

Jaydeep Majumdar Vs. West Bengal Industrial Development Corporation Limited and O

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Court : Kolkata

Decided On : Feb-19-2015

Judge : Banerjee

Appellant : Jaydeep Majumdar

Respondent : West Bengal Industrial Development Corporation Limited and O

Judgement :

Form No.J.(2) IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction
Original Side Present : The Honble Justice Ashim Kumar Banerjee And The
Honble Justice Samapti chatterjee A.P.O.No.113 of 2014 A.P.O.No.116 of 2014
G.A83of 2015 W.P.794 of 2010 Jaydeep Majumdar versus West Bengal Industrial
Development Corporation Limited and Others AND A.P.O.No.114 of 2014
A.P.O.No.115 of 2014 G.A.No.82 of 2015 W.P.No.143 of 2013 Apurba Banerjee
versus West Bengal Industrial Development Corporation Limited and Others AND
W.P.2141 (w) OF2010 Jaydeep Majumdar & ORS.versus The Managing Director,
West Bengal Industrial Development Corporation Limited and Others For the
Appellants : For the Respondents 1 and 2: For Satyendra Nath Routh Mr.Kallol
Bose, Advocate Mr.Suman Banerjee, Advocate Mr.Lakshmi Kumar Gupta, Senior
Advocate Additional Advocate General Mr.D.K.Samanta, Advocate Mr.Mohit
Gupta, Advocate Mr.Anuran Samanta, Advocate : Mr.Subir Sanyal, Advocate For
the State in APO116of 2014: Mr.Manoj Malhotra For the State in APO114of 2014 :

Ms.Chaitali Bhattacharjee Heard on : January 19, 21, 22 and 27, 2015 Judgment on : February 19, 2015.

ASHIM KUMAR BANERJEE, J.: BACKDROP: The West Bengal Industrial Development Corporation Limited is a Public Sector Undertaking.

They have about fifty employees as we gather in CouRs.of hearing.

They did not have any proper promotional rules that would cause the controversy.

The appellants before us, Shree Joydeep Majumder and Apurbo Banerjee were appointed as direct recruit Assistant Manager in 1992.

They were subsequently re-designated as Deputy Manager in the cadre of class one officer level-V as per Appendix-I to the West Bengal Industrial Development Corporation Limited Staff Regulation Corporation, 1975.

The employees of the Corporation had been languishing in their respective posts for a long time and as a result, there had been a great resentment amongst the employees, the authority ultimately framed one-time promotional policy to ameliorate the grievance of the employees.

As per the one-time promotional policy all employees languishing in the post for long, were given the higher post irrespective of their performance and /or status.

In some cases supernumerary posts were created to accommodate the employees on promotion who could not otherwise be accommodated in regular posts.

Joydeep Mojumder and Apurbo Banerjee were also accommodated.

They accepted their promotion and then filed two writ petitions being W.P.No.794 of 2010 and W.P.No.143 of 2013, challenging such promotion to all and sundry as the regular promotee, could not be equated with direct recruits in the guise of onetime promotion policy.

The junior officers and /or employees who served clerical posts could not be equated with them as they were recruited as Class-one officer.

Joydeep Majumder and Apurbo Banerjee also filed a writ petition along with one Debjit Sur Roy Chowdhury, inter alia, challenging the gradation list, as according to them, those promotees could not be placed above them.

The conflict between the direct recruit officers and the stenographers designated as personal secretary started in 1984 when three junior officers filed a writ petition challenging such promotion.

In 1990, the Board of Directors took a resolution authorizing the Managing Director to fill up the vacant posts at Deputy Manager and Manager level by promotion keeping the existing Recruitment Rules in abeyance.

In 1992, Joydeep Majumder and Apurbo Banerjee were recruited as Direct Recruit OfficeRs. In 2001 the promotions were given.

Joydeep Majumder and Apurbo Banerjee did not complain.

In 2009, the Corporation published the draft gradation list that became the subject matter of challenge in W.P.No.2141(w) of 2010 as according to them; their representations had not been considered.

During the pendency of the said representation selection committee gave promotion to all including Debjit Sur Roy Chowdhury and Apurbo Banerjee.

They accepted the promotion and pursued the respective writ petitions as above.

The learned Single Judge elaborately considered the issue and ultimately came to a conclusion that Joydeep Majumder and Apurbo Banerjee could not have any grievance.

His Lordship dismissed the writ petitions.

They also filed review application that the learned Judge dismissed.

Being aggrieved, they preferred the respective appeals.

In couRs.of hearing, we came to know, W.P.No.2141 of 2000 was also pending.

On perusal of the writ petition, we find, dispute between two groups would lie as per back in 1978.

On a cursory glance to the representation that the appellants made before filing W.P.No.2141 (w) of 2010, we find, the appellants apprehended, their seniority would be disturbed on finalization of the Draft Gradation List dated June 18, 2009.

The authority gave personal hearing to the appellants on the objection on July 31, 2009.

However, the Draft Gradation List is yet to be finalized.

As observed hereinbefore, in 1975, the Corporation framed the Staff Regulation.

In 1978, the Corporation issued an office order merging two groups of employees being junior officer subsequently designated as Assistant Manager and personal secretary later on designated as Assistant Manager (personnel).subsequently The members of the second group were stenographeRs.promoted as Assistant Manager (personnel).The Corporation decided to prepare the common seniority list.

The Corporation prepared the combined seniority list in 1982 and in 1983, they decided to promote those employees on 50-50 ratio.

In 1984, some of the employees filed a writ petition restraining the Corporation not to give effect to the combined seniority list and obtained ad interim order to the said effect.

The writ petition of 1984 came to be disposed of vide order dated December 06, 2001 by which the learned Single Judge asked the authority to implement the policy decision resolved by the Corporation.

Accordingly, the Corporation decided to promote on 50-50 basis and gave promotion accordingly.

The appellants did not complain.

Some of the employees became aggrieved, they filed another writ petition in 2002 that the learned Single Judge disposed of observing, the policy decision dated June 30, 1994 could not be given effect to in absence of the government approval.

The Corporation took a further resolution in 2004 by promoting some employees.

The appellants would claim, they were not qualified for the post.

From time to time, the Corporation tried to fill up the post.

Ultimately, in 2010, they framed the One-Time Promotion Policy and implemented the same.

We adjourned the matter to enable the parties to have the said writ petition assigned before us.

Accordingly, the Honble Chief Justice assigned it before us vide order dated January 21, 2015.

We heard all the four appeals and the said writ petition on the above mentioned dates and intend to dispose of all the five matters by this common judgment and order.

CONTENTION: Mr.Kallol Bose learned Counsel advanced argument on behalf of Jaydeep and Apurba whereas the learned Additional Advocate General appeared for the WBIDC.

We heard this matter for four days yet, we could not appreciate the so-called grievance of the appellants.

Mr.Kallol Bose with his eloquence tried to impress us, they were unfairly treated at par with the stenographeRs.having not fit to get promotion at par with the appellants.

He would complain, the promotion, as per the regulation, could only be granted to the employee after considering the seniority as well as merit.

The merit could only be considered looking to the annual confidential record that the Corporation failed to maintain.

The so-called one-time promotion policy would be contrary to the promotional process as suggested in the Service Regulations and in any event, once the grievance with regard to the gradation list, was pending before WBIDC they were obliged to dispose of such representation and finalize the gradation list.

They failed to do so hence, the one-time promotion given to all and sundry, would make the said representation infructuous causing prejudice to the appellants.

Mr.Bose would further contend, had the authority considered the issue of promotion strictly as per the rules, they could effectively participate in such process, they were definite, they could do better than those stenographeRs. One-time promotion would block their subsequent progress.

He would also attack the one-time promotion policy by contending, the concerned resolution to fill up six posts and/or the one-time promotion policy did not have the appropriate approval of the State hence, any decision or act in pursuance of the said decision and/or resolution would automatically be null and void.

Mr.Bose, on instruction, informed this Court, both Jaydeep and Apurba were agreeable to give up their promotion in case we would set aside the process.

Mr.Bose relied upon the Apex Court decision in the case of Shri O.P.Singla and another versus Union of India and Others reported in All India Reporter 1984 Supreme Court Page- 1595.

He would rely upon paragraph 26 that would deal with promotion in Delhi Higher Judicial Service.

The Apex Court observed, the pre-requisite of the right to inclusion to the common list of seniority is that both the groups bare the same characteristics.

Citing the said decision, Mr.Bose would contend, the appellants were direct recruits where the Satyendra Nath Routh was basically a stenographer, they could not be placed in a common Gradation List.

He would also rely upon an unreported decision in the case of Dr.

Amalendu Bikash Sahu versus Union of India (F.M.A.No.3088 of 2002).He would rely upon a passage that the Division Bench of our Court relied upon, from the decision of the Apex Court in the case of Dr.

Ms.O.Z.Hussain versus Union of India reported in 1990 (supplementary).Supreme Court Cases page-688.

The Division Bench relied upon paragraph 7 that is quoted below: This Court has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective.

Promotion is thus a normal incidence of service.

There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the nonmedical A Group scientists in the establishment of Director General of Health Service would be deprived of such advantage.

In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officeRs.It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the A category scientists in the non-medical wing of the Directorate. In the said case, Apex Court deprecated the practice of merging two different groups coming from different source having distinctive characteristics.

Per contra, Mr.Lakshmi Kumar Gupta the learned Additional Advocate General appearing for WBIDC would submit, all were eligible for promotion long time back.

In the year 2000 four posts became vacant and were filled up.

Neither Jaydeep nor Apurba could get opportunity.

In 2001 promotion were never objected.

In 2010 one time promotion policy was adopted that became the center of controversy.

We were also informed; in effect, the grievance of Jaydeep and Apurba would be restricted to only one employee being Satyendra Nath Routh for whom we requested Mr.Subir Sanyal learned Counsel to assist us.

Accordingly Mr.Sanyal made submission.

Mr.Sanyal would contend, he was appointed on December 10, 1979; he got promotion as Assistant Manager, subsequently designated as Deputy Manager, with effect from September 1, 1990 whereas Jaydeep and Apurba got appointment in 1992.

Hence they could not have any grievance against him.

In any event, Satyendra would be retiring very soon.

OUR VIEW: The four appeals and the writ petition being W.P.No.2141 of 2010, if brought within a narrow campus, would raise two issues: i) Gradation list was not made final.

ii) One time promotion policy did not have the appropriate approval of the State, hence illegal and in any event, would cause immense prejudice to the appellants.

On the fiRs.issue we feel, the grievance of the appellants, whatever worth it is,must be met by the Corporation.

The Corporation prepared the draft gradation list long time ago inviting objections from the employees.

Jaydeep and Apurba submitted representation.

The Corporation must consider the same and finalise the gradation list at the earliest, preferably within two months from date that would take care of the writ petition in the appellate side.

The second issue involving the other four appeals, in our view, would be infructuous.

Satyendra would retire soon from service.

We are informed, he would be retiring on November 30, 2015. Jaydeep and Apurba undertook to this Court earlier, they would restrict their grievance only as against Satyendra.

Once Satyendra would retire there would be no grievance at all.

Rather, their grievance would be of no consequence.

Lot was said on the approval of the one-time promotion policy.

We would find, Jaydeep and Apurba availed the benefit of such policy.

They served the promotional post for a long time with all benefits attached to the said post.

It would be too late in the day to contend, they would go back to their feeder post to sustain their grievance.

It is well-settled principle of law; a person receiving benefit out of an action is precluded to challenge the same.

We also do not find any merit in the grievance.

Satyendra got the higher post in 1990 when Jaydeep and Apurba were not engaged.

Hence, they could not have any grievance with regard to the promotion that Satyendra got in 1990.

The day Jaydeep and Apurba entered this service, Satyendra was already above them.

We wonder, how Jaydeep or Apurba could sustain their grievance against an incident that had taken place before their entry in service.

The decisions cited at the bar would reflect the settled proposition of law to the extent, two groups of employees having distinctive characteristics could not be placed in a common Gradation List that would cause prejudice to them, particularly, avenue of promotion would get clogged.

We fail to understand how this would help us in the present case.

If we, for the time being, keep the academic issue in abeyance and give a practical look to the situation, we would find, the appellants consciously undertook before the Court, their grievance would be restricted to Satyendra Nath Routh.

Satyendra Nath Routh would retire on November 30, 2015.

There is no chance of promotion to be given to Satyendra Nath Routh ignoring the appellants.

In any event, learned Judge protected them.

Learned Judge asked the authority to re-examine the issue upon giving hearing to the appellants.

We wonder how it would cause prejudice to the appellants.

It is settled proposition of law, a party who had no locus to challenge an action, would not be entitled to question the action even if it was otherwise irregular.

The promotion policy was not available for challenge, firstly, on the ground, in 2010 Satyendra was not their competitor and secondly, they received benefit out of the said policy.

Yet, the learned Judge asked the authority to consider their representation.

We wonder, how the order could be faulted.

RESULT: In case Jaydeep and/or Apurba want to file any comprehensive representation, either in addition to the existing representations or by substituting the pending representations, they would be at liberty to do so.

Once they would make it, the authority would pass a composite order both on the gradation list as well as promotion and communicate such reasons, preferably within eight weeks from the date of receipt of such representations.

In case no such representation is filed within a period of two weeks, it would be presumed, they are not minded to do so and the authority would pass the reasoned order on the existing representations in terms of the direction contained herein.

The appeals and writ petition are disposed of accordingly without however any order as to costs.

Samapti Chatterjee, J.I agree.

[ASHIM KUMAR BANERJEE, J.].[SAMAPTI CHATTERJEE, J.].

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