

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APO/116/ 2024
With WPO/2626/2022**

**THE KOLKATA MUNICIPAL CORPORATION AND ORS.
Versus
DEBABRATA BERA AND ORS.**

**APO/117/2024
With WPO/2629/2022**

**THE KOLKATA MUNICIPAL CORPORATION AND ORS.
Versus
SANJIB CHAKRABORTY AND ORS.**

**APO/118/ 2024
With WPO/2632/2022**

**THE KOLKATA MUNICIPAL CORPORATION AND ORS.
Versus
PRATTAY BANIK AND ORS.**

**APO/119/ 2024
With WPO/2631/2022**

**THE KOLKATA MUNICIPAL CORPORATION AND ORS.
Versus
DIPAK KUMAR MISTRY AND ORS.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant

: *Mr. Kalyan Bandopadhyay, Sr. Adv.*
: *Mr. Sirsanya Bandopadhyay, Adv.*
: *Mr. Arka Kumar Nag, Adv.*
: *Mr. Swapan Kumar Debnath, Adv.*

For the Respondent : *Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.*
 : *Mr. Raghunath Chakraborty, Adv.*

For the State : *Mr. Jayanta Samanta, Adv.*
 : *Mr. Soumen Chatterjee, Adv.*

HEARD ON : 03.12.2024, 30.01.2025 & 27.02.2025
 DELIVERED ON : 27.02.2025

DEBANGSU BASAK, J.:-

1. Four appeals are taken up for analogous hearing as all of them emanate out of the impugned judgment and order dated May 10, 2024 passed in four writ petitions being WPO/2626/2022, WPO/2629/2022, WPO/2631/2022 and WPO/2632/2022.
2. By the impugned judgment and order learned Single Judge set aside a circular dated July 22, 2022 issued by the Kolkata Municipal Corporation (KMC) authorities. Learned single judge directed the appellant to initiate a process for filling up the vacant posts of Assistant Engineers by giving promotion to the eligible departmental candidates in accordance with the rules which was prevailed prior to coming into force of the circular dated July 22, 2022, if it thinks it so fit and proper.
3. Learned senior advocate appearing for the appellants draws the attention of the Court to the prayers made in the writ petition. He submits that, events occurring subsequent to the impugned judgment and order render prayers (b) and (c) and consequential

reliefs sought for in the writ petition, infructuous. He submits that, in fact, the entirety of the writ petition is rendered infructuous. However, even if one is to assume that the prayer (a) of the writ petition survive after the subsequent events, then also, he submits that, the writ petitioners are entitled to a consideration for promotion to the higher post in accordance with the rules governing such promotion as on the date of consideration of the promotion.

4. Learned senior advocate appearing for the appellant submits that, subsequent to the impugned judgment and order, KMC authorities thought it prudent to visit the issue of the regulations governing the grant of promotion. The appellants reworked the regulations for grant of promotion to the post of Assistant Engineering working in KMC, and the same fructified in the notification dated February 10, 2025 issued in exercise of powers conferred under Section 20 read with Sections 602 and 604 of the Kolkata Municipal Corporation Act, 1980. He draws the attention of the Court to the notification dated February 10, 2025 as also to the grant of approval by the State Government to the decision taken by the Mayor in Council of KMC with regard to such regulation governing the promotion to the post of Assistant Engineer. He submits that, the Sub-Assistant Engineers who aspire to be promoted to the post

of Assistant Engineer, working in KMC, are now governed by the notification dated February 10, 2025. All Sub-Assistant Engineers eligible to be promoted to the post of Assistant Engineer working in KMC will be considered for such promotion, in accordance with the notification dated February 10, 2025.

5. Learned senior advocate appearing for the appellant submits that, the issue as to whether the administrator-in-charge of the administration of KMC, could issue the notification dated July 22, 2022 is no longer open to discussion in view of the pronouncement of the Division Bench in **AIR 2020 Cal 252 (Sharad Kumar Singh vs. State of West Bengal & Anr.)**.
6. Learned senior advocate appearing for the appellants submits that, no Sub-Assistant Engineer can claim the right to promotion but a right to fair consideration for promotion. In support of such proposition he relies on **(2011) 6 SCC 725 (Deepak Agarwal & Anr. Vs. State of Uttar Pradesh & Ors.)** and **(2011) 10 SCC 121 (Hardev Singh Vs. Union of India & Anr.)**.
7. Learned senior advocate appearing for the appellants submits that, the contention that, a reduction in chance to promotion, would mean change in the service condition cannot be accepted in view of the ratio laid down in **(1991) 1 SCC 505 (Union of India Vs. S. L. Dutta & Anr.)**; **(2009) 12 SCC 62 (High Court of Delhi & Anr. Vs.**

A.K. Mahajan & Ors.); and (2015) 6 SCC 727 (Dhole Govind Sahebrao & Ors. Vs. Union of India & Ors.).

8. Learned senior advocate appearing for the appellants submits that, all Sub-Assistant Engineers will henceforth be considered in terms of the policy governing the promotion as notified by the KMC Authorities on February 10, 2025 as and when the appellants decide to fill up the posts of Assistant Engineers by promotion.
9. Learned senior advocate appearing for the writ petitioners submits that, the factual scenario obtaining on the date of the writ petition was different. At that material point of time the notification dated February 10, 2025 was not born. The issue of promotion from the post of Sub-Assistant Engineer to the post of Assistant Engineer was governed by the notification dated July 22, 2022.
10. Learned senior advocate appearing for the writ petitioners submits that, aspiration of the Sub-Assistant Engineer to be promoted to the post of Assistant Engineers were not catered to by the KMC Authorities. They did not grant adequate promotions. He submits that ad hoc promotions were granted. This resulted in stagnation of Sub-Assistant Engineers which is detrimental not only to the Sub-Assistant Engineers who were denied promotion but also detrimental to the KMC.

- 11.** Learned senior advocate appearing for the writ petitioners submits that right of consideration for promotion cannot be deferred. The right to promotion of the writ petitioner on July 22, 2022 should be recognized as done by the learned Single Judge. He submits that, the learned Single Judge rightly set aside the impugned notification dated July 22, 2022 and directed consideration of promotion in terms of the rules governing the promotion, immediately prior to the issuance of the impugned notification dated July 22, 2022.
- 12.** Learned senior advocate appearing for the writ petitioners draws the attention of the Court to the rules existing prior to July 22, 2022 governing the field of grant of promotion from the post of Sub-Assistant Engineer to Assistant Engineer. He submits the same should be applied to grant promotions to Sub-Assistant Engineers as on July 22, 2022.
- 13.** Learned senior advocate appearing for the writ petitioners draws the attention of the Court to the grounds in the Memorandum of Appeal. He submits that there is no ground of challenge to the impugned judgment and order where it holds that notification dated July 22, 2022 was issued without authority.
- 14.** The writ petitioners who are working as Sub-Assistant Engineers approached the writ Court with the following prayers :

“a) A writ of Mandamus commanding the respondents to complete the process of promotion to the vacancies already risen prior to the purported amendment of promotion rules.

b) A writ of declaration declaring and the purported amendment dated Item No. BOA/MOA -21.3 dated 01/10/22 and Item no. BOA/MOA-23.3 dated 17/11/2021, has prospective application.

c) A writ of and/or in the nature of Mandamus commanding the respondents and each one of them, their men, agents and/or assigns to cancel and/or set aside the impugned Circular being the Chief Manager (Personnel)’s Circular No. VIII of 2022-23 dated 22/07/2022 being the annexure “P-3”.

d) A writ of and/or in the nature of Certiorari do issue directing the respondents and each one of them their men, agents and/or assigns to transmit the entire records of the case, to this Hon’ble Court and to certify them and on being so certified, quash the same so that conscionable justice may be administered to the parties;

e) A writ of and/or in the nature of Prohibition do issue prohibitory the respondents and each one of them their men, agents and/or assigns from further giving effect or further effect to the impugned Circular being the Chief Manager (Personnel)’s Circular No VIII of 2022-23 dated 22/07/2022 without giving promotion to the concerned SAEs to the post of A.E till disposal of this instant Writ application.

f) RULE NISI in terms of prayer (a), (b), (c) and (d) above.

i) Such further or other order or orders, direction or directions as Your Lordships may deem fit and proper.”

- 15.** Writ petitions were disposed of by the impugned judgment and order dated May 10, 2024.
- 16.** Issue of grant of promotion to the cadre of Sub-Assistant Engineer working in KMC to the post of Assistant Engineer received the consideration of KMC Authorities subsequent to the impugned judgment and order dated May 10, 2024. KMC Authorities thereafter decided to rework the promotional policy. The Mayor-in-Council of KMC decided a particular manner of promotion which is at variance to the decision dated July 22, 2022. This decision received the approval of the State Government. The approval of the State Government is dated February 10, 2025 which appears at page 9 of the supplementary affidavit. Thereafter, KMC Authorities issued a notification dated February 10, 2025 putting in place the regulation for regulating recruitment to the post of Assistant Engineer.
- 17.** As on date, therefore, the regulation for regulating recruitment to the post of Assistant Engineer is governed by the notification dated February 10, 2025. This regulation is not under challenge. It was in fact rightly pointed out by the learned senior advocate appearing for the writ petitioners that the notification dated February 10, 2025 was not born at the time of filing of the writ petitions. Nonetheless it is yet to be challenged by the writ

petitioners. At least, nothing is placed on record to suggest that such notification is under challenge.

18. *Hardev Singh (supra)* and *Deepak Agarwal and Anr. (supra)* are authorities for the proposition that, no employee is vested with a right to get promotion but only a right to be considered for promotion.

19. *S.L. Dutta & Anr. (supra)* , *A.K. Mahajan & Ors. (supra)* are authorities for the proposition that, the change in government policy in granting promotion, which may result in reduction of chance of promotion are not open to challenge unless it is established to be arbitrary or mala fide. Same view is expressed in *Dhole Govind Sahebrao & Ors. (supra)*. In the facts of the present case, the notification dated February 10, 2025 being the changed policy is not under challenge.

20. The writ petitioners canvass that their right to be considered for promotion prior to the filing of the writ petition should be implemented. With respect, the plea for promotion of the writ petitioners are required to be considered in light of the regulations governing such promotion. As on date, the regulations are as notified on February 10, 2025. If at all, the authorities decide to promote any Sub-Assistant Engineer, no doubt, the authorities will do so in accordance with the regulations and the law governing

such promotion. As noted above, as on date, it is the notification dated February 10, 2025 which govern the field.

21. Moreover, a writ Court cannot call upon the employer to undertake a drive to grant promotions. It is for the employer when to undertake such an exercise. When such an exercise is undertaken all eligible candidates are required to be considered fairly.

22. We need not enter into the issue as to whether or not the Mayor-in-Council being superceded by an administrator during the COVID-19 regime was vested with adequate authority to undertake a revision of the promotional policy as done on July 22, 2022 or not, since the policy enshrined in the notification dated July 22, 2022 no longer exists by reason of the subsequent notification dated February 10, 2025.

23. In view of the discussions above, we dispose of the appeals by permitting the appellants to undertake the exercise of promotion of Sub-Assistant Engineers, if the appellants decides to promote any of them, in accordance with law.

24. The impugned judgment and order is set aside in view of the subsequent events.

25. APO/116/2024, APO/117/2024, APO/118/2024 and APO/119/2024 are disposed of without any order as to costs.

26. Since the notification dated February 10, 2025 is not the subject-matter of challenge in the writ petitions or the appeals, we clarify that we did not pronounce on the legality and validity thereof. All points relating thereto are kept open.

(DEBANGSU BASAK, J.)

27. I agree.

(MD. SHABBAR RASHIDI, J.)