
(2007) 12 CAL CK 0019
In the Calcutta High Court
Case No : W.P.S.T. No. 511 of 2006

Purnendu Sekhor Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Citation : (2008) 116 FLR 1120

Hon'ble Judges : Manik Mohan Sarkar, J;K.J. Sengupta, J

Bench : Division Bench

Advocate : Mohinoor Rahaman, for the Appellant; S. Dasgupta and Runce Mukherjee, for the Respondent

Judgement

K.J. Sengupta and Manik Mohan Sarkar, JJ.—This application is against an order of the learned Tribunal dated 16th March, 2006. By the order impugned, the learned Tribunal did not grant any relief, as prayed for. The short facts of the case giving rise to filing of the present proceedings is as follows:

2. Since 28th June, 1974 the applicant has been working in the post of Compositor in the printing press of West Bengal police. He was upgraded to Grade-I Compositor with effect from 1st April, 1981 in the same office with higher scale of pay and he has been working as such. In the said press, the regular Printer retired on 30th April, 1997. It was the expectation of the applicant that he would be promoted to the post of Printer as a matter of course. In expectation, the applicant claims, he was asked to look after the work of the press in absence of the Printer. So, on the basis of this fact, he prayed before the authority concerned to give him appointment to the post of Printer. However, his prayer was not heeded to.

3. So, the applicant approached the learned Tribunal in 1998 with his application being O.A. No. 4786 of 1998, asking for promotion to the post of Printer. The learned Tribunal was pleased to dispose of the matter on 5th November, 1998 with a direction upon the respondent authority to consider the petitioner's

representation and to pass a speaking order within the time, fixed by the learned Tribunal.

4. The petitioner's case was considered by a speaking order by the Director of I.B., W.B. and he concluded as follows:

It, however, remains a fact that considering the present work-load in the press in Intelligence Branch, West Bengal Shri Mondal can be accommodated as a Printer without detriment to the functioning of the Press.

5. It is, thus, clear that the said authority was of the view that the applicant was competent to discharge the duty as Printer and as such, to hold the said post. It is an admitted position that the aforesaid post of Printer is still there and has not been abolished. The said recommendation was made by passing a speaking order, as above, on 4th February, 1999. In spite of the said recommendation, nothing was done by the respondents; so the applicant approached the learned Tribunal again with the application being O.A. No. 16 of 2001 on which the impugned order has been passed.

6. It is again admitted fact that the aforesaid speaking order was not challenged by the State respondents. So, in our view, the findings and recommendations of the said authority is binding upon both the parties. It is also admitted position that no rule relating to the method of filling up the post of Printer has been finalised or at the time of passing of the said speaking order, there was no such Rule framed.

7. When the matter was heard by the learned Tribunal on 16th March, 2006, it transpired from records that the methodology for filling up of the post of Printer was formulated and the same has been sent for approval. But this has not been given effect, as fairly submitted by Mr. Dasgupta. Mr. Dasgupta submits that when the speaking order was passed by the Director, I.B., W.B., there was considerable work-load in the press of Intelligence Branch, so the post of Printer was required to be manned by a suitable person and in that context, the aforesaid speaking order was passed. At present, he says, there is no work-load and as such, there is no necessity to man the said post now.

8. We are of the view that whether there exists workload or not, is not the criteria or the issue. Admittedly, the post of Printer is a substantive post and it has not been abolished as yet. In any establishment, at any point of time there may be large volume of work and there may not be, but that does not mean that the post should be kept Vacant. So, we are not impressed with this argument of Mr. Dasgupta that the recommendation of the Director, I.B., W.B. should be ignored.

9. We are of the view, when the Director, I.B., W.B. has found that the applicant was suitable for the aforesaid post of Printer, he should have been appointed then and there as the aforesaid speaking order was not challenged by the State. This speaking order is not an order of the department itself, but has been passed

pursuant to the solemn order of the learned Tribunal and it partakes the character of judicial pronouncement. We, therefore, hold that the applicant is entitled to hold the post of Printer in view of the findings of the Director, I.E, W.B. The aforesaid factual and legal position has been totally overlooked by the learned Tribunal. The learned Tribunal has failed to understand the implication of the order of the Director, I.B., W.B. as such, the order of the learned Tribunal is not supportable. Hence the same is set aside.

10. We, accordingly, direct the respondents to appoint the applicant in the post of Printer on ad-hoc basis. Such appointment shall be made within a period of fortnight from the date of communication of this order and this order will be effective prospectively. Obviously, the applicant will get salary and all other benefits.

The moment, the rule relating to filling up of the said post of Printer is finalised by the Government and it is decided to fill in the said post in accordance with the said Rule, then the applicant shall be allowed to participate in the selection process along with other eligible candidates and in the process if the applicant is selected, he will be given permanent status. Till such recruitment is made, in terms of this order the applicant will function as Printer and will get All benefits admissible to the said post on ad-hoc basis.

11. Affidavit in opposition and affidavit in reply filed today are kept with record.

This application is, thus, disposed of. Urgent Xerox certified copy of this order, if applied for, be supplied to the applicants.