

16.04.2024
SI No.10
Court No.8
(gc)

**MAT 1908 of 2023
CAN 1 of 2023**

**Arunagshu Chakraborty
Vs.
State of West Bengal & Ors.**

Mr. S.P. Lahiri,
Mr. Rajesh Naskar
.....for the Appellant.
Mr. Siddhartha Banerjee,
Mr. Sudipta Nayan Ghosh,
Mr. A. Jain,
...for the High Court Admin.
Mr. Sk. Md. Galib, Sr. Govt. Adv.,
Ms. Sujata Mukherjee
...for the State Respondents.

1. The appeal is arising out of a judgment and order dated 25th August, 2023 in a writ petition in which the appellant had prayed for quashing of the order dated 29th June, 2016 of the learned District Judge, Burdwan and for issuance of a writ in the nature of mandamus allowing the writ petitioner to switch over to Schedule-‘A’ post and to direct inclusion of his name in the gradation list of Schedule-‘A’ English Stenographers.
2. The learned Single Judge dismissed the writ petition on the ground that the writ petitioner had accepted the gradation list earlier and had obtained benefits on the

basis of his position in the gradation list and now he cannot turn around and contend that he should have been recommended for the post under Schedule-‘A’. This order is under challenge.

3. Mr. S.P. Lahiri, learned Counsel appearing on behalf of the appellant/writ petitioner has submitted that the learned Single Judge has failed to take into consideration that the writ petitioner could not have challenged the said gradation list prior to 2014 as he was wholly unaware of the fact of his position in the gradation list in the Schedule-‘B’ post instead of Schedule-‘A’ post to which he was entitled under the recruitment notification and initiation of recruitment by the Public Service Commission. Mr. Lahiri has submitted that the writ petitioner was forced to accept his position in the gradation list fearing reprimand by the learned District Judge. However, when the full facts would reveal on the basis of the disclosures made by the Administration in reply to the R.T.I. in 2015 clearly establishing his right to the post under Schedule-‘A’. The said right cannot be denied. It is further urged that the writ petitioner did not receive any

financial benefit although he was promoted in the meantime. Mr. Lahiri also submits that this promotion cannot in any event affect his position in the gradation list under Schedule-‘A’ category since at the relevant point of time it was not known to the writ petitioner that the others are less meritorious and his position in the gradation list has been arbitrarily fixed.

4. Mr. Siddhartha Banerjee, learned Counsel appearing for the High Court Administration has submitted that the writ petitioner was all throughout aware of his position in the gradation list and has availed promotion knowing-fully well that he was posted in the Schedule-‘B’ post in the District Judiciary recruited through the Public Service Commission.
5. Mr. Lahiri has referred to his representation dated 21st November, 2019 to the Hon’ble Registrar General to show that his grievance was something else as he was unhappy with his present posting at the Judgeship of Burdwan. He was not enjoying his service at the Burdwan Judgeship and it has nothing to do with his posting at Burdwan Judgeship since 5th December, 2008.

6. Mr. Banerjee has also referred to the communication made by the District Judge, Burdwan to the Special Secretary to the Government of West Bengal on 29th June, 2016 to demonstrate that in terms of implementation of recommendation of Shetty Commission, separate gradation list of Stenographers was prepared for the Judgeship at Burdwan and the same was circulated amongst the employees for the purpose of obtaining their views. It has been categorically stated that he did not raise any objection, however, at the initial stage or when he accepted his promotion on 30th April, 2012. When the occasion for promotion to the cadre of Grade-I had arisen and the name of the writ petitioner came up for consideration, his willingness was obtained and the writ petitioner in writing had given his consent for promotion in the cadre of Stenographer Grade-I and he has been consequently promoted to the cadre of Stenographer Grade-I on 28th June, 2016 in the pre-revised scale of pay corresponding to the scale of pay with grade pay of Rs.4,800/- as per ROPA, 2009.

7. Mr. Banerjee has also referred to the affidavit-in-opposition filed on behalf of the respondent Nos.2, 6 and 7 and it has been categorically stated in the affidavit with regard to the incorporation of the name of the writ petitioner in the gradation list in the Judgeship of Burdwan. The same has been made in compliance with the direction of the Supreme Court of India in its order dated 11th February, 2009 passed in I.A. no.71A; 135-136, 137-138 and 142 in W.P. (C) No.1022/1989. In view of such order, two Government orders had been issued from the office of the Government of West Bengal, Judicial Department being no.5144-J dt. 20.07.2009 and 5145-J dt.20.07.2009. The Government orders clearly specify that the existing method of recruitment and promotion to these three cadres would be continued but exclusively by the District Court Administration without any reference to the State Government and there shall be a separate seniority list District wise for the Stenographers working in the Courts and promotion would be made in accordance with the said seniority list. The Court Stenographers should not be included in

general seniority list maintained by the Government. Thereafter, a seniority list of the Stenographer working in the Judgeship of Burdwan has been prepared and during the course of preparation of such seniority list (gradation list) primarily a draft of the same had been prepared and the same had also been circulated amongst all the employees of the Judgeship of Burdwan so that they may submit their views, opinions or even objections. Several employees of Group-C, stenographers, Group-D have filed their objection but the writ petitioner did not submit his views, opinions or even objections.

8. Mr. Banerjee has also referred to the communication made by the writ petitioner to the learned District Judge on 22nd June, 2016 to show that he had expressed his willingness for promotion to the cadre of Stenographer/P.A. Grade-I.
9. The attention of the Court is also drawn to the office order dated 28th June, 2016 issued by the office of the District Judge, Burdwan directing Head of the Office/DDOs to obtain willingness and/or otherwise in writing from the Stenographer/P.A. Grade-I mentioned in the

said office memorandum which, inter alia, include the name of the writ petitioner but at the relevant time was posted as P.A. to the Additional District Judge, 5th Court, Burdwan.

10. Sk. Md. Galib, learned Counsel appearing for the State has submitted that the Government of West Bengal issued a Circular on 20th July, 2009 in implementation of the recommendation of the Shetty Commission for the Stenographers attached to the different sub-ordinate courts in the State concerning recruitment, promotion, qualification, travelling allowances and other related matters in which the Stenographers have been classified in three grades. The writ petitioner was appointed to the post of Schedule-‘B’ English Stenographer on 4th December, 2008 and by reason of the Circular dated 20th July, 2009, the service of the writ petitioner was separated from the State cadre to the cadre of the District judiciary. It clarified that the existing method of recruitment and promotion to the three grades of Stenographers would be continued but exclusively by District Court

Administration without any reference to the State Government. There shall be a separate seniority list district wise for the Stenographers working in the Courts and promotion would be made in accordance with seniority list. It is submitted that the Schedule-‘B’ in the letter of appointment would be treated as Grade-B. This concept of gradation was introduced in the District judiciary in implementation of the Shetty Commission recommendation. On the basis of such recommendation, the willingness was invited by the District Judgeship from the Stenographers and P.A.s as would be evident from the order No.28(M) dated 28th June, 2016. It is, thus, submitted that there was no basis for the writ petitioner now to contend that he is now aware of the change of the rules and he was unfairly treated. The learned Counsel has also submitted that the petitioner was initially appointed in Schedule-‘B’ and he accepted such appointment without any demur. Thereafter, he was promoted to Grade-II English Stenographer from Grade-III English Stenographer, which was also accepted by the petitioner and he was

ultimately promoted to Grade-I English Stenographer without any demur. It is submitted that the petitioner at this point of time cannot be allowed to switch over to Schedule-‘A’ post from Schedule-‘B’ post.

11. In the aforesaid backdrop, we need to consider the judgment passed by the learned Single Judge. It is not in dispute that pursuant to the recruitment drive initiated by the P.S.C., the writ petitioner was appointed to the post of English Stenographer (Schedule-‘B’) on September 8, 2008 and thereafter he was interviewed on September 24, 2008 and after verification of his certificates and testimonials, he was appointed in the post of Schedule-‘B’ English Stenographer in the office of the District Judge, Burdwan. The writ petitioner accepted such appointment in the year 2008. The Government in implementation of the Shetty Commission recommendation classified the posts of Stenographers/Personal Assistants of the District Judiciary into three grades for which two Government orders were issued to which we already have made reference in the earlier part of our order. The name

of the petitioner was published in List B containing the names of Stenographers, Grade-II vide Office Order No.30(M) dated 30th July, 2012 issued from the office of the District Judge. The petitioner was classified as Stenographer, Grade-II with effect from 1st January, 2011. Thereafter, the name of the petitioner was published in the proposed gradation list as on 1st January, 2003 to 31st December, 2013 in respect of Stenographers/Personal Assistants of Burdwan Judgeship and the name of the petitioner was appearing under serial no.41. The office memorandum of the subsequent notification from the District Judge to the Office of the Accountant General would clearly establish that sufficient opportunity was given to all the P.A.s/Stenographers to give their views, suggestions and/or objections against the proposed gradation list. Although, some of the persons affected by the gradation list have given their views, suggestions and/or objections but no objection and/or views given by the writ petitioner.

12. On the basis of suggestion and objection received, a final gradation list

was prepared and the petitioner was included in serial no.8 as would be evident from the Order No.119(G) dated 30th May, 2016. The petitioner was promoted to the cadre of Stenographer Grade-I vide Office Order No.28(M) dated 28th June, 2016. It is not in dispute that the petitioner accepted the promotion to Grade-II English Stenographer and thereafter to Grade-I English Stenographer.

13. We have not been able to find out any communication from the writ petitioner raising objection contemporaneously against the proposed gradation list. On the contrary, we find from the letter dated 22nd June, 2016 that the writ petitioner expressed his willingness to promotion to the cadre of Stenographer/P.A. to the District Judgeship of Burdwan. It appears from the representation dated 20th June, 2016 that the writ petitioner has prayed for enlistment. This right he has forfeited when he failed to raise any objection after 20th July, 2009 by which the State Government has implemented the Shetty Commission recommendation and has segregated Stenographers in three grades. Since July, 2009 which was known to the

writ petitioner that he would be considered to be in the service of the District Court Administration and not under the State Administration. With his eyes wide open he has subsequently accepted the promotion. As rightly pointed out by the learned Single Judge, it is too late in the day for the petitioner to take a contrary stand and contend that the petitioner was not recommended for the post under Schedule-‘A’. In fact, his appointment was for Schedule-‘B’ and that appointment he had accepted for all these years until he filed the writ petition. Moreover, we find that the grievance was something else than his placement in the gradation list under the District Judiciary.

14. Moreover, the decision of the District Judge dated 29th June, 2016 insofar as the publication of the gradation list is concerned, is a reasoned one and does not call for any interference in this jurisdiction.
15. In view of the aforesaid, we do not find any reason to interfere with the order passed by the learned Single Judge.
16. The appeal fails.
17. Accordingly, the appeal and the connected application are dismissed.

18. However, there shall be no order as to costs.
19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)