

(2011) 08 CAL CK 0073
In the Calcutta High Court

Case No : Writ Petition No. 8020 (W) of 2008 and CAN No. 4116 of 2010

Pradip Kumar Roy and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Citation : (2011) 08 CAL CK 0073

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Debjani Sengupta and Prasenjit Saha, for the Appellant; Partha Sarathi Basu and Satyajit Talukdar for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—In this Writ Petition, 16 Petitioners have prayed for setting aside the Order dated 29.2.2008 as contained in the enclosure to the letter dated 6.3.2008 (Annexure-P/9) whereby and whereunder and, in purported compliance of the Order dated 31.7.2007 passed in W.P. 27417 (W) of 2006, the Secretary of the Kolkata Metropolitan Development Authority refused to allow the prayer of the Petitioners pertaining to restoration of their original position in the Gradation List of the Typist-cum-Clerks prior to the issuance of Memo dated 18.2.1985 plus consequential benefits.

The Petitioners have also prayed for quashing of the Memo dated 18.2.1985 as contained in Annexure-P/1 and for the issuance of a Writ of Mandamus directing the authorities to restore their position from Sl. Nos. 295 to 329 in the provisional Gradation List together with all service benefits.

2. In CAN 4116 of 2010, the Applicant is one Dhananjay Bhattacharya who is also the Petitioner No. 6 in the Writ Petition. He has, in this Application, has prayed that the authorities be directed to regularise his services as a Muster-roll employee on the post of a Typist-cum-Clerk w.e.f. 1.8.1979 and grant him of

salary, allowances etc. which are admissible and attached to a such post w.e.f. the said date. This Petitioner has further prayed for an Order commanding upon the Respondents and specially, the Respondent Nos. 2 to 4, to create a Super Numerary Post of Senior Assistant w.e.f. 1.8. 1983 to 7.10.1987 in the scale of Rs. 380 to 910 under ROPA 1991 (since revised to Rs. 1260-2610 under ROPA 1991) and, subsequently, to Rs. 4000-8850 under ROPA 1998, and to accommodate him on that post with retrospective effect from 1.8.1983. The Petitioner No. 6 has also prayed that the Respondents be directed to regularise his services according to his placement as a Typist-cum-Clerk w.e.f. 1.8.1979 and, on the post of a Senior Assistant w.e.f. 1.8.1983 and, to grant him salary, allowance etc. in the pay scale of Rs. 380 to 910 under ROPA 1981 (since revised to Rs. 1260-2610 under ROPA 1991) and subsequently, to Rs. 4000-8850 under ROPA 1998. This Petitioner No. 6/Applicant has made a further prayer for an Order of injunction restraining the Respondents from finalising and/or publishing the final Gradation List of Senior Assistants in the Kolkata Metropolitan Development Authority which was published in terms of the provisional Gradation List dated 11.8.2009 and also restraining them from giving effect to the said provisional Gradation List till his case is considered for regularisation of services as Typist-cum-Clerk w.e.f. 1.8.1979.

FACTS PLEADED

3. Through a selection process held in 1979, the Petitioners were appointed as Typist-cum-Clerks (T.C. Cs. for short) and thereafter, they joined and were confirmed on the post in question in the Kolkata Metropolitan Development Authority (KMDA for short). In para-14, they have stated that since the time of their date of appointment (i.e. since 1979), they were awaiting for the preparation of a Gradation List of T.C. Cs in respect of their inter se position qua the Merit Panel prepared in 1979 but no such Gradation List was ever prepared. However, suddenly, on 18.2.1985, the KMDA issued a Memo (Annexure-P/1) dated 18.2.1985 by which they informed and stated that in view of a number of objections being received from some T.C. Cs regarding their positions, their cases were examined and it was found that the positions of some T.C. Cs recruited directly in the year 1978 had not been fixed in the provisional Gradation List according to their positions in the Merit List and therefore, after careful consideration of the matter, it was decided that a block of 34 T.C. Cs beginning with the name of Amal Kumar Chakraborty (SI. No. 330) and ending with the name of Subhas Chakraborty (SI. No. 363) of the provisional Gradation List of T.C. Cs should be positioned just below Mrs. Aparna Dutta (SI. No. 294) and just above Sankar Bose (SI. No. 295) of the provisional Gradation List of the T.C. Cs. According to the Petitioners, the Memo No. of the said provisional Gradation List which was enclosed along with the Memo dated 18.2.1985 (Annexure-P/1) and which was 489/CMDA/2E-137/84 dated 18.2.1985, was never published nor circulated.

Their further grievance, as stated in Paras-7 and 8, is that before such a

modification was made by the impugned Memorandum dated 18.2.1985, these Petitioners were placed above this bunch of 34 T.C. Cs as they were between Sl Nos. 295 to 329 and therefore, they were above the bunch of 34 T.C. Cs who were between Sl. Nos. 330 to 363 but because of the Memorandum dated 18.2.1985 (Annexure-P/1), they were degraded because this bunch was placed just below Sl. No. 294. In other words, they were virtually ousted from the Gradation List causing serious prejudice to their rights as they were bypassed by persons who were below them in the Merit Panel of 1979. Moreover, by reason of such placement of 34 T.C. Cs., they got the benefit of upgradation on the post of Senior Assistants in the ratio of 1:1 in 1985. The Petitioners have stated that they have reasons to believe that everything was pre-planned and was done to accommodate these 34 T.C. Cs. to their prejudice. No Notice was ever served upon the Petitioners nor any opportunity of hearing was given and the entire matter was done behind their back without disclosing the original merit panel which was prepared in the year 1979. Various Representations were made vide Annexure-P/2 but the authorities kept silent over the matter and never published the final Gradation List of the T.C. Cs. who were appointed in 1979. Once this trouble started, the Respondent authorities did not pay any heed to their Representations and thereafter on the basis of the modified impugned Gradation List of 1985, the next provisional Gradation List was published in 1996 finalising the same on 5.2.2001. Thereafter, provisional Gradation List for Senior Assistants was also published in 1993. The Petitioners objected to the publication of such a provisional Gradation List of Senior Assistants but even those objections were not considered.

4. Under the aforementioned circumstances, the Petitioners filed a Writ Petition before this Court being W.P. No. 27417 (W) of 2005 which was disposed of on 31.7.2007 with the following observations and directions:

Considering the fact that this pertains to an anomaly in the gradation list, this Court is of the view that the Respondents should be directed to first deal with this matter. Accordingly, the Petitioners are given liberty to file a fresh representation before the Secretary, K.M.D.A. within a period of four weeks from today. If such a representation is filed, the said Authority will deal with the same and shall pass a reasoned order strictly in accordance with law and within a period of ten weeks from the date of receipt of the said representation. The said order should be communicated to the Petitioners within three weeks thereafter. It goes on without saying that before passing any order, the concerned Authority shall give an opportunity of hearing not only to the Petitioners but also to all other persons who are likely to be affected by any order that may be passed. Since this Writ Petition has been disposed of in the manner indicated above without calling for any Affidavit from the Respondents, none of the allegations, if any made against the Respondents, will be deemed to have been accepted by any of them.

(Quoted)

5. Pursuant to the said Order, the Petitioners filed a Representation on 14.8.2007

along with all necessary documents wherein they highlighted the issues mentioned in Para-14 of the Writ Petition. The said Representation/Objection is Annexure-P/5 at Page 67 of the Writ Petition.

The said Representation remained dormant for quite some time as a result whereof, the Petitioners sent a reminder on 21.8.2007 vide Annexure-P/6. On 23.11.2007, the Petitioners were informed and were asked to be present before the Secretary, KMDA on 14.12.2007 for hearing. They accordingly appeared on the said day but they were not given any opportunity of hearing and on the contrary and as has been stated in Para-20, were told that nothing will be done and that the bunch of 34 persons who were already given the benefit of placement below Sl. No. 294 and above Sl. No. 295 would remain as such. The Petitioners again requested that they be first shown the Merit Panel of 1979 but it was not shown to them. Thereafter, the Respondent authorities kept silent over the issue and after the lapse of about three months, sent a Notice under the Contempt of Courts Act vide Annexure-P/8 stating inter alia that in the event no Order was passed, the Petitioners would take appropriate action under the Contempt of Courts Act.

6. It was thereafter that the Petitioners received the impugned Order dated 29.2.2008 along with a forwarding letter dated 6.3.2008 rejecting the submissions of the Petitioners.

7. An Affidavit-in-opposition has been filed wherein a preliminary point has been raised with regard to the maintainability of the Writ Petition on the ground of non-joinder of the block of 34 persons who, according to the Petitioners, were wrongly placed above them. The Respondents have submitted that if any Order is passed, it would affect them and therefore, without hearing those 34 persons, no relief can be granted to the Petitioners. They have further stated that the Gradation List was published in 1985 but the first Writ Petition was filed in the year 2006 i.e. after a delay of 21 years and because of such inordinate delay, it cannot be assumed that they were not aware of the Gradation List published in 1985. They did not choose to approach the High Court during that period and therefore, such inordinate delay cannot be overlooked on the ground that they were making successive representations.

8. They have further stated that a recruitment process was initiated in the year 1979 to fill up some vacant posts of T.C. Cs in the erstwhile CMDA (now KMDA). They have stated that as per Office records, the letters of appointment to 1980 successful candidates selected through that recruitment process were first issued on 13.10.1979 and presumably to other selected candidates also. Those candidates who were selected began joining on the post of T.C. Cs. They have further stated that as per their Office records, there was a provisional Gradation List of T.C. Cs. who were already appointed and working in the CMDA (now KMDA) and the first name in the said Gradation List was of one Prabir Kr. Paladhi who had joined on 16.7.1973 and the last name of Bhabatosh Saha at Sl. No. 263 and who had joined on 1.3.1979. Therefore, according to them, candidates

recruited in 1979 and who had joined after 13.10.1979 began to be featured in the said Gradation List from Sl. No. 264 and the first name featured at Sl. No. 264 was of Sankar Kr. Ghosh and the last name at Sl. No. 382 was that of Chandana Banerjee. Representations were even received in 1984 from more than a dozen T.C. Cs. who were appointed through the recruitment process of 1979 and these Representations were considered. It was found that the inter se seniority with reference to the selected panel position prepared on merit was correct up to Aparana Dutta at Sl. No. 294 but the mistake occurred in fixing the actual inter se seniority of the entire block of 34 T.C. Cs. who were placed between Sl. Nos. 330 to 363. As per the selected panel position, those T.C. Cs. who featured from Sl. No. 295 to Sl. No. 329 ought to have been positioned after the entire block of 34 T.C. Cs. were placed serially just below Aparna Dutta and just above Sankar Bose and accordingly, the modified Gradation List which has been sought to be impugned, was prepared and circulated on 18.2.1985.

9. These Respondents have stated further that the Writ Petitioners were promoted to the post of Senior Assistants in terms of the modified Gradation List and all of them joined without raising any objection whatsoever. The Applicant of 34 T.C. Cs. were also promoted to the post of Senior Assistants and even then, there was no objection. They have further stated that a final Gradation List of Senior Assistants incorporating the names of the Writ Petitioners including other concerned persons were published on 23.12.1999 and some of those Senior Assistants who were promoted from the post of T.C. Cs. retired in the meantime on superannuation. Therefore, it should be deemed that the relevant Gradation List is now settled in view of the actions taken.

10. A Reply has been filed repeating and reiterating the submissions and statements made in the Writ Petition denying and disputing the contentions of the Respondents to the effect that the provisional Gradation List was published and circulated. They have stated that no opportunity of hearing was given while publishing the modified Gradation List.

11. There is absolutely no reason not to accept the contentions of the Respondents. Firstly, this Court is inclined to accept the submissions to the effect that a block of 34 persons whose placement has been challenged can certainly suffer if any Order is passed in favour of the Petitioners. Strangely, they have not been made parties in the Writ Petition and accordingly after such a long period of time, they cannot be allowed to suffer specially when, some of them have retired after having been promoted as Senior Assistants. The other aspect is that the cause of action apparently arose in 1985 and the first Writ Petition was filed in 2006 after a delay of about 21 years. Many people in the meantime have retired and therefore the contentions of Ms. Debjani Sengupta to the effect that it is not necessary to implead everyone when the Order of authority is under challenge, is totally misconceived.

12. Under the aforementioned circumstances and for the foregoing reasons, this Court does not find any reason to interfere at this stage because if anything is

done after such a long period of time, it may have serious consequences by seriously affecting such persons referred to above.

The Writ Petition is therefore Dismissed. As a consequence, CAN 4116 of 2010 is also dismissed.

There shall however, be no Order as to Costs.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.