

(1975) 08 CAL CK 0020

Calcutta High Court

Case No: Matter No. 661 of 1973

Lakshmi Narayan Pande

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision: Aug. 8, 1975

Acts Referred:

- Calcutta Municipal Act, 1951 - Section 76, 76(1), 78, 81(6)

Citation: (1976) 2 ILR (Cal) 416

Hon'ble Judges: Ghose, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ghose, J.

The Petitioners are now employed as junior clerks in the Treasury Department of the Corporation of Calcutta. They were promoted to the posts of junior clerks after qualifying in departmental examinations as per regulations framed u/s 81(6) of the Calcutta Municipal Act, 1951 (hereinafter referred to as the said Act).

2. By an order dated March 7, 1973, the Respondent Administrator ordered that the ratio 30 : 70 as between junior clerks and standard grade clerks would be adopted in the case of junior clerks working in counter in the Collection and Treasury Department of the Corporation. By reason of the said order it is alleged in the petition that the Respondents Nos. 5 to 32 have been promoted to the posts of standard grade clerks in the grade of Rs. 270-545 without qualifying for being posted as junior clerks in accordance with the regulations framed by the Municipal Service Commission in terms of the said Act. It is alleged that the posts of standard grade clerks may be filled up by promotion only from the cadre of junior clerks. This, according to the Petitioners, have caused prejudice to the Petitioners inasmuch as they have been prevented from being considered for promotion to the posts of standard grade clerks.

3. In the Treasury Department of the Corporation of Calcutta there are two categories of clerks--(i) Junior Clerks and (ii) Standard Grade Clerks--having respective scale of pay of Rs. 245-435 and Rs. 270-543. Vacancy in the posts of standard grade clerks can be filled up by way of promotion only from the junior clerks in accordance with the regulations framed by the Municipal Service Commission. The recruitment to the posts of junior clerks is governed by Section 81(6) of the said Act and regulations framed by the Calcutta Municipal Service Commission. Some of the regulations that are relevant for the purpose of the instant application are set out hereunder:

(i) These Regulations supersede the previous Regulations for recruitment to clerical posts prescribed by the Corporation on 26th March, 1957, 4th July, 1958 and 9th June, 1967,

(ii) These Regulations shall govern the recruitment to posts of clerks in Corporation offices carrying a minimum salary of Rs. 300 or below, (ii)(a) Sixty per cent of vacancies as on 1st January of the year of examination in the post of junior clerk/junior assistant in the entire Corporation shall be filled up by direct recruitment on the results of Recruitment Examination and the rest, i.e. forty per cent, shall be filled up by promotion from the clerical and subordinate services specified in the Schedule of Establishment.

(iii) Appointment to the clerical posts mentioned above will be made on the results of a Recruitment Examination to be held every alternate year and conducted in the manner hereinafter provided.

4. Because of the above-mentioned promotion of the Respondents Nos. 5 to 32 of the Petitioners who at the time of the impugned promotion were posted as junior clerks have lost their substantive rights according to them--rights of promotion to the posts of standard grade clerks.

5. It appears, however, that the Respondents Nos. 5 to 32 were employed in different capacities under the Corporation of Calcutta on different dates between November 7, 1937 and September 16, 1964. The Respondents Nos. 30 and 31 were directly appointed as counter agents in January and September 1964 respectively. The rest of the Respondents Nos. 5 to 32 were appointed as counter agents on diverse dates between April 19, 1952 and June 1965, by way of promotion from various categories of posts under the Corporation of Calcutta.

6. The Standing Finance and Establishment Committee of the Corporation of Calcutta recommended the change of the designation of counter agents, from counter agents to junior clerks on January 19, 1971, inasmuch as the said posts of counter agents carried the same scale of pay as junior clerks and the nature of duties of counter agents was the same as that of junior clerks. The said recommendation of the Standing Finance and Establishment Committee was accepted and confirmed by the Corporation of Calcutta by means of a resolution

passed on May 21, 1971. The said resolution is set out hereunder:

Resolved--

That it be recommended that the designation of Counter Agents, Counter Assistants and Counter Agent-cum-Cashier of the Collection, Treasury and Tollygunge Tax Department be changed to Junior Clerks, their grades remaining, however, unaltered and that the Schedule of Establishment as contemplated u/s 76 of the Act be amended accordingly.

Sub-section (6) of Section 81 of the Calcutta Municipal Act, 1951, reads as follows:

(6) Appointments to posts. The maximum salary of which does not exceed three hundred rupees per month shall be made by the Commissioner subject to such regulations relating to such appointment as may be framed by the Municipal Service Commission and approved by the Corporation.

Regulations u/s 81(6) of the said Act framed by the Calcutta Municipal Service Commission and confirmed by the Corporation on August 30, 1971. The Regulations relied on by Mr. Dutt are Regs. 2 and 2A which read as follows:

2. These Regulations shall govern the recruitment to posts of clerks in Corporation offices carrying a maximum salary of Rs. 300 or below.

2A. Sixty per cent of the vacancies as on 1st January of the year of examination in the post of Junior Clerk/Junior Assistant in the entire Corporation shall be filled up by direct recruitment on the result of Recruitment Examination and the rest, i.e. forty per cent shall be filled up by promotion from the clerical and subordinate services specified in the Schedule of Establishment.

7. Although in the petition the impugned promotion of the Respondents Nos. 5 to 32 has been challenged as being made direct from counter agents to standard grade clerks in view of the change of designation of counter agents to junior clerks. Mr. (sic) Dutt, counsel appearing on behalf of the Petitioners, contended that the change of designation of counter agents to junior clerks as mentioned hereinabove was made in contravention of the above quoted Regs. 2 and 2A in view of the fact that the junior clerks could be appointed only in the manner as laid down in the said Regulations. The impugned promotion, therefore, was in fact the promotion of counter agents to standard grade clerks and could not be sustained by the Regulations or the provisions of the Act.

8. It appears, however, that Section 78 of the Calcutta Municipal Act provides as follows:

78. (1) The Commissioner shall from time to time prepare and lay before the Standing Committee dealing with Finance and Establishment (hereinafter referred to as the Standing Finance Committee) a Schedule setting forth the designation and grades of the officers and servants other than those mentioned in Sub-section (1) of

Section 76 who should, in his opinion, constitute the Corporation establishment indicating the salaries, fees and allowances payable to them.

(2) The Standing Finance Committee may either approve or amend such Schedule as it thinks fit and shall lay such Schedule before the Corporation for its consideration and approval.

(3) The Corporation shall sanction such Schedule with or without modifications as it thinks fit and may from time to time amend it either of its own motion after ascertaining the opinion of the Commissioner and the Standing Finance Committee or at the instance of the Commissioner and the Standing Finance Committee.

Provided that the sanction of the Corporation shall be subject to the approval of the State Government where such sanction relates to

(i) the creation of a post carrying a maximum salary not below one thousand rupees per month, or

(ii) the enhancement of salary of a post to one thousand rupees or more per month.

9. None of the Respondents Nos. 5 to 32 at the time of the change of designation of their posts were officers or servants of the Corporation of Calcutta as mentioned in Sub-section (1) of Section 76. Sub-section (1) of Section 76 only mentions the Finance Officer, the Chief Accountant of the Corporation, the Chief Engineer, the Health Officer, the Secretary and the Deputy Commissioners. The Corporation of Calcutta approved of the change of designation of counter agents to junior clerks by amending the Schedule of Establishment as contemplated u/s 78 of the Act. This was, in my opinion, clearly within the power of the Corporation of Calcutta and no exception could be taken to the same.

10. By reason of the premises, with effect from May 21, 1971, the Respondents Nos. 5 to 32 became junior clerks under the Corporation of Calcutta. They were promoted to the posts of counter agents between April 19, 1952 and June 1, 1965 and became junior clerks with effect from May 21, 1971, as stated hereinbefore.

11. The Petitioners were promoted to the posts of junior clerks between January 10, 1973, to February 19, 1973. They were not even confirmed in the posts of junior clerks on June 11, 1973, when the Respondents Nos. 5 to 32 were promoted to the posts of standard grade clerks.

12. It should be noted that in terms of Regulations governing the employment in question under the Corporation of Calcutta, academic qualification prescribed in the Recruitment Regulations for any post did not and do not apply in case of appointment by promotion from subordinate ranks.

13. By reason of what has been stated hereinbefore it is apparent that the Petitioners were not even junior clerks when the designation of counter agents was changed. They were also not confirmed in the posts of junior clerks on June 21,

1973, when the Respondents Nos. 5 to 32 were promoted to the posts of standard grade clerks. In my view, they had at that time no right to be promoted nor any right to be considered for promotion to the posts of standard grade clerks. See the case of [Mukunda Murari Shaw Vs. K. Sen, Member, Board of Revenue, West Bengal and others,](#) .

14. There was and is no rule governing the promotion either of the Petitioners or of the Respondents Nos. 5 to 32. Promotion in the premises had to be made on seniority basis. See the case of [P.C. Wadhwa Vs. Union of India \(UOI\) and Another,](#) and the case of [Government of India and Another Vs. C.A. Balakrishnan and Others,](#) .

15. It cannot be denied that the Respondents Nos. 5 to 32 were senior to the Petitioners on the date of the impugned promotion. The Petitioners, therefore, in any event cannot in my view challenge the impugned promotion.

16. For all the reasons stated hereinbefore the application must fail and is dismissed. The Rule is, therefore, discharged. There shall, however, be no order as to costs.