

04.09.2024
Item No.19
Court No.11
Avijit Mitra

WP.CT 202 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Shri Partha Sen

-Versus-

Union of India & ors.

Mr. Nirbanesh Chatterjee,

Ms. Reshmi Khatun

...for the petitioner

Mr. Sahasrangshu Bhattacharya,

Mr. Sukanta Ghosh

...for the respondents

While pressing this writ petition, Mr. Chatterjee, learned advocate for the petitioner, submits that the selection process for promotion to a higher post was initiated by the respondents in 2006. The petitioner participated in the process but due to a pending criminal proceeding against the petitioner, the assessment of his performance was kept in a sealed cover. However, the other candidates who participated in the selection process were promoted in 2009.

He contends that although the petitioner's promotion was withheld due to pendency of the criminal proceeding, but ultimately, even during pendency of that criminal proceeding, he was promoted to a higher post effective from March, 23, 2011.

Mr. Chatterjee argues that if the pendency of the criminal proceeding was a bar to granting the petitioner a promotion in 2009, and that same bar still existed in 2011 when the petitioner was promoted to a higher post. Therefore, withholding the petitioner's promotion since 2009 and granting it in 2011 is irrational. According to him, this discrepancy is the petitioner's

main grievance, which led him to approach the learned Tribunal with an original application (in short, OA) being O.A. No. 1067 of 2012). The OA was disposed of by directing the respondents to pass appropriate orders to re-fix the petitioner's seniority in the Postman grade from the date his immediate junior was granted such promotion, along with consequential notional benefits.

Additionally, the learned Tribunal directed the respondents to grant actual benefits from the date of filing the original application. The respondents were also directed to pass a reasoned order within a specific time frame.

However, on an application for modification preferred in connection with the OA, the directive to grant 'actual benefits from the date of filing of this OA' was omitted. Since the petitioner's promotion was not granted according to the order dated December 11, 2013, passed in O.A. 1067 of 2012, the petitioner was compelled to file a contempt application (CPC 76 of 2015). During hearing of the contempt application, the learned Tribunal observed that a speaking order had already been issued in compliance with the December 11, 2013 order. Consequently, it was determined that the order had been complied with, and the contempt proceedings were dropped by an order dated June 30, 2015.

Thus being the situation, the petitioner has preferred this present writ petition assailing the order dated 11.12.2013 passed in the OA. He submits that a direction be given upon the respondents to antedate the petitioner's promotion to the post of postman w.e.f. 3rd October, 2009.

Mr. Bhattacharya, learned advocate for the respondents, vehemently opposes the contention canvassed by Mr. Chatterjee.

He submits that a reasoned order was issued in compliance with the order dated September 11, 2013. If the petitioner felt aggrieved by this reasoned order, he should have approached the learned Tribunal to challenge it. Instead, the petitioner has filed this writ petition to assail the order dated December 11, 2013, passed in the OA.

Admittedly, by passing an order dated 11th December, 2013 in the OA, the learned Tribunal directed the respondents to pass order for re-fixing his seniority in the grade of Postman from the date his immediate junior had been granted such promotion with consequential notional benefits. Alleging wilful violation of the order dated 11th December, 2013, a contempt application was also taken out but the same was dropped citing that by passing reasoned order, the respondents complied with the order dated 11.12.2013.

The petitioner did not challenge the reasoned order issued by the respondents. Instead, nearly 11 years later, he is seeking to challenge the order dated December 11, 2013, in the present writ petition. The learned Tribunal, which acts as a court of first instance, did not have the opportunity to address the grounds raised in the reasoned order.

Moreover, the petitioner has not provided any explanation for the almost 11-year delay in approaching this Court. It is well settled that a writ court, as a court of equity, may refuse to exercise its jurisdiction due to unexplained delays. In this context, we are of the view that it would not be appropriate to entertain this writ petition for the reasons stated above.

Consequently, the writ petition is dismissed. There shall, however, be no order as to costs.

However, it is clarified that this order shall not preclude the petitioner from pursuing his remedy before the appropriate forum in accordance with the law, if he is advised to do so and if he so desires.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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