

02.05.2024
Sl. No.31
g.b.
Court No.24

W.P.A. 27419 of 2023

Nishith Ranjan Sarkar
-Vs-
The State of W. B. & Ors.

Ms. Koyeli Bhattacharya
Mr. Bibek Dutta
.....For the Petitioner

Mr. Indranil Roy
Mr. Tapas Kr. Mandal
.....For the State

Mr. Sunil Gupta
Mr. Hasibul Islam
.....For the Respondent Nos. 4 and 5

The petitioner was serving as the Upper Division Clerk in the Dakshin Dinajpur Zilla Parishad. He retired from service on attaining his usual date of superannuation on 31st October, 2021. The petitioner claims notional benefit on promotion on and from the date the post of Head Assistant became vacant.

The petitioner relies upon the order dated 7th March, 2017 passed by the Special Secretary, Government of West Bengal, Panchayats and Rural Development Department mentioning that the promotion benefits shall be extended to all the Group 'A', 'B' and 'C' employees from the date of the occurrence of the vacancy. The appointing authority shall initiate the process of promotion at least sixty days prior to the occurrence of actual vacancy.

The petitioner submits that the post of Head Assistant became vacant on and from 1st February, 2019. The authority ought to have initiated the process of promotion at least sixty days prior to the said date. The petitioner made several representations requesting the

authority to initiate the process of promotion but the same was not heeded to by the respondents.

The petitioner presently prays for a direction upon the Zilla Parishad to accord notional benefit to the petitioner on promotion to the post of Head Assistant on and from 1st February, 2019.

Learned advocate representing the Zilla Parishad opposes the prayer of the petitioner. It has been submitted that the writ petition is liable to be dismissed on the ground of delay and laches.

The Zilla Parishad admits that the vacancy was there from 1st February, 2019 but at the same time submits that since the process of promotion was not initiated at that time, the petitioner, at this stage, cannot seek notional benefit of the same.

There is no scope to assess the merit of the petitioner for the purpose of promoting him to the post of Head Assistant after he has retired from service.

He has submitted that on the retirement of the petitioner from service, the relationship between the employer and the employee ceased to exist and at this stage there is no scope for considering the case of the petitioner for grant of promotion.

The learned advocate for the Zilla Parishad relies upon a Judgment delivered by the Hon'ble Supreme Court in the matter of **Union of India Vs. Manpreet Singh Poonam** reported in **(2022) 6 SCC 105**.

I have heard the submissions made on behalf of both the parties.

Admittedly, in the instant case the writ petitioner approached the Court long after his retirement from service. The date on which the vacancy arose the petitioner was very much in service. He merely filed representation but thereafter did not proceed with his prayer for promotion. After retirement in the year 2021 the

petitioner cannot claim promotion, as a matter of right, by filing the writ petition in the year 2023, i.e. more than two years after his retirement.

It is well settled law that promotion cannot be claimed as a matter of right. Minimum assessment is required to be conducted for ascertaining as to whether an incumbent is eligible to be promoted to the next higher post. After the petitioner retired from service there is cessation of the relationship between the employer and the employee and, at this stage, there is absolutely no scope for assessment of his merit.

The Hon'ble Supreme Court in the matter of Manpreet Singh Poonam (supra) clearly laid down that mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process.

In the above matter the Supreme Court took into consideration the decision passed in the matter of **Union of India Vs. K. K. Vadera** reported in **1989 Supp. (2) SCC 625** wherein the Court observed that "We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant".

In the present case, the process of promotion did not commence when the petitioner was in service. After his retirement he cannot claim, as a matter of right, promotion and all notional benefits on and from the date the post fell vacant for promotion.

In view of the above, no relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

No costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties after compliance of all necessary formalities.

(Amrita Sinha, J.)