

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 35375 of 2013

With

CAN 1 of 2020 ((Old No. 358 of 2020))

Munna Prasad Singh & Anr.

Vs.

Damodar Valley Corporation & Ors.

For the petitioners : Mr. Shibaji Kumar Das,
Mr. Dipendu Sarkar.

For the Respondent DVC : Mr. Pradiip Kumar Tarafdar, Ld. Sr. Adv.,
Mr. Subir Pal.

Heard on : 28.07.2025

Judgment on : 02.09.2025

Partha Sarathi Chatterjee, J.:-

Preface:

1. Two employees of the Damodar Valley Corporation (for short, "DVC") have invoked the extraordinary jurisdiction of this Hon'ble Court through the present writ petition, alleging hostile discrimination and unequal treatment in respect of appointment to the post of Dozer Operator Grade-III, as well as in the grant of

service-related benefits, including promotion and other consequential benefits. They further claim to be similarly situated as three other employees, namely Gopal Roy, Sahin Aktar, and Trilochan Singh, and seek the grant of such service-related benefits with effect from the date on which Gopal Roy and the other two employees were so granted.

2. During the pendency of the writ petition, Petitioner No. 2 unfortunately expired. As the legal heirs of Petitioner No. 2 did not express any intention to be substituted in his place, the writ petition is now being pursued solely by Petitioner No. 1 (hereinafter referred to as the "Petitioner").

Petitioners' Case.

3. For a proper appreciation of the issues involved in the writ petition, it is considered appropriate to set out the facts, as projected in the writ petition, which are delineated below:

- i) Way back in 1991, the DVC initiated a selection process to fill up the 10 numbers of vacancy in the post of 'Dozer Operator, Grade-III'. Accordingly, through an advertisement vide. no. 91/18 published in a newspaper, The Telegraph on 5.5. 1991, applications were invited from the eligible and intending candidates for the posts. Out of 10 (ten) posts, four (4) were reserved for candidates belonging to the Scheduled Castes and one (1) post for a candidate belonging to the Scheduled Tribes, while the remaining six (6) posts were unreserved.
- ii) In response to the said advertisement, petitioner, being duly qualified, submitted his candidature for the post. He was called to appear in the practical test -cum-interview and, upon successfully

clearing the same, his name was placed at serial no. 5 in the panel, which was published on 1.3.1992.

iii) However, certain candidates, including the petitioners, raised objections on the ground that although nearly 32 posts of Dozer Operator, Grade-III were lying vacant, the selection process was discontinued after granting appointment to a few candidates in violation of the order of merit and three Ex-Service men were appointed to those posts.

iv) These incidents prompted the petitioner and four other candidates to prefer a writ petition, C.O. no. 15440 of 1995, before this Hon'ble Court. A Co-ordinate Bench of this Court disposed of the writ petition by an order dated 02.04.1998. The operative portion of the order dated 02.04.1998, which reads as follows:

“This writ petition is accordingly disposed of with a direction upon the respondent Corporation to fill up the 6 posts of Dozor Operators grade III Post 91/18 in so far as General category candidates are concerned strictly adhering to the ranking assigned by the Selection Board and if any of the petitioners come within such eligibility criteria they may be considered for appointment to one of the 6 posts in the General Category. The respondents shall complete the said exercise within a period of 2 months from the date hereof and also communicate their decision to the petitioners, if any or all of them are found not entitled to be offered the post the reason therefor.”

- v) The DVC filed an application for review; however, the same was dismissed. Consequently, petitioner, along with some other similarly situated candidates, was appointed, and petitioner joined as Grade-III Dozer Operator.
- vi) In the writ petition, it was contended that subsequent developments occurred after his joining. The petitioners alleged that the benefits granted to Gopal Roy and 2 others were not extended to them, amounting to hostile discrimination. The petitioners ventilated their grievances through a formal representation, but the same did not elicit any positive response, thereby necessitating the filing of the present writ petition.

Respondents' case:

4. The crux of the defence taken by the respondents (DVC) in their affidavit-in-opposition, duly affirmed by one Jitmanyu Satpati, is that the petitioners suppressed material facts and filed the present writ petition on the basis of distorted facts. The affidavit states that in 1987, three individuals, namely Gopal Roy, Sahin Aktar, and Trilochan Singh, were engaged as Casual Workers for the post of Dozer Operator in the DVC.
5. On 05.05.1991, Advertisement No. 91/18 was issued, inviting applications from both internal and external candidates for the post of Dozer Operator, Grade-III, Group-B. Interviews were conducted from 04.12.1991 onwards, and Gopal Roy, Sahin Aktar, and Trilochan Singh were empanelled as internal candidates.
6. However, Gopal Roy and two others, who had been working as Casual Workers since 1987, filed a writ petition, being Matter No. 3758 of 1993, seeking regularization of their services against four vacant sanctioned posts, along with

consequential benefits. By an interim order dated 14.12.1993, a Coordinate Bench of this Court directed that three posts of Dozer Operator be kept vacant and that the status quo regarding their service conditions be maintained. Ultimately, the writ petition was allowed on 17.07.1995.

7. An intra-court appeal was preferred by the DVC challenging the order dated 17.07.1995. By an interim order, the Hon'ble Division Bench directed the DVC to maintain the status quo with regard to the continuity of service of the three employees and to explore measures for their absorption.
8. During the pendency of the appeal, on 06.09.1996, various Group-B and Group-C posts were restructured, and Group-D posts were introduced. The post of 'Dozer Operator, Group-B' was reclassified as a Group-C category (entry-level) post, designated as Junior Technician Grade-III, in the pay scale of Rs. 1430-15-1610-20-1750-25-1850.
9. On 09.09.1997, noting the submission made on behalf of the DVC that the order passed in Matter No. 3758 of 1993 would be implemented and letters of appointment would be issued within fifteen days, the appeal was adjourned to 23.09.1997.
10. In terms of the order dated 09.09.1997, appointment letters were issued to Gopal Roy and two others on 22.09.1997 for Group-C posts in the pay scale of Rs. 1430-1850. On 24.12.1997, the appeal was dismissed. Subsequently, Gopal Roy and three others filed a contempt application being CC No. 31 of 1998. By an order dated 12.07.1999, a Coordinate Bench directed the DVC to issue fresh appointment letters to Gopal Roy and the two others with retrospective effect from 04.12.1991, with a rider that their employment was not temporary, and

further directed that Gopal Roy would be entitled to the said pay scale with effect from 04.12.1991 and that all arrears of salary in his favour be released.

11. The DVC preferred an appeal against the order dated 12.07.1999; however, the same was dismissed by order dated 12.08.2002. Subsequently, the DVC challenged the order dated 12.08.2002 in Civil Appeal No. 1815 of 2003, which was disposed of by the Hon'ble Supreme Court by an order dated 05.05.2010, setting aside both the order dated 12.08.2002 and the order dated 12.07.1999 passed in the contempt petition. The matter was remitted back to the Hon'ble Single Judge to proceed with the contempt petition in accordance with law to ensure that the order passed in the Matter No. 3758 of 1993 is complied with.
12. On 25.08.2010, the contempt petition was taken up for hearing, when the learned counsel representing Gopal Roy and two others submitted that the prayer for their absorption in the posts of Dozer Operator had been complied with. However, their claim for the difference in pay between them and other regular employees with effect from 04.12.1991 had not been settled. Subsequently, on 04.05.2011, the DVC paid the said difference, and accordingly, the contempt proceeding was dropped.
13. The petitioners agreed to accept the post of Junior Technician Grade-III (Dozer Operator), Group-C (entry level) of pay scale of Rs. 1430-1850. The cause of action of the writ petitioners are completely different from that of Gopal Roy & 2 others. The petitioners are not similarly situated with Gopal Roy & 2 others.

Contents of Affidavit-in-Reply:

14. In the affidavit-in-reply, it was stated that Advertisement No. 91/18 had been published on 10.05.1991 inviting applications for filling up 10 posts of Dozer

Operator Grade-II. Petitioner No. 1 had been working as a Dozer Operator in DVC since 1991 and had accordingly submitted his candidature for the post of Dozer Operator Grade-II. However, by letter dated 22.11.1991, he was called upon to appear in the practical test-cum-interview for the post of Dozer Operator Grade-III.

15. Petitioner appeared in the practical test-cum-interview held on 15.12.1991 along with 156 other candidates. Thereafter, on 21.12.1991, a list of 33 candidates was published, out of which 11 candidates were found eligible for appointment to the post of Dozer Operator Grade-II against 10 available posts. The name of Petitioner appeared at serial no. 5 under the 6 unreserved category posts. However, despite this, he was not appointed, whereas three ex-servicemen, whose names appeared at serial nos. 9, 12, and 13 in the said list, were appointed.
16. The petitioner was subsequently appointed to the post of Junior Technician Grade-III (Dozer Operator) by appointment letter dated 12.07.1999. The grievance of Petitioner No. 1 is that, although he had appeared in the practical test-cum-interview for the post of Dozer Operator Grade-II and was duly selected, he was ultimately appointed to a lower post, namely Dozer Operator Grade-III.
17. Petitioner served in the post of Junior Technician Grade-III (Dozer Operator) until 2005, whereafter he was promoted to the post of Dozer Operator Grade-III. He was subsequently promoted to the post of Dozer Operator Grade-II in 2011, to Dozer Operator Grade-I in 2017, and ultimately to the post of Dozer Operator (Charge Hand) in 2022, in which position he is presently serving.

Submission:

18. Mr. Das, learned Advocate appearing for the petitioner, contended that the advertisement itself makes it clear that the selection process was initiated for

appointment to the post of Dozer Operator Grade-II. However, by letter dated 22.11.1991, the petitioner was called upon to appear in the practical test-cum-interview for the post of Dozer Operator Grade-III. He submitted that Gopal Roy and two others had also participated in the same selection process but were subsequently appointed to the post of Dozer Operator Grade-II. It was urged that the petitioner is similarly situated with Gopal Roy and the said two others and, therefore, is entitled to the same benefits as were extended to them. According to him, denial of such benefits to the petitioner is a glaring instance of arbitrary, discriminatory, mala fide and whimsical action on the part of the respondents.

19. In rebuttal, Mr. Tarafdar, learned Senior Advocate appearing for the respondents, vehemently disputed the contention advanced by Mr. Das that the petitioner stood on the same footing as Gopal Roy and two others. He contended that Gopal Roy and the said two others had been engaged as Dozer Operator Grade-II since 1987 and had participated in the selection process as internal candidates, whereas the petitioner had appeared in the practical test-cum-interview as an external candidate. He further submitted that Gopal Roy and the other two candidates had preferred a writ petition seeking their regularisation in the post of Dozer Operator Grade-II and, ultimately, pursuant to the order passed therein, they were appointed to the said post.

20. He further argued that nowhere in the writ petition has it been pleaded that the petitioner had participated in the selection process initiated for the post of Dozer Operator Grade-II. Hence, according to him, such a claim now advanced is beyond the scope of the pleadings. Placing reliance on the decision reported in (1988) 4 SCC 534 [*Bharat Singh & Ors. vs. State of Haryana & Ors.*], he submitted that in a writ petition, not only the material facts but also the evidence

in support thereof must be specifically pleaded and annexed. If a point is urged without necessary factual pleadings or supporting evidence, the Court cannot entertain the same.

21. Adverting to the order dated 02.04.1998 passed in C.O. No. 15440(W) of 1995, he submitted that the petitioner himself had admitted therein that the selection process was initiated for the post of Dozer Operator Grade-III. He further argued that although the petitioner was appointed in 1999, he chose to challenge his appointment only in 2013. According to Mr. Tarafdar, at such a belated stage, the petitioner cannot be permitted to raise such a plea.

Analysis:

22. It is well settled that in a writ petition, the material facts must be specifically pleaded and the evidence in support thereof must be annexed. In the present case, the petitioner has not pleaded that the selection process was initiated for the post of Dozer Operator Grade-II, nor has he stated that he had applied for the said post. Neither a copy of the advertisement nor his application has been annexed to the writ petition.
23. In the writ petition filed by the petitioner along with certain other candidates, registered as C.O. No. 15440(W) of 1995, it was specifically stated that the petitioner had applied for the post of Dozer Operator Grade-III. In the order dated 02.04.1998, a Coordinate Bench also recorded that the selection process was initiated for the post of Dozer Operator Grade-III and the petitioners therein including the petitioner of this present writ petition applied for the post of Dozer Operator Grade-III. The petitioner has never filed any application seeking clarification or modification of the said order dated 02.04.1998.

24. The petitioner cannot deny that in 1999 he was appointed to the post of Junior Technician Grade-III (Dozer Operator). Without raising any protest, he accepted the appointment and served in the said post until 2005, when he was promoted to the post of Dozer Operator Grade-III. Thereafter, he was successively promoted to the posts of Dozer Operator Grade-II, Dozer Operator Grade-I, and ultimately to the post of Dozer Operator (Charge Hand).
25. The petitioner has suppressed the material fact that during the pendency of the appeal preferred by DVC challenging the order passed in the writ petition, registered as Matter No. 3758 of 1993, the post of Dozer Operator was restructured on 06.09.1996 from Group-B category to Group-C category (Entry Level) as Junior Technician Grade-III, with a pay scale of Rs. 1,430–1,850.
26. The respondents have admitted that Gopal Roy and two others were engaged in the post of Dozer Operator Grade-II in 1987. However, although the petitioner claims that he was similarly engaged in 1991, no documentary evidence has been produced to substantiate this claim.
27. Gopal Roy and two others had preferred a writ petition seeking their regularisation in the post of Dozer Operator Grade-II. Pursuant to the order passed in that matter, they were appointed as Dozer Operator Grade-II, and in compliance with the order passed in the contempt petition, they were granted salary and other service-related benefits with effect from 04.12.1991. The petitioner was not a party to that proceeding. For these reasons, it cannot be said that the petitioner is similarly situated to Gopal Roy and the two others.
28. Therefore, although the petitioner has never sought modification of the order dated 02.04.1998 and had accepted his appointment to the post of Junior Technician Grade-III (Dozer Operator) in 1999 without any protest, he is,

through the present writ petition, seeking a direction for retrospective consideration that he ought to have been appointed to the post of Dozer Operator Grade-II, as was done in the case of Gopal Roy and two others, and that all consequential service-related benefits, including promotions, should be granted to him.

29. It is a well-settled proposition of law that a belated claim, or a request for retrospective consideration of a claim that would unsettle a long-settled position, should not be entertained. In this regard, a useful reference may be made to the decision reported in *(2010) 2 SCC 59 [Union of India vs. M.K. Sarkar]*, wherein it was observed that a Court or Tribunal, before directing consideration of a claim, must examine whether the claim pertains to a live issue or to a dead or stale dispute. If the claim relates to a dead or stale issue, the Court or Tribunal should bring the matter to a close and refrain from directing any consideration or reconsideration. In a catena of decisions, the Hon'ble Supreme Court has observed that, although there may be no prescribed period of limitation, where there is an attempt to resuscitate a dead or stale claim in order to revive the issue or create a fresh cause of action, the Court must exercise caution before entertaining such a claim.

30. In the present case, in 2013, after almost 14 years, the petitioner awaking from a deep slumber preferred the present writ petition claiming that in 1999, he should have been appointed to the post of Dozer Operator Grade-II and he should have been given the same benefits and promotion as were granted to Gopal Roy & 2 others w.e.f. 4.12.1991. It would be appropriate to entertain such claim after almost 25 years.

31. Another useful reference may be made to the decision reported in (2008) 7 SCC 210 [Subha B. Nair vs. State of Kerala], wherein it was held that if the selection process is complete, the select list has expired, and appointments have been made, no relief can be granted at a belated stage. In the present case, as noted earlier, the selection process was concluded in 1999.

Order:

32. Therefore, based on the reasons and discussions set out in the preceding paragraphs, the present writ petition and its connected application are, thus, dismissed. However, there shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)