

(2019) 11 CAL CK 0044

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10717 (W) Of 2015

Debdas Saha

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

West Bengal Municipal Act, 1993 — Section 17, 54(3)(A)
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 CAL CK 0044

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Arunava Ghosh, Dwaipayan Sengupta, Ravi Kumar Dubey, Pranati Das, Tapan Mukherjee, Smita Das De

Final Decision : Disposed Of

Judgement

Md. Nizamuddin, J

Heard both sides.

Relevant facts involved in brief in this case as appears on perusal of relevant records are hereunder.

The Writ petitioner was initially appointed as Clerk in the Chakdaha Municipality since 16.11.1988 to 31.07.1996 on consolidated payment.

It is the case of the petitioner that he was absorbed with effect from 01.08.1996 as permanent ledger clerk by a memo no. 305/C.M. dated 30.07.1996 issued by the Chairman, Chakdaha Municipality/respondent no. 5 and that his appointment was made in accordance with law and by observing the required formalities and has served the respondent Municipality for more than 26 years as a permanent employee in sanctioned post and has been retired from service on 28.02.2014 but all post retiral benefits have been denied to him illegally and has been subjected to discrimination also.

It appears on perusal of the service book of the petitioner annexed to the Writ Petition including a certificate dated 27.02.2013 issued by the Chairman of the Chakdaha Municipality/respondent no. 5 wherein it has been specifically mentioned about the petitioner that:

"..... the certificate date 19.01.1998 depicted at page no. 3, is now modified in terms of G.O. no. 411/P2-P/18/85 dated 17.05.1986 of Government of West Bengal, Deptt. of Local Govt. & Urban Development as follows:

"This is to certify that SRI DEBDAS SAHA, son of Late Durga Pada Saha of Kalyannagar P.O. Madanpur, P.S. Chakdaha, Dist. Nadia, W.B. is the employee of Chakdaha Municipality.

His Designation is Ledger Clerk and initially he was appointed on a fixed pay mainly because no scale of pay was prescribed for the post in which he was appointed.

I also certify that the service rendered by him to this Municipality for the period from 16.11.1988 to 31.07.1996 on fixed pay was whole time and it counts towards qualifying service for pension.""

It also appears from memo no. 207/MA/O/C-4/1A-7/2000 dated 7th May, 2009 issued by the Government of West Bengal, Department of Municipal Affairs an order was passed, which reads as:

"WHEREAS it appears that a considerable number of appointments/promotions were made in a number of Municipalities against sanctioned vacancies holding erstwhile Scale of Pay of Rs. 380/- - 910/-, since revised to Rs. 4,000/- - 8,850/- and below between the period from the 14th day of July, 1994 to the 15th day of October, 2000 (hereinafter referred to as the aforesaid period);

AND WHEREAS in absence of approval of the State Government the Municipalities are facing difficulties relating to the finalization of pension cases of the retired employees;

AND WHEREAS processing of such cases by the Directorate of Local Bodies with the approval of this Department, taking considerable time;

NOW THEREFORE, The Governor, for quick disposal of all pending cases, is pleased hereby to authorize the Director of Local Bodies, West Bengal to issue orders according post facto approval of appointments/promotions made by the Municipalities against sanctioned vacancies holding erstwhile scale of pay Rs. 380/- - 910/-, since revised to Rs. 4,000/- - 8,850/-, and below within the aforesaid period on case to case basis after due examination/enquiry."

It appears that by a further memo being no. 422/MA/O/C4/1A-7/2000 dated 19.08.2009 an amendment was made to the aforesaid Memo dated 7th May, 2009 thereby inserting, inter alia, a paragraph:

"The Governor is further pleased to direct that no approval of the State

Government is required in the cases of appointments/promotions made by the Municipalities within the aforesaid period against sanctioned vacancies holding erstwhile scales of pay from scale of pay Rs. 230/- - 414/-, since revised to Rs. 2,700/- - 4,400/- to the pay scale of Rs. 220/- - 388/-, since revised to Rs. 2,600/- - 4,150/- (hereinafter referred to as the said scales of pay), or in the cases where the resolutions adopted by the Board of Councillors of the Municipalities for making appointments/promotions against the sanctioned vacant posts holding the aforesaid scales of pay but implementation of such resolution has been kept pending till obtaining government approval during the aforesaid period."

By dint of such memo dated 19.08.2009 it was clarified that no approval of the State Government is required in the cases of appointments/promotions made by the Municipalities within the period from the 14th day of July, 1994 to the 15th day of October, 2000 against sanctioned vacancies and as such question of approval of the State Government in the case of the petitioner cannot and/or does not arise at all.

Petitioner contends that all of a sudden, the petitioner came to learn from the office of the respondent Municipality that the Director of Local Bodies by their letter dated 14.11.2013, requested the Chairman of the Municipality to approach the Government of West Bengal to seek post facto approval to the petitioner's appointment with other persons as according to them on examination of their service record, the authorities came to the conclusion that the appointments were given to them without obtaining Government approval.

In reply to the aforesaid memo dated 14.11.2013 the Chairman, Chakdah Municipality by his letter dated 18.12.2013 duly intimated the Director of Local Bodies that by memos dated 08.12.2013, 21.09.2004, 11.08.2009, 20.12.2010 and 12.07.2013 approval have been sought by them and further requested them to grant approval to the petitioner's appointment.

The petitioner contends that the fact of the petitioner's permanent status will be evident from his service book. It will be further apparent from the pay slip of the petitioner that the same is similar to the pay slips of all other permanent employees and all other benefits were given to him during his service like a permanent employee.

The petitioner contended that the impugned letters/memo issued by the authorities are contrary to the aforesaid orders/memos issued by the respondents from time to time.

It has been further contended by the petitioner that it would be apparent from the documents placed before the respondent authorities that the appointment of the petitioner already stands approved by dint of and particularly in terms of memo no. 207/MA/O/C-4/1A-7/2000 dated 7th May, 2009 read with memo no. 422/MA/O/C4/1A-7/2000 dated 19.08.2009 issued by the Department of Municipal Affairs according to which Governor has authorised the Director of

Local Bodies to accord post facto approval to the class of employees under which the petitioner falls and no further approval of State Government was required to be taken.

The petitioner submitted that a representation dated 21.02.2014 was made before the respondent authorities demanding justice and for redressal of his grievance. In the said letter the petitioner requested the respondent authorities to refrain from adopting such practice of denying the petitioner his retiral benefit and to recall and/or rescind and/or withdraw the said notice dated 14.11.2013.

The petitioner contended that in spite of receipt of the said representation long back, the respondent authorities neither replied to the same nor released the retirement benefits to him.

The petitioner contended it is matters of record that he was allowed to work continuously from the date of joining till the normal date of his retirement on 28.02.2014. On the date of superannuation the petitioner duly applied for ad hoc pension by application dated 31.03.2014.

The petitioner contended that the Chairman, Chakdaha Municipality by his letter dated 25.04.2014 intimated the petitioner that his application dated 31.03.2014 for ad hoc payment of pension could not be acceded to as his appointment was not approved by the Director of Local Bodies.

Aggrieved by the acts and actions and/or inactions on the part of the respondent authorities in issuing the notice dated 14.11.2013 and letter dated 25.04.2014 and withholding his retirement benefits, including pension and gratuity, the petitioner filed the Writ Petition being W.P. No. 20716 (W) of 2014 before this Court.

The aforesaid Writ Petition was disposed of by this Court by an order dated 24.07.2014 after hearing the Learned Advocates appearing for the parties, inter alia, holding that:

"Heard learned advocates for the parties.

Since I find from the certificate issued by the Chairman that the petitioner was absorbed in the sanctioned post on 19th March, 1996 and the orders dated 7th May, 2009 and 19th August, 2009 covers the said period, that is March, 1996 and as I find from the said certificate that the petitioner "has been absorbed in the sanctioned post in terms of G.O. No. 103/MA/O/C-9/M2A-13/94 dated 19.03.1996 and the length of his/her temporary service has not been counted towards the length of his pensionable service" and as in the ultimate paragraph it has been mentioned that "I also certify that the service rendered by him to this Municipality for the period from 16.11.1988 to 31.07.1996 on fixed pay was whole time and it counts towards qualifying service for pension", the intimation dated 25th April, 2014, being annexure P-12 to the writ petition, issued by the Chairman cannot be sustained and is set aside and quashed. The writ petition is allowed. Accordingly, the Principal Secretary, Department of Municipal Affairs,

Kolkata, the respondent no.1 is directed to consider the matter with regard to grant of ad hoc pension by passing a reasoned order within ten weeks from the date of presentation of a copy of the certified copy of this order after giving an opportunity of hearing to the petitioner and to a representative of the Chakdaha Municipality and after verifying the records and documents, including the certificate appearing at page 25 of the writ petition and after considering the notifications appearing at pages 58 and 59 of the writ petition and other notifications, if any. If it is found that the petitioner is entitled to pension, the respondent no.1 shall issue appropriate directions forthwith thereafter in accordance with law. It is, however, made clear that I have not gone into the merits of the matter and all points are left open to be dealt with by the respondent no.1.

No order as to costs."

It appears that this Court set aside the aforesaid intimation dated 25th April, 2014 issued by the Chairman, whereby the petitioner was intimated that his application dated 31.03.2014 for ad hoc payment could not be acceded to as his appointment was not approved by the Directorate of Local Bodies.

It appears that the order under memo no. 103/MA/O/C-9/M2a-13/94 dated 19.03.1996 clearly states that:

"NOW THEREFORE, after careful consideration and in continuation of para 2 of this department Order No. 50/MA/O/C-9/2A-17/95 dated 02.05.1995 the Governor is further pleased to determine in accordance with the provisions of sub-section 3(A) of Section 54 of the West Bengal Municipal Act, 1993 (West Ben. Act XXII of 1993) that duly qualified Casual Workers who were engaged by different municipalities upto 31.12.1991 and are still continuing as such will be eligible for absorption in the duly sanctioned vacant Group 'C' posts within the approved staffing patterns of the municipalities strictly on the basis of seniority and with prior approval of the Board of Councillors subject to the fulfilment of other terms and conditions laid down under the Labour Deptt. No. 100-EMP/1M-17/79 (Pt) dated 13.3.1996 read with memo Nos. 1700-EMP of 03.08.79 and 1650-EMP dated 28.08.80."

The petitioner contends that pursuant to the order dated 24.07.2014 passed by this Court in W.P. No. 20716 (W) of 2014 the Principal Secretary, Department of Municipal Affairs passed the impugned undated order being annexure 'P-16' to the Writ Petition from which the petitioner came to learn that none of the points as raised by him was considered by him while passing the said impugned order.

The petitioner contends that it appears from the said impugned undated order passed by the Principal Secretary, Department of Municipal Affairs that even the department itself admitted that the petitioner was absorbed by the Municipality yet granting of approval to the petitioner's service was refused by relying on an order passed by the Chief Secretary, Government of West Bengal being dated 02.12.2009 relating to State Government employees on the basis of an order

dated 24.08.09 passed by this Court in W.P.S.T. No. 483 of 2009 where subject matter of challenge was the impugned instruction nos. 1700-EMP/3C-26/78 dated 03.08.79, 1650/EMP/3C-5/80 dated 28.8.80 and 100-EMP/9M/17 dated 13.03.96 of the Labour Department, Government of West Bengal for regularization/absorption of casual appointees or ad-hoc appointees of the State Government employees while petitioner is the employee of the Municipality and not of the State Government.

Petitioner contends that while refusing approval to his service the respondent authorities failed to appreciate that the Chairman of the Municipality had been recommending for approval of his service since 2003 onwards which are matters of record and the petitioner cannot be made to suffer for inaction on the part of the officials of the Directorate of Local Bodies.

The petitioner submits that the service/retrial benefits denied to the petitioner are not bounty but legal entitlement of the employee which he earns by dint of his long, continuous, faithful and unblemished service with his employer and the right to receive retiral benefits should be treated as right to property and there is no provision for withholding retiral benefits of any employee.

The petitioner contends that the respondent Municipal authorities raised the issue of approval of the petitioner's service at the fag end of his service career that also without considering the necessary materials on record including the service book of the petitioner as well as Government's memo no. 207/MA/O/C-4/1A-7/2000 dated 7th May, 2009 read with memo no. 422/MA/O/C4/1A-7/2000 dated 19.08.2009 issued by the Department of Municipal Affairs which are directly applicable to the case of the petitioner.

The petitioner contends that when the Governor of West Bengal, has been pleased to authorize the Local Bodies to grant post-facto approval to the petitioner's appointment and dispensing with the approval of the State Government then the Municipal Authorities being subordinate authorities and having binding effect on them do not have any authority/jurisdiction to take a stand contrary to the same. Such action of the authorities suffers from total non-application of mind and is unreasonable and illegal on the face of it.

The petitioner contends that there are instances in the same municipality wherein the similarly placed employees are getting the retiral benefits including the pensionary benefits, whereas the petitioner has been denied such benefits and to substantiate his contention the petitioner has filed supplementary affidavit annexing the documents to show that the respondents are practising discrimination to the petitioner in denying him retiral benefit as appears from those documents annexed to the supplementary affidavit filed by the petitioner that similarly placed employees who were working below the rank and scale of the petitioner in the same selection list in which one Ram Chandra Das (Serial No. 5) and one Mahadeb Kumar Mondal (Serial No. 28) have been granted retiral benefits including pension while name of the petitioner in the same list is as

serial No. 4 and has been denied retiral benefits including pension. Respondents have chosen not to file any affidavit-in-opposition to the said supplementary affidavit even after I asked the Learned Counsel appearing for the State Respondents to file the same.

The petitioner submits that the aforesaid undated impugned order being annexure 'P-16' to the Writ Petition, passed by the Principal Secretary, Department of Municipal Affairs, intimated to the petitioner under covering letter dated 17.02.2015 is bad, illegal, perverse, discriminatory and shows total non-application of mind.

In support of his contention made in the Writ Petition, the petitioner has relied on the following decisions:-

- (i) (2006) 4 SCC 1 State of Karnataka -vs- Uma Devi (3) - paragraph 53
- (ii) (2010) 9 SCC 247 State of Karnataka & Ors. -vs- M.L. Kesari & Ors..
- (iii) (2016) 1 WBLR (SC) 98 Amarkant Rai -vs- State of Bihar & Ors. - Paragraphs 14 and 15.
- (iv) (1986) 2 SCC 679 Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. -vs- K. S. Jagannathan & Anr. - Paragraphs 18, 19 & 20.
- (v) (2013) 14 SCC 65 Nihal Singh & Ors. -vs- State of Punjab -Paragraph 18, 19&20
- (vi) (2017) 1 SCALE 426 Jivanlal -vs- Pravin Krishna, Principal Secretary & Ors.

Learned counsel appearing for the State respondent nos. 1, 2, 4 and 7 has appeared and filed affidavit-in-opposition to the Writ Petition but Municipality/ respondent nos. 5 and 6 have not appeared and did not bother to file any affidavit-in-opposition to the Writ Petition though they are very much necessary parties in this Writ Petition.

The state respondents in their affidavit-in-opposition have made simple denial to the allegations made in the Writ Petition and has not specifically dealt with those allegations with any substance nor filed any documents in support of their contention to substantiate their case against the allegations made in the Writ Petition and have not denied or disputed the documents including circulars and notifications etc. annexed to the Writ Petition and have not cited any decision in support of their contention and have also declined to file any affidavit-in-opposition to the supplementary affidavit.

The judgments cited by the petitioners in support of his contentions and on the propositions of law are hereunder.

The case of Uma Devi (supra) paragraph 53 and which has been followed in the case of M.L. Kesari (supra) and in the case of Amarkant Rai (supra) is on the proposition of law as appears hereunder:

" 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the right of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date."

The case of K.S. Jagannathan (*supra*) paragraphs 18, 19 & 20 relied upon by the petitioner is on the scope of exercise of power by the High Court under Article 226 of the Constitution of India which are hereunder:

" 18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission - both with respect to the order of the Division Bench and the purpose and scope of the writ mandamus. The High Court had not issued a writ mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarkanath v. ITO* this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In *Hochtief Gammon v. State of Orissa* this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers."

"19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago Martin, B., in *Mayor of Rochester v. Regina*, said :

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That Court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A) Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *The king v. The Revising Barrister for the Borough of Hanley*. In *Hochtief Gammon's Case* this Court pointed out (at p. 675 of Reports: SCC p. 656) that the powers of the Courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield and Others v. Minister of Agriculture, Fisheries and Food* the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, 4th Eed. Vol. I, Para 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions

where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

The case of Nihal Singh (supra) paragraphs 18, 19 & 20 cited by the petitioner on the issue of discrimination which are hereunder:

"18. Coming to the judgment of the Division Bench of the High Court of Punjab & Haryana in LPA No. 209 of 1992 where the claims for regularisation of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularisation of their service, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under Section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilise the services of employees of the State for a period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants."

"19. No doubt that the powers under Section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts."

"20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of a large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The state has to create them by a conscious choice on the basis of some rational assessment of the need."

The case of Jivanlal (supra) paragraph 2, 3 & 4 cited by the petitioner is also on the issue of discrimination and are hereunder:

"2. The appellants have prayed for regularization of their services with effect from the date they completed 10 years of service. Main reliance is placed on the orders passed by the respondents in the case of similarly situated persons."

"3. The learned counsel for the respondents has vehemently contended that all the regularization orders passed in the case of those pointed out by the appellants are illegal since the State, in principle, had decided to discontinue the appointment to the post of Sweepers by order dated 10.12.1997. However, the fact remains that after the said order also, many similarly situated persons have been granted regularization with effect from the date of completion of 10 years of service."

"4. In that view of the matter, we do not find any justification in discriminating the appellants herein. The policy had been violated in many cases. There cannot be any pick and choose policy; it would certainly lead to corruption. Hence, the appeals are allowed with a direction to the respondents to grant similar treatment to the appellants herein as well and grant regularization to them with effect from the date of completion of 10 years of service."

Undisputed facts and admitted position which emerge on perusal of relevant record available that the petitioner was initially appointed by the Chakdah Municipality/respondent no. 5 for a period from 16th November, 1988 to 31st July, 1996 and this service of the petitioner was qualified for pension as certified by the Chairman, Chakdah Municipality/respondent no. 5 as appears at page 49 of the Writ Petition and petitioner was absorbed as a full time employee in sanctioned post as "Ledger Clerk" from 19th March, 1996 by a resolution on 1st July, 1996 by the Board of Councillors of the respondent Municipality with a pay scale of Rs. 1,040-1,920/- together with usual allowance with effect from 1st August, 1996 as appears at pages 32, 33 & 38 of the Writ Petition. It also appears from service record of the petitioner that the respondent Municipality used to pay salary and all other allowances and issue pay slip to the petitioner like a permanent employee of the respondent Municipality and allowed him to continue to work till the normal date of retirement.

It appears from annexure 'P-4' to the Writ Petition which is a Government Order issued by the Special Secretary, Department of Municipal Affairs, Government of West Bengal dated 7th May, 2019 that Governor of West Bengal has authorised the Director of Local Bodies, West Bengal/respondent no. 4 to issue orders according post-facto approval to the appointments/promotions made by the Municipalities against the sanctioned vacancies in Municipalities holding erstwhile pay scale of Rs. 381-910/-, since revised to Rs. 4,000-8,850/- and below between the period from 14th July, 1994 to 15th October, 2000. It also appears from annexure 'P-5' to the Writ Petition that the aforesaid Government Order dated 7th May, 2009 was amended specifically inserting that the Governor was

further pleased to dispense with the approval of the State Government in cases including the cases where resolutions were adopted by the Board of Councillors of the Municipality for making appointments/promotions against the sanctioned vacant posts holding the aforesaid scales of pay but such implementation of resolution has been kept pending till approval of the said Government Order during the period and the Directors of Local Bodies have been authorized to grant post-facto approval in such cases and case of the petitioner is covered by the aforesaid Government orders.

It appears from annexure 'P-13' to the Writ Petition that earlier, petitioner had filed a Writ Petition being W.P. No. 20716 (W) of 2014 challenging the intimation issued by the respondent no. 5 rejecting the prayer of the petitioner for granting ad-hoc pension on the plea that appointment of the petitioner was not approved by the State Authorities and the said Writ Petition was disposed of by this Court by order dated 24th July, 2014 from which it appears that in the said Writ Petition also the chairman, Chakdah/respondent no. 5 did not appear in spite of service and it appears from the said order that this Court had specifically, inter alia, held that the petitioner was absorbed in the sanctioned post on 19th March, 1996 and the aforesaid Government Orders dated 7th May, 2009 and 19th August, 2009 covers the said period that is 19th March, 1996 under which case of the petitioner falls apart from the facts on record that the respondents have accepted the aforesaid findings and have failed to show that any appeal was filed against the aforesaid order of the Court dated 24.07.14. It also appears from record that the appointment of the petitioner was made by a resolution adopted by the Board of Councillors of the Municipality.

I have also perused the order of the Government of West Bengal dated 2.12.2009 appearing as annexure 'P-14' to the Writ Petition at page 137 and the order dated 24.08.09 passed in W.P.S.T. No. 483 of 2009 referred therein and upon reading the same I am of the view that neither the aforesaid order of the Government, dated 2.12.09 nor the order of this Court, dated 24.08.09 in W.P.S.T No. 483 of 2009 has any relevance to the facts and circumstances and issue involve in the present Writ Petition and the same have no application in this case and the same cannot have overriding effect of the aforesaid Government orders dated 7th May, 2009 and 19th August, 2009, issued by the Departmental of Municipal Affairs since the said Government Order dated 2.12.2009 and which was the subject matter in W.P.S.T. No. 483 of 2009 was relating to appointment and absorption of the contract labourer and casual employees of the State Government while the petitioner is an employee of the Municipalities and the aforesaid Government orders dated 7th May, 2009 and 19th August, 2009 specifically cover Municipal employees.

Taking into consideration the aforesaid factual and legal position I am of the considered view that for petitioner's appointment, approval of the State Government was not required and the aforesaid orders of the Governor of West Bengal is binding upon Municipality and the Directors of Local Bodies was bound

to accord post-facto approval to the appointment of the petitioner and I hold that the action of the respondent Municipality seeking approval of the State Government with regard to appointment of the petitioner and refusal to grant post retiral benefit to the petitioner on the said ground of non approval of the petitioner by the State Government is in total non-application of mind and such action of the respondents are highly unjustified, unreasonable and irrational in view of the aforesaid orders of the Governor as appears from the State Government Orders dated 7th May, 2009 and 19th August, 2009 which are clearly applicable to the case of the petitioner and in view of the fact that the respondents could not show any subsequent circular/order/notification specifically overriding the effect of the aforesaid Government Orders dated 7th May, 2009 and 19th August, 2009.

I also hold that the action of the respondent Municipality denying the post retiral benefits to the petitioner is discriminatory after taking into consideration the documents annexed to the supplementary affidavit affirmed by the petitioner on 11th September, 2019 from which it appears that the respondent Municipality has granted all post retiral benefits to some of its employees named Ram Chandra Das and one Mahadeb Kumar Mondal who were similarly placed and were working below the rank and scale of the petitioner and whose names appeared in the same select list as serial no. 5 & 28 respectively while the name of the petitioner appeared in the same select list as serial no. 4. The said select list has been annexed to the Writ Petition as annexure 'P-2' at page 32 of the Writ Petition. I would like to record that I gave opportunity to the respondents to file affidavit-in-opposition to the aforesaid supplementary affidavit to enable them to controvert the allegations of discrimination made in the said supplementary affidavit with supporting documents but the learned counsel representing the State Respondents showed their reluctance to file any affidavit-in-opposition to the said supplementary affidavit filed by the Writ Petitioner.

In view of the foregoing discussion made above I allow the Writ Petition by quashing the impugned undated order being annexure 'P-16' to the Writ Petition and direct the Director of Local Bodies, Government of West Bengal/respondent no. 4 to grant post facto approval to the appointment of the Writ Petitioner from the date of his absorption in the respondent Municipality in the sanctioned post as a "Ledger Clerk" by the resolution of the Board of Councillors of the Municipality dated 01.07.1996, as per Government order no. 207/MA/0/C-4/1A-7/2000 dated 7th May, 2009 and Government order no. 422/MA/0C-4/1A-7/2000 dated 19th August, 2009 issued by the Government of West Bengal, Department of Municipal Affairs and direct the respondent authorities concerned to make payment of all post retiral benefits including pension to him as of a permanent employee of the respondent/Municipality. The whole exercise of approval and payment of all such post retiral dues to the petitioner must be completed by the respondents concerned within 12 weeks from the date of communication of this order. In case of default in making payment of all post retiral dues within the aforesaid stipulated period respondents shall pay the same

with interest to the petitioner at the rate of 6% from the date of retirement till the date of actual payment of such arrears.

Writ Petition W.P. No. 10717 (W) of 2015 is accordingly disposed of and there will be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.