

29.07.2024
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WPCT 194 of 2024
Union of India & Others
– *Versus* –
Parameswar Prasad

Mr. Shymal Mukherjee,
Mrs. Sarda Sha
... for the Petitioners.

Ms. Ashrulina Amiya Gayen
... for the Respondent.

Affidavit-of-service filed by the petitioners be kept on record.

The present writ petition challenges an order dated 22nd January, 2024 passed by the learned Tribunal in O.A. 350/00261/2021. By this order, the learned Tribunal directed the respondents/petitioners herein to treat the original applicant/respondent herein at par with that of the other candidates appointed under the notification *vide*. no.1 of 2008 and to extend all consequential benefits, including seniority, within a specific time frame.

Mr. Mukherjee, learned advocate, representing the petitioners, contends that a selected process was initiated for the post of Assistant Loco Pilot under a notification vide.no. 01 of 2008. One of the essential education qualifications for the post was 'Matriculation from any recognized Board'. The respondent participated in the selection process and emerged to be a successful. During the verification of his testimonials, it revealed that the petitioner had presented a certificate which was obtained from Bihar Sanskrit Shiksha Board, Patna (in

short, the said Board) to support of his claim of meeting that essential education qualification.

Mr. Mukherjee submits that a question arose regarding authenticity of the certificate. Additionally, there was also a question as to whether the Madhyama qualification awarded the Board in favour of the petitioner was equivalent to Matriculation, as prescribed as one of essential criteria in the employment notice.

He next contends the said issue was resolved by a co-ordinate Bench of this Court in a writ petition, *vide* WPCT 283 of 2013, where the petitioners were directed to treat the Madhyama qualification of the said Board as equivalent to matriculation in order to decide the eligibility criteria of the respondent as per employment notice.

Pursuant to the order passed in the writ petition, the respondent was appointed in the post on 15th January, 2016. Claiming seniority at par with the candidates appointed under notification *vide* no. 01 of 2008, the respondent preferred an original application, OA 261 of 2021, which was disposed of directing the petitioners to treat the petitioner at par with the candidates appointed under the notification *vide* no. 01 of 2008.

He argues that the respondent can never claim seniority prior to his joining. Such issue was raised before the learned Tribunal but the learned Tribunal was glossed over the same and no finding was returned on it. According to him, this infirmity warrants interference of the order challenged in the writ petition.

Ms. Gayen, learned advocate, representing the respondent argues that the petitioners, by raising baseless suspicions, have compelled the respondent to go through a protracted litigation. The respondent cannot be penalized for the time lost in the litigation.

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

Indisputably, the petitioner emerged to be successful in the selection initiated under notification no. 01 of 2008. Raising doubt about whether the qualification and the certificate awarded to the petitioner by the Board are sufficient to meet the essential criteria, the petitioner declined to appoint the respondent in 2009, thereby dragged the respondent in a legal battlefield. After a lengthy legal battle lasting for almost 7 years, the respondent was appointed in 2016. The delay in appointing the respondent due to protracted litigation cannot be attributed to the respondent.

Citing Para 303 of IREM, Vol.1, the learned Tribunal came to a categorical finding that the respondent is entitled to be treated to be an employee belonging to batch which was recruited under notification no. 01 of 2008 and he is entitled to notional seniority from the date when other candidates were appointed under the notification no. 01 of 2008. Consequently, the learned Tribunal directed the petitioners to *'treat the applicant's year of appointment at par with that of the other candidates who were appointed against the notification no. 1/2008 and extend all consequential benefits including the benefits of seniority to him, within a period of 90 days from the date this order is received in their office'*.

We do not find any infirmity, substantial miscarriage of justice or any patent error, let alone any jurisdictional error in the order impugned in the writ petition, that would warrant interference with the same.

Accordingly, the writ petition is dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

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