



**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**RVWO/26/2025
IA No.GA/1/2025**

**UTTAM KUMAR MAHATO AND ORS.
-VERSUS-
PRASENJIT RAY AND ORS.**

**RVWO/27/2025
IA No.GA/1/2025**

**UTTAM KUMAR MAHATO AND ORS.
-VERSUS-
ASOKE KUMAR ROY AND ORS.**

**RVWO/28/2025
IA No.GA/1/2025**

**UTTAM KUMAR MAHATO AND ORS.
-VERSUS-
BADAL ROY AND ORS.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Review Applicants

: *Mr. Saptangsu Basu, Sr. Adv.*
Mr. Pran Gopal Das, Adv.
Mr. Tanmoy Sett, Adv.

For the Respondent

: *Mr. R. Chatterjee, Adv.*
Mr. Arijit Dey, Adv.

For the KMC

: *Mr. Alak Kumar Ghosh, Adv.*
Mr. Swapan Kumar Debnath, Adv.

For the appellants in APO/59/2024 :

Mr. Bikash Ranjan Neogi, Adv.
Mr. Jaydeep Sen, Adv.
Ms. Ananya Neogi, Adv.



HEARD ON : 02.09.2025
DELIVERED ON : 02.09.2025

DEBANGSU BASAK, J.:-

1. Three applications for review are taken up analogously as they are at the behest of the same review applicant. The review applicant seeks review of the judgment and order dated February 25, 2025 passed in APO/59/2024, APOT/218/2024 and APOT/183/2024.
2. IA No.GA/1/2025 in all of the three applications are for condonation of delay.
3. Considering the averments made in the application for condonation of delay and for the ends of justice, we deem it appropriate to condone the delay in making and filing the review application. IA No.GA/1/2025 in all the three review proceedings are disposed of accordingly.
4. Review is taken up for final hearing, by consent of the parties.
5. Learned senior advocate appearing for the review applicants submits that, a Special Leave Petition (SLP) was directed against the judgment and order dated February 25, 2025 and the same was dismissed. Nonetheless the review proceedings are maintainable. He submits that, the review applicants are prejudiced by the actions taken by the Kolkata Municipal Corporation.
6. Learned senior advocate appearing for the review applicants submits that, by the judgment and order dated February 25, 2025, the Division Bench observed in paragraph 46 that the writ petitioners cannot steal a march over the regular promotees. However, the Division Bench upheld



the gradation list. According to him, the direction of upholding the gradation list, is contradictory to the finding that the writ petitioners cannot steal a march over the regular promotees. He submits that, in view of the observation made in paragraph 46 of the judgment and order dated February 25, 2025, the gradation list needs to be re-worked.

7. Learned senior advocate appearing for the review applicants submits that, each of the review applicants will stand upgraded in the gradation list, should the gradation list is recast in terms of the observation made in paragraph 46 of the judgment and order dated February 25, 2025. Therefore, he submits, the apparent error on the face of the record is required to be reviewed.
8. Learned senior advocate appearing for the review applicant relies upon (2006) 2 SCC 747 (State of Karnataka vs. C. Lalitha). He submits that, a person is entitled to parity in employment. According to him, since the review applicant stands on the same footing as that of the other Engineers involved in the gradation list, therefore, it cannot be said that the review applicants are fence sitters. He submits that, all persons similarly situated should be treated similarly irrespective of the fact that one person approached the Court only.
9. Learned senior advocate appearing for the review applicants submits that, the review applicants were not made parties to the writ petition or the appeal, resulting in the judgment and order dated February 25, 2025 and, therefore, the review applicants could not ventilate their grievance before the Court.



10. Corporation, writ petitioners and the appellants are represented.
11. Final gradation list of Assistant Engineer (Civil) published on July 5, 2021 was made the subject-matter of three writ petitions resulting in three appeals. The three appeals resulted in the judgment and order dated February 25, 2025, review of which is sought for herein.
12. Relevant portions of in the judgment and order under review dated February 25, 2025 are as follows:

“46. As noted above, in the instant case, the writ petitioners were accommodated in supernumerary posts created with a view to overcome stagnation in the cadre of Sub-Assistant Engineers. At the time of such creation, by the impugned circular, it was made explicit that the incumbents in such post would be subject to existing Recruitment Regulations in due course, as and when vacancy arises. Such vacancy first arose in 2017-2018 and the regular promotees who were senior to the writ petitioners in the gradation list of SAEs, were regularized. Again on the occurrence of vacancy in 2021, the writ petitioners were regularized as per the extant Recruitment Regulations and then born in the cadre of Assistant Engineers. Applying the principles laid down by the Hon'ble Supreme Court, in the aforementioned judgments, the writ petitioners cannot be seen to steal a march over the regular promotees, who, were regularized in the promotional post, as per the Regulations, prior to the writ petitioners. Apparently, the direct recruits born in the cadre of Assistant Engineers in 2012, when they were appointed on regular basis in accordance with the prevailing Recruitment Regulations.

47. The minimum qualification for appointment in the feeder post of Sub- Assistant Engineers was ostensibly a Diploma. The Recruitment Regulations provided for promotion to the post of Assistant Engineers, both of the Diploma holder SAEs and Degree holder SAEs. The candidature of both the regular promotees and



the writ petitioners were evaluated at the time of regularization, when the vacancies arose in the cadre of Assistant Engineers on the touchstone of their seniority position in the gradation list of the cadre of SAEs. Nothing has been placed on record that any ineligible SAE was promoted or regularized. Accordingly, the impugned gradation list for the cadre of Assistant Engineers was prepared and published on July 5, 2021.

48. *It transpires from the materials placed before us that during pendency of the writ petition, there was an order passed on June 6, 2022 directing that any steps taken during the pendency of the writ petition shall abide by the result of the same. Relying upon Vashist Narayan Kumar (Supra) and Sri Kartick Chandra Ghosh (Supra) it was argued that the learned Single Judge ought to have moulded the relief sought in the writ petitioner to annul the promotions given to some of the parties as Executive Engineers. However, in the facts of the case, no such steps were actually warranted.*

49. *Therefore, in the light of the discussions made hereinabove and applying the ratio laid down by the Hon'ble Supreme Court, we find no fault with the impugned gradation list published on July 5, 2021 or the resolution adopted by the Board of Administrators of KMC at its meeting dated June 29, 2021. Consequently, the impugned judgment and order is hereby, set aside."*

13. By the judgment and order dated February 25, 2025, which is under review we upheld the gradation list dated July 5, 2021.

14. None of the review applicants before us drew our attention to any materials to suggest that they approached the Court at any point of time assailing the gradation list published on July 5, 2021. They accepted the gradation list. They waited till the conclusion of the proceeding right upto the steps of the Hon'ble Supreme Court.



- 15.** Each of the review applicants are, therefore, fence sitters. They, by their conduct, allowed third party rights to be created by the gradation list. They are now seeking to reopen the entire issue ostensibly as a review.
- 16.** The judgment and order dated February 25, 2025 was assailed in a Special Leave Petition (SLP) which was dismissed on May 26, 2025. The review applicant allowed the position to be crystallized and, thereafter are seeking to rake up a concluded issue with regard to the subject gradation list. The gradation list which was published on July 5, 2021 attained finality by the judgment and order dated February 25, 2025 with the Special Leave Petition directed against such judgment and order being dismissed on May 26, 2025.
- 17.** In the facts and circumstances of the present case, no doubt, a section of the persons affected by the gradation list dated July 5, 2021 approached the writ Court. Such persons are not before Court seeking review. As noted above, such gradation list attained finality. The review applicants before us, are governed by the gradation list. There are not being treated in a manner which is contrary to the gradation list published. As noted above, none of the review applicants approached any authority far less the Court assailing the gradation list dated July 5, 2021.
- 18.** Our attention is drawn to one particular instance of the review applicant no.2 in the gradation list, as and by way of an example. It is contended that in the event paragraph 46 of the judgment and order



dated February 25, 2025 is implemented, then the gradation list needs to be re-worked and that the review applicant no.2 will climb up in the gradation list to a higher serial number ensuring to the benefit of the review applicant no.2.

19. With the deepest of respect, we made our observations in the judgment and order dated February 25, 2025 justifying that the gradation list published on July 5, 2021 need not be touched. We upheld the gradation list dated July 5, 2021. Our observations made in the judgment and order dated February 25, 2025 should be read in such context.

20. We find that the attempt by the review applicants is an attempt to misuse the process of the Court. They seek to derail a gradation list which attained finality. As noted above, each of the review applicants are fence sitters. This conduct of the review applicants should not go unnoticed.

21. Valuable time of the Court was unnecessarily consumed by the review applicants.

22. We, therefore, proceed to dismiss the three review applications with costs assessed at Rs.1,00,000/- each for each of the review applicant in respect of each of the review proceeding. This cost be paid within seven days from date to the West Bengal State Legal Services Authority, Kolkata. Documentary evidence of payment of such costs be submitted by the review applicants with the employer. In default, the



employer will proceed to deduct the cost from the salary payable to each of the review applicants and deposit it with the authority named above.

- 23.** RVWO/26/2025, RVWO/27/2025 and RVWO/28/2025 along with all connected applications are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

- 24.** I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.