Sl. No. 13

In the High Court at Calcutta

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 12538 of 2016

Rupok Kumar Chakraborty

Vs.

The Branch Manager, LIC of India& Ors.

For the Petitioner :	Mr. Gautam Brahma Mr. Tarapada Das Mrs. Pampa Saha Mr. Subhojit Chatterjee Mr. Arijit Dey
For the Respondents : [Life Insurance Corporation of India]	Ms. Tanushree Das Gupta
Heard On :	05.10.2026
Judgment on :	**05.10.2026**

Partha Sarathi Chatterjee, J.:-

1. The present writ petition has been preferred by the petitioner, an employee of the Life Insurance Corporation of India (in short, "LICI"), seeking promotion to the post of Higher-Grade Assistant (Programmer-II) from the post of Assistant/Cashier, by implementing the merit list dated 10th February, 2014,

prepared for the promotional exercise for the year 2013-14, in which the petitioner's name was placed in the contingency list.

2. The case of the petitioner, in substance, is that the petitioner joined LICI on 6th October, 1998, as a sub-staff at Siliguri Branch-II (Class-IV staff). Subsequently, he was promoted to the cadre of RC in 2004 and further promoted to the post of Assistant (Class-III staff) in 2006. In 2013-14, a promotional exercise was undertaken by the respondents/LICI and, upon completion of the said exercise, a merit list for the post was prepared, wherein the name of the petitioner was placed in the contingency list along with the names of two other persons, whose names were placed in the main list as candidates belonging to the General category and Scheduled Caste category, respectively.

3. It is the specific case of the petitioner that, from the information furnished to him pursuant to an RTI application filed by him in 2015, the petitioner came to know that, on 7th July, 2014, a vacancy had arisen. According to the petitioner, the said vacancy should have been filled up from the contingency list. However, without filling up the said post from the contingency list, the respondents/LICI instead carried forward the said vacancy to the next promotional exercise. In such conspectus of facts and circumstances, the petitioner has been constrained to prefer the present writ petition.

4. Record reveals that, upon arriving at a conclusion that the issue raised in the present writ petition needs to be decided after exchange of affidavits by the parties, a coordinate Bench of this Court, vide order dated 25th July, 2016, directed the parties to exchange their affidavits. Pursuant thereto, an affidavit-in-opposition to the writ petition was filed on behalf of respondent no. 2.

Thereafter, the petitioner filed a supplementary affidavit bringing on record certain documents and/or facts. The record further reveals that the respondents/LICI filed an affidavit-in-opposition to the writ petition, followed by an additional affidavit-in-opposition and an affidavit-in-opposition to the supplementary affidavit filed by the petitioner.

5. Mr. Goutam Brahma, learned Advocate appearing for the petitioner, narrating the background facts leading to the presentation of the instant writ petition, submits that the contingency list was prepared so that the vacancy which may arise in future can be filled up from that list. Elaborating on the mode and manner in which the promotional exercise is to be conducted by the respondents/LICI, he further submits that, as per the applicable Rules, 20% of the number of vacancies announced in a particular year shall be placed in the contingency list without any ceiling, subject, however, to a maximum number of five. He also submits that the contingency list shall be used for filling up a vacancy that may arise on account of non-acceptance of promotion by any candidate on the ranking list, death or resignation, sanctioning of a new post in the cadre, transfer or retirement.

6. Mr. Brahma submits that it is to be taken note of that in the cadre there was a transfer of one candidate also. He further submits that these facts have been glossed over by the respondents/LICI and the promotion has not been granted to the petitioner. According to him, such action on the part of the respondents/LICI is arbitrary and furnishes sufficient cause and/or reason to interfere with the present writ petition. He also submits that it is well settled principle of law that right to promotion is not a fundamental right but right to be considered for promotion can be considered to be a fundamental right. In

support of his contention, he relies on the following decisions of the Hon'ble Apex Court :

i) *AIR 1999 SC 3471* (*Ajit Singh & Ors. vs. The State of Punjab & Ors.*)

ii) *(2022) 12 SCC 579* (*Ajay Kumar Shukla vs. Arvind Rai*)

7. Mr. Brahma further submits that the right of a person included in the contingency list would depend upon the occurrence of the event contemplated under the relevant rules. According to him, upon the occurrence of such event, the person concerned would acquire an enforceable right to claim the benefit flowing therefrom. In the present case, it is contended that upon the vacancy arising, a corresponding right accrued in favour of the petitioner to claim promotion to the said post. He places reliance upon the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. T.S. Sastry, reported in (2004) 1 SCC 136 and submits that the underlying object and purpose of preparing a contingency list ought to be given effect to by adopting a purposive construction of the relevant provisions, rather than an interpretation which would render the contingency list nugatory.

8. According to him, in the given case, since the vacancy arose during the year 2013-14, the petitioner's case for promotion should have been considered by the respondents/LICI. Having failed to do so, the respondents/LICI acted illegally with a mala fide intention and, therefore, the benefit of restitution should be given to the petitioner by granting promotion to the post with retrospective effect.

9. In rebuttal, Ms. Dasgupta, learned Advocate representing the respondents/LICI, vehemently opposes the contentions advanced by Mr.

Brahma. She submits that the promotional exercise was undertaken in the year 2013-14; however, the present writ petition was filed in 2016. Therefore, in her view, there is a delay in preferring the present writ petition. However, there is no explanation in the writ petition to justify such delay. She further submits that the delay in preferring the present writ petition is fatal, particularly in a case where an order granting promotion is prayed for. She argues that, due to such delay and laches, the right of a third party will inevitably accrue, and acceptance of the petitioner's prayer at this belated stage will result in curtailment of the right of a third party. To lend support to such contention, she relies upon the following decisions of the Hon'ble Supreme Court of India:

i) *(2010) 12 SCC 471* (*Shiba Shankar Mohapatra & Ors. vs. State of Orissa & Ors.*)

ii) *(1969) 1 SCC 110* (*Tilokchand and Motichand & Ors. vs. H.B. Munshi & Anr.*)

iii) *(2013) 12 SCC 179* (*State of Uttaranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.*)

10. Referring to sub-rule (4) of Rule 6 of the Life Insurance Corporation of India Class III and Class IV Employees (Promotion) Rules, 1987 (in short, "the 1987 Rules"), Ms. Dasgupta submits that a ranking list shall remain in force for a period of one year from the date on which it was prepared. She further submits that promotion can be given from the contingency list if a vacancy arises in the cadre and/or post to which a candidate seeks to be promoted.

11. In response, Mr. Brahma submits that no specific period of limitation has been prescribed for preferring a writ petition. He further submits that if it is

found that the fundamental right of a person has been infringed, a writ petition can be entertained despite the delay.

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

13. As noticed earlier, in the present case, the promotional exercise was undertaken in 2013-14. After assessing the eligibility of the employees who participated in the process, an office order dated 10th February, 2014 was published by the Senior Divisional Manager, LICI, disclosing the ranking list of the candidates in order of merit selected for promotion to the cadre of HGA (Prog.), 2013-14. The ranking list consists of two parts, namely, the main list and the contingency list, respectively. In the main list, the names of one General category candidate and one Scheduled Caste candidate, respectively, were published, whereas in the contingency list, the petitioner's name was published as a General category candidate.

14. Placing reliance upon the information furnished to the petitioner pursuant to his RTI application, the petitioner claims that the vacancy arose on 7th July, 2014. Despite this, the petitioner has not been granted promotion to the said post. From the said information, it transpires that the sanctioned strength of HGA (PROG-II) for the year 2013-14 was 23, out of which 21 posts were filled up. Therefore, there were two vacancies, which were filled up by the two candidates whose names appear in the main list.

15. From the reply furnished to the petitioner by the Central Public Information Officer/Manager (CRM), vide communication dated 5th June, 2015, addressed to the petitioner, as appearing at page 42 of the writ petition, and also from the order passed in the RTI appeal preferred by the petitioner, as

appearing at page 39 of the writ petition, it transpires that the vacancy arose in the post/cadre of PG-I on 7th July, 2014 upon the exit of one PG-I. The said post was offered to the promotee PG-II during the year 2014-15. Therefore, the vacancy did not arise in the cadre of PG-II. Undisputedly, the contingency list expired after one year from the date on which it was prepared.

16. In the present case, the petitioner seeks to derive a right from his inclusion in the contingency list in connection with the promotional exercise for the year 2013-14. Such inclusion, however, cannot be construed as conferring upon the petitioner an absolute and vested right to promotion. The contingency list was subject to the terms and conditions governing its operation and, significantly, was to be acted upon only upon the occurrence of a vacancy in the relevant promotional cadre. In the case at hand, the petitioner has not been able to demonstrate that the said vacancy occurred in the promotional post of PG-II. No material has also been placed on record to demonstrate that the validity of the merit list, particularly the contingency list, was extended by passing any administrative order.

17. The existence of a vacancy is not sufficient by itself. The vacancy must be one against which the petitioner is eligible to be considered under a particular promotional scheme and within the period during which such contingency list remains operative.

18. Needless to say, the inclusion of the petitioner's name in the contingency list did not confer upon him any vested or indefeasible right to promotion. At best, it preserved his candidature for consideration, subject to the occurrence of a vacancy during the currency of the contingency list and in accordance with the governing Rules. In the present case, the vacancy which arose on 7th July, 2014

was a vacancy in PG-I and not in PG-II. The said vacancy was thereafter filled by promoting an incumbent from PG-II.

19. The petitioner seeks to contend that the consequential vacancy, if any, in PG-II should give rise to a right in his favour. However, in the absence of any provision in the governing Rules, such contention cannot be accepted. The petitioner cannot claim promotion by requiring the respondents to follow a particular sequence of promotions merely because such a course may result in a consequential vacancy in PG-II. The right to be considered for promotion does not, by itself, confer upon an employee a right to require the employer to create a vacancy in a particular cadre in a particular manner.

20. Undisputedly, delay by itself is not invariably fatal to a writ petition where a continuing or subsisting legal right is demonstrated, or where the demands of justice are so compelling that intervention by a writ court is warranted to render effective justice to the aggrieved party. However, if the delay has resulted in a change of facts and circumstances, or if entertaining a writ petition presented belatedly results in unsettling a settled issue, then such delay will be fatal.

21. In the given case, the vacancy which arose in the cadre of PG-I was carried forward, and thereafter promotional exercises were undertaken for the years 2014-15, 2015-16 and onwards. From the averments made by the parties, it appears that subsequently the petitioner also participated in a subsequent promotional process without any demur or objection.

22. So far as the proposition that an employee has a right to be considered for promotion is concerned, there is no real controversy. There cannot be any quarrel with the proposition laid down by the Apex Court in *Ajit Singh & Ors.*

(supra) and *Ajay Kumar Shukla* (supra) that there is no fundamental right to promotion. However, an employee has a right to be considered for promotion when the occasion for consideration arises, and such consideration has to be in accordance with the applicable Rules. However, the aforesaid proposition does not mean that the petitioner has a fundamental right to insist upon his promotion merely because, at one point of time, a vacancy existed somewhere in the promotional hierarchy. The right to consideration itself is conditioned by the applicable service Rules.

23. Therefore, the authorities relied upon by the petitioner establish important principles, but none of them advances the petitioner's case to the extent necessary for grant of the relief sought.

24. The factual matrix of the decision reported in *Oriental Insurance Co. Ltd.* (supra) is totally different from the facts and circumstances of the case at hand. In that case, during the currency of the said list, an additional post was created and the employees placed in the contingency list claimed promotion. In those circumstances, the Hon'ble Apex Court held that the provision relating to the contingency list has to be given a meaningful effect and that the employer could not, by adopting a restrictive construction of the promotional policy, render the contingency list provision otiose. Thus, decision of *Oriental Insurance Co. Ltd.* (supra) does not come to the aid of the petitioner.

25. In view of the facts and circumstances of the case, the reasons recorded in the preceding paragraphs, and the principles enunciated in the aforesaid decision, I find no ground to interfere in the present writ petition. The petitioner's claim for promotion to the post of HGA (PG-II) with retrospective effect is, accordingly, found to be devoid of merit.

26. Accordingly, the writ petition being WPA 12538 of 2016 stands dismissed.

27. There shall be no order as to costs.

28. Let urgent Photostat certified copy of this order be made available to the parties, if applied for, upon compliance of usual formalities.

(Partha Sarathi Chatterjee, J.)

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