

24-01-2024
ct no. 13
Sl. 12
sp

WPA 27000 of 2023

Tarun Kumar Roy & Ors.

-Versus-

The State of West Bengal & Ors.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das

...for the petitioners

Mr. Tapan Kr. Mukherjee,
Ms. Tuli Sinha

...for the State

Mr. Ranjay De,
Mr. B. Banerjee,
Mr. A.B. Bose

...for the respondent no. 4 to 6

1. This Court has decided to finally hear the matter since the facts are undisputed and the decision of a Co-ordinate Bench dated 25.07.2023 passed in WP No. 383 of 2023.
2. The petitioner no. 1, Tarun Kumar Roy is a Chemist who joined the services of Durgapur Chemicals Limited (DCL) on February 16, 2008. The petitioner no. 2, Subhendu Roy, is a Store Officer who joined the services of DCL on April 1, 2015 and petitioner no. 3, Paramita Chakraborty, is a Stenographer who joined the services of DCL on September 1, 1998.

3. They are permanent employees of the DCL and have received the benefit of ROPA 2009.
4. However, when ROPA 2019 was brought into the force, the post of Chemist, Store Officer and Stenographer have not been included in the schedule thereto.
5. The DCL is a Government company of which the majority shareholding is that of the State of West Bengal. Consequently it is presumed that the State has nominated its Directors on the Board of Management of DCL.
6. The State, in or about 2019, took over the entire control and management of the said company. The DCL, however, remained as a body corporate and a company registered within the meaning of the provisions of the Companies Act, 1956.
7. By a communication dated April 1, 2021, the Director-in-Charge of DCL, pointed out the anomaly in implementing ROPA 2019 in respect of 4 employees, 3 of which are the petitioners. The 4th employee, Sayan Kr. Panda was also a Chemist, like the petitioner no. 1 herein.
8. With a view to implement ROPA 2019 for three categories of employees, namely, Chemist, Store Officer and Stenographer, a

Committee comprising of the Personnel Manager, Assistant Manager and the Account Assistant was constituted by DCL. The said committee forwarded a proposal to fix the scale of pay of the 4 employees in the manner indicated in page 63 of the writ petition vide recommendation dated March 12, 2021 and placed the same before the Government. A decision is yet to be taken.

9. In the meantime, the petitioners and the said Sayan Kr. Panda continued to represent to the DCL and the State for being accorded the benefit of ROPA 2019 (6th Pay Commission). It must be noted that except for these four employees, the balance 160 employees of DCL have been granted and are enjoying the benefit of ROPA 2019.
10. Sayan Kr. Panda approached this Court by filing WPA 383 of 2023 seeking benefits of ROPA 2019. By an order dated July 25, 2023, a Coordinate bench of this Court had directed grant of benefit under ROPA 2019 to the said Sayan Kr. Panda.
11. This Court notes, as had the Coordinate bench, that the petitioners herein and the said Sayan Kr. Panda were being clearly discriminated viz-a-viz the other 160

employees of M/s. DCL. There is no basis whatsoever for such differentiation. There is no rational nexus between such differentiation and any object sought to be achieved by such differentiation. No such basis or nexus or object is demonstrated by the State.

12. The argument advanced by Mr. Mukherjee, learned Senior Counsel appearing for the State that the petitioners and the said Sayan Kr. Panda were not appointed in any sanctioned post, cannot does not cut any ice. It is also not acceptable for the State to argue that no prior sanction was taken before the appointment of these four persons. The said four persons have been lawfully appointed by the DCL in accordance with law.
13. Admittedly, M/s. DCL is a Company Limited by share within the meaning of the Companies Act, 1956. The highest authority to decide any matter with regard to a company including the appointment and personnel management rests and vests entirely in the Board of Directors.
14. The State Government having sufficient share holding in M/s. DCL and must be deemed to have nominated Directors on its

Board of Management. The appointment of the petitioners must be deemed against the sanctioned posts and de facto approved by the State.

15. It is completely another issue that the ROPAs 2009 and 2019 did not have the post of Chemist, Store Officer and Stenographer in their schedules. Admittedly, there are approved post of Chemist Grade-I, Senior Store Officer and Senior Stenographer in the ROPA 2009 and 2019. The petitioner no. 1 is entitled to be fitted into the post of Chemist Grade-I, the petitioner no. 2 in the post of Senior Store Officer and petitioner no. 3 in the post of Senior Stenographer within the schedules of ROPA 2019. There shall be a writ of mandamus directing the DCL as well as the State to do so with immediate effect.
16. All arrears payable to the petitioners from the date of giving effect to ROPA 2019, i.e., from January 1, 2020 shall be made available to them within a period of 3 months together with 6% interest.
17. Mr. Tapan Kr. Mukherjee, learned Senior Counsel for the State submits that the order dated July 25, 2023 passed by a Coordinate

bench in WPA 383 of 2023 has been carried in appeal being MAT 2267 of 2023.

18. The instant decision shall abide by the result of the aforesaid MAT 2267 of 2023 since the subject matter of WPA 383 of 2023 and the instant writ petition are similar.
19. With the aforesaid observations, the instant writ petition shall stand disposed of.
20. There shall be no order as to costs.
21. Since the respondents have not used any affidavit-in-opposition, the other allegations contained in the writ petition shall not be deemed to have been admitted.
22. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)