

**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

MAT 1151 of 2018

with

CAN 2 of 2023

The Chairman, Hall Management Committee,
Indian Institute of Technology, Kharagpur

Vs.

Subhash Kumar & Ors.

For the Appellant : **Mr. O.M. Obaidullah, Advocate**
Mr. R.N. Majumdar, Advocate

For the Respondent : **Mr. Ujjal Ray, Advocate**
Mr. Arpa Chakraborty, Advocate

Heard on : July 15, 2024

Judgment on : July 15, 2024

The Court:

1. Pursuant to the advertisement issued for appointment to the post of Group-D (unskilled) on 20.06.2022, the petitioners along with others applied by making an application and was called for a written test. Subsequently, the writ-petitioners noticed that the candidates who stand on the same pedestal that of the writ-petitioners were given benefit of a pension scheme whereas the writ-petitioners were denied such benefit.
2. Claiming parity, as the writ-petitioners perceived the action of the authorities to be discriminatory, a representation was made to the authorities to redress such grievances. Since the authorities were keeping the said representation in abeyance and did not take any

decision thereupon, the writ-petitioners were constrained to move this Court with a writ-petition being WP 28376 (W) of 2014 which was disposed of directing the authorities to take a decision on the said representation.

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3. Pursuant to the said order, the authorities, namely Indian Institute of Technology, Kharagpur took a decision on 06.06.2016 that the three persons named in the said representation, who have been extended such benefits, were in fact, a pre-HMC which would further be corroborated from the letters of appointment issued to the said persons by giving distinct numbers and, therefore, the writ-petitioners are not entitled to seek parity with them.
4. The said order is further assailed by the writ-petitioners in WP 31227 (W) of 2017 which was disposed of by the Single Bench on 20.08.2018 quashing and setting aside the said decision taken by the authority and directing the authorities to treat the writ-petitioners *at par* with the other three persons and extend the notional benefit from the date of the appointment of the aforesaid persons i.e. 12.11.2002.
5. The appellant has challenged the said order in the instant appeal on the score that the order dated 06.06.2016 passed by the Indian Institute of Technology, Kharagpur clearly indicates the reasons for extending the benefits of the aforesaid three persons and such decision does not invite any interference by the writ-court. It is further submitted that they were already working prior to the said advertisement and, therefore, the authorities thought it fit to grant them the benefit after they were appointed on the basis of the said advertisement.
6. According to the Counsel for the appellant, since the writ-petitioners were appointed for the first time and admittedly did not work prior to the said date of advertisement, the authorities have not found parity in their claim with the other three persons and, therefore, the writ-court committed error in interfering with the said decision.

7. The Counsel for the respondent submits that equality amongst the equals is the hallmark of constitutional ethos and the act of discrimination at the behest of the authorities is always interfered with having run counter to the rights guaranteed under Article 14 of the Constitution of India. It is further submitted that the writ-petitioners as well as the other three persons named in the representation were appointed in the same post having undergone the same recruitment process and, therefore, it is improbable that their past service would make them distinct and different from other successful candidates.
8. Taking the aforesaid plea, the first and foremost point, which in our opinion, involved in the instant appeal is whether the writ-petitioners can claim parity with the other three persons who were appointed through the same recruitment process even though they were working in the said organization as contractual employees anterior to the said date of advertisement. It is undisputed that to fill up the post of Group-D (unskilled), the advertisement was published on 22.06.2002 and the writ-petitioners as well as the other three persons whose names are disclosed both in the order of the authority as well as the writ-petition, offered their candidature and participated in the selection process.
9. The writ-petitioners as well as the other three persons were adjudged successful in the said recruitment process and were subsequently appointed to such posts but the writ-petitioners were excluded from purview of the pension scheme which was extended to the other three persons. It is a trite principle in the service jurisprudence that the moment a vacancy is sought to be filled up by initiating a recruitment process, in absence of any special direction or the conditions contained in the said advertisement, all the participants are treated *at par* and upon successful completion of the said recruitment process the appointment shall also be made treating them having stood on the same pedestal and no special benefits either in counting the tenure of service nor extending the

benefit can be given for the period rendered prior to the date of such advertisement.

10. The Single Bench has found that there is no distinction between a pre-HMC and HMC appointed on the basis of the said advertisement and the distinction being unreasonable and irrational, cannot withstand on the constitutional provision. The authorities cannot arbitrarily make a distinction amongst the successful candidates of the same selection process and extend the benefit and deny such benefit to the others as the equality amongst the equals is the hallmark of the constitutional provision.
11. We are conscious that the principle of equity should be applied amongst the equals and not un-equals. The candidates who are appointed along with the writ-petitioners cannot be treated differently nor the authorities would be permitted to make a classification within the class unless based upon intelligible differentia.
12. We do not find any rationality and/or reasonability in the stand of the authorities in discriminating the writ-petitioners with the other equally circumstanced persons and, therefore, the decision of the Single Bench does not warrant any interference.
13. The appeal being **MAT 1151 of 2018** and the connected application being **CAN 2 of 2023** are **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J)

