

12.12. 2024
item No.160
n.b.
ct. no. 24

WPA 7337 of 2019

Shri Shib Shankar Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Dilip Kr. Saha,

Ms. Dhriti Das,

..... for the petitioner.

Mr. Susanta Pal,

..... for the State.

State of West Bengal has created a post of LDA for the office of West Bengal Women Development Undertaking. Petitioner applied for the said post and he was appointed as LDA on March 12, 2007. After three years' satisfactory service with the department, he was made permanent with effect from April 4, 2010. He got his first promotion on March 30, 2012 to the post of UDA since then he was serving with the department more than ten years in the same post. The department has created a post of administrative officer, by issuing impugned circular that the said post of Assistant Project Manager/Administrative Officer would be filled up on deputation by officer belonging to West Bengal Junior Social Welfare Service. The impugned circular dated May 26, 2009 is under challenge before this Court.

It is the case of the petitioner that the circular itself has stalled his promotional avenues as Administrative Officer. It is the further case of the

petitioner that the action of the State respondent is illegally and arbitrary the promotion at the next higher post in the office of the West Bengal Women Development Undertaking i.e. post of Administrative Officer should be filled up from the post of UDA as the same promotional avenue is applicable in other government departments.

Mr. Dilip Kumar Saha, learned advocate appearing on behalf of the petitioner submits that the present petitioner is a government employee and the State of West Bengal has framed the rules for promotion of the UDA to the post of Administrative Officer in different department. Impugned circular actually stalled the promotional avenues of the petitioner though the similarly situated persons i.e. the other employees of the Government of West Bengal in different departments under the same post of UDA are being regularly promoted to the post of Administrative Officer.

He further argued, in that score, the fundamental right of the petitioner under article 14 has been violated. Thus, he prayed for quashing of the circular dated May 26, 2009. In support of his contention different circulars of different departments were placed before this Court.

Mr. Pal, learned counsel appearing on behalf of the State authority has submitted that the instant writ petition is mis-conceived. The West Bengal Women

Development Undertaking was incorporated under the companies Act, 1956. There are some separate Articles of Associations to guide and from the association. As per clause 4 of Article of Association of the said undertaking, it is a Government company within meaning of Section 617 of Companies Act, 1956.

He further argued that the functions of West Bengal Development Undertaking are undertaken by receiving fund as grants-in-aid from the department of Women and Child Development and Social Welfare, Government of West Bengal. For smooth functioning of the said undertaking, the Governor has time to time created some posts. Article of Association has specifically mentioned, how the said post has to be filled up. The Cabinet has approved regarding norms of filling up the post. According to the said approval LDA can be filled up through Employment Exchange. UDA can be filled up through promotion from the suitable candidates working in the fiddler post as a confirmed employee LDA in the fixed scale. The Assistant Project Manager/Administrative Officer can be filled up by deputation of an officer belonging to West Bengal Junior Social Welfare Service.

Mr. Pal further argued that the present petitioner was appointed as LDA and he was promoted to the post of UDA. He further submits that the Governor has the only authority for creating of post in the department.

There is no promotional post for the post of UDA in the said undertaking and therefore, question of awarding further promotion to the petitioner does not arise.

Having heard learned counsel for the parties also considering the fact, it appears to me that the petitioner was appointed as LDA under the West Bengal Women Development Undertaking. He was promoted to the post of UDA on March 30, 2012, since then he is serving under the same post for more than 12 years. Admittedly, several department of Government of West Bengal has certain rule regarding promotional avenue of UDA to the post of lower fitter of officers i.e. Administrative Officer. But it is true that West Bengal Women Development Undertaking is a Government company purely run under the grants-in-aid. Pay structure, service benefits of employees of the same undertaking are being guided by the rules of the Government of West Bengal but the structure of employees, more recruitment and the promotional avenues has been specifically framed under the Articles of Association of the said undertaking. The petitioner has joined in the post in the year 2007 on temporary basis. Thereafter, his service was become permanent in the year 2010. The alleged circular, which is under challenge before this Court is issued in the year 2009 i.e. much prior to his service, became permanent in the department. The petitioner was well aware about the fact that in the said undertaking, he did not have

any promotional avenues after the post of UDA. I can understand that the promotional avenues of the petitioner has been stalled. But the petitioner was well-known about his service tenure and service facilities before joining in the post. Moreover, the alleged circular issued by the Government of West Bengal each of year 2009, now, after long 15 years the petitioner cannot challenge the said circular issued by the Government of West Bengal, when he was otherwise aware of the circular before joining in the post.

Under the above observation, I am of the view that the promotional avenues of the employees of the Government of West Bengal in different departments cannot be at par with the promotional avenues of the West Bengal Women Development Undertaking. Thus, I find no justification to entertain the present petitioner.

Under the above observation, the instant writ petition is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)