

Subhas Chandra Bose Vs. the Trustees for the Improvement of Calcutta and ors.

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Court : Kolkata

Decided On : Dec-22-1987

Reported in : (1989)1CALLT376(HC)

Judge : Paritosh Kumar Mukherjee, J.

Acts : Service Law

Appeal No. : C.R. No. 5136 (W) of 1981

Appellant : Subhas Chandra Bose

Respondent : The Trustees for the Improvement of Calcutta and ors.

Advocate for Def. : Pravat Kumar Sengupta and ;H.L. Dasgupta, Advs. for Respondents Nos. 1 to 6 and ;Sanjay Bhattacharya and ;Chandrima Bhattacharya, Advs. for Respondents No. 7

Advocate for Pet/Ap. : Jamini Kumar Banerjee and ;Subodh Chandra Bhattacharya, Advs.

Judgement :

Paritosh Kumar Mukherjee, J.

1. In the present writ petition, the petitioner Subhas Chandra Bose has challenged the illegal grant of promotion in respect of private respondent Nos. 8 and 9, without preparing any detailed seniority list and prayed for issue of appropriate writ in the nature of Mandamus not to give effect and/or further effect to, the seniority list of Sub-Assistant Engineers of the Engineering Department of Calcutta Improvement Trust, which is Annexure T to the writ petition, and further to prepare a seniority list of Sub-Assistant Engineers and also further commanding the respondents to fix up the seniority position of the petitioner, in accordance with the resolution of the Board, which is Annexure 'H', after re-checking the Board's resolutions, dated January 22, 1972, and July 20, 1974.

2. The writ petition was moved before T. K. Basu, J, on June 8, 1981, and came up for disposal before me on April 6, 1987, and hearing was concluded on May 19, 1987, and judgment was reserved.

3. As I was sitting in the Division Bench in the meantime and the Rule file was misplaced, the judgment could not be delivered till recently.

4. It is the case of the writ petitioner that he was appointed as a 'Surveyor', in the Engineering Department, since 1965, and thereafter he was given 'promotion', in the substantive post by resolution, dated July 2, 1974, and the petitioner was substantively appointed with the confirmation with effect from July 20, 1974, and accordingly he has been holding the said post of Overseer/Sub-Assistant Engineer on 'substantive post,' from the said date. A seniority list was, however, prepared and approved at the meeting of the Rules and Establishment Committee, Calcutta Improvement Trust, in its meeting, dated July 11, 1974, being confirmed by the Board on July 20, 1974, and the said seniority list was prepared for the temporary Overseers of the Engineering Department for C.M.D.A. works and particularly for the work-charged establishment.

5. In the said seniority list, the name of the respondent No. 7 was shown in the heading of temporary Overseers with effect from April 1, 1971, and such appointment has been shown against the work-charged establishment of the C.I.T.

6. It is the further case of the petitioner that in terms of Section 30 of the Calcutta Improvement Trust Act, there is no provision to prepare and maintain a statement of the permanent employees of the C.I.T., which does not provide for inclusion of any staff as shown against the workcharged establishment. Therefore, without complying with the mandatory provisions of Section 30 of the said Act, the seniority list, as shown in Annexure 'C was prepared.

7. The petitioner also stated that he was initially placed in the scale of Rs. 300-600 and was given the new intermediate Selection Grade Post, as per Order, dated March 10, 1980, and the petitioner at present is placed in the scale of Rs. 560-825, whereas the respondent No. 7 being a SubAssistant Engineer is placed in the scale of Rs. 450-675.

8. In that view of the matter, it was submitted that the purported promotion of the respondent No. 7 was also absolutely illegal, in as much as, the petitioner first of all got the substantive appointment on July 20, 1974, in the cadre of Sub-Assistant Engineer, whereas the respondent No. 7 got such substantive appointment on October 12, 1974.

9. In support of the writ petition, Mr. Jamini Kumar Banerjee, Learned Advocate submitted that the petitioner having been confirmed on July 20, 1974, in the substantive post of Sub-Assistant Engineer and the respondent No. 7 having been confirmed on October 12, 1974, the impugned Order giving the promotional benefit to the respondent No. 7 was absolutely illegal, void in law and should be struck down.

10. I have examined the impugned Order from Page 34 of the writ petition, which runs as follows:

'Sri Biswanath Mitra, S.A.E. has been appointed to the temporary post of Asst. Engineer vide Resolution-3(a) of the Rules & Establishment Committee, dated the 16th April 1981 (confirmed by the Board, dated, the 25th April 1981) on usual terms and conditions of temporary appointment which are, inter alia, as follows :

(a) The appointment is purely temporary since the post is temporary.

(b) Leave and other conditions of service will be governed by the rules of the Trust.

(c) You will be subject to the same conduct rules as are applicable to the temporary employees of the Government of West Bengal or to any other conduct rules as may be formed by the Trust.

Your appointment is subject to sanction of the Government required under Section 33 of the C.I. Act.

You are, therefore, requested to join immediately and submit your joining report to the Chief Engineer on furnishing the undertaking to refund the excess amount drawn on account of pay and allowance of the post of Assistant Engineer if Government sanction is refused.

Sd/- S. K. Dasgupta

11.5.81.

Secy. to the Board.'

11. Mr. Pravat Kumar Sengupta, Learned Advocate appearing for the Improvement Trust Authorities placed reliance on the statements made in paragraph 8 of the Affidavit-in-opposition, wherein it has been stated that as per direction contained in resolution No. 3, dated April 16, 1981 (Annexure 'B' to the Affidavit), the seniority list, as recorded by the Board's resolution, dated January 22, 1972 and July 20, 1974, was reckoned by the Chairman, with reference to the Rules and relevant gradation list.

12. It appears in course of such re-checking that the gradation list of Sub-Assistant Engineers was

1. Shri Ranjit Kumar Das

2. Shri Tarun Kumar Banerjee

3. Shri Biswanath Mitra

13. All the three persons mentioned above, were confirmed Sub-Assistant Engineers, Sri Tarun Kumar Banerjee is a handicapped person being deaf and dumb. He was considered to be unfit for field work. An extract of resolution Nos. 11 and 14 of the Rules and Establishment Committee, dated April 3, 1975, (confirmed by the Board on April 12, 1975), recommending that it would not be possible to promote Sri Tarun Kumar Banerjee, Sub-Assistant Engineer, on the basis of seniority since he is physically handicapped where field work is involved, which has been marked as Annexure 'C to the said Affidavit.

14. It was further stated in paragraph 9 of the said Affidavit, that in view of the statements made in paragraph 8 of the said Affidavit, and as the work of Assistant Engineer involved, field work, the Chairman of the Board had no other alternative, but to leave out the case of Sri Tarun Kumar Banerjee and offer appointment to Sri Biswanath Mitra, who is next in seniority to Sri Tarun Kumar Banerjee, as Sub-Assistant Engineer.

15. It may be noted that although Sri Biswanath Mitra is junior to Sri Tarun Kumar Banerjee, as Sub-Assistant Engineer, he was senior to Sri Tarun Kumar Banerjee, as Senior Sub-Assistant Engineer, having been promoted thereto earlier than Sri Tarun Kumar Banerjee.

16. In my view, the reasons given in paragraphs 8 and 9 of the said Affidavit, are not sufficient to justify and deny the promotion to the present writ petitioner and in my opinion, the apprehension of the writ petitioner has been subsequently proved in this writ petition.

17. In my opinion, the respondents have not taken into consideration the relevant facts of continuous service of the writ petitioner and have not given due weightage to the length of service of the writ petitioner for the purpose of granting impugned promotion in favour of the respondent No. 7, without following the principles as laid down by the Supreme Court in the case of S.B. Patbally v. State of Maharashtra, reported in : [1977]3SCR775 and in the case of Baleswar Das v. State of U.P. as reported in : (1981)ILLJ140SC , which has also been followed by the Supreme Court in a recent case of P.D. Agarwal v. State of U.P. and Ors. reported in : [1987]3SCR427 .

18. Accordingly, the writ petition is entitled to succeed. The preparation of the seniority list is accordingly set aside by issue of appropriate Writ in the nature of Certiorari.

19. I further direct the respondents to prepare a 'seniority list', strictly in accordance with law, that is, to take into account the continuous length of service and the date of substantive appointment, in the post of SubAssistant Engineer for the purpose of reckoning seniority of the petitioner and to give promotion on the basis of the said seniority list.

20. I make it clear that promotion already given in favour of the respondents will not be affected by this judgment, but the respondents are restrained from giving any further promotions, without preparing any seniority list, and in accordance with law.

21. The Rule is made absolute to the extent indicated above. There will be no Order as to costs.

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