

(1996) 06 CAL CK 0003
In the Calcutta High Court

Case No : Appeal from Original Order Tender No. 2613 of 1992

C.M.D.A. and Another

APPELLANT

Vs

Sudhir Brahma and Others

RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:

Calcutta Metropolitan Development Authority Act, 1972 — Section 22
West Bengal Services (Provision for Promotion Prospects of Class IV Employees) Rules, 1974 — Rule 2

Citation : 100 CWN 753

Hon'ble Judges : S.N. Chakraborty, J;S.B. Sinha, J

Bench : Division Bench

Advocate : Pradip Ghosh, Sumit Panja and Fazlul Haque, for the Appellant;
Ashoke Banerjee and Sakti Kumar Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This appeal is directed against a judgment and order dated 17th July. 1992 passed by a learned Single Judge of this Court in Civil Order No. 9165 (W) of 1989. whereby and whereunder the writ application filed by the writ petitioners-respondents claiming promotion from Group-D category to category III was allowed. The fact of the matter lies in" a very narrow compass.: The petitioner-respondents were appointed as Group-D employees by the State of West Bengal However, after formation of Calcutta Metropolitan Development Authority in terms of President Act No. XVII of 1970 which was later on repealed and replaced by the West Bengal Act No. 11 of 1972, namely Calcutta Metropolitan Development Act, 1972, their services were transferred to the appellant. By reason of a resolution adopted by the Board of directors in its 29th meeting held on 11th May 1973 which is contained in annexure "A" to the Affidavit-in-opposition, it was resolved that the employees of the appellant would be enjoying all facilities enjoyed by the State Government employees under their terms and conditions of their services excluding pension. In terms of a resolution passed in its 85th meeting held on 30th March, 1985, the authority approved the

proposal contained in Item No. 7 regarding reservation in the cadre in typist-cum-clerk with regard to promotion of Group-D employees inasmuch as such measure will be in conformity with the existing position of the State government. It may be noticed that by a notification dated 21st February, 1977, Rule 2 of the West Bengal Services (Provision for. Promotion Prospects of Class IV Employees) Rule, 1974 was amended in the following manner :-

2. Notwithstanding anything contained in any rules regulating recruitment to the Clerical Services in an Office other than a Department of the Secretariate or a Directorate under the government of West Bengal ten percent of the posts of Lower Division Clerk in such Office, shall be filled up by promotion from class IV and also from eligible class III employees of that office whose minimum educational qualification is a pass in School Final or Higher Secondary or equivalent examination. Preference shall be given to an employee who possesses the educational qualification prescribed for candidates for direct recruitment to the post of Lower Division Clerk and has rendered not less than five years continuous service as a permanent, permanent status, quasi permanent or temporary government servant in that office

Explanation - For the purpose of this rule the expression eligible class III employees shall mean all non-technical class III. Drawing pay in a scale lower than the scale of pay prescribed for Lower Division clerks/Assistants.

2. Post of clerk-cum-typist fallen vacant in the appellant's organisation. The writ-petitioners-respondent claim their right of being promoted in terms of the aforementioned notification issued by the State of West Bengal dated 21st February, 1977. Having regard to the said notification as also the resolution passed by the appellants in its aforementioned 85th meeting as mentioned hereinbefore in agenda item no. 7 that category III posts should to be filled up by the promotion of qualified Group-D employees. In terms of paragraph 2.1. of the aforementioned resolution, the authorities considered all aspects of the matter and resolved that knowledge of typing is an absolute necessity for the post of typist-cum-clerk while it is not so for the post of junior assistants in CMW & SA. It was, therefore, resolved that such persons who have put in six years of satisfactory service and having qualification of Madhyamik or equivalent examination may appear at the said test wherein they have to pass typing test at 30 words per minute conducted by selection committee. It is not in dispute that pursuant to the aforementioned resolution, typing test were conducted thrice. The writ-petitioner-respondents appeared allegedly without prejudice to their right in the said test, all along but did not come out successful. Thereafter the said writ application was filed. An affidavit-in-opposition was filed by the appellants wherein copies of the aforementioned resolutions were annexed. The learned Trial Judge without going into the question as to whether for the purpose of promotion to the post of typist-cum-clerk, typing test was an essential qualification or not, relying on or on the basis of a Division Bench decision in Appeal No. 604 of 1988. arising out of Matter No. 1426 of 1987 (C.M.D.A. v.

Pratul Chandra Ghose & Ors.) disposed of on October 3, 1991, wherein the learned Trial Judge himself was a party, allowed the writ application.

3. The short question raised in this appeal is as to whether in view of the aforementioned resolution, the writ-petitioners-respondents were entitled to be promoted to the post of clerk-cum-Typist.

4. It is not disputed that the appellant no. 1 in exercise of its power conferred upon it u/s 22 of the Calcutta Metropolitan Development Authority Act, 1972 framed regulations known as Calcutta Metropolitan Development Authority Service Regulations, 1976. The said regulations, therefore, are statutory in nature. The post of Clerk-cum-typist was created under the said Regulations. From a perusal of the proceeding of the 29th Meeting of C.M.D.A. held on Monday the 7th May, and Friday, the 11th May, 1973 as contained in annexure "A" to the Affidavit-in-Opposition. it is evident that onlby facilities enjoyed, by the State Government employees were extended to the employees of C.M.D.A. By reason of such a resolution, therefore, eligibility criteria fixed by C.M.D.A. neither had been nor could be altered. In Pratul Chandra Ghose's case (supra) the Court was concerned with the grant of interim scale of pay which despite having been sanctioned by the State of West Bengal, the appellants refused to implement It is in that context, the Division Bench held that C.M.D.A. is bound to extend the facilities of the State government employees including the grant of new interim selection grade to its own employees. It is not Court as the SLP filed by C.M.D.A. being SLP (Civil) No. 14292 of 1993, has been dismissed by an order dated 31.3.94.

5. Having heard the learned Counsel for the parties, we are of the opinion that keeping in view the aforementioned resolution, there cannot be any doubt whatsoever that the appellant no. 1 was entitled to fix the eligibility criteria for promotion from category "D" employees to Category "C" employees. The appellant no. 1 has followed the directive of the State of West Bengal insofar as it had reserved 10% of the seats to be filled up by way of promotion, but in its 85th Meeting it was clarified that such candidates must pass typing test prescribed thereby. It is also not in dispute that the writ-petitioners-respondents also appeared in the said typing test but did not come out successfully. Thus we have no doubt that word, "facility" used in its 25th Meeting by the appellant no. 1 cannot be extended to the qualification prescribed by it to which it was entitled to prescribe under its service regulations. Mr. Banerjee, learned counsel appearing on behalf of the respondents, when questioned, even could not point out that there exists any provision for relaxation of the essential qualification for promotion. It must also further be borne in mind that essential qualification, unless there exists some provisions, cannot be dispensed with and fixing up such eligibility criteria cannot come within the purview of the term, "facility".

6. For the reasons aforementioned, we are of the view that the learned Trial Judge erroneously held that the point at issue is covered by the Division Bench decision in Pratul Chandra Ghose's case (supra). However, before we part with

this matter, we may note one submission of Mr. Banerjee to the effect that as the writ-petitioners-respondents have been promoted during the pendency of this appeal as no order of stay was passed in its favour by the appeal court, they should not be disturbed. An interim order passed or refused to be passed is not binding on the Bench while disposing of the matter finally, it is an admitted position that the writ-petitioners-respondents were promoted in terms of the judgment passed by the learned Trial Judge. However, we have been assured by the learned Counsel appearing on behalf of the appellants that in the event the writ-petitioners respondents pass the typing test, keeping in view the fact that they have been working for a period of about four years, they would be promoted with retrospective effect i.e. from the date of their joining in the promoted post. We hope and trust that the Selection Committee shall hold such a typing test as early as possible.

7. For the reasons aforementioned, this appeal is allowed. The judgment and order passed by the learned Trial Judge is set aside with the aforementioned observations. In the facts and circumstances of this case, there will be no order as to costs. Xerox certified copy, if applied for urgently, should be supplied within two weeks.

S.N. Chakrabarty, J.

I agree.