

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:-

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Madhuresh Prasad

A.P.O.T.267 of 2023

WITH

WPO/1238/2023

IA NO:GA/1/2023

**THE LD REGISTRAR GENERAL APPELLATE SIDE
HIGH COURT AT CALCUTTA AND ORS**

Vs.

SUCHHANDA GANGULY AND ORS

A.P.O.T. 329 of 2023

WITH

IA NO:GA/2/2023

GA/3/2024

SUCHHANDA GANGULY AND ORS

Vs.

THE LD REGISTRAR GENERAL AND ORS

For the Respondent :Mr. Partha Sarathi Bhattacharyya,
Mr. Dhruba Ghosh,
Mr. Anand Farmania,
Mr. Raju Bhattacharyya,
Mr. Piyan Kumar Maity,
Mrs. Indumouli Banerjee,
Ms. Shamrin.

For the State Respondents : Mr. Biswabarata Basu Mallick,
Mr. Abhisheek Banerjee,

For the High Court Administration : Mr. Jaydip Kar,
Mr. Siddhartha Banerjee,
Mr. Sudipta Nayan Ghosh
Ms. Jyoti Rauth,
Mr. Anjan Bhandari

Heard on : March 05, 2024

Judgment on : May 22, 2024

Madhuresh Prasad,J.:

1. The present memorandum is filed by the High Court at Calcuttaby way of intra-Court Appeal, being aggrieved and dissatisfied with the judgment and order dated 14thJuly, 2023 passed in W.P.O. No. 1238 of 2023 whereby and whereunder the learned Single Judge has directed the learned Registrar, Original Side, to dispose of the representations dated 04.01.2021, 18.03.2021, 19.03.2021 and 28.03.2021 filed by the writ petitioners. The order mandates passing of a reasoned order within four weeks after affording an opportunity of hearing to the representationist. The learned Single Judge has restrained the authority from publishing the result of the promotional process till disposal of the representations.

2. The brief factual matrix leading to filing of the writ petition commences from issuance of one notice dated 01.06.2023. The notice was in terms of the resolution dated 18.05.2023 adopted by the Recruitments and Promotion (High Court) Committee ('HC Committee' for short) duly approved by the Hon'ble the Chief Justice regarding selection process for the newly sanctioned post of Deputy Registrar (Legal). In terms of the notice dated 01.06.2023, the selection process was scheduled to be held from amongst the Assistant Registrar (Direct

Recruit from Legal Profession) and Stamp Reporter(s). The selection process comprised of a written test and viva voce.

3. The writ petitioners who are Assistant Registrars directly recruited from the legal profession were offended by the fact that the notice invited willingness/ unwillingness from Stamp Reporter(s), along with the petitioners, for being considered as candidates for the selection process to the post of Deputy Registrar (Legal).According to them, clubbing of the post of Assistant Registrar (Direct Recruit from Legal Profession) along with the Stamp reporter(s), as feeder posts for selection to the post of Deputy Registrar is arbitrary and discriminatory. The post of Stamp Reporter(s) is a Grade III post, whereas the petitioners are holding Grade II posts. The clubbing, therefore, amounts to treating unequals as equals and is violative of Article 14 and 16 of the Constitution of India.

4. The writ Court after affording due consideration to the issue has directed the Registrar General, Appellate Side, High Court at Calcutta to consider the representations submitted by the writ petitioners in this regard, before publishing the result of the promotional process. The order and Judgment is thus under appeal at the instance of the High Court.

5. An appeal (A.P.O.T. No. 329 of 2023) has also been filed by the writ petitioners. It is their contention that the learned Single Judge has erred in not considering the fact that the post of Assistant Registrar is

in existence since the inception of the Original Side Rules and Calcutta High Court Service Rules, 1960. The post of Stamp Reporter(s) was, however, introduced in 1974 in the Original Side Rules. The learned Single Judge also erred in not taking into consideration the higher rank of the post of Assistant Registrar in comparison to the Stamp Reporter(s), who as per their case are not entitled to be within the zone of consideration, at par with the writ petitioners for the post of Deputy Registrar (Legal). Another distinguishing feature is that the post of Assistant Registrar has promotional avenues, which was absent in the case of Stamp Reporter(s). The writ petitioners are aggrieved by dilution of their promotional prospects on account of inclusion of the Stamp Reporter(s) within the zone of consideration for the promotional process. Since the post of Deputy Registrar (Legal) was a new post being filled up for the first time, the process for appointment by way of promotion to the said post was required to be preceded by consultation with the Governor of the State as contemplated under Article 229 of the Constitution of India and by framing rules in this regard accordingly. The nature of duties performed by the Assistant Registrar (Direct Recruit from Legal Profession) and the Stamp Reporter(s) are also lacking in similarity, which is a pre-requisite for clubbing of two posts. Clubbing of the two posts as feeder posts was also required to be preceded by compliance with the principles of Natural Justice, allowing the writ petitioners an opportunity of being heard. The same having not

been done the decision suffers on this count also and is legally unsustainable. Had such opportunity been granted to the petitioners, the petitioners would have brought to the notice of the High Court the fact that such clubbing of post was arbitrary and discriminatory and that the impugned notice seeks to equate the writ petitioners (Assistant Registrar) who are unequals holding the posts in Class II, with Stamp Reporter(s) who are holding Non-Gazetted Ministerial Class III posts. The further submission of the petitioners before the writ Court was that rejection of their earlier representations in this regard is mechanical and by a non-speaking order, and, therefore, unsustainable in the eyes of law.

6. The writ petitioners are not satisfied with the order of the learned Single Judge in as much as the same merely directs for disposal of the representations. According to them, the impugned notice with respect to the promotional process was/is required to be quashed, and positive directions issued, declaring the candidature of the Stamp Reporter(s) as ineligible; and to direct for conducting of the selection process afresh excluding the Stamp Reporter(s) from the process and to confine consideration in the fresh process to Assistant Registrar (Direct Recruit from Legal Profession).

7. The first and foremost issue raised by the writ petitioners was that the notice dated 01.06.2023 initiating the selection process for the Assistant Registrar (Direct Recruit from Legal Profession) was

discriminatory in nature. Discrimination has been alleged, referring to the nature of work being performed by the Assistant Registrar (Direct Recruit from Legal Profession), their pay scale as also the fact that categorization of the post of Assistant Registrar (Direct Recruit from Legal Profession) is a class higher than that of the Stamp Reporter(s). To emphasize discrimination the writ petitioners have also claimed superiority over the Stamp Reporter(s) on the premise that their post has been in existence since inception of the Original Side Rules and the Calcutta High Court Service Rules, 1960. The post of Stamp Reporter(s), however, was introduced in the Original Side Rules much later, that is in 1974. The fact that the post of Assistant Registrar had specified promotional avenue, which the Stamp Reporter(s) did not have is also relied upon to allege discrimination.

8. Upon careful consideration of the submissions and material relied upon by the writ petitioners, in the course of these proceedings we are of the opinion that some of the grounds urged in support of the alleged discrimination are based on *non est* reasons. The fact that the post of Stamp Reporter(s) was introduced in the Service Rules later in time, and after the post of Assistant Registrar (Direct Recruit from Legal Profession), *per se* cannot sustain the petitioners claimed superiority over the Stamp Reporter(s). There is no dispute that when the impugned notice of appointment was issued both the posts were very much

inexistence in the Service Rules, and were filled up by persons who were discharging duties on their respective posts.

9. Another ground urged by the writ petitioners regarding the duties of Assistant Registrar (Direct Recruit from Legal Profession) and the Stamp Reporter(s) lacking in similarity, is also in our opinion irrelevant. Such distinction, even if it exists, would not disentitle the Stamp Reporter(s) to be clubbed with the Assistant Registrar (Direct Recruit from Legal Profession) as feeder posts for the selection process initiated under the impugned notice, for appointment of Deputy Registrar (Legal). The alleged difference in the duties performed by the Assistant Registrar (Direct Recruit from Legal Profession) and the Stamp Reporter(s) may perhaps have assumed significance if the writ petitioners had shown to this Court that the duties performed by the Assistant Registrar (Direct Recruit from Legal Profession) as opposed to Stamp Reporters constituted any kind of experience which may be useful or relevant to the performance of duties on the higher posts of Deputy Registrar (Legal). Such is not the case of the writ petitioners. It is not their case that their experience on the lower post is of performing duties which has a nexus with duties of the higher post for which the promotion process is being undertaken, so as to give them any advantage over the Stamp Reporter. We, therefore, hold that alleged distinction in the duties performed by the Deputy Registrar (Legal) with that of the Stamp Reporter(s), is irrelevant and cannot be made the

basis of alleging discrimination by clubbing of the two posts as a common feeder reservoir for appointment by way of promotion to the post of Deputy Registrar (Legal).

10. The claim of the Assistant Registrar (Direct Recruit from Legal Profession) that they are superior to the Stamp Reporter(s) by virtue of being in a higher class/ higher scale is required to be examined with reference to the Calcutta High Court Service Rules, 1960. The writ petitioners have placed reliance on Schedule 'A' of the 1960 Rules to show that the post of Deputy Registrar (Legal) and Assistant Registrar (Direct Recruit from Legal Profession) are posts of class II whereas the post of Stamp Reporter(s) is a class III posts. Referring to Schedule 'A' of the 1960 Rules they have submitted that even scale of pay of the post of Assistant Registrar is higher than that of the Stamp Reporter(s). The learned Senior Counsel appearing for the appellant has pointed out a basic fallacy in such claim of the writ petitioners based on Schedule 'A' by highlighting the fact that the same is a schedule for the Appellate Side of the Calcutta High Court. The schedule of services in the Original Side of the Calcutta High Court are specified in Schedule 'B' of the same Rules wherein there is no such distinction to be found between the Assistant Registrar (Direct Recruit from Legal Profession) and the Stamp Reporter(s). In fact, both Assistant Registrar (Direct Recruit from Legal Profession) as well as Stamp Reporter(s) in the Original Side relating to which the impugned notice has been issued are in the same pay scale

(Ref : 1974 Amendment). We find force in such submission of the learned Senior Counsel representing the High Court, since it is evident from a bare perusal of Schedule 'A' and Schedule 'B' of the Rules that Schedule 'A' relates to the Appellate Side whereas schedule 'B' relates to the Original Side which is relevant to the issue in these proceedings. We, therefore find that reliance placed by the learned Counsel for the petitioner on Schedule 'A' is futile in establishing any discrimination with the Stamp Reporter(s) based on class or scale of the two posts.

11. Another ground raised by the writ petitioners to allege discrimination is that promotional avenue is lacking for the Stamp Reporter(s) whereas specified for the Assistant Registrar (Direct Recruit from Legal Profession). In our opinion, this fact only substantiates the reasons assigned by the H.C. Committee, duly approved by the Chief Justice that the Stamp Reporter(s), who entered service based on the same qualifications as the Assistant Registrar (Direct Recruit from Legal Profession) have been stagnating for want of promotional avenues; and thus being in the same scale of pay, could also be provided a promotional avenue in the self same process of selection by way of promotion notified by the impugned notice. The decision of the Chief Justice to allow the Stamp Reporter(s) to participate in the recruitment process was to ameliorate the undue hardship being faced by the Stamp Reporter(s) on account of their stagnation, for want of promotional avenues, for which Annexure II of the Calcutta High Court Service Rules

specifically empowers the Chief Justice. Annexure II is a Rule dated 13.09.1962 framed under Article 229 of the Constitution of India with approval of the Governor. The relevant extract of the said Rule is being quoted for ease of relevance :-

“In cases where the Chief Justice is satisfied that the operation of any of these rules causes undue hardship, he may, by order, dispense with or relax the requirements or that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.”

12. In view of the source of power being derived from this notification dated 3rd September, 1962, we find another issue raised by the writ petitioners regarding non-compliance of Article 229 of the Constitution of India also to be without any substance.

13. We are also not impressed with the stand of the writ petitioners that the issuance of the impugned notification, initiating the selection process for appointment of Deputy Registrar (Legal) was required to be preceded by compliance with Principles of Natural Justice and after giving an opportunity to the Assistant Registrar (Direct Recruit from Legal Profession) for being heard. By clubbing the Stamp Reporter(s) along with the Assistant Registrar (Direct Recruit from Legal Profession) as a common feeder reservoir for promotion/ appointment to the post of Deputy Registrar (Legal) no vested right of the writ petitioners has been taken away. The alleged dilution of their promotional prospects cannot be made the basis to claim an opportunity of hearing. The impugned notification issued by the High Court is pursuant to decision of the

Recruitment and Promotion(High Court Committee) duly approved by the Chief Justice, which as noticed above was in accordance with the Rules framed under Article 229 of the Constitution of India. Such exercise of jurisdiction with respect to promotional process of selection, for a post undertaken for the first time under sanction of the Rule, is not found to be discriminatory or violative of the Article 14 and 16 of the Constitution of India.

14. There is no allegation that procedure being adopted under the impugned notice, is in any manner lacking in fairness or that it violates Articles 14 and 16 of the Constitution of India.

15. In the above circumstance, we find that there is no requirement of compliance with the Principles of Natural Justice, for the same is not a strait jacket formula to be applied in each and every circumstance. The petitioners even if they are afforded with an opportunity of hearing, would not have benefitted from the same whatsoever. The Principles of Natural Justice, it is trite is no unruly horse and are not required to be complied with in a case like the instant one. Compliance with Principles of Natural Justice, in fact, would be nothing more than a useless and empty formality. More so in the instant case where there is no prejudice that can be claimed by the petitioner. In this connection we consider it worth taking note of decision of the Apex Court in the case of **Kanwar Natwar Singh vs Directorate Of Enforcement & Anr** reported in **(2010)13 SCC 255**.

16. All these issues have been duly considered by the learned Single Judge and decided by referring to the facts, submissions and the legal position in this regard. The learned Single Judge has rejected all the submissions and has concluded in paragraph 35 “m” and “n” that there is no requirement to dispose of the representations or afford an opportunity of natural justice while framing rules under Article 229 (2) of the Constitution of India. In the present case, the selection process for Deputy Registrar (Legal) was being conducted for the first time after decision of the Recruitment High Court Committee duly approved by the Chief Justice, who was the competent authority to frame Rules. The facts of the present case as taken note of above make it abundantly clear that discretion was exercised under the Rules; and no statutory violation is made out. We, therefore, are not in agreement with the conclusions and directions of the learned Single Judge as contained in paragraph 35 cc, dd and ee and paragraph 36 of the Judgment of the learned Single Judge whereby and whereunder the right of the petitioners for having their representations disposed of after an opportunity of hearing has been recognized. Such directions are diametrically opposite to the findings of the learned Single Judge recorded in paragraph 35 l., m., n. The directions are also unsustainable when viewed keeping in background the findings recorded by the learned Single Judge in paragraph 35 bb. wherein it has been held that the reasons for clubbing together the post of

Assistant Registrar (Direct Recruit from Legal Profession) and Stamp Reporter(s) are after due deliberation by the administrative committee and that the Stamp Reporter(s) were not being given any undue advantage, nor were the Assistant Registrar (Direct Recruit from Legal Profession) being ousted from the process. The directions of the learned Single Judge for consideration of the petitioners' representation and opportunity of hearing, therefore, in our opinion, was wholly unwarranted in view of the above noted findings of the learned Single Judge.

17. In so far as the grievance of the writ petitioners regarding dilution of their promotional prospects as a result of the decision to combine the Stamp Reporter(s) along with the writ petitioners as a common feeder corpus for promotion to the post of Deputy Registrar (Legal), we observe that the same is a result of a conscious decision in accordance with law. The *bona fides* of the decision is apparent from deliberations of the H.C. Committee considering the hardship of the Stamp Reporter(s) for whom there was no promotional prospects whatsoever. On the other hand, the Assistant Registrar (Direct Recruit from Legal Profession) (writ petitioners) were exclusively having a promotional prospect to the post of Deputy Registrar (Legal), though they were not having any qualification/ experience in addition to that possessed by the Stamp Reporters. As noticed above both Assistant Registrar (Direct Recruit from Legal Profession) (petitioners) and the Stamp Reporter(s) are members of

the same class and in the same scale of pay. The decision, therefore, to combine the two posts as a common feeder corpus for consideration for promotion to the post of Deputy Registrar (Legal) cannot be said to be lacking in *bona fides*. It is also observed that the decision is in exigency of service as having a common feeder corpus of the Stamp Reporters along with the Assistant Registrars would only ensure that the meritorious candidate is rewarded by way of promotion, augmenting the efficiency of the higher promoted post. Merely because one of the consequences of the decision of the H.C. Committee, taken in accordance with law, by the competent authority, for valid reasons, was likely to effect the promotional prospect of the petitioners, in future, the same cannot be said to be bad in law. It is trite law, and the position is well settled as can be seen from decision of the Apex Court in the case of **K.S. Vora and Others vs. State of Gujarat and Others** reported in **(1988) 1 SCC 311** wherein the Apex Court was considering a similar grievance and held that the rules of seniority are matters for the employer to frame. The Apex Court has, further, held that even though the future promotional prospect were likely to be affected by introduction of a new set of Rules and if the Rules were made *bona fide*, to meet exigency of service, no entertainable grievance could be made. Paragraph 5 of the said Judgment is considered useful to quote, which reads thus:-

“5.As we have already pointed out in the instant case the State decided at stages to switch over to the common cadre in respect of all the four grades of the Subordinate Service. Before common grades had been formed promotion was granted departmentwise. When ultimately a common cadre came into existence — and all that was done by 1974 — it was realised that if seniority as given in the respective departments were taken as final for all purposes there would be prejudice. Undoubtedly the common cadre was for the purpose of increasing the efficiency by introducing a spirit of total competition by enlarging the field of choice for filling up the promotional posts and in the interest of discipline too. After a common cadre was formed, the general feeling of dissatisfaction on account of disparity of seniority became apparent. The 1977 Rules were introduced in this background to ease the situation. The scheme of this rule protected the rank then held by every member of the service notwithstanding alteration of seniority on the new basis. This, therefore, made it clear that accrued benefits were not to be interfered with. To that extent the 1977 Rules were not retroactive. In spite of the protection of rule regarding the post then held, the Rules brought about a change in the inter se seniority by adopting the date of initial recruitment and the length of service became the basis for refixing seniority. Total length of service for such purpose is a well known concept and could not said to be arbitrary. Undoubtedly one of the consequences of the change in the basis was likely to affect prospects of promotion — a matter in future. Two aspects have to be borne in mind while considering the challenge of the appellants to this situation. It was a historical necessity and the peculiar situation that arose out of government's decision to create a common cadre with four grades in the entire Secretariat. We would like to point out with appropriate emphasis that there was no challenge to creation of the common cadre and certainly government was competent to do so. The second aspect to be borne in mind is that rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made. If these are the tests to apply, we do not think the appellants have indeed any grievance to make. In our view, therefore, the High Court rightly dismissed the contention and found that appellants were not entitled to relief.” (emphasis ours).

18. We also consider it apt to take into consideration the decision of the Apex Court in the case of **Renu and Others vs. District & Sessions Judge, Tis Hazari Courts, Delhi and Another** reported in **(2014) 14 SCC 50** wherein the Apex Court has acknowledged the

administrative power of Chief Justice of a High Court for making appointments or regulating other conditions of service with constitutional backing. Such discretion exercised by the Chief Justice has been held not to be open to be challenged, except on well-known grounds only on a very strong and convincing argument to show that the powers have been abused. Once it is found that the discretion has been exercised in good faith and not in violation of any law, as in the instant case, such discretion should not be interfered with by the Courts merely on the ground that it could have been exercised differently.

19. Having considered the matter in its entirety keeping in background the settled legal position emanating from the Judgments considered above, we find no infirmity in the notice dated 01.06.2023 setting in motion the process of appointment to the post of Deputy Registrar (Legal), by way of promotion from a feeder corpus comprised of the Assistant Registrar (Direct Recruit from Legal Profession) and Stamp Reporter(s). We also do not find any justification for the direction of the learned Single Judge to consider the representations made by the Assistant Registrar (Direct Recruit from Legal Profession) after affording them an opportunity of hearing. To that extent, we interfere with the decision of the learned Single Judge passed in the writ proceedings. The instant appeal (A.P.O.T. 267 of 2023) is allowed to this limited extent.

20. The A.P.O.T. 329 of 2023 preferred by the writ petitioners stands dismissed.

21. Interim orders, if any, stand vacated. The applications, if any are also hereby disposed of.

(Madhuresh Prasad, J.)

22. I agree.

(Harish Tandon, J.)

Later:

After pronouncement of the Judgment in the open Court, learned Counsel for the appellant in A.P.O.T. No. 329 of 2023 prays for stay of the operation of this order.

Since we have taken up a conscious decision, we do not think there is any justification in staying the operation of the Judgment and, therefore, the prayer is refused.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)