

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 3938 of 2020

With

CAN 1 of 2021

Ab. Sattar

Versus

The State of West Bengal and Others

For the Petitioner : Mr. Bidhayak Lahiri, Adv.
Mr. Md. Kalam, Adv.
Ms. Bhaswati Lahiri, Adv.

For the K.M.C. : Mr. Alok Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.

Heard on : 24.02.2025

Judgment on : 19.03.2025

Ajay Kumar Gupta, J:

1. By filing this Writ Petition, the petitioner has challenged the impugned order dated 11th January, 2020 passed by the Chief Manager (Personnel), Personnel Department, Kolkata Municipal Corporation, Kolkata.

2. By the said impugned order, the Chief Manager (Personnel) rejected the application/representation of the petitioner stating therein that the claim for payment of arrear salary could not be entertained on the principle of “No Work, No Pay”. It was stated that “No Work, No Pay” is the normal Rule, but, “No Work, Yet Pay” is the exception. The Rule of exception cannot be applied in the case of the petitioner, when he himself was at fault.

3. The said impugned order was passed by the Chief Manager (Personnel), Personnel Department in pursuant to direction passed by the Single Bench of this Court in Writ Petition filed by the petitioner in earlier round of litigation being WP No. 4795 (W) of 2011 (Ab. Sattar Vs. State of West Bengal and Others).

4. The Single Bench of this Court has directed the OSD and DMC (P), KMC or any other competent authority discharging the function of the said post to consider and dispose of the representation of the petitioner dated 21st September, 2010 made

through his learned advocate in accordance with law while considering the two decisions of the Hon'ble Apex Court passed in the cases of ***Mohd. Ahmed Vs. Nizam Sugar Factory and Others***¹ and ***Union of India and Others Vs. K. V. Jankiraman and Others***².

5. The background facts, which led to filing of this writ petition, may be adumbrated as under: -

5a. The petitioner was appointed as a Guard on 20th March, 1972 in Kolkata Municipal Corporation (hereinafter referred to as 'the Corporation'). He was promoted to the post of Security Assistant Grade – III in the year 1998 and further promoted to the post of Security Assistant Grade – II in the year 2007. However, despite his diligent and exemplary service, he was not promoted to any higher position until his retirement on 28th February, 2010. The petitioner made several requests for promotion but his request went unheeded from 2005 till his superannuation. Though, he was entitled for promotion to the post of Security Assistant Grade – I with effect from 27.06.2001 and to the post of Assistant Sergeant with effect from 31.01.2006.

5b. Additionally, during his service period, he found that juniors to him were promoted while his case was overlooked. He discovered

¹ (2004) 11 SCC 210

² (1991) 4 SCC 109

that the record of the corporation recorded his date of joining erroneously on 27.04.1981 instead of correct year of 1972. Upon realizing this mistake, the petitioner submitted a request for correction on 27.09.2005 to the authority concern for correction and the same was sent to DMC (P), KMC on 17.10.2005. But, he was not promoted to the aforesaid posts.

5c. Prior to 10 days of his retirement date, an Office Order No. D.M.C. (P)/PT/III-A/273/2009-10 issued by the O.S.D. & D.M.C. (Personnel) wherefrom it was learnt by the petitioner that he was only allowed notional fixation of pay without any arrear benefits as, *inter alia*, as follows:-

“Pursuant to the order of Jt. Municipal Commissioner(G) dated 27/01/2010, Mr. A.B Sattar, Security Assistant (Gr.-II), [Emp.ID-42914] of Water Supply Department, (Br.XI) is hereby promoted to the post of Security Assistant (Gr.-I) w.e.f. 27/06/2001 in the Pay scale of Rs. (3800-7775) and to the post of Asst. Sergeant w.e.f. 31.01.2006 in the Pay Band (P.B-3) Rs. {7100-37600} plus Grade Pay Rs. 3900/- and considering his early retirement w.e.f (28.02.2010)(A.N), he is posted in the Water Supply Department (Br.XI).

The above promotions are awarded with the benefit of notional fixation of pay only and without any arrear benefit.

The above promotion order will abide by any orders of the Hon'ble High Court in this regard and is subject to

terms and conditions as laid down in the case of promotion. This order of promotion will not be applicable for those employees who have already been promoted earlier in the same rank.”

5d. The petitioner contended that he was/is entitled to all arrear benefits rather than just notional benefits prior to his retirement. However, these benefits were not granted by the respondent, despite the mistake being on their part specifically regarding the erroneous recording of his date of joining on 27.04.1981 instead of 1972.

5e. There was no fault on the part of the petitioner. It is well-settled principle of law that when any respondent makes a mistake, the incumbent should not be held liable for the same and the department must pay the arrears in place of notional benefit. Therefore, the petitioner has made a representation on 21.09.2010 which was not considered.

5f. The petitioner then compelled to file a Writ Petition being WP No. 4795 (W) of 2011 and the same was disposed of on 06.09.2019 by the Single Bench of this Court directing the concerned authority to dispose of petitioner's application in the light of the two judgments of the Hon'ble Supreme Court as aforesaid.

5g. However, the Chief Manager (Personnel), without considering the settled principle of law and/or accepting the fault of the

respondent authorities, rejected the petitioner's prayer for arrear benefits whimsically and capriciously. The Chief Manager wrongly stated that petitioner was entirely at fault and denied him any arrear benefits on the principle "No Work No Pay". This is the subject-matter of challenge herein. Hence, this Writ Petition.

6. Learned counsel appearing on behalf of the petitioner strenuously argued and submitted that the impugned order dated 11th January, 2020 passed by the Chief Manager (Personnel) has no legal basis and/or without considering the settled principle of law declared by the Hon'ble Supreme Court. The contention of the respondents that the petitioner is not entitled to any arrear benefits on the principle of "No Work No Pay". Actually, it was the inaction on the part of the respondents, which prevented the writ petitioner from performing higher duties and responsibilities by not granting timely promotion. The erroneous recording of joining date and promotion of juniors ahead of him were the mistake made by the concerned respondent. Therefore, an employee cannot be deprived of his right of promotion and further the petitioner is entitled for full arrear benefits from the date of his actual promotion.

7. Finally, the learned counsel prays for setting aside the said impugned order and for directions to be issued to the respondents

concern to pay arrear benefits to the writ petitioner along with other consequential benefits.

8. To bolster his contention, the learned counsel appearing on behalf of the petitioner has placed reliance of a judgment passed in the case of ***Mohd. Ahmed Vs. Nizam Sugar Factory and Others*** particularly paragraph nos. 5 and 6 as under:-

“5. We thus find that while disposing of the appeal, nothing was said about the present appellant, though the same principle was equally rather more applicable to him as the appellant was even senior to Indumati Ganesh but she alone was given the benefit. He was very much in service when the promotion was given to Lakshmipathi Raju on 25-6-1992. He continued in service and retired only on 31-5-1995. The learned Single Judge had rendered the judgment on 27-10-1995 giving the benefit of the arrears of difference of pay to the appellant which, in our view, could not be faulted with. We feel that if the benefit allowed to the appellant by the learned Single Judge was meant to be disallowed by the Division Bench, it should have specifically dealt with that matter. It is true that he could not be given promotion on the date the judgment was rendered by the learned Single Judge or the Division Bench as then Smt Indumati Ganesh was the seniormost person available for promotion, by reason of the fact that the appellant had retired on 31-5-1995

but it would not mean that he could be deprived of the difference of salary during the period he was denied the benefit of promotion i.e. from 25-6-1992 till the date of retirement. That direction was issued by the learned Single Judge and on the reasoning adopted by the Division Bench for making the benefit available to Smt Indumati Ganesh, there would be no reason to deny the said benefit to the appellant. At this stage, it would also be pertinent to mention that the respondent sugar factory had filed the SLP against the judgment of the Division Bench which has been dismissed.

6. *Considering all the facts and circumstances of the case and in view of the discussion held above, we allow the appeal and provide that as per the direction given by the learned Single Judge, the present appellant, Mohd. Ahmed, shall be paid difference of salary by Respondent 1 at the earliest. The impugned judgment and order passed by the Division Bench stands modified accordingly to the extent mentioned above.”*

9. Learned counsel also placed reliance of second judgment passed in the case of **Union of India and Others Vs. K. V. Jankiraman and Others** particularly paragraph nos. 25 and 26 as under:-

“25. *We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.*

26. *We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the*

employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., “but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion”, we direct that in place of the said sentence the following sentence be read in the Memorandum:

“However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the

authority denies arrears of salary or part of it, it will record its reasons for doing so.”

10. Learned counsel also placed reliance of third judgment passed in the case of ***The State of Bihar Vs. Dr. Shafique Azam***³ particularly paragraph nos. 3 and 4 as under:-

“3. The sole argument raised by the appellant is that there was no junior promoted in the year 1996 or in the year 2001 which could confer a right on him to seek promotion from the aforesaid dates. Since the promotion is notional, he is not entitled to salary from the date he was notionally promoted but is entitled to salary from the date he actually started working against the promotional post.

4. We do not find any merit in the said argument. The fact is that the respondent stands promoted, though notionally, on the post of Reader with effect from 26th of July, 1996 and thereafter as Professor with effect from 26th of July, 2001. Therefore, the appellant admits the genuineness and entitlement of the claim of the writ petitioner for promotion as Reader and Professor on the dates from which he was granted notional promotion. Once a candidate is entitled to be promoted and has been notionally promoted, the natural consequence will be that all financial benefits

³ 2016 0 Supreme (Pat) 100 : 2016 2 PLJR 276

will accrue to him. The argument that he is not entitled to salary on the principle of 'no work no pay' is not applicable for the reason that it was the inaction of the State which prevented the writ-petitioner from discharging higher duties and responsibilities. For such inaction of the State, an employee cannot be deprived of his right of promotion."

11. On the other hand, none appears on behalf of the Kolkata Municipal Corporation and the State despite good service at the time of hearing on 24.02.2025. However, from perusal of affidavit-in-opposition filed by the respondent nos. 2 to 5, it appears they are denying all the material facts and allegations made by the petitioners. The respondent contended that it was at the fault of the petitioner himself. Actually, the Corporation authority had prepared a gradation list of the employees to determine the seniority, in which the petitioner's joining date was erroneously recorded as 27th April, 1981. Based on the said gradation list, the petitioner was promoted to Senior Assistant Gr-III in 1998 and subsequently in 2007, he was promoted to Senior Assistant Gr-II. The petitioner did not raise any objection either at the time of preparation of gradation list or when accepting the promotions in the year 1998 or 2007. Once, the

petitioner brought the error to authorities' attention. The corporation promptly corrected the date of joining.

12. Since he was supposed to retire on 28th February, 2010, prior to his superannuation, the KMC passed an order on 18.02.2010, *inter alia*, as under:-

“In pursuant to the order of Jt. Municipal Commissioner(G) dated 27/01/2010, Mr. A.B Sattar, Security Assistant (Gr.-II), [Emp.ID-42914] of Water Supply Department, (Br.XI) is hereby promoted to the post of Security Assistant (Gr.-I) w.e.f. 27/06/2001 in the Pay scale of Rs. (3800-7775) and to the post of Asst. Sergeant w.e.f. 31.01.2006 in the Pay Band (P.B-3) Rs. (7100-37600) plus Grade Pay Rs. 3900/- and considering his early retirement w.e.f (28.02.2010)(A.N), he is posted in the Water Supply Department (Br.XI). The above promotions are awarded with the benefit of notional fixation of pay only and without any arrear benefit.”

The petitioner is not entitled for any arrear benefits due to his own latches or fault.

13. Upon hearing the arguments and on perusal of the record including affidavit-in-opposition, this Court finds the writ petitioner, admittedly retired from service with effect from 28.02.2010 (A.N.). The

KMC had erroneously recorded the petitioner's joining date as 27th April, 1981 instead of 1972 in the gradation list, which led to his promotion in 1998 and 2007.

14. The petitioner accepted all such promotions without any objection. The petitioner did not challenge the gradation list as published from time to time.

15. It appears from the available records that the provisional gradation list of Assistant Sergeant Cadre and Security Assistant Cadre was published by DMC (P) vide Circular No. 38 of 1998-99 dated 10th August, 1998 with a deadline for objections on or before 31st August, 1999 but the petitioner did not raise any objection.

16. It is the contention of the respondents that whenever the petitioner brought to the knowledge of the department recording his error in recording his date of joining in the year 2009, the concern authority corrected the mistake and granted him notional promotion with no arrears.

17. However, the petitioner had requested for correction of his date of joining in the gradation list and same was forwarded to the concerned authority on 17th October, 2005 but, the KMC did not act or promoted him until 18th February, 2010. He was allowed notionally the higher post of Security Assistant (Gr. I) w.e.f.

27.06.2001 in the pay scale of Rs. (3800-7775) and to the post of Assistant Sergeant w.e.f. 31.01.2006 in the Pay Band (P.B. -3) Rs. (7100-37600) plus Grade Pay Rs. 3900/- but without any arrear benefit on 18th February, 2010.

18. It is not disputed that the wrong entry of the date of joining of the writ petitioner was not on the part of corporation mistake. It is true that the petitioner also did not raise any objection on the gradation list or at the time of his promotions, he should have raised the issue sooner as he was the person, who should aware of his actual date of joining.

19. Therefore, the petitioner is entitled to arrear benefits only from the date i.e. on and from 18th October, 2005 when he first notified the KMC for the correction of his date of joining. The Corporation cannot claim it was unaware of the request, as revealed it was recorded in the dispatch register of the K.M.C. (Annexure P-1 to the writ petition).

20. Even after information, if the Corporation fails to correct their mistake, it would be definitely an inaction or at fault on the part of the corporation and for which, the petitioner should not suffer to bear the consequences. Accordingly, the petitioner is entitled to get arrear benefits on and from 18.10.2005 till his retirement and he will

get his other financial benefits in according to his entitlement in view of the ratio decided by the Hon'ble Courts in aforesaid judgments.

21. “No Work No Pay” principle cannot be universally applied especially when the employer is at fault for not correcting his date of joining in the record despite informing by the petitioner to the concerned respondent on 17.10.2005. The concerned Department did not take any appropriate attempt to correct the same and/or utilize the employee's services in promotional posts since 2005.

22. In the light of the above terms and discussion, this writ petition being **WPA 3938 of 2020** stands disposed of, without any order as to costs. **CAN 1 of 2021** is also, thus, disposed of.

23. The respondent no. 4 is hereby directed to take immediate steps to disburse all the arrear pay of differences of salary of his promotional posts on and from 18th October, 2005 till his retirement and re-fix his financial benefits in accordance with relevant rules within eight weeks from the date of communication of this judgment by the petitioner.

24. Interim order, if any, stands vacated.

25. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

26. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.