

(1989) 12 CAL CK 0025

Calcutta High Court

Case No: Matter No. 6000 of 1988

Sudhir Kumar Adhikari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Dec. 19, 1989**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1990) 2 CALLT 365**Hon'ble Judges:** Monoranjan Mallick, J**Bench:** Single Bench**Final Decision:** Allowed

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### Judgement

Monoranjan Mallick, J.

In this writ petition the petitioner who is a driver appointed by the Housing Board with effect from 12-2-75 has moved this Court for quashing the order No. 4340/24B dated 2-4-1980 granting the order of promotion of Sri Gopal Giri in the up-graded post of driver and for appointing the petitioner to the said post as he is senior to the respondent Gopal Giri.

2. The petitioner states as follows :

The West Bengal Housing Board by the order dated 2nd April 1980 has converted one out of six posts of driver in the basic grade of Rs. 235-435 into one of higher grade of Rs. 380-545 with effect from 1-4-1980. By the order annexure "C" the West Bengal Housing Board has appointed the Respondent No. 6 Gopal Giri to that post with effect from 1st April 1980. Being aggrieved the petitioner claiming to be the senior to Gopal Giri made representation. As the representation went unheeded he moved the High Court under Article 226 of the Constitution. Mohitosh Mazumdar, J. in CO. No. 13141 (W) of 1986 by the judgment dated 18-11-1988 directed the Respondent Housing Board to consider his case of promotion in the basis of the seniority and giving him opportunity of hearing.

3. Thereafter the Respondent Housing Board has rejected the case of the petitioner as the Managing Committee by its resolution dated 16-1-1988 has adopted the resolution that inter se seniority of an absorbed employer in the cadre will be counted from the date of his joining the Board on deputation and therefore according to the above resolution whatsoever may be the date of absorption of Sri Giri he will be senior to the petitioner as Sri Giri came on deputation to the Board on 1-7-1973 and the petitioner's date of appointment is 11-2-1975. So, the Respondent Board refused to revert Sri Giri.

4. Being aggrieved by the petitioner has moved this Court again.

5. His case is that there are five regular drivers appointed in the Housing Board in 1975 and amongst whom the petitioner is the seniormost. Over and above there are two more drivers who are working under the Board since 1973 and 1974 respectively. Respondent No. 6 Shri Gopal Giri joined the Board as driver in the Board on deputation on 1st July 1973 when Shri Giri was on deputation and had not yet been absorbed. The order of promotion required concurrence of the Government in Housing Department as he was an employee of the Housing Department. Without obtaining concurrence of the Housing Department such an order of promotion has been made. Subsequently, however, the Deputy Secretary of the Housing Department, Government of West Bengal by his Memo No. 1308/IHZ dated 10-3-1983 to the Housing Commission of the said Board informed that Sri Gopal Giri, driver on deputation in the Board from the Housing Department might be absorbed in the Board unconditionally if he was so willing but no necessary release order of Sri Giri from that Housing Deptt. was issued till 10-5-1983. Thereafter again the Housing Board in spite of issuing the alleged promotion order to Sri Giri by annexure "C" passed another order being Ref. No. 5396 H.B. dated 24th May 1983 absorbing Sri Giri in the upgraded post of Driver with effect from 1-6-1983, but no release order from the parent department was received by the Board. The petitioner made several representations against the impugned order and thereafter moved High Court and after the order of the High Court has been communicated the Board by the letter dated 9-9-1988 has communicated that in terms of Management Committee's resolution dated 10-1-1986, Sri Giri cannot be reverted.

6. The petitioner challenges the above action of the Respondent on the ground that in terms of Board's standing order No. 13017 HB dated 31-12-1983 fixing guiding principle for determining the seniority of the Board's officers and staff and according to that principle the inter se seniority of an employee in the basic cadre post should be fixed with reference to the date of his regular appointment in the said Cadre, that the Management Committee's resolution dated 16-1-1986 as mentioned in the letter dated 9-9-1988 is illegal, wrongful and bad in law, that in the resolution of the Management Committee meeting dated 16-1-1986 it was indicated that draft Rule should be modified accordingly but no rule has so far been modified

and that the resolutions therefore cannot be implemented. By filing a supplementary affidavit the writ petitioner has annexed documents from which it is indicated that the Government has not approved the draft rule and has given the clear opinion that no regularisation of the deputationists in the Board his seniority shall be counted from the date of his absorption and not from the date of the joining the post in the deputation.

7. The Respondents Nos. 2 to 5 have filed an affidavit-in-opposition jointly.

In the affidavit-in-opposition the following contentions have been raised.

8. The writ petition is not maintainable as it has become infructuous in view of the passing of the recent resolutions in the 209th meeting held by the Housing Board on March 30, 1989 whereby amongst others a resolution has been framed for determination of seniority of the absorbed employees in consultation with the Government of West Bengal. In terms of that resolution, seniority of an absorbed employee in the cadre in which he is absorbed shall be counted from the date of absorption in the Housing Board, The said resolution clearly lays down that the case of promotion of the absorption of employees already decided otherwise shall not be re-opened and that the seniority period already assigned to them will not be disturbed and shall remain unaltered. Shri Gopal Giri the Respondent No.- 6 joined the Housing Board on deputation as a driver from the afternoon of June 30, 1973- The petitioner was appointed by the Housing Board as a driver on February 11, 1975. Thus, at the material time the respondent No. 6 was adjudged the seniormost amongst all the drivers. In 1980, a post of driver was upgraded and the respondent No. 6 who was adjudged seniormost amongst the eligible. candidates for serving the Housing Board for the largest period as on the material date, was promoted to the said post in accordance with the procedure followed by the Housing Board.

9. Having considered the contentions raised by both the parties it is now clear that the Respondents take the stand that the Respondent No. 6 having been adjudged seniormost by the Housing Board as on the material time has been given the upgraded scale with effect from 1st April 1980.

10. In the communication to the petitioner dated 9-9-1988 the Deputy Housing Commissioner referred to the Resolution of the Management Committee in its meeting dated 16-1-1986. In the affidavit-in-opposition the Board's resolution dated 30th March 1989 has been referred in which the Board resolved that the seniority of the deputationist shall be counted on and from the date of his absorption. But it has further been resolved that cases of promotion of the absorbed employees otherwise decided shall not be re-opened and the seniority period assigned to there will not be disturbed and shall remain unaltered.

11. From the supplementary affidavit filed by the petitioner, it is now clear that the State Government has not approved that part of the resolution of the Board that case of promotion of the employees already absorbed otherwise decided shall not

be re-opened. Therefore, the proviso of the Resolution adopted not having been approved the Housing Board has to reconsider the question of seniority of the direct employees vis-a-vis the deputationist who has been absorbed. In this case the petitioner has been appointed on 11-12-1975 and the Respondent No. 6 has been absorbed in May 1983. So, even in view of the resolution adopted and approved by the Government the contention of the Respondent Nos. 2 to 5 that the upgraded post has been given the respondent No. 6 as he was the seniormost cannot stand and must be rejected.

12. I would, therefore, allow the writ petition.

13. The writ petition is allowed. Let a writ of Mandamus be issued directing the Respondents Nos. 2 to 5 to quash the order of the West Bengal Housing Board dated 2nd April 1980 appointing the Respondent No. 6 to the upgraded scale of Rs. 380-545 with effect from 1.4.1980. The Respondents shall be at liberty to appoint one of his six drivers to that post regard being had to their respective seniority as on that date and also regard being had that the seniority of an absorbed employee shall be counted from the date of his absorption and not from the date of his joining the Board on deputation. The appointment to the selection grade post of the driver shall be made by the Board within two months of this order strictly in accordance with the relevant rules.

14. There is no order as to costs. All parties shall act on the operatives portion of this judgment. The prayer for stay of operation of this order made by the" state Respondent is refused.