

03.01.2024
Sl. No. 07
Suman
Ct.No.238.

WPA 14925 of 2023

Arkojit Bhattacharyya & Ors.
Vs.
University of Burdwan and Ors.

Mr. Biswaroop Bhattacharya
Ms. Oisani Mukherjee
..for the petitioners

Mr. Achintya Kumar Banerjee
Mr. Raghunath Chakraborty
Mr. Mehboob Ahmed
..for the University

In this writ petition the petitioners have prayed,
inter alia, as follows:-

“A. A writ in the nature of Mandamus commanding the respondents and their men and agents and subordinates to forthwith withdraw the select list to reassess the performance of the petitioners in terms of the prescribed criterion by an independent agency and to give appointment to the petitioners in the Grade-III posts by promotion and further directing them to act in accordance with law.

B. A writ in the nature of Mandamus directing the respondents and their men and agents and subordinates to forthwith appoint the petitioners to the promotional Grade-III posts by recalling or cancelling the select list and order dated 09.01.2023, if there are no other vacancies in the promotional posts and further directing them to act in accordance with law.”

The factual antecedents of this case are apparent from the report filed by the University before this Court. The report suggests that following the Order No.

416-Edn(U)/1U(C)/06/12 dated April 16, 2013 issued by the Higher Education Department of the State, the Executive Council of Burdwan University in its meeting held on May 28, 2013 resolved to invite applications from Grade-IV in-service employees of the University i.e., the employees holding the positions below the rank of Junior Assistant and its equivalent cadre who have passed Madhyamik examination or its equivalent and have rendered at least six years' continuous service in the University for filling up of some vacancies in Grade –III positions like Junior Assistant or its equivalent cadre.

A selection process was undertaken pursuant to the said notification dated November 16, 2015, and a panel of 28 candidates was prepared.

Some Grade-IV employees of the University, who did not fulfil the requisite qualifications of rendering six years' continuous service in the University on the date of issuance of notification i.e., November 16, 2015 made several representations before the University for cancellation of the panel. Ultimately, a fresh notification dated January 10, 2022, was issued by the Registrar of the University inviting applications from Grade-IV in-service employees for filling up the

vacancies in Grade-III positions as per the resolution of the Executive Council adopted on May 28, 2013.

Challenging the said notification dated January 10, 2022 a writ petition was filed by two Grade-IV employees [WPA 942 of 2022 (Biva Chakraborty & Anr. vs. The University of Burdwan and Ors.)]. The said writ petition was disposed of by a learned single Judge of this Court on April 28, 2022.

The operative part of the said order is quoted below:-

“By reason of the above, this Court is of the view that the respondents have not disclosed any legal or factual basis for inviting fresh applications to the posts described in the impugned Notification dated 10.01.2022 particularly after cancellation of the earlier panel where the petitioners had been successfully empanelled. The impugned Notification is arbitrary and unreasonable and fails to disclose any basis which would warrant invitation for fresh applications.

W.P.A. 942 of 2022 is accordingly allowed in terms of prayer (b). The respondent University is restrained from taking any steps in furtherance of the Notification dated 10.01.2022. The University shall call for fresh applications giving sufficient priority to the petitioners commensurate to their ranks in the earlier panel. The Writ Petition is disposed of in terms of this order.”

It is not in dispute that after the said order the University by two resolutions dated May 23, 2022 and June 6, 2022 appointed the petitioners in the aforesaid case to the post of Junior Assistant (Grade-III).

Thereafter, again a fresh notification was issued by the University on 31st August, 2022 calling for fresh applications from Grade-IV in-service employees of the University. The petitioners in this writ petition along with other candidates participated in the selection process, but they were not successful.

By filing this writ petition the petitioners have challenged the selection process.

Mr. Biswaroop Bhattacharya, learned advocate appearing for the petitioners submits that in the initial advertisement dated January 10, 2022, it was clearly indicated that the selection should be made on the basis of written test, viva voce and performance report. The University, however, subsequently, in the advertisement dated August 31, 2022 altered the said conditions by introducing a new criterion of seniority-cum-merit. Mr. Bhattacharya submits that because of introduction of this criterion the merit of the petitioners has been sacrificed. Mr. Bhattacharya argues that the University authority was not justified in altering the selection criteria as aforesaid.

It appears that after the order dated April 28, 2022 passed by this Court, the Executive Council of the University in its meeting on May 23, 2022 resolved, inter alia as follows:-

“i. In compliance of the order of the Hon’ble High Court at Calcutta in WPA No. 942 of 2022 in the matter of Biva Chakraborty & Anr. –vs.- The University of Burdwan & Ors., the petitioners namely Biva Chakraborty and Kaberi Mallick be appointed to the post of Junior Assistant or its equivalent cadre.

ii. Further process be initiated in regard to promotion of in-service Grade-IV category employees to the post of Junior Assistant or its equivalent Group-C post maintaining the existing Govt. rules for the purpose [G.O. No.416-Edn. (U)/1U(C)-06/12 dated 16.04.2013].

iii. Vacancy positions as on 01.06.2022 of the substantive Group-C posts be prepared by the concerned section of the Registrar’s Department.

iv. Existing roster policy of the Govt. of the West Bengal for the promotional post be strictly followed for the purpose and the Roster Committee must ensure its compliance prior to issue of notification.

v. A notification be issued by the Registrar, B.U. calling for fresh applications from the eligible in-service categories of employees.

*vi. The panel for appointment to the post of Junior Assistant or its equivalent Group-C post on promotion from categories of in-service Grade-IV employees of this University be made on the basis of the Seniority cum Merit (Written Test, Viva and Performance Report) by the Standing Committee for the Non-Teaching employees.
Draft for approval.”*

It further appears that the Standing Committee for non-teaching employees of the University regarding filling up of the vacant promotional posts from Grade-IV, on August 29, 2022 evolved the following criteria for selection:

- “iv. The proposed breakup of Total Marks (100) for selection to the said post:*
 - a. For Seniority: 50 marks (2 marks for every completed year of service subject to maximum 50 marks).*
 - b. For Written Test: 20 marks (20 MCQ questions of 1 mark each)*

- c. For Viva-Voce: 20 marks
- d. For Performance Report: 10 marks (as per prescribed format.)”

I do not find any justification to interfere with the selection process on the ground as urged by Mr. Bhattacharya. First of all, it has to be appreciated that there is no statutory scheme prescribing the criteria for selection to the relevant post.

The relevant Government order dated April 16, 2013 prescribed, inter alia, as follows:-

- “Now, after considering all aspects of the matter, the Governor is hereby pleased to direct that:-*
- I) promotional opportunities for Lower Subordinate Staff (Grade 9 to 6) to a suitable Group-C post (Grade-5) at base level shall be allowed up to 10% (Ten) of all eligible Group-C vacant posts in the University taken together;*
 - II) only such employee under Lower Subordinate Staff (LSS) shall be eligible for promotion who has passed S.F./Madhyamik prior to entry into the service or has acquired this qualification during his service after obtaining due permission, and who has completed six years’ continuous service,*
 - III) an employee who had suppressed the fact of processing an educational qualification superior or higher to the specified eligibility condition criteria for entry into service shall not be taken into consideration in this exercise;*
 - IV) this order is issued in supersession of earlier order, No. 1423-Edn(U) dt. 07.09.1987 and in light of the Finance (Audit) Department’s U.O. No.2789 Gr. P (Service) dt. 21.09.2012.*
- Accountant General, West Bengal is being informed.”*

It is apparent that the aforesaid order dated April 16, 2013 did not prescribe any criteria for selection. It

only prescribed the criteria for coming within the zone of consideration for promotion.

In absence of any statutory scheme, the University authorities were free to evolve a just criterion for the selection. The University in its wisdom decided to select the candidates on the basis of seniority cum merit principle. The selection based on seniority-cum-merit is well-accepted in service jurisprudence.

The deference between a selection process on the basis of merit-cum-seniority and seniority-cum-merit has been delineated by the Supreme Court in a number of decisions. The term “merit-cum-seniority” has been explained by the Supreme Court in the judgment reported at **(1995) Supp 1 SCC 434 (Sarat Kumar Dash v. Biswajit Patnaik)** in the following manner.

“8. In case of merit-cum-suitability, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a juniormost man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. The seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then the seniority has no role to play. In our view the PSC has evolved correct procedure in grading

the officers and the marks have been awarded according to the grading. It is seen that the four officers have come in the grading of 'B'. In consequence, the PSC had adopted the seniority of the appellants and Panda in the lower cadre in recommending their cases for appointment in the order of merit."

We may refer to a judgment of the Supreme Court reported at **(2011) 3 SCC 422 (Haryana State Warehousing Corporation v. Jagat Ram)** wherein the Supreme Court noted a series of judgments explaining the principle of seniority-cum-merit. It has been held as follows:

“45. *Thus it is the settled position that the criterion of seniority-cum-merit is different from the criterion of merit and also the criterion of merit-cum-seniority. Where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. Seniority-cum-merit means that, given the minimum necessary merit required for efficiency of administration, the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employees. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be considered for promotion on the basis of seniority-cum-merit.*

46. *The concept of “seniority-cum-merit” postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and, subject to fulfilling the said requirement, promotion is based on seniority. There is no further assessment of the comparative merits of those who fulfil such requirement of minimum merit or*

satisfy the benchmark previously fixed. On the other hand, the principle of “merit-cum-seniority” puts greater emphasis on merit and ability and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal among the candidates considered for promotion.”

Therefore, no fault can be found with the University in giving priority or preference on the basis of seniority cum merit principle.

The order dated April 28, 2022, passed by this Court neither mandated the University to complete the selection process in terms of the earlier advertisement dated January 10, 2022 nor did it restrain the University from evolving the just criteria for the promotion to initiate the selection process afresh.

Accordingly, WPA 14925 of 2023 is **dismissed**.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)