

12.11.2025
Court No.13
Item No.30
AP

FMA 391 of 2025

**Principal Secretary, Urban Development
& Municipal Affairs Department and Ors.
Vs.**

Debasish Gangopadhyay and Ors.

Mr. Naba Kumar Das
Mr. Suman Singh

.... For the Appellants.

1. Despite service of notice, the respondents are not represented.
2. The short questions that come for consideration in the instant appeal is whether a person who has been promoted to the post of Sub-Assistant Engineer in Asansol Municipal Corporation without processing the qualifications prescribed and without following the 50 point roster can claim to continue in the said post.
3. The second issue is as to whether the High Court can direct the State to regularize an appointment made illegally and clearly contrary to the rules in question.
4. The admitted facts are that the writ petitioner/respondent was promoted to the post of Sub-Assistant Engineer in the Asansol Municipal Corporation sometime in the year 2019. It is also admitted position that the writ petitioner/respondent did not have the prescribed qualifications since he did not possess the five years experience, which was required for the promotion for the said post. The 50 point roster that was required to be followed for promotion, which was also not at all

adhere to by the Asansol Municipal Corporation. No register of promotion was maintained by the Asansol Municipal Corporation.

5. As to under what special circumstances the writ petitioner/respondent was granted the promotion by the Asansol Municipal Corporation is beyond this Court's comprehension. The writ petitioner/respondent is clearly an illegal promotee.

6. It is now well settled, inter alia, by the decision of the Supreme Court in the case of ***Institution of Mechanical Engineers (India) through its Chairman Vs. State of Punjab & Ors.*** reported in **(2019) 16 SCC 95** that a person not having prescribed qualifications could not have been promoted. Such promotion is ex facie illegal and contrary to law.

7. The writ petitioner/respondent cannot benefit from his own wrong or the impropriety committed by the employer/Asansol Municipal Corporation.

8. The writ petitioner/respondent admittedly has wrongly taken higher salary for the period he works for the said higher post. The writ petitioner/respondent shall be reverted back to his original post. He shall, however, be entitled to participate in the future promotional process conducted by the Asansol Municipal Corporation in accordance with law and the applicable rules.

9. The impugned order shall stand set aside.

10. The direction on the appellant to regularize the promotion of the writ petitioner/respondent shall also stand set aside.

11. Accordingly, FMA 391 of 2025 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

12. There shall be no order as to costs.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)