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21.05.2024
Ct. No. 15
adeb

W.P.A. 2253 of 2019

**Ashis Mondal
Vs.
The State of West Bengal & Ors.**

Mr. Indranath Mitra
Mr. Sankha Biswas
...for the petitioner

Mr. Asim Hati
Ms. Barnali Deb
Mr. Antarisksha Karmakar
...for the zilla parishad

Mr. Sudipta Panda
Mr. Subrata Ghosh
Ms. Munmun Tewary
...for the State

Mr. Chittaranjan Chakraborty
Mr. Depjyoti Chakraborty
Mr. Sumit Banerjee
..for the respondent no. 10

Matter relates to promotion to the post of Head Assistant in North 24 Parganas Zilla Parishad. Both the petitioner and respondent no. 10 participated in the promotional process aspiring to be promoted to the post of Head Assistant. According to the petitioner in terms of 7th March, 2017 order issued by the Special Secretary to the Government of West Bengal, Panchayats and Rural Development Department, written test of 50 marks was conducted by the authority wherein the petitioner received 34 and the respondent no. 10 received 26.

In support of the contention reliance has also been placed on the provisions contained in rule 4(VII) under Chapter II of the West Bengal Panchayat (Recruitment

and Conditions of Appointment of Employees of Zilla Parishad) Rules, 1997 (hereinafter referred to as the 'said rules of 1997') in order to demonstrate that for promotion to the post of Head Assistant from the feeder post of Upper Division Assistant and the Accountant merit-cum-seniority should be followed. Based on such provisions as contained in Rule 4(VII) it is submitted on behalf of the petitioner since in the written test petitioner was awarded 34 whereas respondent no. 10 was awarded 26 notwithstanding the seniority of the respondent no. 10 as it appears from page 38 of the writ petition to be reckoned from 16th April, 1999 petitioner should be promoted albeit being junior to the said respondent no. 10 on the basis of his performance in the written test.

Another limb of submissions made on behalf of the petitioner is applicability of the order dated 3rd July, 2012 and subsequent order dated 7th March, 2017 issued by the Special Secretary to the Government of West Bengal. According to the petitioner since Clause 8 of the order dated 3rd July, 2012 was framed in contravention to Rule 4(VII) of the said rules of 1997, Clause 8 should not be given any credence while conducting promotional process to the post of Head Assistant from the post of Upper Division Assistant and Accountant. In support of the case made out in the writ petition reliance has been placed on the order of the coordinate Bench dated 23rd July, 2014 passed in a writ petition being **WPA 15909 of**

2013 (Chinmoy Dey Vs. The State of West Bengal & Ors.).

The prayer of the petitioner is opposed by the learned advocates representing the respondent no. 10, North 24 Parganas Zilla Parishad and the State-respondents on the score that the petitioner obtained benefit of promotion to the post of Upper Division Assistant based on the guidelines/order dated 3rd July, 2012 and promotional order was passed by the Executive Officer, North 24 Parganas Zilla Parishad on 18th July, 2014 which is at page 35 of the writ petition.

It is also submitted that petitioner without any demur participated in the promotional process for being promoted to the post of Head Assistant of the Zilla Parishad along with other candidates and when it was found that he was not selected, he challenged the order of promotion which was issued in favour of the respondent no. 10 which is impermissible in terms of law laid down by the Hon'ble Apex Court. According to the respondents including respondent no. 10 petitioner should have questioned the validity and legality of the orders dated 3rd July, 2012 and 7th March, 2017 instead of participating in the promotional process which was scheduled to be conducted in terms of the relevant provisions of the said rules of 1997 read with orders dated 3rd July, 2012 and 7th March, 2017.

Be that as it may, during course of submissions this Court has come across order of a coordinate Bench dated 23rd July, 2014 passed in **Chinmoy Dey** (supra). On careful reading of the said order dated 23rd July, 2014 it appears that the coordinate Bench considered similar set of facts while deciding the identical issue where question came up for consideration before the coordinate Bench whether in view of existence of the relevant provisions of the said rules of 1997 authorizing the concerned authority to follow a particular process in the matter of promotion to the post of Head Assistant from the post of Upper Division Assistant and the Accountant the guidelines/orders dated 3rd July, 2012 and 7th March, 2017 can be pressed into service or not. It was decided by the coordinate Bench that when statutory provisions are there in the said rules of 1997 the orders issued by the Special Secretary to the Government of West Bengal dated 3rd July, 2012 ought not to be considered while initiating promotional process, but this Court on reading the entire order dated 23rd July, 2014 finds it relevant to quote a particular paragraph below:-

“However, taking into consideration that the private respondent no. 6 has already given promotion-rightly or wrongly-and she is attaining superannuation at the end of this month, the entire exercise, in terms of this order, shall be conducted by the Executive Officer of the North 24-Parganas Zilla Parishad immediately after the retirement of the private respondent no. 6, so that her service is not affected in view of the observations made in this order. The Executive Officer, North 24

Parganas Zilla Parishad, upon coming to a decision in the matter, shall also give the petitioner benefit of notional seniority and such other benefits which he may be entitled to, in accordance with law.”

Almost similar situation is found to be present in the case at my hand where respondent no. 10 was scheduled to be retired on 31st January, 2019 and he was granted promotion to the post of Head Assistant with effect from 1st March, 2018.

In consideration of aforesaid observations made by the coordinate Bench in **Chinmoy Dey** (supra) this Court permits the respondent no. 10 to get the benefit of promotion in terms of the order dated 22nd January, 2019 till his date of superannuation. After superannuation of the respondent no. 10 upon compliance of necessary formalities by the concerned authority of North 24 Parganas Zilla Parishad the petitioner shall be given benefit of promotion to the post of Head Assistant with notional seniority and other benefits based on the above observations. Such exercise relating to the promotion of the petitioner shall be completed by the concerned authority of North 24 Parganas Zilla Parishad as early as possible but not later than 8 (eight) weeks from the date of communication of this order.

With the above directions the writ petition stands disposed of.

Interim order passed earlier stands vacated.

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

(Saugata Bhattacharyya, J.)