

General Manager, Kolaghat thermal Vs. Power Station and ors.

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Court : Kolkata

Decided On : Dec-17-1997

Reported in : (1998)1CALLT391(HC)

Judge : Altamas Kabir, J.

Acts : West Bengal Power Development Corporation Limited Employees Promotion/Recruitment Rules, 1990;; Constitution of India, Article 1950 - Articles 14, 16 and 226

Appeal No. : Constitutional Writ Jurisdiction W.P. No. 22643 (W) of 1997

Appellant : General Manager, Kolaghat thermal

Respondent : Power Station and ors.

Advocate for Def. : Mr. Moni Bhusan Sarkar and ;Mr. Gobindalal Ghosh, Advs.

Advocate for Pet/Ap. : Mr. Murari Mohan Das and ;Mr. Rajas Baruva, Advs.

Judgement :

A. Kabir, J.

1. The petitioners claim to be working as operating Assistants in the Operation Power House (Mechanical) in the Kolaghat Thermal Power Station under the West Bengal Power Development Corporation Limited, hereinafter referred to as 'the

Corporation', and their services are said to be governed by the Employees' Service Regulations framed by the said Corporation.

2. It appears that the Corporation framed the West Bengal Power Development Corporation Limited Employees' Promotion/Recruitment Rules, 1990, here inafter referred to as the '1990 Rules', which came into operation on and from 21st August, 1990.

3. The said Rules, inter alia, provide that 80% of vacancies in the post of senior Operating Assistant are to be filled up on seniority-cum-merit basis from amongst departmental candidates having passed LME/LEE/ B.Sc. examination with specific training/experience of not less than one year or more as may be fixed by the Corporation.

4. It is the petitioner's grievance that, although, the basis of promotion is 'selection cum merit', steps are being taken by the concerned authorities to fill up the vacancies in the post of Senior Operating Assistant treating the said post to be a selection post.

5. Appearing in support of the writ petition, Mr. Murari Mohan Das urged that ignoring the criteria for grant of promotion on the basis of seniority cum merit, the respondent authorities without fixing the seniority amongst the Operating Assistants and without publishing the seniority list and fixing the number of vacancies, have fixed a date for holding a written test for selecting candidates for filling up the vacancies that have occurred. Mr. Das urged that the steps taken by the respondents were highly arbitrary and illegal and were liable to be quashed.

6. Mr. Das urged that when the criteria for promotion is seniority cum merit, candidates should automatically be granted promotion unless it became necessary to test the merit of similarly-placed candidates for reducing the number of eligible candidates against the number of vacancies available.

7. In support of his submissions Mr. Das firstly referred to a decision of the Delhi High Court in the case of Deep Chand Gupta v. The Food Corporation of India wherein while considering the quota rule for promotion, the learned single Judge

observed that criteria for selection being seniority subject to fitness, it was improper for the Selection Committee to adopt merit as the criteria.

8. Mr. Das also referred to a decision of the Kerala High Court in the case of V.N. Rajan v. Hindustan News Print Limited, reported in 1997 Lab. I.C., page 2757, where the same question was under consideration and where it was held that when the eligibility criteria was based on seniority cum fitness, it was improper on the part of the authorities to treat the post as a selection post and to give preference to merit Instead of seniority.

9. Mr. Das submitted that in the circumstances the respondents should be restrained from conducting the written test or from granting promotion to the post of Senior Operating Assistant on the basis thereof. Mr. Das urged that the respondents should be directed to publish the gradation list of Operating Assistants and to grant promotion on the basis of such list and till such time as the gradation list was published not to give promotion in respect of the vacancies in the post of Senior Operating Assistant.

10. Opposing the writ application on behalf of the respondents, Mr. Moni Bhusan Sarkar firstly submitted that the draft gradation list of operating Assistants had been duly published on 2nd July. 1997, and objections had also been invited and that the objections which had been received till 31st October, 1997, were being processed.

11. Mr. Sarkar urged that the list of candidates chosen for sitting in the written test had been prepared on the basis of seniority as per the draft gradation list and the criteria relating to seniority had been duly maintained in the preparation of such list.

12. Mr. Sarkar then submitted that the Corporation had issued two Circulars dated 15th July, 1996 and 29th October, 1997, respectively, in this regard where for the purpose of determining the merit of the candidates a procedure had been indicated which provided for marking on the basis of a written test, interview and the Personal Assessment Records of the candidates of the previous three years.

13. Mr. Sarkar urged that as would appear from the said Circulars, the qualifying pass marks had been fixed at 50% for general candidates and at 40% for reserved candidates,

14. Mr. Sarkar urged that while greater weightage had been given to seniority, in so far as the weightage relating to merit was concerned, the above-mentioned norms were being followed so as to ensure that persons with some amount of merit were being promoted. Mr. Sarkar submitted that a person higher in the seniority list who had obtained the minimum qualifying marks would be given preference to his junior in the list who may score higher marks in the written examination and interview and on consideration of his PAR for the last three years.

15. Mr. Sarkar urged that if the petitioners secured even the minimum qualifying marks, their selection on the basis of seniority would not be disturbed.

16. In support of his submission Mr. Sarkar referred to the decision of the Hon'ble Supreme Court in the case of Mahesh Kumar Agal v. Director General of Police & Anr.. reported in : (1996)2SCC70 , where it was held that where the passing of a Hindi test was the criteria for promotion, the promotee's seniority would have to be fixed from the date of passing of the test.

17. Reference was also made to another decision of the Hon'ble Supreme Court in the case of J.C. Prasad Rao & Ors. v. Secretary to Government & Ors.. reported in 1996(2) SCC page 51, where similar sentiments were expressed.

18. Mr. Sarkar urged that the petitioners were labouring under a misapprehension that the question of promotion would be decided only on the basis of marks obtained in the written test and interview and the PAR of the previous three years.

19. Admittedly, in terms of the Regulations framed by the Corporation, the basis of granting promotion in respect of 80% of the vacancies in the post of senior operating Assistant from amongst departmental candidates is seniority cum merit, which means that greater weightage is to be given to seniority than merit. Promotion cannot, therefore, be granted solely on the basis of seniority, as has

been urged by Mr. Das and a certain amount of weightage has to be given to merit as against seniority whatever be the ratio between the two.

20. Since the draft gradation list has been published and the list of eligible candidates was prepared in order of seniority on the basis thereof, the petitioners can have no grievance on such score.

21. However, the petitioners can certainly raise a grievance in regard to the weightage given to the written test/interview/PAR of the preceding three years, over seniority, despite the eligibility criteria being seniority cum merit. Although, an attempt has been made by Mr. Sarkar to explain that more weightage was being to seniority and that if the candidate obtained the minimum qualifying marks in the merit evaluation tests, then in keeping with his seniority he would be selected for promotion such explanation does not, in my view, conform to the concept of seniority cum merit.

22. The procedure indicated Mr. Sarkar makes merit and not seniority the determining factor in deciding whether a candidate is to be selected for promotion, instead of the opposite being the case where the criteria is seniority cum merit. Unless a candidate, whatever be his position in the seniority list, secures the minimum qualifying marks in the merit test, he does not come within the zone of consideration for promotion, thus reducing the procedure for promotion to a process of selection or, in other words, merit cum seniority.

23. When seniority cum merit is the criteria for promotion. it is understood and accepted that seniority will be the determining factor and not merit and the procedure should be drawn up in such a way so as to fulfil such intention. Normally, points are separately awarded for seniority and for merit and are then added together for preparing the Select List. There is no reason as to why such a procedure or a procedure similar thereto should not be followed by the respondents in preparing the Select List for promotion to the prescribed quota of vacancies in the post of Senior operating Assistant on the basis of seniority cum merit. The holding of a written test/interview/consideration of the PAR, for the three preceding years can always be fitted in for satisfying the requirement of merit in such a way so that more weightage to seniority is duly maintained.

24. The writ petition, therefore, succeeds to the extent that obtaining minimum qualifying marks in the written test/interview/consideration of PAR of the preceding three years should not be made the criteria for preparation of the Select List. While the aforesaid merit evaluation process may be undertaken, separate marks should be awarded for seniority and in respect of such merit evaluation process, with more weightage on seniority than merit, in keeping with the eligibility criteria of seniority cum merit. The respondents are directed to hold a fresh written test for promotion to the post of senior operating Assistant in respect of 80% of the vacancies, in keeping with the above directions.

The writ application is thus disposed of. There will be no order as to costs.

If a certified copy of this judgment is applied for, the same is to be supplied to the applicant within 72 hours from the making of such application, subject to compliance with all the required formalities.

Leave is given to the learned advocates of the respective parties to communicate this order to the concerned respondents, who are directed to act on the basis of such communication.

25. Application disposed of