

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE**

Present:
The Hon'ble Justice Partha Sarathi Chatterjee

WPA 28702 of 2022

**Tapan Kumar Saha & Others
-Versus-
Damodar Valley Corporation & Another**

For the Petitioners : ***Mr. Soumya Majumder, Ld. Sr. Adv.
Ms. Sanjukta Dutta***

For the Respondents/DVC: ***Mr. Pradip Tarafder, Ld. Sr. Adv.
Mr. Subir Pal***

Hearing is concluded on : **10th February, 2026.**

Judgment on : **10th February, 2026.**

Partha Sarathi Chatterjee, J.:

1. As borne out from the present writ petition and the supplementary affidavit filed by the petitioners pursuant to the leave granted by this Hon'ble Court vide order dated 9th January, 2023, the petitioners pray for issuance of a writ of mandamus directing the respondents to restore the petitioners' seniority with effect from the dates on which their juniors joined service in the post of Assistant Grade-III Clerk-cum-Typist and to extend the benefits of Uniform Career Progression from the respective dates on which such benefits

were granted to their juniors, together with payment of all consequential arrears along with interest. The petitioners further pray for setting aside the communications dated 6 June 2018 and 4 November 2022, as well as the decision taken by the DVC in relation to the Uniform Career Progression, to the extent such decisions reject the petitioners' claims. In addition, the petitioners pray for a declaration that the Uniform Career Progression Scheme cannot be implemented on the basis of the actual date of joining by ignoring the merit list.

2. Briefly stated, the essential facts, as projected in the writ petition and the supplementary affidavit, which need to be adverted to for effective adjudication of the writ petition are as follows:

- i) In the year 1988, the Damodar Valley Corporation (for short, DVC) issued an advertisement in *Anandabazar Patrika* (a Bengali newspaper) inviting applications for appointment to the post of Assistant Grade-III (Clerk-cum-Typist) and allied posts. Pursuant to the said advertisement, the petitioners submitted their candidatures for the post and participated in the selection process, which comprised a written examination and a typing test conducted in the year 1990.

- ii) Upon completion of the selection process, a merit panel comprising 172 successful candidates was published on 23 November 1990, ranking the candidates strictly in order of merit.

iii) However, despite the publication of a common merit panel on 23 November 1990, letters of appointment was not issued to all empanelled candidates simultaneously; instead, they were issued in a phased manner. Several candidates who were placed lower in the merit panel were issued appointment letters earlier and, accordingly, joined service during the period 1990–1991. The petitioners, though placed higher in the merit panel, were issued appointment letters at a later stage and joined service between 1993 and 1994.

iv) Clause 10 of the letters of appointment expressly stipulated that “Seniority as per the Selection Panel will be maintained.” However, to the utter surprise of the petitioners, they came to learn in the year 1997 that candidates who were placed lower in the merit panel but had joined service earlier were being treated as seniors in the cadre. As a result, such candidates were drawing higher pay and had already secured financial and career benefits earlier, despite being lower in merit.

v) The DVC published gradation lists on 14 February 2000 and 3 July 2006, wherein seniority was determined on the basis of the actual dates of

joining service. The petitioners contend that the said gradation lists failed to reflect the seniority as assured in the letters of appointment and, as a consequence, resulted in the supersession of the petitioners by their juniors in the merit panel.

- vi) On 9 August 2007, the DVC introduced the Uniform Career Progression (for short, UCP) Scheme for Group-B non-executive employees, providing for financial upgradation upon completion of the prescribed period of service, calculated from the date of joining.
- vii) Owing to the disparity in the dates of joining, employees who were placed lower in the merit panel but were appointed earlier became eligible for UCP benefits prior to the petitioners. Consequently, such juniors in the merit panel began drawing higher basic pay than the petitioners, thereby giving rise to a continuing and recurring pay anomaly. For instance, in October 2022, employees placed lower in the merit panel but who had joined earlier were drawing a basic pay of Rs. 87,400/-, whereas the petitioners were drawing a basic pay of Rs. 76,500/- at the relevant time.

- viii) The petitioners submitted several representations from time to time, commencing in or about the year 1997 and continuing up to 2022, seeking restoration of their seniority in accordance with the merit panel and grant of all consequential financial benefits.
 - ix) Upon consideration of the grievances, the DVC also constituted an Anomaly Committee to examine the issues of seniority and pay disparity. The Anomaly Committee submitted its report on 26 November 2019, wherein it concluded that the petitioners' grievance is genuine.
 - x) However, notwithstanding the findings of the Anomaly Committee, the DVC rejected the petitioners' claims by communications dated 6 June 2018 and 4 November 2022.
 - xi) Being aggrieved by the continued denial of seniority and financial benefits, the petitioners have approached this Hon'ble Court by filing the present writ petition seeking appropriate relief.
3. The record reveals that by an order dated 9 August 2023, the DVC was directed to submit a report in the form of an affidavit addressing the issues raised in the writ petition. Pursuant thereto, the DVC filed a report in the form of an affidavit.

4. As would appear from the said report, the DVC seeks to defend the writ petition on the basis of the following contentions:

- i) The Office Memorandum dated 2 July 1982, issued by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, which lays down guidelines in the matter of verification of character and antecedents, mandates police verification prior to appointment to service.
- ii) Accordingly, although upon completion of the selection process a panel consisting of 172 candidates was published on 11 December 1990, letters of appointment were initially issued to 109 candidates in two batches (the first batch consisting of 50 candidates and the second batch consisting of 59 candidates) whose police verification reports had been received. Subsequently, letters of appointment were issued to the remaining 58 candidates upon receipt of their police verification reports at a later point of time.
- iii) It was contended therein that, in terms of the Office Memorandum dated 2 July 1982, it was a mandatory obligation on the part of the respondents to determine seniority on the basis of the date of joining and not on the basis of the selection panel. It was further contended that

the petitioners, being “panel seniors,” cannot be granted any benefit on a notional basis from a current date, nor can they claim actual monetary benefits with arrears, since they were not borne in the cadre on the date of publication of the panel. According to the respondents, the only relevant date for determining the petitioners’ seniority is the date on which they joined service.

5. The petitioners filed an exception to the said report. In the exception, it was specifically contended that the police verification reports of all the candidates had been received in 1991. For instance, the police verification report of petitioner no.1, namely, Tapan Kumar Saha, was received on 12th August, 1991; however, the letter of appointment in his favour was issued only in September, 1993. On the other hand, Ratna Roy, whose name appeared at the last position in the panel, joined the DVC on 7th June, 1991.

6. It was further contended therein that the Office Memorandum dated 2nd July, 1982 pertains to the requirement of pre-enrolment verification. The said Memorandum does not deal with the seniority of any Central Government employee. Therefore, the DVC failed to offer any acceptable explanation to justify the delay in issuing letters of appointment in favour of the petitioners.

7. Mr. Majumder, learned Senior Advocate, appearing for the petitioners argues that in the letters of appointment issued to the

candidates emerged to have been successful from the selection, it was specified that the seniority as per selection panel will be maintained. However, in the present case, appointments were given on diverse dates and seniority has been determined on the basis of date of joining ignoring the stipulation regarding seniority in the letters of appointment.

8. He submits that in the present case, the DVC has taken the stand that, due to non-completion of police verification, certain candidates, though placed lower in the panel, were appointed earlier, and consequently, the petitioners were appointed later on account of non-completion of their police verification. However, referring to page nos. 77, 79 and 80 of the writ petition, he submits that the police verification of certain employees, namely, Tapan Kr. Saha, Sanjoy Kr. Dutta, Sunil Kr. Chowdhury, Nawal Kishore Yadav, Sujit Das, Nandita Sen, etc., was completed in 1991, yet they were appointed only in 1993, without any reason being assigned whatsoever.

9. He argues that, in order to resolve the issue, an Anomaly Committee was constituted, and the said Committee recommended grant of seniority along with all consequential benefits in favour of the petitioners. However, on untenable grounds, the authority refused to extend such benefits to the petitioners.

10. In rebuttal, Mr. Tarafdar, learned Senior Advocate appearing for the DVC, submits that, as indicated in the report filed on

behalf of the DVC, completion of police verification of a candidate prior to his entry into service is mandatory in terms of the Office Memorandum dated 2nd July, 1982. He further contends that, due to non-completion of police verification, certain candidates, though senior in the panel, were appointed at a later point of time.

11. He further contends that the petitioners, who were not “borne in the cadre” at the relevant point of time, cannot be granted the benefit of seniority or any consequential benefits, either on a notional basis or on an actual basis. He asserts that unless a candidate enters the cadre, he cannot claim any benefit attached thereto. He further submits that seniority and its consequential benefits can be granted only from the date of joining of service and not on the basis of the position in the panel. He further argues that at the stage, such stale claim of the petitioners should not be entertained.

12. He relies upon the decision reported in (2011) 3 SCC 267 (*Pawan Pratap Singh & Ors. vs. Reevan Singh & Ors.*) to contend that *inter se* seniority in a particular service has to be determined in accordance with the applicable service rules, and that the date of entry into service or the date of substantive appointment is the safest criterion for fixing *inter se* seniority between employees. He further refers to the decision reported in **(1990) 2 SCC 715** (*Direct Recruit Class II Engineering Officers’ Association vs. State of Maharashtra & Ors.*) and submits that the seniority of an employee is to be counted from the date of his appointment. He also relies upon the decision

reported in **1988 (Supp) SCC 107** (*Nirmal Kumar Choudhary & Ors. vs. State of Bihar & Ors.*) for the proposition that seniority would ordinarily depend upon the length of service, subject, of course, to the rules holding the field. He cites the decision reported in **(2001) 2 CHN 300** (*Universal Petrochemicals Ltd. vs. Rajasthan State Electricity Board*) for the proposition that a contract dehors the statutory provisions is a nullity. He further refers to the decision reported in **(1979) 2 SCC 409** (*M/s. Motilal Padampat Sugar Mills vs. State of U.P. & Ors.*) for the proposition that no representation or promise made by an officer can preclude the Government from enforcing a statutory prohibition. He also relies upon the decision reported in **(2019) 16 SCC 28** (*Ganga Vishan Gujrati & Ors. vs. State of Rajasthan & Ors.*) for the proposition that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on the cadre, and that seniority amongst members of the same grade has to be counted from the date of initial entry into the grade.

13. In reply, Mr. Majumder, referring to the factual matrix of the decisions cited by Mr. Tarafdar, contends that those decisions are distinguishable on facts.

14. Indisputably, in the present case, the selection process for the post of Assistant Gr. III-cum-Typist and Allied Posts (Post No. 88/3) was initiated in 1990. In paragraph 3 of the letters of appointment, it was stipulated that the appointees would be governed

by the DVC Service Regulations and other relevant regulations and orders of the Corporation for the time being in force, as amended from time to time. It was further stipulated in paragraph 10 of the appointment letters that “Seniority as per Selection Panel will be maintained.”

15. Admittedly, in a catena of decisions, the Supreme Court has repeatedly held that *inter se* seniority must be determined in accordance with the statutory service rules. Where the rules provide that seniority is to be reckoned from the date of appointment or entry into service, the position in the selection panel cannot override such provision. Therefore, even if the letter of appointment stipulates that seniority would be maintained “as per the selection panel”, but the applicable service rules prescribe that seniority shall be counted from the date of joining/appointment, it is the service rules which shall prevail.

16. At the cost of reiteration, it may be observed that in *Pawan Pratap Singh* (supra), the Supreme Court held that the safest criterion for determining seniority is the date of substantive appointment or the date of entry into service, unless the rules provide otherwise. In *Direct Recruit Class II Engineering Officers’ Association v. State of Maharashtra* (supra), it was ruled that seniority ordinarily counts from the date of appointment, and retrospective seniority cannot be granted unless supported by law. In *Ganga Vishan Gujrati v. State of Rajasthan* (supra), it was laid down that retrospective seniority

cannot be granted from a date when the employee was not borne in the cadre. In *Universal Petrochemicals Ltd. v. Rajasthan SEB* (supra), it was held that a contract dehors the statutory provisions is a nullity. Further, in *Motilal Padampat Sugar Mills v. State of U.P.* (supra), it was held that the doctrine of promissory estoppel cannot operate so as to prevent the Government from enforcing a statutory prohibition.

17. Therefore, the inevitable conclusion that follows is that any stipulation in the letter of appointment providing that seniority would be maintained as per the selection panel cannot prevail over the statutory service rules, and if the applicable rules prescribe that seniority is to be reckoned from the date of joining/appointment, the petitioners cannot claim retrospective seniority or consequential benefits from a date when they were not borne in the cadre. However, in the present case, neither of the parties has produced the applicable service rules to demonstrate that the statutory provisions mandate that seniority is to be reckoned from the date of joining.

18. As previously noticed, in the present case, despite publication of a common merit panel on 23rd November, 1990, letters of appointment were not issued to all empanelled candidates simultaneously; rather, the same were issued in a phased manner. Several candidates, though placed lower in the merit panel, were issued appointment letters earlier and, accordingly, joined service during the period 1990–1991. The petitioners, despite being placed higher in the

merit panel, were issued appointment letters at a later stage and joined service between 1993 and 1994.

19. Be it noted that, alleging inaction on the part of the respondents in issuing letters of appointment in their favour, the petitioners had preferred a writ petition being W.P. No. 7165 of 1993. However, during the pendency of the said writ petition, letters of appointment were issued in favour of the petitioners, thereby rendering the writ petition infructuous.

20. In the given case, the tabulation sheet as appearing at page nos. 77 to 80, which is a part of Annexure-p-12 to the writ petition, indicates that although police verification reports of a number of candidates were received by the DVC in 1991, the letters of appointment were issued in their favour only in 1993-94 without assigning any reason therefor.

21. This issue, however, remained unresolved in the establishment and, accordingly, an Anomaly Committee was constituted by the DVC. The Committee, in its report dated 26.11.2019, upon considering the applicable statutory rules, observed that the appointment letters were not issued serially in accordance with the selection panel of the 1991 batch. Instead, the appointment letters were issued in three phases, namely: (i) in the first phase from May, 1991; (ii) in the second phase from September, 1991 to February, 1994; and **(iii)** in the third phase from May, 1994. The Committee further observed

that the appointment letters in the second and third phases were issued after a lapse of about 2.5 years. Accordingly, the Committee arrived at the following conclusion:

“Based on the above fact made available before the Committee, it is felt that the claim of applicants/senior persons in the Selection Panel for the post of Assistant Gr. III-cum-Typist & Allied Post (no. 88/3) a panel of 176 persons which was approved by the Chairman on 21.11.1990 & 11.12.1990 in File no. PLR-17/GOS/12 (Pt. vi) at P/40/N & 41/N appears to be genuine.”

22. Therefore, the Committee, being conversant with all extant statutory rules and after obtaining legal opinion on the issue and considering the same, came to the conclusion that the grievances of the petitioners and other similarly situated employees were genuine. In the given case, the DVC could not justify as to why, despite completion of police verification of candidates such as Tapan Kr. Saha, Sanjoy Kr. Dutta, Sunil Kr. Chowdhury, Nawal Kishore Yadav, Sujit Das, Nandita Sen, etc. in 1991, they were appointed only in 1993, without assigning any reason whatsoever.

23. No statutory rule confers unfettered discretion upon an employer to act arbitrarily or in derogation of the doctrine of equality as enshrined in Articles 14 and 16 of the Constitution of India. The DVC sought to take recourse to the settled propositions of law laid down in the decisions referred to in the foregoing paragraphs.

24. Admittedly, upon completion of a selection process involving several candidates, it is quite likely that police verification reports of all such candidates may not be received by the employer simultaneously. In such circumstances, if seniority is determined solely on the basis of the date of appointment, candidates securing higher positions in the merit panel may suffer due to delay in receipt of their police verification reports, which is beyond their control. Keeping such contingency in mind, and in the absence of any specific statutory provision mandating that seniority would be determined only on the basis of the date of joining irrespective of merit position, it was expressly stipulated in the letters of appointment that seniority would be maintained as per the selection panel. Furthermore, in the present case, the Anomaly Committee being an internal Committee of the DVC also found justification in the grievances of the petitioners, who, despite securing higher positions in the selection panel and despite receipt of their police verification reports in 1991, were appointed at a later stage, i.e., only in 1993–1994. Admittedly, due to such unjustifiable belated appointment, the petitioners are being deprived of their legitimate entitlement to the benefits under the Uniform Career Progression Scheme, which accrue only upon completion of the prescribed length of service.

25. Mr. Tarafdar criticized the petitioners' claim as stale. In the present case, the petitioners contend that in 1997 they came to learn that certain candidates, though placed lower in the selection panel, had

been issued appointment letters earlier. Thereafter, in 1997, they submitted a representation seeking restoration of their seniority as per the selection panel. Subsequently, gradation lists were published in 2000 and 2006. In the gradation list of 2006, the DVC mentioned that the seniority of employees appointed to a post on and after 1st July, 1965 had been fixed in the order of preference laid down in the selection note. In 2013, the Departmental Promotion Committee granted clearance for promotion and redesignation of non-executive employees, including the petitioners. As noted earlier, an Anomaly Committee was thereafter constituted, which in 2019 found the petitioners' grievances to be justified. Between 2021 and 2022, the petitioners made several representations and, ultimately, in 2022, preferred the present writ petition. Furthermore, the present incident is a reminder of the decision reported in (2008) 8 SCC 648 (*Union of India & Ors. vs. Tarsem Singh*), wherein it was observed that where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, provided such continuing wrong creates a continuing source of injury. Denial of service-related benefits on the basis of wrongful determination of seniority, resulting in continuous deprivation of financial benefits, can be construed as a continuing wrong. Therefore, taking note of this aspect, it can safely be held that the present writ petition is maintainable.

26. Needless to state, it is a settled proposition of law that if any mistake is committed or any action is taken arbitrarily by an employer, or if any promotion is granted erroneously due to misinterpretation of the rules, the employer is not precluded from correcting such mistake and applying the law in its proper perspective. Though such correction may cause hardship to certain employees, a Court of law cannot ignore the settled principles of law.

27. At the same time, where ex facie injustice has been meted out to certain employees and it is noticed that, despite being entitled to particular benefits, they have been deprived of the same even after submitting repeated representations, the Court, in the larger interest of justice and guided by the principles of justice, equity and good conscience, may issue necessary directions for grant of such benefits. If the plea of staleness is upheld and the petitioners' claim is not entertained, it would amount to permitting the respondents to take undue advantage of their own wrong and would result in perpetuating injustice rather than remedying it.

28. Therefore, I find merit in the petitioners' claim. Accordingly, the writ petition is disposed of by directing the respondents to grant seniority in favour of the petitioners in terms of the selection panel dated 23rd November, 1990, and to extend the notional benefits consequential thereto. The respondents are further directed to grant the petitioners the benefits under the Uniform Career Progression Scheme from the dates on which their juniors were granted

such benefits and consequential benefits including arrears of pay under the Uniform Career Progression Scheme.

29. The entire exercise should be completed within a period of eight weeks from the receipt of a copy of this order.

30. With these observations and order, the writ petition being WPA 28702 of 2022 is, thus, disposed of.

31. However, there shall be no order as to the costs.

32. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.)