

(2008) 07 CAL CK 0056

Calcutta High Court

Case No: W.P.S.T. No. 828 of 2002

State of West Bengal and Others

APPELLANT

Vs

Sk. Nazrul Islam and Others

RESPONDENT

Date of Decision: July 8, 2008

Acts Referred:

- West Bengal Service (Determination of Seniority and Promotion) Rules, 1981 - Rule 55(4), 6

Citation: (2008) 118 FLR 1183 : (2009) 1 SLR 108

Hon'ble Judges: Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: A.B. Chatterjee and P.K. Ghose, for the Appellant; Indrajit Sarkar and Ujjwal Dwivedi, for the Respondent

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta and Prasenjit Mandal, JJ.

State Government above has impugned the judgment and order of the learned Tribunal dated 22nd March 2000 by which the respondents No. 1 to 6 have been given relief, as prayed for in their application filed before it.

2. In substance, the above respondents got relief of pay protection as available by virtue of Rule 55(4) of the West Bengal Service Rules. Learned Tribunal found that pre-conditions for granting pay protection, as provided in the aforesaid Rules, were fulfilled while hearing factually found, promotion being granted to the respondent No. 9 and the date of promotion of the respondents No. 1 to 6. Factually respondents No. 1 to 6 are direct recruit to the post of Deputy Jailor and they joined sometimes in 1984-85 whereas the respondent No. 9 joined State Service as a clerk and then he was gradually promoted to the post of Deputy Jailor. However, such promotion was made only on the strength of the judgment and order passed by a learned Single Bench of this Court. He was given promotion, admittedly and

factually, on ad hoc basis sometime in 1989. On 17th of November 1990, seniority of respondent No. 9 was fixed to the post of Deputy Jailor from. 1st January 1977.

Respondent No. 9 has retired with all the benefits as above, therefore, we do not like to interfere with his status and position with regard to pension and other benefits. We are to examine whether the judgment and order of the learned Tribunal is perfect in terms of the provisions of law.

3. Mr. Chatterjee, learned Counsel appearing for the State, while assailing the judgment and order of the learned Tribunal says that in order to get pay protection under the aforesaid Rules, the above respondents have to be senior to respondent No. 9. He says that respondent No. 9 became notionally senior on fixation of seniority in terms of the judgment and order passed by this Court and he was deemed to have been promoted to the post of Deputy Jailor on 5th of September 1977. Admittedly, on that date the aforesaid respondents did not join the service. In order to understand this submission, we set out Rule 55(4) of the West Bengal Service Rules as under:

55(4) If a Government employee while officiating in a higher post draws pay at a rate higher than his Senior Officer either due to fixation of his pay in the higher post under the normal rules, or due to revision of pay scales, the pay of the Government employee senior to him shall be re-fixed at the same stage and from the same date his junior draws the higher rate of pay irrespective of whether the lien in the lower post held by the Senior Officer is terminated at the time of re-fixation of pay, subject to the conditions that both the Senior and Junior Officers should belong to the same cadre and the pay scale of the posts in which they have been promoted are also identical.

The benefit of this rule shall not be admissible in case where a senior Government employee exercises his option to retain un-revised scale of pay, or where the pay drawn by the senior officer in the lower post before promotion to the higher post was also less than that of his junior.

4. There is no dispute that in order to get benefit under the aforesaid Rule, one has to establish that junior has been given the benefit. Therefore, whole question is whether respondent No. 9 was junior, as found by the learned Tribunal, to the applicants or not.

5. Mr. Chatterjee says that in terms of the judgment and order of the Hon"ble Justice Ajit Kumar Sengupta, as His Lordship then was, he had to be given promotion and accordingly reading the judgment and order thereof, he should have been promoted to the post of Deputy Jailor with effect from 5th of September 1977 and as such notional seniority was given.

Mr. Sarkar, learned Counsel for the respondents, on the other hand submits that the judgment and order of Ajit Kumar Sengupta, J. and the previous writ petition had

nothing to do with fixation of seniority. The aforesaid judgment granted relief to respondent No. 9 with regard to promotion and there was no specific direction that he should be given retrospective seniority. According to Mr. Sarkar, when promotion was given to respondent No. 9 in 1989, he should be deemed to be in the cadre of Deputy Jailor on and from that date and his seniority cannot be fixed over looking the relevant Seniority Rules; namely West Bengal Service (Determination of Seniority and Promotion) Rules, 1981. He has drawn our attention to Rule 6 of the said Rules whereunder the methodology of fixation of seniority between the promotee and direct recruit has been provided, Relevant portion of Rule 6 of the said Rules is set out hereunder:

6. Relative seniority of direct recruits and promotees : (1) The relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining.

(2) The promotees shall be en bloc senior to the direct recruits of the same year.

6. Mr. Sarkar then urges when there is no specific direction for giving retrospective seniority in favour of the respondent No. 9 by the judgment and order of Ajit Kumar Sengupta, J., the State Government cannot ignore the aforesaid statutory provision.

7. While considering rival contentions of the respective Counsels and having gone through the records it appears to us, the point for determination in this case is whether fixation of notional seniority of respondent No. 9, with effect from 5th September 1977, was justified under the law or not.

8. We have seen the judgment and order of the learned Single Judge of this Court carefully and it does not appear to us the learned Single Judge has directed to grant seniority, as has been given by the State Government. Promotion granted to respondent No. 9, in terms of the judgment is quite justified going by the judgment of this Court but from which date it has to be given effect to is not specifically mentioned; only gradation list was set aside. In the affidavit it has not been explained, either before the learned Tribunal or before us, how respondent No. 9 was given notional seniority from 5th September, 1977 and how this express provision of Seniority Rules has been ignored. Therefore, we cannot say, at least for rendering decision in this case, the respondent No. 9 was senior, taking note of so called retrospective notional seniority. We have no doubt in our mind that respondent No. 9 was junior and he was given greater pay scale; as such the learned Tribunal has come to a correct conclusion that the applicants should have; been given pay protection, as provided under the aforesaid Rules. Hence, we do not find any merit in this application.

9. Accordingly, the application is dismissed. There will be no order as to costs.