been abolished. Hence, there was no scope for framing recruitment Rules for appointment to the abolished posts.

Learned Advocate for the writ petitioner-respondent submits that the posts have not been abolished in terms of the extant Rules. Appointment to the said posts was kept in abeyance and may be revived at any point of time.

We have given consideration to the aforesaid submissions. Fact that the promotional posts had been kept in abeyance for more than two years and accordingly, had been deemed to have been abolished as per Rules was not placed before the learned single Judge.

On an erroneous premise that the writ petitioner-respondent could be considered for appointment by promotion to the said abolished posts, learned Judge directed appellant no.4 to settle the recruitment rules and publish the same within the stipulated time frame.

Materials placed before us show that the promotional posts have been deemed to have been abolished. Hence, there is no question of framing recruitment rules for appointment to the said posts. Issue of revival of the said posts is a question of policy which this court would not embark into.

In the light of the aforesaid facts, we allow the appeal and set aside the impugned order dated 05.02.2021.

Appeal is accordingly, allowed.

In view of disposal of the appeal, CAN 1 of 2021 is also disposed of.

There shall be no order as to costs.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)