

04 11.06.24

Ct. No. 04

akd

F.M.A. 2767 of 2016
CAN 1 of 2016 (Old No. CAN 6215 of 2016)

Sanjay Prokash Nanday
Vs.
The State of West Bengal & Ors.

Ms. Priyanka Chanda.
... for the appellant.
Mr. Vimal Kumar Shahi,
Mr. Sayan Datta,
Ms. Pratiti Das.
... for the State.
Mr. Himadri Sikhar Chakraborty,
Mr. Debdash Khanna.
... for the University.

The writ petitioner approached the Writ Court claiming parity with the other similarly circumstanced persons, who were promoted to the post of Sub-Assistant Engineer (SAE) and granted approval by the State Government.

The reliance appears to have been made on the resolution of the University dated March 15, 1986 and November 16, 2012 by which the persons working as Working Assistant were promoted to the post of SAE with the approval of the State Government. The stand of the State as well as the University before the Single Bench was that the notification dated November 19, 1974, which was the foundation of taking the resolution on the above noted dates, is applicable to the State Government employees and not to the said respondent University.

The Single Bench discarded the contention of the writ petitioner, as the said notification dated November, 19, 1974, which forms the basis of the resolution taken by the University as above, is strictly applicable to the Government employees and not extendable to the employees of the respondent

University. It is further held that the illegality and/or infirmity in promoting the Working Assistant as SAE on the basis of the aforesaid notification issued by the State is patent and does not confer any right to the writ petitioner nor the plea of equality and discrimination can be available to him.

The learned Counsel appearing on behalf of the appellant vociferously submits that the similarly circumstanced persons were promoted to the post of SAE and, in fact, the writ petitioner has been discharging the duties and functions of SAE since long, yet he is deprived of the salaries and allowances attributable to such post.

There is no fetter on the part of the respondent organization to entrust upon the writ petitioner to discharge the duties and functions of the said post, but the same is always considered as and by way of an interim measure.

Keeping the person in the said post for a considerable period of time is not desirable, as the authority must take steps to fill up the said promotional post. We are not unmindful of the proposition of law that once the Court finds the illegalities having been committed by the respondent authority, it cannot issue Mandamus upon the authority to perpetuate such illegality for all time to come. Neither the principle of equality nor the discrimination stands in such situation. Furthermore there is no regulation or rules in this regard framed by the University as of now. In absence of any statutory provision, the right as claimed by the writ petitioner has been negated by the Single Bench; which in our opinion does not warrant any interference in the instant appeal. However, we are conscious over the agony and anguish of the

appellant, who is still discharging the duties and functions of SAE without any attempt or endeavour having shown by the University to fill up the said post with the regular incumbent.

We, therefore, direct the University to take immediate steps for filling up the post of Sub-Assistant Engineer (SAE) which should not exceed beyond the period of six months from the date of the communication of this order.

With the above observations the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)