

WPA 15793 of 2022
With
CAN 1 of 2023

Surajit Saha
Vs.
State of West Bengal & Ors.

Mr. Sreekumar Chakraborty
... for the petitioner

Mr. Sujay Bandyopadhyay,
Mr. Jagajyoti Das
.... For the Medinipur Municipality

Mr. Lalit Mohan Mahata, A.G.P
Mr. Prasanta Behari Mahata
.... For the State

The Affidavit-in-Opposition on behalf of respondent Nos. 1, 2, 6, and 8 filed in Court today is taken on record. The Affidavit-in-Reply to the opposition filed by respondent Nos. 1, 2, 5, and 8 in Court today is also taken on record.

In essence, the present writ petition has been filed praying for a direction upon the concerned respondents to approve the petitioner's promotion to the post of Cashier at Midnapore Municipality with effect from the date on which he claims to have been promoted to the said post. The petitioner further prays for a direction upon the respondents to grant all consequential service-related and retirement benefits arising out of such approval of his promotion.

Succinctly stated, the essential facts leading to the institution of the present writ petition are that the petitioner commenced his service career with the Municipality on 15th December, 1986, in the

capacity of a Night Guard. He was subsequently promoted to the post of Clerk in the Cash Section of the Municipality on 22nd March, 1989. Thereafter, with effect from 30th September, 1995, the petitioner was further promoted to the post of License Inspector.

Subsequently, the Municipality obtained prior permission from the competent authority to fill up the post of Cashier along with certain other posts. It was decided that the said post of Cashier would be filled by way of promotion from among eligible in-service candidates.

Accordingly, the eligible in-service candidates were asked to express their willingness or unwillingness to accept the post. The petitioner expressed his willingness to accept the post.

Mr. Chakraborty, learned Advocate representing the petitioner, invites my attention to a communication dated 2nd July, 2012, issued by the Chairman, Midnapore Municipality, addressed to the petitioner, and contends that the petitioner was selected for promotion to the post of Cashier as per the approved gradation list.

Mr. Chakraborty submits that the petitioner served the Municipality as Cashier from 2012 until the date of his retirement.

However, when the proposal for approval of the petitioner's promotion to the post of Cashier was forwarded to the Director of Local Bodies, West Bengal, the Director refused to approve the promotion on the ground that the post of License Inspector cannot be considered a feeder post for promotion to the post of Cashier as per the applicable rules.

Challenging that order, the petitioner has preferred the present writ petition.

Mr. Chakraborty informs that the petitioner retired from service on attaining the age of superannuation. He also submits that in the Pension Payment Order, the petitioner's designation was mentioned as License Inspector, and the retirement benefits, terminal benefits, and other service-related benefits were released in favour of the petitioner by treating him as a License Inspector.

Mr. Chakraborty, learned counsel for the petitioner, submits that the post of License Inspector is essentially a post falling within the category of Upper Division Clerk (UDC). As such, a candidate holding a post in the clerical cadre ought to be considered eligible for promotion to the post of Cashier.

He further submits that an appropriate direction be given upon the concerned authority to

approve the petitioner's promotion to the post of Cashier and to extend all consequential retirement and other service-related benefits.

Mr. Mahata, learned Advocate representing the State, draws my attention to Rule 5(3) of the West Bengal Municipal Employees' (Recruitment) Rules, 2005 (for short, "the 2005 Rules"), and submits that after the selection of a candidate, prior approval of the State Government must be obtained by the Municipality before making an appointment, whether by direct recruitment or promotion.

He also submits that no prior approval was ever obtained by the Municipality in this regard. Referring to the prayer portion of the writ petition, he further contends that the petitioner has not challenged the order dated 9th June, 2022, issued by the Director of Local Bodies, whereby the petitioner's request for approval of his promotion to the post of Cashier was rejected.

Mr. Bandyopadhyay, learned Advocate representing the Municipality, submits that the Municipality is not the appropriate authority to resolve the issue. He states that the matter was referred to the Director of Local Bodies for approval of the petitioner's promotion. However, the Director declined to approve the petitioner's promotion of the post of Cashier. Thereafter, the Municipality is not

in a position to act contrary to the decision taken by the Director of Local Bodies.

In reply, Mr. Chakraborty submits that the application seeking prior approval for the petitioner's promotion to the post of Cashier was submitted by the Municipality. However, while keeping the matter pending, the Director of Local Bodies created a new issue by holding that the post of License Inspector cannot be treated as a feeder post for the post of Cashier.

Heard the learned Advocates appearing for the respective parties and perused the materials on record.

As noted previously, the petitioner began his service career as a Night Guard of the Municipality. Subsequently, he was promoted to the post of Clerk and posted in the Cash Section of the Municipality in 1989. Thereafter, the petitioner was promoted to the post of License Inspector.

Rule 4 of the 2005 Rules prescribes the essential qualifications for in-service candidates to be eligible for promotion to the post of Cashier, which are as follows:

- i)** By promotion from the Senior most persons in the posts of Assistant Cashier having minimum qualifications of Madhyamik.

- ii)** In case there is no post of Assistant Cashier the senior most clerks, with at least ten years experience in the post and having served for five years, among the said ten years, in Accounts/cash section of the Municipality shall be eligible.

Therefore, to obtain promotion to the post of Cashier, an aspiring candidate must either be an Assistant Cashier or, in the absence of such a post, must be the senior-most Clerk with at least ten years' experience in that post, having served for five of those ten years in the accounts/cash section of the Municipality. Thus, the Assistant Cashier and the Clerk are the feeder posts from which a person can be promoted to the post of Cashier.

Therefore, I do not find any infirmity in the decision that the post of License Inspector cannot be treated as a feeder post for the post of Cashier.

Moreover, neither the petitioner nor the Municipality could produce any document to demonstrate that the petitioner's promotion to the post of Cashier has ever been approved in accordance with Rule 5(3) of the 2005 Rules.

Mr. Chakraborty, learned counsel for the petitioner, submits that the selection process involves direct recruitment and, accordingly, the petitioner's promotion to the post of Cashier may be approved.

It is a well-settled principle of law that a party cannot be permitted to approbate and reprobate simultaneously. In the present case, the petitioner had submitted his candidature as an in-service candidate and, having secured promotion on that basis, is now contending that the process of appointment from among in-service candidates is tantamount to direct recruitment. In view of the above, I find no substance in the contention advanced by Mr. Chakraborty.

Therefore, based on discussions and reasons set out in the preceding paragraphs, I am of the view that the petitioner's contention lacks merit.

Accordingly, the present writ petition being **WPA 15793 of 2022** and its connected application stand dismissed. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)