

18.11.2024
Item No.3
gd/ssd

WPA/18273/2010
CAN 1 OF 2015 (OLD CAN 11441 OF 2015)
CAN 2 OF 2018 (OLD CAN 1398 OF 2018)
SAMAR CHANDRA MONDAL
VS
STATE OF WEST BENGAL & ORS

Mr. Tulsidas Ray,
Mr. H. Ghosh,
Mr. Tirthankar Roy
..for the Petitioner.

Mr. Ashim Kr. Ganguly, Ld. AGP,
Mr. Bellal Sheikh,
Mr. Protim Chakraborty
..for the State.

The order of the District Judge, Howrah dated November 10, 2008 is under challenge in this writ petition. The said order was passed pursuant to an order of the Principal Secretary dated 27th July, 2007. In the said order the Principal Secretary observed as follows:

“Thus in the changed circumstances the district administration had to review the situation in light of the aforesaid G.O. dated 21.1.1988 w.e.f. 01.4.1981. Unfortunately, there was long lapse of time and after consideration of all aspects Ld. District Judge, Howrah by order No.17M dated 2.6.2001 has decided that 13 L.D. Assistants would be promoted to U.D posts as mentioned therein under 1:1 scheme w.e.f. the dates mentioned in Column No.C regards being had to the promotion policy of the Government towards SC and ST candidates as per verdict of the Hon’ble Apex Court. From 01.10.1996 to 31.10.1997 only six posts of U.D. Assistants have fallen

vacant upon which the policy of reservation for promotion as SC and ST candidates was applied. In doing so Ld. District Judge has tried to regularize the promotion of present Writ Petitioner in the following terms:-

“In view of 100 Point Roster candidates as they appear in column B be given promotion to the posts of U.D Assistants w.e.f. the dates as mentioned against each in column C. As Sri Samar Mondal has already enjoyed Upper Division scale, the relevant order to that effect was not issued due to oversight. At present, his position is adjusted with the vacancy caused due to retirement of Shri Nabendu Ghatak. So, he has been given benefit of U.D post under 1:1 scheme w.e.f. 01.7.1994. The order is also passed subject to modification variation change, if any, in future.”

From a plain reading of the said order No.17 M dated 2.6.2001 I find that the case of Shri Mondal has not at all been considered by the Ld. District Judge, Howrah in its proper perspective. His inter sc seniority in the Gradation List has not at all been determined for more than a decade and no Gradation List on the date of confirmation of Shri Mondal is forthcoming before me to decide whether his seniority has been properly determined or not. It is admitted by the Ld. District Judge that relevant order of promotion of Shri Mondal was not issued due to oversight and by such passing remarks only he has tried to indicate the date of temporary promotion of the Writ Petitioner without determining his seniority. Two essential things required in the present case is publication of a Gradation List of the employees of Howrah Judgeship on the date of confirmation of service of Shri Mondal under order No.70M dated 5.7.84 w.e.f. 5.7.84. But this confirmation was also made without determining inter sc seniority. What I find in this case is that in this Judgeship temporary promotion of staff has been made year after year without determining their inter sc seniority on the pretext of pending Writ Petition or disciplinary proceedings etc. But there is no bar to public provisional

Gradation List subject to result of such Writ Petitions or disciplinary proceedings as the case may be. However, in any case there should be a valid Gradation List of staff on the date of consideration of his claim for promotion to higher post. Even from order No.86/M dated 27.5.1994 I find that promotion of 39 staff to U.D Posts was given without determining the question of promotion of SC/ST candidates on the basis of 20 point/50 point roster which was left open for consideration after disposal of Cr. No.1318 (W)/91 along with the question of determination of bottom seniority of one U.D. Assistant Smt. Nilima Bhattacharjee.

It is argued on behalf of the District Judge that in terms of G.O No.6060-F dated 25.6.1979 the name of the Writ Petitioner was not included in the promotion list earlier since Shri Mondal did not complete his three years service and was not declared confirmed. Shri Mondal completed his three years service on 30.6.1983 his date of joining being 1.7.1980. So from 1.7.1983 he has acquired a legitimate claim for promotion as S.C candidate. As soon as by G.O No.633-F dated 21.1.1988 the date of effect of 1:1 promotion was reverted back from 1.4.1984 to 1.4.1981 the question of his promotion was left open and required to be reconsidered afresh. In G.O No.176-TW/SC dated 17.4.90 it has been clarified by the SC & T Welfare Department that in deciding cases of promotion to fill up vacancies reserved for SC/ST candidates with retrospective effect date of consideration shall be the factor and not the date of availability of vacancy. It is also clarified in G.O No. 1770 F dated 6.3.1981 of the Finance Department interpreting clause (a) of rule 10 of the W.B Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976 that the correct interpretation of "zone of consideration" mentioned in such Rule is five times the total number of promotional vacancies actually available at the time of consideration.

As the services of Shri Mondal is confirmed w.e.f. 1.7.1983 on completion of satisfactory service of three years and not from 5.7.1984 as mentioned in order No. 70 M dated

5.7.1984 and a Gradation List is required to be published as on 1.7.1983 for determination of the question of his promotion to U.D. post. The second point is to decide the earliest date available as per such Gradation List for promotion of Shri Mondal subject to result of any pending Writ petition and disciplinary proceedings at the material time.

Without going through necessary details I hold that the impugned order of promotion bearing No. 17 M dated 2.6.2001 of Shri Mondal is not sustainable in law and as such the same is liable to be set aside. Ld. District Judge is directed to publish fresh Gradation List of his employees as on 1.7.1983 to determine inter sc seniority of the Writ Petitioner and then to decide the claim of his promotion as S.C candidate in accordance with prevalent rules and guidelines applicable on the date of such consideration afresh and to decide his claim of Career Advancement Scheme in light of the observations made above within three months from the date of receipt of this order. Application filed by Shri Mondal is thus disposed of.”

After going through the said order, this Court finds that the Principal Secretary after setting aside the order of promotion being No.17M dated 2nd June, 2001 directed the learned District Judge to publish a fresh gradation list of his employees as on 1st of July, 1983, to determine inter SC seniority of the writ petitioner and then to decide the claim of his promotion as SC candidate in accordance with the prevalent Rules and Guidelines applicable on the date of such consideration afresh and to decide his claim of Career Advancement Scheme in the light of the observation made in the said order within the

time limit stipulated in the said order. Though a specific direction was passed upon the Principal Secretary to publish afresh gradation list of the employees as on 1st of July, 1983 and to determine the inter SC seniority of the writ petitioner and then to decide claim of the writ petitioner for promotion as SC candidate in accordance with the prevalent Rules and Guidelines as well as the claim of Career Advancement Scheme, this Court finds that the learned District Judge without referring to the prevalent Rules has determined the date of promotion of the petitioner to the post of Upper Division Clerk as on 1st February, 1995. The said order is a non-speaking order. The said order does not reflect as to how the relevant Rules have been considered. Such order also did not decide the petitioner's claim of Career Advancement Scheme. In view thereof, this Court is of the considered view that the order of the District Judge dated 10th November, 2008 is liable to be set aside only on that ground alone.

Accordingly, the order of the District Judge dated 10th November, 2008 is set aside and quashed.

The learned District Judge, Howrah is directed to supply a copy of the gradation list as on 1st of July, 1983 to the petitioner within a period of three weeks from the date of receipt of a server copy of this

order. The District Judge shall fix a date of hearing and shall take a decision in the light of the observations contained in the order of the Principal Secretary dated 27.07.2007 after giving an opportunity of hearing to the petitioner and by passing a reasoned order after taking into consideration the relevant Rules as directed in the order of the Principal Secretary. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a server copy of this order.

Mr. Ganguly, learned Advocate appearing for the State submits that during the pendency of the writ petition the Pension Payment Order has already been issued and the petitioner has received the benefits in terms of the said Pension Payment Order without any protest.

Mr. Ray, learned Advocate appearing for the petitioner submits that the petitioner has received the payments under protest. Since the writ petition was pending, it is observed that any payment received by the petitioner pursuant to the Pension Payment Order shall be without prejudice to the rights of the petitioner to make his claim with regard to the date of promotion before the District Judge in the hearing as directed by this Court.

With the above observations and directions this writ petition stands disposed of.

There will be no order as to costs.

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

(HIRANMAY BHATTACHARYYA, J.)