
(2020) 05 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 1719 (W) Of 2016

Sudeb Mahato & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 16(4A)

Citation : (2020) 05 CAL CK 0017

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Tarun Kumar Ray, Biplab Ranjan Bose, Arnab Ray, Sirsanya Bandyopadhyay, Sudeshna Das Mazumder, Susanta Pal

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The petitioners are serving as Upper Division Assistants in the courts/ departments under the judgeship of Dakshin Dinajpur. They belong to the Scheduled Tribes and Scheduled Castes community.

They are aggrieved by the act of the District Judge, Dakshin Dinajpur by denying them the benefit of consequential seniority by promotion in the final gradation/ seniority list of Upper Division Assistants as on 1st August, 2017.

According to the petitioners their names ought to have been placed in the 2nd and 4th position respectively in the gradation list in accordance with the 50-point roster but their names have been erroneously placed in the 14th and 15th position of the gradation list.

The petitioners submit that the same is contrary to the West Bengal Scheduled Castes and Scheduled Tribes (reservation of vacancies in services and posts) Act, 1976 (Act of 1976) and Article 16(4A) of the Constitution of India.

Challenging the denial on the part of the respondent to grant promotion in the

post of Upper Division Assistant in accordance with the reservation policy of the State, the petitioners preferred a writ petition before this court being W.P. 22752 (W) of 2010. The said writ petition was disposed of by a judgment dated 1st April, 2015. The court observed that from the preamble it is explicit that the Act has been promulgated to ensure adequate representation of the backward classes. Upon considering and ascertaining the elements of backwardness and inadequacy of representation, the State by the said Act has provided for reservation both in respect of direct recruitment and also for promotion, without any compromise with the efficiency of administration. The court was of the opinion that the respondents have not followed the mandatory provisions of the Act of 1976.

The respondents were directed to recall the orders being nos. 176 and 177 dated 30th July, 2010 and 3rd August, 2010 respectively and to take immediate steps towards grant of promotion to the petitioners in the post of Upper Division Assistants to the vacancies earmarked for Scheduled Castes and Scheduled Tribes with effect from 3rd August, 2010 and to grant consequential benefits to the petitioners from the aforesaid date.

In compliance of the order passed by the court the petitioners were duly promoted to the positions earmarked in terms of the 50-point roster and by order no. 421 dated 24th September, 2015 the District Judge, Dakshin Dinajpur categorically mentioned that the petitioners were entitled to all consequential benefits as per the service rules with effect from 3rd August, 2010 in accordance with the order passed by the court however, subject to the result of the appeals being nos. MAT 793 of 2015 and MAT 1183 of 2015.

It has been submitted by the parties that the aforesaid two appeals are sub judice till date.

The petitioner no. 2 by a letter dated 20th March, 2017 made a representation before the District Judge indicating that though the direction passed by the Hon'ble Court on 1st April, 2015 has been implemented but no gradation list has been published in the cadre of Clerk-III/UDC and LDC. A prayer was made for publication of the gradation list. The petitioner was informed that the gradation list will be published in due course of time maintaining the prevailing government rules and orders.

A draft gradation/seniority list of clerks in the judgeship of Dakshin Dinajpur as on 1st August, 2017 was published. The petitioners being aggrieved by the same made representation before the learned District Judge by letter dated 25th August, 2017.

A final gradation/seniority list of clerks was published by the District Judge of Dakshin Dinajpur on 4th September, 2017. The office order by which the final gradation list was published mentioned that the same has been prepared by giving due regard to the applications made by the petitioners. In the final gradation list the names of the petitioners appeared at serial nos. 14 and 15.

According to the petitioners their names ought to appear against serial nos. 2 and 4 respectively. The petitioners through their learned advocate demanded justice from the respondent authority by filing representation by letter dated 9th December, 2017. As the representations of the petitioners have not been considered by the respondents till date the petitioners have filed the instant writ petition.

The primary contention of the petitioners is that as the court on the earlier occasion categorically held that they will be entitled to all consequential benefits and the reservation policy shall be applicable in case of promotion, accordingly, the position of the petitioners in the gradation list are liable to be changed.

The petitioners have prayed for cancellation of the final gradation/seniority list of clerks impugned herein and have prayed for publication of a fresh revised gradation/seniority list.

The petitioners have relied upon the judgments delivered by the Hon'ble Supreme Court in the matter of Union of India & Ors. -vs- Virpal Singh Chauhan & Ors. reported in (1995) 6 SCC 684 (paragraphs 2, 23 and 24), Jagdish Lal & Ors. -vs- State of Haryana & Ors. reported in (1997) 6 SCC 538 (paragraph 17), Ajit Singh & Ors. -vs- State of Punjab & Ors. reported in (1999) 7 SCC 209 (paragraph 94) and Dipak Bandopadhyay -vs- Kolkata Metropolitan Development Authority reported in (2018) 3 CHN (Cal) 257 (paragraph 29) in support of their case.

The respondents, on the other hand, submit that in compliance of the order passed by the court the petitioners have been duly promoted to the post of Upper Division Assistants with effect from 3rd August, 2010 with all consequential benefits. It has been submitted that the gradation/seniority list and the roster for promotion are not the same thing. Publishing seniority list is a routine work for the administration and it is updated and modified from time to time. The roster for promotion is an internal document and the same is maintained by the promotion giving authority. The petitioners have been given the benefit of promotion both at the initial stage as well as at the time of promotion. No prejudice has been caused to the petitioners in any manner whatsoever by way of publication of the final gradation list.

The respondents rely on the decision delivered by the Hon'ble Supreme Court in the matter of Ajit Singh Januja -vs- State of Punjab reported in (1996) 2 SCC 715 (paragraph 16) in support of their case.

I have heard the submissions made on behalf of both the parties.

The fact that the petitioners being members of the Scheduled Castes and Scheduled Tribes communities are entitled to reservation at the time of promotion has already been decided by the judgment dated 1st April, 2015 delivered by a coordinate Bench of this court in the earlier writ petition filed by the petitioners. In fact, there is hardly anything new to be decided in this case.

The issue is already at rest, for the present. The respondents have acted and implemented the direction passed by the court, subject however, to the result of the pending appeals. As long as the said order is not set aside and/or modified by the Hon'ble Appeal Court the same holds the field.

There is hardly any quarrel with the fact that the petitioners are entitled to be given the benefit of reservation at the time of promotion. The authority has never contended that the petitioners will not get the benefit of reservation at the time of promotion. It is the definite case of the respondent that the benefit of reservation has been duly given to them at the time of promotion. But it appears that at the time of publication of the gradation list the names of the petitioners have not been placed in the positions reserved for them.

A five judge Bench of the Supreme Court in *Ajit Singh & Ors. (II)* (supra) overruled the decision passed in *Jagdish Lal* (supra) and affirmed the decision passed in *Virpal Singh Chauhan* (supra) and *Ajit Singh Januja* (supra) and held that the roster point merely becomes operative whenever a reserved vacancy becomes available. Once such vacancies are filled up the roster has worked itself out (paragraph 42).

The court in the matter of *Dipak Bandhopadhyay* (supra) held that a gradation list is a seniority list in which the seniority of an employee is generally indicated. A gradation list is to be prepared in accordance with the principle of seniority. An employee has the right to know his position as against other employees so that he may locate the precise seniority position at any point of time. In the said matter the court relied upon a decision of the Hon'ble Supreme Court in the matter of *Union of India -vs- H.R.Patankar* AIR 1984 SC 1587 wherein it was observed that a gradation list has to be prepared in accordance with the principle of seniority.

The Constitution Bench decision of the Hon'ble Supreme Court in the matter of *Ajit Singh Januja* (supra) clinches the issue that reservation is also available at the time of promotion.

In view of the law laid down by the Supreme Court the respondent authority is duty bound to act in accordance with the order passed by this court on 1st April, 2015 and place the petitioners in their appropriate earmarked position in the gradation list.

The District Judge, Dakshin Dinajpur is accordingly directed to review the case of the petitioners and take necessary steps to place the petitioners in their respective positions in the gradation list, by granting them the benefit of reservation. If required, the final gradation list shall be modified, keeping in view the position of the petitioners in the 50-point roster. Steps shall be taken by the said respondent within a period of eight weeks from the date of communication of a server copy of this judgment. In the event the said respondent is of the opinion that there is no error in the gradation list, the said decision, supported by reasons, shall be communicated to the petitioners immediately thereafter.

W.P No. 1719 (W) of 2018 is disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.