

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**FMA/1019/2024
With
IA NO: CAN/2/2025**

**FEROZ ALAM
VS
THE STATE OF WEST BENGAL AND ORS.**

For the Appellant : Mr. Anindya Labiri, Ld. Senior advocate
Ms. Pampa Dey(Dhabal)
Mr. Biswarup Chatterjee,
Ms. Souparna Malakar, Advocates

For the State : Mr. Anirban Roy, Ld. Govt. Pleader
Sk. Md. Galib, Ld. Sr. Govt. Pleader
Mr. Rajarshi Basu, Junior Govt. Adv.
Ms. Suvasree Ghose, Advocate

For the High Court Administration: Mr. Siddhartha Banerjee,
Mr. Anjan Bhandari,
Mr. Srijit Halder, Advocates

Heard & Judgment on : February 19, 2025

DEBANGSU BASAK, J.

- 1.** Appeal is at the behest of the writ petitioner and directed against order dated May 14, 2024 passed in WPA 7241 of 2024.
- 2.** Affidavits filed in Court be taken on record.

- 3.** The appeal is taken up for final hearing.
- 4.** Learned senior advocate appearing for the appellant submits that, appellant initially joined the Bankura Judgship as a Lower Division Clerk (LDC). Appellant was promoted to Upper Division Clerk (UDC) at Bankura. Appellant applied for obtaining transfer to the Judgship of Pashim Burdwan. Appellant joined Pashim Burdwan Judgeship on February 4, 2023 as LDC. While at the Pashim Burdwan, District Judge, Bankura passed an order giving effect to the Shetty Commission. Such order was passed on July 10, 2023 with retrospective effect from April 1, 2003.
- 5.** Learned senior advocate appearing for the appellant submits that, the appellant was promoted to the post of UDC in the Bankura Judgship with retrospective effect from September 14, 2015.
- 6.** Learned senior advocate appearing for the appellant submits that since the appellant was in the District Judgeship of Bankura till February 3, 2023, appellant is entitled to the benefits of the retrospective promotion to the post of UDC with effect from September 14, 2015. He submits that, the monetary benefits that flow from the retrospective effect of such promotion should be made over to his client.
- 7.** Learned senior advocate appearing for the appellant submits that, during the pendency of the appeal, Additional Chief Judicial Magistrate, Durgapur passed an order re-fixing his pay. He submits that, re-fixation is claimed to be made on the basis of the impugned order. In the event, such impugned order is set aside, then, the basis for re-fixation does not survive. In any event, he submits that,

his client should be allowed to challenge the re-fixation of the salary of the appellant as also recovery, if any, in an appropriate proceeding, should re-fixation occurs.

- 8.** State and the High Court Administration are represented.
- 9.** Learned advocate appearing for the High Court Administration draws the attention of the Court to the Scheme which fell for consideration before the learned Single Judge. He submits that, the Scheme for transfer is contained in the communication dated June 19, 2012. He refers to Clause 3(v) of such scheme.
- 10.** Learned advocate for the High Court Administration submits that, once an employee of one Judgeship seeks voluntary transfer and such transfer is granted, in such a case, such employee joins the cadre of the transferred Judgeship at the bottom of the gradation list. In the present case, he points out that, in terms of such scheme, appellant gave up his post as UDC and joined as LDC in the transferred Paschim Burdwan Judgeship, voluntarily.
- 11.** Learned advocate appearing for the High Court Administration submits that, both the scheme as well as the voluntary action of the appellant, denuded the appellant of any right to seek any benefit that accrued to the appellant in the previous Judgeship, that is, Bankura Judgeship.
- 12.** Learned advocate for the High Court Administration submits that, since the appellant voluntarily relinquished all his rights and interests in respect of his earlier post of UDC at Bankura Judgeship, he cannot be allowed to claim any benefit which accrued to him at the Judgeship of Bankura. Moreover, so far as the present pay is

concerned, appellant is entitled to the pay of the employee placed at the bottom of the LDC cadre of Pashim Burdwan. He submits that, his pay should be fixed accordingly. He submits that, the scheme permits and allows the appellant to be posted at the last in the cadre of the LDC at Paschim Burdwan, in other words, he is posted at the bottom of the gradation list.

13. Admitted facts are as follows :-

- i) Appellant joined the Judgeship of Bankura as a LDC,
- ii) Appellant was promoted to the post of UDC at Bankura on May 1, 2019. Appellant applied for voluntary transfer from the Judgeship of Bankura to the District Judge of Paschim Burdwan. Such application was considered and allowed. Appellant left the Judgeship of Bankura on February 3, 2023 as UDC and joined the Judgeship of Paschim Burdwan on February 4, 2023 as LDC.
- iii) Appellant was placed at the bottom of the gradation list of LDC for Paschim Burdwan where he is presently working, on his joining such Judgeship.
- iv) District Judge of Bankura issued an order dated July 10, 2023 implementing the recommendations of the Shetty Commission. By such order dated July 10, 2023, retrospective promotion to the post of UDC with effect from April 1, 2003 due for the ministerial staff of Bankura Judgeship was granted. A list was published with regard thereto. Appellant is at Serial No. 108 in such list. Appellant was given retrospective promotion with effect from September 14, 2015 to the post of UDC.

14. As noted above, appellant sought transfer from the Judgeship of Bankura to the District Judgeship of Pashim Burdwan by virtue of a Scheme dated June 19, 2012.

15. Relevant portion of the Scheme for transfer of employees of subordinate Court is as follows :-

"GO. No. 3338(13)-J dated 12.4.1972 issued by the Govt. of W.B. provides that when a clerk of a Civil Court is transferred from one district to another in the interest of public service his past service in the substantive capacity in his present judgeship will be taken into account in fixing his position in the Gradation List of permanent employees of the Judgeship where he is transferred.

However, when the transfer is made at the initiative of the applicant concerned, he will not get any benefit of his past service either permanent or temporary in the present judgeship. In other words his name will be at the bottom of the Gradation List of both permanent and temporary employees of the District where he is transferred."

16. Relevant portion of such Scheme of transfer treats the transfer of employees from one District Judgeship to another within the State, in two categories. One category is a transfer at the behest of the Administration where certain repercussions occur so far as the gradation of the employee is concerned. The other category is a transfer allowed at the instance of the employee concerned.

17. In the writ petition and the appeal, we are concerned with the second category of transfer, that is, a transfer sought for by the employee concerned and granted by the Administration.

18. So far as voluntary transfer is concerned, Scheme of transfer specifies that, the employee will not get any benefit of his past service either permanent or temporary in the parent Judgeship. This

restriction, is, thereafter, explained to mean that the name of the employee will be at the bottom of the gradation list of both permanent and temporary employees of the District where he is transferred.

- 19.** The scheme of transfer which allows a transfer at the initiative of the appellant, does not specify that, the appellant will not receive benefits which accrues to him in his past service so long he was there in the previous judgeship. It prevents the concerned employee from carrying forward the benefits of his service at the past Judgeship but does not disentitle him to receive the benefits accruing to him at the previous Judgeship till he is there in such Judgeship. In other words, if any monetary benefits accrue to the employee concerned in the previous Judgeship for the period of time that he was there in such Judgeship, and such monetary benefit is declared subsequent to his transfer, such employee would be entitled to the monetary benefit for the period of time that he was there in the previous Judgeship. He may not be allowed to carry forward such benefit to the new Judgeship. But, since the benefit accrued to that employee for the work done in the previous Judgeship, the same cannot be denied to him for the period during which he was in the previous Judgeship on the plea of the scheme of transfer.
- 20.** In the facts of the present case, appellant worked in the District Judgeship till February 3, 2023. Benefits accrued to him due to his employment at the District Judgeship of Bankura till February 3, 2023 cannot be taken away from him.

- 21.** The order dated July 10, 2023 of the District Judgship of Bankura implements the Shetty Commission recommendation and gives promotion retrospectively. In such order dated July 10, 2023, appellant is found to be entitled to retrospective promotion to the post of UDC with effect from September 14, 2015.
- 22.** In our view, appellant is entitled to the benefit of his promotion as UDC with effect from September 14, 2015 till he was actually given the benefit of his promotion as an UDC at the District Judgship of Bankura.
- 23.** Again, as noted above, appellant applied for voluntary transfer from the Judgship of Bankura to the District Judgship of Paschim Burdwan. He was allowed to do so and permitted to join the Judgship of Paschim Burdwan as LDC on February 4, 2023 by an order of the same date being February 4, 2023. This order was never challenged by the appellant. This order placed the appellant at the bottom of the gradation list maintained by the District Judgship of Paschim Burdwan as LDC.
- 24.** During the pendency of the appeal, the pay of the appellant was sought to be revisited and recovery sought to be made.
- 25.** We did not enter into the issue as to whether the revision of pay of the appellant the recovery thereof since those are not issues which were agitated before the learned Single Judge and are instance which occurred subsequent to filing of the appeal. We leave such issues open to be decided by the appropriate forum, if any of the parties are aggrieved by the steps taken by the District Judegship, in this regard.

26. Order impugned is modified to such extent.

27. FMA/1019/2024 along with connected application are disposed of without any order as to costs.

(Debangsu Basak, J.)

28. I agree.

(Md. Shabbar Rashidi, J.)

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