

01.12.2025.
Item No. 27.
Court No. 13
ap

M.A.T. No. 1642 of 2023
With
I.A. No. CAN 2 of 2023

Dipankar Paul & Ors.
Versus
The Kolkata Municipal Corporation & Ors.

Mr. L. K. Gupta, ld. Sr. Adv.
Mr. Debdatta Sen, ld. Sr. Adv.
Mrs. Suchismita Ghosh Chatterjee,
Mr. Prasun Ghosh.

....For the appellants.

Mr. Subir Sanyal,
Mr. Saurav Chaudhuri.

...For the respondent no.5.

Mr. Soumya Majumder, ld. Sr. Advocate,
Ms. Susmita Pal.

...For the respondent no.6.

Mr. Alok Kumar Ghosh,
Mr. Arijit Dey

... For the K.M.C.

1. The instant intra court appeal is directed against the judgment and order dated 2nd February, 2023 passed by a learned Single Judge of this Court in W.P.A. No. 6471 of 2019.

2. The 13 writ petitioners were promoted to the posts of Assistant Engineer (Civil) between the years 1996-1998. They were eight other persons, who were Direct Recruits to the said posts. Eight other persons also came to be promoted in the said post of Assistant Engineers for the same period.

3. For being placed below the eight Direct Recruits, the promotees, being denied seniority, led by Ashoke Guha and another and Kartick Chandra Das, and others filed W.P. No. 21394 (W) of 2000 and W.P. No.

936 of 2003. They placed reliance on Circular No.13 of the Kolkata Municipal Corporation Rules and stated that they ought to have been placed above the Direct Recruits.

4. A learned Single Judge of this Court by a judgment and order dated 15th May, 2013 disposed of the two writ petitions by working out an equitable formula to balance the rights of the promotees as well as Direct Recruits. The promotees were directed to be placed between 8th and 9th positions in the list of seniority. This would imply that eight Direct Recruits were above the promotees and the promotees would get in accordance with their seniority the positions from 9th to 17th.

5. The Direct Recruits as well as thirteen promotees challenged the order of the Single Bench dated 15th May, 2013 before a Division Bench of this Court. The Direct Recruits filed A.P.O. 272 of 2013 and promotees filed C.O.T 87 of 2013. The grievance of the promotees in the cross-objection was that the consequential financial benefit pursuant to their re-fixment of seniority as per the order of the Single Bench was not granted to them. A Co-ordinate Bench of this Court by a judgment and order dated 16th March, 2016 at paragraph 59 held as follows:

“.... Accordingly, the Ld. Judge moulded the relief by directing the respondent corporation to re-fix the seniority of the promotees in accordance with the law notionally from the stage of their appointment on promotion in the post of Assistant Engineer (Civil), i.e. to re-fix the seniority of the promotees notionally above the person who was appointed against the 9th

vacancy in the post of Assistant Engineer (Civil) by way of direct recruitment during the period from 15.7.1996 to 15.7.1998. We are of the opinion that this was the most prudent and rational thing to do in the peculiar facts and circumstances of the case. We are in complete agreement with the course adopted by the Ld. Judge.”

6. The order of a Co-ordinate Bench has not been challenged by any party before a higher forum and has therefore attained finality.

7. In so far as the cross-objection is concerned, the Co-ordinate Bench was of the view that the learned Single Judge of this Court has erred in not granting consequential financial benefits to the promotees. The Court, therefore, held at paragraphs 62 and 63 which are quoted below:

“62. In view of the aforesaid, we are of the opinion that the promotees are entitled to receive monetary and other benefits incidental to such promotion with effect from the date of notional promotion.

63. In conclusion, therefore, F.M.A. No.2555 of 2013 and A.P.O. No. 272 of 2013 are dismissed. The cross-objections are allowed to the extent indicated above. In the facts and circumstances of the case there shall be no order as to costs.”

8. The order of coordinate Bench has neither been questioned or challenged by any of the parties. It has therefore achieved finality.

9. It is clear and abundant from the above that the cross-objection of the promotees was allowed to a limited extent i.e. grant of monetary and other benefits incidental to such promotion with effect from the date of notional promotion. The arguments advanced by Mr. L. K. Gupta and Mr. Sen, learned Senior Advocates for the appellants direct recruits, that they were entitled to be promoted over and above all the Direct Recruits

has not been considered by a Co-ordinate Bench (supra). In fact, the expression “C.O.T. is allowed to the extent indicated above clearly” implies that the prayer in cross-objection seeking a position above the first promotee, has been clearly rejected.

10. Having regard to the above discussions, the learned Single Judge of this Court has only followed the view expressed by a Co-ordinate Bench of this Court and has implemented the same.

11. This Court, however, makes it clear that the impugned judgment and order referred to hereinabove are confined to the promotees of the years 1996-1998 and the persons involved in these writ petitions and appeals mentioned above. The Corporation shall be free to implement its Circulars, particularly Circular No.13 for all others.

12. It is further clarified that any recovery, if at all sought to be made by the Corporation from the appellants, shall be in accordance with the law settled by the Hon’ble Supreme Court of India. The employee aggrieved by such recovery shall have the right to change the same in independent proceedings, if they are so advised.

13. This Court therefore can find no fault with the order passed by the learned Single Judge of this Court impugned in this appeal.

14. M.A.T. 1642 of 2023 shall stand dismissed.

15. In view of dismissal of the appeal itself, the connected application being CAN 2 of 2023 shall also stand dismissed.

16. Interim order shall also stand vacated.

17. There will be no order as to costs.

18. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)