

05.02.2024
Item No.06
Court No.11
Avijit Mitra
ML

WPCT 39 of 2022

In re: An application under Article 226 of the Constitution
of India;

And

**The Additional Commissioner & Regional Director,
Establishment Branch-1, Regional Office & anr.**

-Versus -

Ajay Kumar

Mr. Shiv Chandra Prasad
...for the petitioners

Mr. Ujjal Ray,
Mr. Arpa Chakraborty
...for the respondent

As prayed for by Mr. Prasad, leave is granted to correct
the cause title of the writ petition.

The present writ petition has been preferred
challenging an order dated 10th February, 2021 passed in the
original application being OA No.350/1365/ 2020. By the
said order, the petitioners herein were directed to look into
the grievance of the respondent herein as highlighted in the
representation dated 11th March, 2020 and to consider it in
accordance with the decision in *K. Meghachandra Singh and
Others vs. Ningam Siro and Others* as well as the decision in
OA No.194/2020 and to pass appropriate orders, in

accordance with the decisions within a period of three months from the date of receipt of a copy of the order.

Mr. Prasad, learned advocate appearing for the petitioners submits that the learned Tribunal failed to appreciate the ratio of the judgment delivered in the case of *K. Meghachandra Singh & ors. Vs. Ningam Siro & ors.*, reported in (2020) 5 SCC 689. Prior to delivery of the said judgment, the *inter se* seniority of the employees, was finalised on the basis of the judgment delivered in the case of *Union of India & ors. Vs. N.R. Parmar & ors.*, reported in (2012) 13 SCC 340.

He argues that the applicant before the learned Tribunal was appointed as UDC in Tamil Nadu region and he joined the Kolkata region in the year 2016 under IRT policy accepting the bottom seniority in the recipient region. Upon accepting the transfer on such condition, the applicant/respondent cannot turn back and challenge his placement in the seniority list. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

He argues that as the placement of the proforma respondent no.2 in the seniority list was confirmed on the basis of the judgment delivered in the case of *N.R. Parmar (supra)*, the learned Tribunal erred in law in directing the petitioners to redraw and revisit the respondent's seniority.

Mr. Ray, learned advocate appearing for the respondent denies and disputes the contention of Mr. Prasad and submits that the respondent cannot be accorded seniority lower than the incumbents, who joined after the respondent in the West Bengal Region.

Drawing our attention to the provisional gradation/seniority list of UDC/UDC-Cashier as on 31st December, 2018, Mr. Ray submits that the respondent was placed at serial no. 334 of the seniority list whereas the proforma respondent no.2 was placed at serial no. 125. Upon transfer the respondent joined in the year 2016 whereas the proforma respondent no.2 was appointed subsequent thereto on 12th February, 2018. The said seniority list was of the year 2020 and from such sequence, it is explicit that the *inter se* seniority was not finalized prior to the delivery of the judgment in the case of *K. Meghachandra Singh (supra)*.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the placement of the respondent as UDC in the West Bengal region was in the year 2016 whereas the proforma respondent no.2 joined after the respondent in the year 2018. The provisional gradation/seniority list which has been annexed to the writ petition is also dated 27th February, 2020 and that as such the *inter se* seniority was not finalised even in the year 2020. In the said conspectus, the learned Tribunal rightly discounted the argument advanced on

behalf of the petitioners that the *inter se* seniority of the respondent and the direct recruits was already finalised on the basis of the judgment delivered in the case of. *N.R. Parmar* (supra).

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

The writ petition being WPCT 39 of 2022 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)