
(2016) 01 CAL CK 0113
In the Calcutta High Court
Case No : Writ Petition No. 27752 (W) of 2015

Swapan Kumar Mitra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 WBLR 183

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Mr. Amitava Chowdhuri, Mr. M. Chowdhury, Mr. Nirmalya Roy, Advocates, for the University; Mr. Indranil Chakraborty, Mr. Suryasarathi Basu, Advocates, for the Petitioner; Mr. Saikat Chatterjee, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Debangsu Basak, J. - In this writ petition, the writ petitioner has challenged the writing dated May 18, 2015 negating his prayer for extra remuneration as well as promotion to the post of Assistant Librarian (Officer).

2. According to the writ petitioner, he was working as superintendent (library service). He was officiating in the post of Assistant Librarian (Officer) since September 20, 2012. He had applied by a letter dated March 10, 2015 for the purpose of twenty per cent extra remuneration for performing the duties in the higher post of Assistant Librarian (Officer). Such request was turned down by the impugned writing dated May 18, 2015.

3. The petitioner superannuated from his service on July 31, 2014. He contends that he should have been promoted to the post of Assistant Librarian (Officer) with effect from July 1, 2014. In support of the contention that he ought to have been promoted, the writ petitioner refers to a notification dated September 21, 1991. It is contended that the Education Department of the Government of West Bengal has decided that sixty per cent of the posts of officers may be filled up by

promotion from amongst the incumbents holding tenure of not less than six years in the senior posts of Senior Superintendent or other categories of supervisory staff in the equivalent rank on merit cum seniority basis.

4. It is contended on behalf of the petitioner that the University authorities ought to have considered the petitioner as promoted to the post of Assistant Librarian (Officer) with effect from July 1, 2014. Their refusal to do so has visited the petitioner with financial implications subsequent to his retirement. He seeks redressal with regard thereto.

5. The State authorities as well as the University authorities are represented before me.

6. By several orders, the University authorities were directed to produce the records. Today, when the matter is taken up for consideration, the University authorities have produced a bunch of photocopies.

7. According to the University authorities, the petitioner is not entitled to be promoted, as the promotion to the post concerned is guided by the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Rules, 2011 framed under the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976. The first vacancy, according to 50-point roster is reserved for a scheduled caste candidate.

8. It is also contended on behalf of the University authorities relying upon University Grants Commission's guideline that the petitioner does not possess the minimum qualification required for the purpose of grant of promotion.

9. Referring to the notification dated September 21, 1991, it is submitted that the promotion can be granted only on the basis of merit cum seniority. The University had six months' time to consider the same. The petitioner had retired within a month from his so-called entitlement to get the promotion. Therefore, there is no infirmity in the action of the University.

10. It has been pointed out on behalf of the University authorities that by a writing dated January 18, 2013, the University authorities sought permission of the Vice Chancellor so that the petitioner would officiate at the post. Such permission was granted by the Vice Chancellor.

11. I have considered the rival contentions of the parties and the materials made available on record.

12. The petitioner was officiating as the Assistant Librarian (Officer) for twenty two (22) months. Prior to his retirement, he was asked to officiate as such by the University authorities. This action of the University authorities establishes the merit of the petitioner to discharge the duties of such a post.

13. The petitioner became entitled to be appointed on promotion to the post with effect from July 1, 2014. His entitlement stems from the notification dated

September 21, 1991. Such notification allows promotion on merit cum seniority. It is not the case of the University that the petitioner is not the senior most and, as such, he should not be granted promotion. The University authorities claim that the petitioner does not have the requisite educational qualification and, therefore, cannot be considered to be meritorious to get the promotion. In support of the requirement of educational qualification, the University Grants Commission's guidelines have been relied upon. Such guidelines relate to direct recruitment. The present case involves grant of promotion on the basis of seniority. Therefore, such guidelines would be no application for the purpose of consideration of the promotion. More so, in the facts of this case, the University authorities have themselves found the petitioner suitable to officiate in the post for twenty two months. Therefore, the University authorities can not have any justifiable objection as to the so-called unsuitability of the petitioner on the ground of alleged lack of educational qualification.

14. The contention that the University had six months' time to prepare the roster and to give the appointment on promotion cannot be accepted. The University authorities ought to have been taken steps for the purpose of filling up the vacancies, as they occurred, on the basis of the merit cum seniority and as prescribed by the notification dated September 21, 1991. The delay on the part of the University should not be allowed to be used either as a sword or as a shield to deny the right of a person to get promotion to a post, which he is otherwise entitled in law.

15. In such circumstances, I find that the request of the petitioner to be considered as being promoted to the post of Assistant Librarian (Officer) with effect from July 1, 2014 is justified. The University authorities will consider him to be promoted to such post with effect from such date and will disburse his entitlement both during his services as well as post retirement considering the petitioner to have been promoted to such post with effect from July 1, 2014 and to have retired therefrom. The authorities will disburse such entitlement as expeditiously as possible and preferably within four weeks from the date of communication of this order to them.

16. With the aforesaid observations and directions, the W.P. 27752 (W) of 2015 is disposed of without, however, any order as to costs.

17. Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.