

24.06.2024
ct. 6/SI. No.9
tkm

FMA 380 of 2024
CAN 1 of 2024

In re : The Director of Local Bodies
...appellant

Mr. Asish Kr. Guha
Mr. Benazir Ahmed
... .. for the appellant
Mr. Tapas Kr. Ghosh
Mr. Tanmay Chowdhury
... .. for respondent nos. 3 to 5

Mr. Srikanta Paul
Ms. Ankita Chowdhury
Mr. Priyabrata Batabyal
... .. for respondent no. 1-writ petitioner

1. Appellant has assailed order dated 21.12.2023 whereby the learned single judge directed the respondent-writ petitioner to be promoted to the post of sanitary inspector.
2. Factual matrix leading to the appeal is as follows:
 - a) By memo dated 22nd September 2010 the appellant permitted the Chairman of the respondent municipality to make recruitment to the post of sanitary inspector.
 - b) In terms of the aforesaid memo the respondent no.1-writ petitioner who was working as conservancy supervisor, was recommended for appointment through promotion to the said post in 2016.
 - c) By order dated 10th January 2018 the recommendation was rejected by the appellant i.e. Director of local bodies.

d) The employee approached the learned single judge who referring to the West Bengal Employees Recruitment Rules 2005 (hereinafter referred to as 2005 Rules) held the writ petitioner was entitled for promotion and directed as such.

3. Learned counsel for the appellant contends that the writ petitioner was not holding the post of sanitary assistant and as per the amended Recruitment Rules he was ineligible for promotion.

4. For better appreciation of the issue the relevant rules relating to recruitment to the post of sanitary inspector as per 2005 rules and the amendment thereto in 2017 are set out hereinbelow :

“30. Sanitary Inspector :	
(a) Method of recruitment	: by promotion and in case of non-availability of suitable candidate, by direct recruitment;
(b) Qualification	: for direct recruitment the candidate shall be at least Higher Secondary passed from a Board or Council recognized by the Government, and also have Diploma in Sanitary Inspectorships from any Institution recognized by the Government. <u>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.</u> The minimum age limit for such recruitment shall be 21 years”

(12)in entry 30 –

- (a) for the words “Diploma in Sanitary Inspectorships”. Substitute the words “diploma or certificate in Sanitary Inspectorships”
- (ii) insert the following para at the end –

“By promotion on the basis of seniority-cum-merit and performance from the employee working in the post of Sanitary Assistant and having qualification for direct recruitment”.

5. A plain reading of the amendment to the Recruitment Rules 2017 for the post of sanitary inspector would show the feeder post for appointment by way of promotion of candidates was altered from employees working in the pay scale below that of sanitary inspector to employees working in the post of sanitary assistant.

6. Admittedly, respondent-writ petitioner was working in the post of conservancy supervisor whose pay scale is lower than that of the sanitary inspector. Hence, he was eligible to be considered for appointment by way of promotion as per the pre-amended rules but the amendments in 2017 restricts the zone of consideration to sanitary assistant which is a higher post.

7. We are of the view the amendments had come into effect after the recruitment process had been initiated and the writ petitioner had been recommended for appointment by promotion under the pre-amended rules. It is trite that a recruitment process once initiated is to be conducted under the relevant rules and the subsequent amendments thereto would not apply retrospectively to the said selection process.

8. In light of the aforesaid discussion we do not find any merit in the appeal and the same is dismissed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)