
(1989) 06 CAL CK 0005
In the Calcutta High Court
Case No : C. O. No. 3370 (W) of 1987

Kajal Kanti Dasgupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 94 CWN 511

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Shaktinath Mukherjee and sicpan Kumar Dutta, for the Appellant;
Mukul Prakash Banerjee and M. Chowdhury, for the Respondent

Judgement

Kalyanmoy Ganguli, J.—in this application under Article 226 of the Constitution of India two orders dated 30th December, 1986 and 31st December, 1986 issued by the respondent No. 3 being Annexures "G" and "H" to the writ petition have been challenged. The Howrah Municipal Corporation inter alia has two departments viz., Assessment Department and Engineering Department. The medium categories of employees may be posted either in the Assessment Department or the Engineering Department and the corresponding posts in the two departments are interchangeable.

2. Mr. Tapan Dutta learned advocate appearing for the petitioner has submitted a chronological chart from which the entire case of both the petitioners and the respondents can be spelt out.

3. The respondent No. 6 joined the Howrah Municipal Corporation on 7th January, 1957 as an Amin in the Assessment Department and on 16th January, 1961 the respondent" No. 6 was promoted to the post of Ward Surveyor in the Assessment Department. On 1st of June, 1961 the petitioner was appointed as the Ward Surveyor in the Assessment Department when the respondent no. 6 was also continuing as Ward Surveyor in the same department. In June 1965 the respondent no. 5 was appointed as a Ward Surveyor in the Engineering

Department in the same scale of pay as the petitioner and respondent no. 6. And in June, 1965 the petitioner and the respondent nos. 5 & 6 were all working as Ward Surveyors, the petitioner and the respondent no. 6 working in the Assessment Department and the respondent no. 5 working in the Engineering Department. On or about 1st April, 1967, the respondent no. 5 who was the juniormost incumbent was promoted to the post of Building Inspector/Overseer in the Engineering Department. On 19th November, 1968 the petitioner was ordered to function as Assistant Assessor in the Assessment Department and on that date the respondent no. 5 was continuing in his promoted post of Building Inspector/Overseer and the respondent no. 6 was continuing in the lower post of Ward Surveyor in the Assessment Department. On 1st April, 1970 the petitioner was again ordered to function as Assistant Assessor in the Assessment Department while the respondent nos. 5 & 6 were continuing in their respective posts as stated hereinbefore. On 19th December, 1977 the petitioner was promoted to the post of Overseer, Roads in the Engineering Department while the respondent no. 5 was continuing as Overseer in the Engineering Department and the respondent no. 6 was continuing in the lower post of Ward Surveyor in the Assessment Department. On 29th July, 1978 the petitioner was promoted to the post of Assistant Assessor on officiating basis in the Assessment Department while the respondent no. 5 was continuing as Overseer in the Engineering Department and the respondent no. 6 was continuing as Ward Surveyor in the Assessment Department. On 27th March, 1980 the petitioner was promoted to the post of Assistant Assessor in the Assessment Department substantively while the respondent nos. 5 & 6 were continuing respectively in the post of Overseer in the Engineering Department and Ward Surveyor in the Assessment Department. On 13th May, 1980 the respondent no. 6 was promoted to the post of Assistant Assessor in the Assessment Department and on 13th October, 1983 the respondent no. 5 was promoted to the post of Assistant Assessor in the Assessment Department. On 1st February, 1984 the petitioner was working as Assistant Assessor in the same scale of pay. On 31st July, 1986 the petitioner was continuing as the Surveyor Superintendent in the Engineering Department equivalent to the post of Assistant Assessor while the respondent no. 5 was continuing as Assistant Assessor in the Assessment Department but the respondent no. 6 was ordered to take charge of the post of Deputy Assessor in addition to his own duties with effect from 1st August, 1986 in the Assessment Department. On 1st January, 1987 the petitioner was continuing in the post of Survey Superintendent in the Engineering Department whereas the respondent no. 5 was promoted to the post of Assistant Engineering in the Engineering Department by the order impugned in writ petition which post is equivalent to that of Deputy Assessor and by an order dated 31st December, 1986 the respondent no. 6 was also promoted to the post of Deputy Assessor in the Assessment Department and this order has also been, impugned in the writ petition.

4. It may be noted here that a on 1st June, 1961 both the petitioner and the

respondent no. 6 were working as Ward Surveyor but the petitioner was ordered to discharge the functions of Assistant Assessor with effect from 19th November, 1969 and thereafter was promoted to the post of Overseer, Roads in the Engineering Department with effect from 19th December, 1977 when the respondent no. 6 was still continuing as Ward Surveyor even on 27th March, 1980 when the petitioner was promoted substantively to the post of Assistant Assessor, the respondent no. 6 was still continuing as Ward Surveyor. The respondent no. 5 came into the picture for the first time in June, 1965 as Ward Surveyor. From the aforesaid chronological list it appears that the petitioner had the grade seniority in the post of Ward Surveyor and as such was senior in the feeder post. The petitioner was first promoted to the post of Assistant Assessor on officiating basis on 29th July, 1978 and substantively with effect from 27th March, 1980 when the respondent no. 5 was continuing as an Overseer, the respondent no. 6 was still wallowing in the post of Ward Surveyor.

5. It is not known how suddenly by the orders impugned in the writ petition the petitioner was superseded by the respondent nos. 5 & 6 in the post of Deputy Assessor equivalent to the post of Assistant Engineer. I have tried to find out a common denominator to the actions taken by the authorities concerned but in spite of my anxious consideration given to the matter I was unable to find any method in the madness in the scheme of promotions.

6. It is now June, 1989 and the respondent nos. 5 & 6 were promoted on 1st January, 1987 and have discharging duties in the post of Assistant Engineer and Deputy Assessor since that date. Although the petitioner has been superseded and his position must be protected yet I do not want to introduce any greater anomaly in the matter than has already been caused by the municipal authorities themselves.

7. It will not be very kind to give a direction for demotion of either the respondent no. 5 and respondent no. 6 also as that will be visited with monetary consequences.

8. In the circumstances, I dispose of this rule by passing the following order. The authorities are directed to give promotion to the petitioner with effect from the 30th December, 1986 to the post of Assistant Engineer/Deputy Assessor and his name be placed above the names of respondent nos. 5 & 6 and he will be treated as senior to both the aforesaid respondents in the said post. If necessary, the municipal authorities will create super numerary posts to accommodate the petitioner if no vacancy exists in the post of Assistant Engineer/Deputy Assessor. The municipal authorities are also directed to pay to the petitioner the difference of pay and allowances which would have been admissible to the petitioner in the post of Deputy Assessor/Assistant Engineer with effect from 1st January, 1987 within 12 weeks from the date of communication of this order.

The application is disposed of as above but in the circumstances of the case there will be no order as to costs.