

02 14.03.2024
rkd Ct.15

W.P.A. 13616 of 2014

Arobinda Kumar Ghosh & Ors.

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. Abhijit Basu,
Mr. Arghya Kamal Das

....for the petitioners.

Mr. Alok Kumar Ghosh,
Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya

....for the KMC.

The petitioners were the employees of Kolkata Municipal Corporation (for short "KMC") claiming promotion initially from Jr. Assistant to Assistant based on circular No.57/VIII/2012-13 dated 10th December, 2012 issued by the Deputy Municipal Commissioner (Personnel) of KMC.

Mr. Basu, learned advocate representing the petitioners has strenuously argued in order to satisfy the query of the Court with regard to delay in approaching the Court and it has been contended on behalf of the petitioners that for determining the *inter se* seniority of the petitioners and the private respondents relevant gradation list was prepared in 1994-95 and respondent no.7 was promoted to the post of higher cadre ignoring the *inter se* seniority of the petitioners qua respondent

no.7.

It is contended on behalf of the petitioners that representations were made from time to time ventilating the grievance of the petitioners and the claim of the petitioners for granting promotion as it has been granted to respondent no.7 stood fortified vide circular dated 10th December, 2012 wherein in clause (a) as well as in clause (c) it has been provided that there were errors in preparing cadre/post wise gradation list which relates to cadre/post wise gradation list prepared w.e.f. 1st October, 2001.

According to the petitioners benefit of admission of errors as expressed by the concerned authority of KMC while issuing circular dated 10th December, 2012 needs to be extended to the petitioners thereby granting them promotion based on the gradation list prepared in 1994-95. It is also submitted that if actual benefit is not possible to be granted in favour of the petitioners at least notional benefit should be accorded to the petitioners taking note of the positions of the petitioners in the gradation list of 1994-95 vis-a-vis respondent no.7.

In pursuit of satisfying the query of the Court based on delay and laches in approaching the Court with the present writ petition much

emphasis has been laid on the said circular dated 10th December, 2012 which according to the petitioners has kept the issue alive at least up to the date of issuance of said circular whereby an effort was made by the KMC to restructure the cadre/post wise gradation list with effect from 1st October, 2001.

It is also contended that if by issuing circular dated 10th December, 2012 cadre/post wise gradation list was restructured then the previous gradation list where the names of the petitioners featured along with the name of the respondent no.7 need to be considered in the light of the said circular dated 10th December, 2012 in order to grant similar benefit as it has been extended in favour of respondent no.7 in order to comply the principle embodied in Article 14 of the Constitution of India.

It is submitted on behalf of the petitioners that the cause of action of the writ petition arose after issuance of the circular dated 10th December, 2012; therefore the time needs to be reckoned from the date of issuance of such circular dated 10th December, 2012 not from the date of granting promotion to the respondent no.7. In addition thereto, the documents which are at pages 115 and

118 of the writ petition dated 6th September, 2013 and 25th September, 2013 are relied upon to demonstrate that the writ petition is not time barred.

Mr. Basu, has made an attempt to distinguish the judgment of the Apex Court, reported in **(2013) 12 SCC 179 (State of Uttaranchal & Anr. -vs- Shiv Charan Singh Bhandari & Ors.)**. The relevant paragraphs of the said judgements are placed before this Court in order to substantiate that the fact situation was not akin to the facts which this Court is considering in connection with the present writ petition.

Based on the facts narrated in paragraph 5 it is contended that it was a case of granting promotion to a lone candidate by the authority which was not competent to grant such promotion therefore according to the petitioners the ratio decided in **Shiv Charan Singh Bhandari** (supra) may not have application in the present case since the claim has been laid on behalf of the petitioners that the benefit which has been granted to respondent no.7 should also be granted to the petitioners who are equally circumstanced specially after issuance of the circular dated 10th December, 2012. The relevant cadre/post wise gradation list

of earlier period where the names of the petitioners as well as respondent no.7 featured could have been restructured for extending the benefit.

Mr. Ghosh, learned advocate representing the Kolkata Municipal Corporation who has opposed the prayer of the petitioners on the ground that the circular dated 10th December, 2012 relates back to 1st October, 2001 and not beyond that. It is also submitted by placing a list before this Court that out of thirty one petitioners in total only three are in service. On the contrary out of thirty six respondents who have been arrayed as parties only one is in service. It is also submitted on behalf of the KMC that some of the private parties who have been arrayed either as petitioners or private respondents have died.

According to KMC, if at this stage prayer of the petitioners is allowed the same shall have cascading effect in maintaining the records relating to cadre/post wise gradation list from 1994-95 onwards. Therefore, from the said period the cadre position of the respective employees also is required to be altered which at this juncture is a colossal task apart from administrative difficulty which department would face in changing the cadre position.

It is also contended that it is too late in the day to entertain the prayer of the petitioners for granting promotion as it has been granted to respondent no.7 since the cause of action arose in 1998 when respondent no.7 was promoted to the higher post as it has been alleged on behalf of the petitioners. The petitioners ought to have challenged the promotion granted to respondent no.7 by filing the writ petition contemporaneously and according to the respondents preferring representations one after another cannot be considered as relevant factor in condoning the delay.

It is also submitted that had the petitioners approached the Court contemporaneously then there could have been possibility of changing the cadre position, if it was found by the Court that the claim of the petitioners were justified; but at this stage due to finalisation of cadre position after issuance of circular dated 10th December, 2012 the prayer of the petitioners may not be granted.

This Court has heard the learned advocates representing the parties and perused the relevant materials specially circular dated 10th December, 2012 based on which argument has been advanced on behalf of the petitioners.

Petitioners initially claimed promotion from Jr. Assistant to Assistant upon restructuring the gradation list of 1994-95 and it is the contention of the petitioners that in 1998 respondent no.7 was promoted ignoring their seniority. Surprisingly the writ petition has been filed on 29th April, 2014 i.e. sixteen years after the promotion which was granted to respondent no.7.

Today when the Court is considering the issue finally most of the petitioners as well as respondents have retired and some of them have died. Much emphasis has been laid on circular dated 10th December, 2012 in order to fortify the claim of the petitioners relating to promotion. But on mere reading of the said circular dated 10th December, 2012 it appears that the same is confined to preparation of cadre/post wise gradation list up to 1st October, 2001 and not prior thereto whereas petitioners are claiming benefit of promotion based on cadre/post wise gradation list which was prepared in 1994-95 in the backdrop of the fact that respondent no.7 was promoted in 1998.

This Court finds substance in the submission made on behalf of the KMC that the petitioners acquiesced by causing delay in taking

steps in pursuit of getting relief relating to promotion. This Court also finds it apt to rely on the ratio decided by the Apex Court in **Shiv Charan Singh Bhandari** (supra) and paragraphs 23, 24 and 29 of the said judgment are quoted below:

“23. *In State of T.N. v. Seshachalam, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)*

“16.filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

24. *There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of J&K.”*

“29. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Nor for nothing, has it been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.”

In consideration of the ratio decided in **Shib Charan Singh Bhandari** (supra) it appears that the Apex Court has succinctly held that claim of promotion must be considered on the anvil of equity and equitability; therefore the said relief needs to be claimed within a reasonable time.

It is also held in paragraph 29 that even in the case of claim of granting notional promotional benefits the same is likely to affect the State exchequer regard being had to the fixation of pay

and pension. It has been pointed out on behalf of the petitioners that there are certain factual differences so far the case which was considered by the Apex Court in **Shiv Charan Singh Bhandari** (supra) and the case which is at the hand of this Court but that would not alter the ratio decided by the Apex Court in the judgment alluded above.

In view of aforesaid discussion, this Court does not find merit in this writ petition and the same stands dismissed.

However, there shall 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 on the usual undertakings.

(Saugata Bhattacharyya, J.)