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(2023) 09 CAL CK 0030

In the Calcutta High Court

Case No : W.P.A No. 6688 Of 2022

Dipankar Dasgupta & Ors. — APPELLANT

Vs

State Of West Bengal & Ors — RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:
Constitution Of India, 1950 — Article 141
West Bengal Town and Country (Planning and Development) (Amendment) Act, 2017 — Section 27A(2)(f)

Citation : (2023) 09 CAL CK 0030

Hon'ble Judges : Rajarshi Bharadwaj, J

Bench : Single Bench

Advocate : B.B.Sarkar, Iti Dutta, Priti Jain, Pratit Sarkar, Satyajit Talukdar, Piu Karmakar

Final Decision : Allowed

Judgement

Rajarshi Bharadwaj, J

1. A writ petition has been instituted, contesting the act and conduct of the respondent authorities for their failure to adhere to the established Rules and procedural norms set forth by the Kolkata Metropolitan Development Authority concerning the process of promotion. The petitioners seek to challenge the denial of the application of the stipulations outlined in the West Bengal Services (Determination of Seniority) Rules, 1981, with regard to the determination of seniority.

2. The facts of the case in brief are that that a recruitment notification, identified as no. 474/KMDA/2E-49/97(pt-III) dated 29th March, 2010 was promulgated by the respondent no.3 herein the Secretary, Kolkata Metropolitan Development Authority pertaining to the solicitation of applications for the role of Assistant Engineers across various branches under the purview of Kolkata Metropolitan Development Authority, including the Kolkata Metropolitan Water and Sanitation Authority (hereinafter referred to as 'KMW&SA') and Kolkata Metropolitan

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Development Authority (hereinafter referred to as 'KMDA'). Following this, a competitive examination was conducted in July, 2010 culminating in the publication of a unified rank/merit list. This list formed the basis upon which appointment letters were subsequently issued to candidates whose names were featured therein.

3. At the present juncture, the petitioners hold positions as engineers within the KMDA, occupying roles that encompass the designation of Superintending Engineer, Executive Engineer or Additional Chief Engineer.

4. Through Notice No. 631(5)-UD/O/M/SB/A-1/2014 dated 27.02.2014, Government of West Bengal officially communicated the propositions concerning the amalgamation of KMDA, KIT, HIT, and KMW&SA. Therefore, leading to the amendment of the West Bengal Town and Country (Planning and Development) Act, 1979, through the West Bengal Town and Country (Planning and Development) (Amendment) Act, 2017, the consolidation of the former entities, KMW&SA, HIT and KIT, with the KMDA had been effectuated, in accordance with the stipulations outlined within the aforementioned amending Act. Subsequent to this amalgamation, the personnel hailing from the said organizations had also been designated as an employee of KMDA, subject to the terms and provisions laid down in the amending Act as the communication explicitly indicated, inter alia, that the hierarchical ranking, remuneration, and retirement benefits of the amalgamated entities cannot be amended to their detriment.

5. Owing to the amalgamation, two distinct approaches were taken by the Administrative Authority of the respondent nos.2 to 5 in conferring advancements to its engineering personnel, encompassing those employed under the KMDA from their initial employment date, as well as engineers formerly engaged by a distinct statutory entity, namely the KMW&SA, from their initial employment date prior to its amalgamation with the KMDA. These actions were predicated upon the provisions articulated within the Notification dated 31st March, 2017, which become operational commencing 28th April, 2017.

6. Thus, being aggrieved by the discriminatory policy that deviated from the established merit based promotion criteria by favoring certain employees over others; the petitioners have preferred the present petition.

7. Learned counsel appearing for the petitioners submits:

I. Promotion is a right or service condition, wherein the determination of relative seniority for promotional considerations ought to adhere to the explicit terms delineated within the appointment letter. Pursuant to paragraph 9 of the said appointment communication furnished to petitioner no.3, precedence is to be ascribed in congruence with positioning within the merit list and pertinent regulations.

Consequently, the act of elevating individuals to the position of chief engineer whilst bypassing those senior in the role of engineers contravenes the promotion

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protocol established by KMDA.

II. The promotional framework ratified during the 155th and 156th meeting of the KMDA on the 26th March, 2008 and 24th June, 2008 respectively, delineates the benchmarks requisite for the elevation to the designations of chief engineer, additional chief engineer, and superintending engineer. This criteria-laden directive ought to have served as the guiding principle for all engineers under the employment of KMDA post-merger. Nonetheless, contrary to this stipulated protocol, the pre-existing modus operandi of the amalgamated authority continued to be adhered to. Thus, the adopted policy of promotion being arbitrary in nature thereby creating difference between the engineers holding the same post should not been in existence and accordingly the same is to be set aside and quashed.

III. The unreported decision relied upon by the respondent authorities passed by Hon'ble Justice Amrita Sinha in W.P. No. 15492 (W) of 2018, specifically rejected the idea of creating a unified ranking list. The rationale behind the rejection was that such an endeavor would not only be arduous but also overly burdensome. This could potentially divert authorities' resources from more productive tasks. However, the crucial point seemingly overlooked by the Learned Single Judge is that while applying these rules and regulations might present significant challenges, it should not come at the expense of promoting eligible candidates. Therefore, it is imperative to formulate a collective ranking list for engineers employed under the KMDA. The list should not differentiate between the various parent authorities under which the engineers were initially employed. Subsequent promotions should then strictly adhere to the rules outlined in the West Bengal Service (Development of Seniority) Rules, 1981.

IV. The Writ Petition being WP No. 15492(W) of 2018 was filled by an employee initially while being employed under KMW&SA. Following the merger, the employee (petitioner in WP No.15492 (W) of 2018) became an employee of the K.M.D.A. However, the decision made in the aforementioned case did not address any legal points and thus lacks the power to influence the reconsideration of the petitioner's concerns. The petitioners have subsequently requested the creation of a unified ranking list based on merit, as outlined in the Rank (Merit) List dated 17th October, 2021, reiterated in another demand dated 21st February, 2022, and finally communicated through an advocate's letter dated 16th March, 2022. However, the authority has chosen to remain unresponsive, neither rejecting the petitioners' requested rights nor referring to the previously mentioned decision.

8. Submissions of the Learned counsel appearing for the respondent nos. 2 to 5 are:

I. The authorities have made a policy decision to maintain the previous gradation lists that were in place before the merger. This decision is aimed at managing the challenges arising from the merger of the mentioned organizations with KMDA, ensuring effective administrative operations. This policy choice is both reasonable

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and logical, and it's worth noting that this decision is not being contested in the present writ petition.

II. A precedent exists where a comparable matter was presented before this Hon'ble Court in W.P No. 15492(W) of 2018. In that instance, the Learned Single Judge affirmed that the authoritative policy determination to abstain from introducing a shared gradation list, and instead maintain the pre-merger gradation list, was deemed advantageous and beneficial for both the workforce and the employees involved.

III. The proposal for merger explicitly states that the gradation list, salary, and pension benefits of the organizations to be merged must not be modified to their detriment. As a result of the decision not to merge the gradation list, the advancement opportunities for employees of both KMDA and the former KMW&SA are being managed independently in accordance with the pre-existing policy prior to the merger.

IV. The stipulations outlining the qualifications for elevation to the positions of Chief Engineers, Additional Chief Engineers, Directors, and Additional Directors within the planning cadres were disseminated through Memorandum No. 616/ KMDA/2E-4/2008 dated 17th June, 2022. KMDA has not exhibited any arbitrary or discriminatory conduct towards the personnel of these entities. The governing body has consistently refrained from obstructing their access to promotional opportunities within their respective engineering cadres.

9. On perusal of the documents brought to the Court and considering the submissions made on behalf of the parties, this Court finds that the respondent authorities are obligated to formulate a consistent promotion roster in accordance with the resolutions made during the 155th and 156th meetings convened on 26th March, 2008, and 24th June, 2008, respectively. This action should be carried out without making distinctions based on the original affiliation of the employee to a particular parent organization. By establishing a unified gradation list founded on the principle of merit as indicated in the AE (Civil) Rank (merit) List, strict adherence will be ensured in accordance with the guidelines stipulated in the West Bengal Services (Determination of Seniority) Rules 1981.

10. The respondent authorities seem to have overlooked the the background note of the notification dated 27th February, 2014 outlining the proposal to merge all three organizations with KMDA wherein it has been clearly stipulated that due consideration must be given to the divergent gradation lists, salary structure and pension benefits of these organizations. It is imperative that the existing gradation lists, inter se, seniority of staffs and other officers across various categories remain unaffected in order to avoid any detriment. The prevailing circumstance underscore the significance of consolidating the gradation list, as maintaining separate lists has not only led to disputes where junior employees have leapfrogged their senior counterparts through promotions, but has also impeded the operation of the office.

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11. Further, the respondent authorities shall realise that reasoning of one decision cannot be applied in another case in the absence of parity of situation or circumstance. Therefore, the order passed by the learned Single Judge in WP 15492 (W) of 2018, cannot be the sole basis for non-compliance with the policies formulated for promotion of employees in the KMDA as the said decision has no binding effect in deciding the petitioners grievances.

12. The Supreme Court in Regional Manager v. Pawan Kumar Dubey reported in (1976) 3 SCC 334 held that:

"It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some consequences based upon the facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases, even when the same principles are applied in each case to similar facts. "

13. It has also been observed by the Supreme Court in State of U.P and another v. Synthetics and Chemicals Ltd and another reported in (1991) 4 SCC 139 that:

"A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent."

Therefore, for the purpose of have a binding precedence materials must be of the nature as would satisfy the doctrine of ratio decidendi. In the present case, the subject matter of the order relied by the respondent authorities and the instant writ petition are completely different. The ground taken by the Learned Single Judge in W.P. No.15492(W) of 2018 that maintaining separate gradational lists would be beneficial for the employees is, rather being detrimental to the senior employees in the KMDA. Furthermore, in accordance with the promotion policy established by KMDA, employees shall adhere to such policy, contingent upon the gradation list formulated based on merit, in case of its non-availability, promotion should be determined based on seniority, taking into account the date of joining. It is crucial to emphasize that in accordance to Section 27A (2) (f) of The West Bengal Town and Country (Planning and Development) (Amendment) Act, 2017 which says that:

"All officers and other employees of the Authority continuing in office immediately before the date of the repealing of the Kolkata Metropolitan Water and Sanitation Authority Act, 1966, shall be deemed to be employed by the Development Authority on such terms and conditions not being less advantageous than what they were entitled to immediately before the said date"

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It is incontrovertible that all personnel hailing from the consolidating entities are now under the employment of KMDA and consequently, are duty-bound to adhere to the statutes and mandates set forth by KMDA.

14. Moreover, in a resolution passed by the Finance Department, Audit Branch, Government of West Bengal, as delineated in Memo No. 3161 F(P) dated 7th June, 2014. Specifically within the context of paragraph 5 (2) and its second proviso, it has been stipulated that employees, in the event of cessation of their functioning, shall retain all the benefits previously enjoyed in their originating organization, with the sole exception being promotion. Thus, the employees of the merged organization cannot take undue advantage of the maintenance of separate promotion policies, thereby making it imperative to uphold a common gradation list ensuing equal treatment for all employees within the four organizations.

15. Therefore, this Writ Petition raises the question of whether it's permissible to have two concurrent promotion policies operating simultaneously under the same governing body, taking into account the parent authority's policy even when the parent authority is defunct. As there are conflicting precedents on this matter, it is imperative that a Larger Bench examines and adjudicates the issue.

16. WPA 9595 of 2023 is accordingly allowed and disposed of by directing that the matter be placed before the Hon’ble Chief Justice for Constituting a Larger Bench to answer the reference as indicated above.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

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