

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

FMA No. 906 Of 2023

Subrata Ray Karmakar

-Versus-

The University of Calcutta & Ors.

For the Appellant : **Mr. Krishnendu Bera.**

For the Calcutta University : **Mr. Nilotpal Chatterjee,
Mr. Sourabh Sengupta.**

Hearing Concluded on : **16.07.2024**

Delivered on : **19.08.2024**

Prasenjit Biswas, J:-

1. The order dated 03.04.2024 passed by the learned Single Bench of this Court in connection with WPA 8088 of 2022 is assailed in this appeal.

2. A writ petition has been filed by the petitioner alleging his supersession in the promotion to the post of Junior Superintendent at the Calcutta University. The writ petitioner/appellant (herein) was appointed as a Junior Assistant at Calcutta University on May 2, 2002 and after completion of nine years of service he was promoted as Senior Assistant on May 2, 2011. The writ petitioner was further promoted to the post of Junior Superintendent on May 2, 2018 upon completion of seven years of service as a Senior Assistant. The main grievance of the writ petitioner is that during pendency of the writ petition, respondent nos. 11 to 13 to that writ petition have been given promotion as Senior Superintendents by superseding his seniority.

3. The stand point of the University would be appearing from its affidavit-in-opposition filed before the learned Single Bench. It is stated that there are various cadres and posts in the University service but there has never been any compartmentalized pool like Cash Pool etc. and virtually holders of post placed in various departments dealing with cash under the mother department of accounts section were identified as the Cash Pool employees only for the purpose of convenience but that Cash Pool is not a separate section/ department/ pool. The concept of the said Cash Pool became extinct since 2017 by re-designation of post and placement of employees in the general cadre by adopting a resolution by the university dated 24.12.2019. By the said resolution the various posts in the Cash Pool were re-designated in the general cadre of non-teaching staff with existing service conditions and respective scales of pay with designation of the general cadre. It is said by the university that the said promotional exercise in the university for non-teaching staff is solely based upon G.O. No. 2426(6)-Edn(11) dated 17.10.1985 issued by the

government of west Bengal and the university follows same system in terms of the said G.O.

4. It is admitted position that the respondent nos. 11 to 13 to the writ petition had entered into service in the clerical cadre prior to entering in the service of the writ petitioner and accordingly those private respondents were senior to the present petitioner/appellant who were born earlier in the clerical cadre in the university service. But the petitioner failed to show any instance or example whether the persons in the lower stage in the gradation list/ seniority list have superseded persons ranked higher in the gradation list including the petitioner at any particular point of time when the promotional exercise was being carried out by the authority concerned. It is also admitted position that the petitioner got two promotional posts, one in the year 2011 and the other in 2019 with effect from May 2018 but no such case was made out by the petitioner to show a single instance of supersession in such promotional exercise. By re-designation/ re-structurization of the Cash Pool employees in the general pool had taken effect from 03.03.2021 by adopting a resolution dated 24.12.2019 by the university authority.

5. We are of the view that redesignation of the Cash Pool employees is a mere shifting from one structure to another structure and their seniority in service was maintained. A change in the redesignation/ re-structurization would not take away grade seniority from the employees of the erstwhile Cash Pool who were redesignated with different post nomination in the general cadre. The petitioner/ appellant has failed to show that he is much senior to the private respondent nos.11 to 13 as Junior Superintendent.

6. Learned Single Bench was disinclined to interfere the resolution adopted by the university dated 24.12.2019 in a manner so that it would upset the seniority of the

Cash Pool staff and general cadre staff based on their initial date of joining. The learned Single Bench by passing the impugned order correctly interpreted the intention of the university that while making resolution it was not the intention of the university to diminish the seniority of the general cadre non-teaching staff employees.

7. Learned Counsel appearing on behalf of the appellant submits before this Court interalia that promotions were given to the private respondent with effect from 03.03.2017 as Junior Superintendents in violation of the resolution taken by the university and this appellant/ writ petitioner being the senior employee working in the post of Junior Superintendent with effect from 02.05.2018 became junior to those respondents. It is further submitted by the learned Counsel that this appellant was promoted to the post of Junior Superintendent on 02.05.2018 and his next promotion to the post of senior superintendent is due on 02.05.2023 and the private respondents no(s) 11 to 13 being the employees under cash pool are not entitled to get promotion to the post of senior superintendent prior to the appellant.

8. It would be clear from the stand point of the university that while making the resolution effective from July 16, 2019 its intention was not to diminish the seniority of general cadre of non-teaching staff employee. Although there is no explicit statement in the said resolution that the seniority of general cadre, non-teaching staff employees for the purpose of promotion should be counted from their date of initial appointment but we find that does not intend that seniority of the respondent nos. 11 to 13 should be reckoned from July 16, 2019 in the post of junior superintendent. It was only for to give effect the resolution taken by the university and was not meant to alter *interse* seniority at the time of redesignation/ re-structurization in the general cadre of various categories of clerical employees. Not a single instance has been shown by the petitioner where the persons whose names are appearing in the gradation list

in the lower position have superseded persons ranked higher in the said gradation list including this petitioner at the time of exercise of giving promotion to the employees.

9. We are of the view that the redesignation of the 'Cash Pool' employees is a mere shifting from one structure to another structure by retaining their seniority in the service. The university rightly reckoned the seniority of its employees from the date of their initial appointments in the service. The redesignation/ re-structurization of the Cash Pool employees in the general pool which had taken effect from 03.03.2017 are mere change of nomenclature only. So, the promotion given to the employees by the university on the basis of their joining dates in the service is justifiable.

10. The learned Single Bench rightly held that there is no illegality in giving promotion to the respondents given by the university authority and there is no illegality in the resolution adopted by the university dated 24.12.2019 with effect from 03.03.2017. We are not inclined to interfere the impugned order passed by the learned Single Bench dated 03.04.2023.

11. Accordingly, the present appeal sans merit and is liable to be dismissed.

12. The instant appeal being no. FMA 906 of 2023 is hereby dismissed but without any order as to costs.

13. Consequently, other pending applications, if any, are hereby also dismissed.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)