
(2019) 09 CAL CK 0252

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 713 (W) Of 2019

Jitnarayan Banerjee

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

West Bengal Municipal Act, 1993 — Section 54(3)
West Bengal Municipal (Employee's Death-CUM-Retirement Benefits) Rules, 2003 — Rule 31

Citation : (2019) 09 CAL CK 0252

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Partha Sarkar, Abhijit Basu, Soumitra Bandopadhyay, Subhasis Bandopadhyay, Tapan Mukherjee, Monika Pandit, Gourav Das

Final Decision : Disposed Of

Judgement

Samapti Chatterjee, J

After hearing the learned advocates for the parties, it does appear that at pages 19 and 20(Annexure P1) of the writ petition, the writ petitioner was appointed as a Helper with effect from 1st October, 2001, against the sanctioned vacant post. He retired on 28th February, 2018. His grievance is that he has not been paid his pension and other retiral benefits.

In that view of the matter, I allow this writ application passing an order in terms of prayer (a) of the writ petition which is set out herein below:

"(a) A writ in the nature of Mandamus commanding the respondents, their men, agents and servants, more particularly the respondent nos. 2 and 6 and/or the respondent no. 7, Director of Local Bodies, Government of West Bengal and Chairman and/or the Sub-Divisional officer being the Administrator, Burdwan Municipality to give post facto approval on appointment of the petitioner in the post of Barning Ghat Helper of the Burdwan Municipality who retired on

28.02.2018, and thereby the Chairman and/or the Sub-Divisional Officer, being the Administrator of Burdwan Municipality shall release the pension and other retiral dues of the petitioner forthwith."

Mr. Sarkar, learned advocate appearing for the petitioner submits that the petitioner had been serving since 1989 as casual worker under Burdwan Municipality and pursuant to a resolution of the Board of Councillors and by an order dated 20.09.2001 of the Chairman, Burdwan Municipality, the petitioner was engaged/absorbed as Burning Ghat Helper against the sanctioned vacant post with effect from 01.10.2001 in the scale of pay Rs. 2600-4175/- plus other benefits as declared by the government. He further submits that though the petitioner superannuated on 28.02.2018 but till date the pensionary and other retiral benefits have not been given, however, on the similar circumstanced person are getting pension and other benefits because of the post-facto approval has already been given to them by the Director of Local Bodies.

Mr. Sarkar also submits that under section 54(3) of the West Bengal Municipal Act 1993 in respect of appointment of all other officers and employees, the prior approval of the State Government is required with effect from 01.10.2003. However, in the instant case, the petitioner absorbed/engaged on 01.10.2001 against the sanctioned vacant post i.e. prior to 01.10.2003. Therefore, no approval is required. He further submits that under Rule 31 of the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003, the pension shall be paid by the Municipality or Notified Area Authority from its own fund. Therefore, the Director of Local Bodies has no function regarding payment of pension.

Mr. Sarkar draws the attention of this Court that by an order of the Governor, the Special Secretary to the Government of West Bengal, Municipal Affairs Department issued an order under number 207/MA/O/C-4/1A-7/2000 dated 7th May 2009 which runs as follows:

"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. 4000-8850/- 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 proceeding of such cases by the Director 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 of Rs. 380-910/- since revised to Rs. 4000-8850/- and below within the aforesaid period on case to case basis after due examination/enquiry."

Mr. Sarkar further draws the attention of this Court that the Special Secretary to the Government of West Bengal by an order vide number 422/MA/O/C-4/1A-7/2000 dated 19th August, 2009 amended this Department order no. 207/MA/O/C-4/1A-7/2000 dated 7th May, 2009 in the following manner:

"The Governor is pleased hereby to make the following amendment to this Department order no. 207/MA/O/C-4/1A-7/2000 dated 7th day of May, 2009 (hereinafter referred to as the said order):

(1) In the last para for the words "Scale of Pay of Rs. 380-910/-, since revised to Rs. 4000-8850/- and below," the words "scales of pay from Scale of Pay, of Rs. 380-910/-since revised to Rs. 4000-8850/- to the Scale of pay of Rs. 245-455/-, since revised to Rs. 2850-4650/- shall be substituted.

(1) After the last para the following new paragraph shall be inserted.

"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 of Rs. 230-414/-, since revised to Rs. 2700-4400/- to the Scale of Pay of Rs. 220-338/-, since revised to Rs. 2600-4150/- (hereinafter referred to as the said Scales of Pay), or in the cases where the resolutions adopted by the Board of Councilors 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."

Mr. Bandopadhyay, learned advocate appearing on behalf of the Municipality submits that the petitioner was appointed against the sanctioned vacant post of Barning Ghat Helper.

The submission of Mr. Bandyopadhyay is endorsed by Ms. Monika Pandit, learned Advocate appearing for the State respondents.

Considering the submissions as advanced by the learned advocates for the parties and after perusing the record, I direct the respondent no. 2, the Director of Local Bodies, Government of West Bengal to give post facto approval on the appointment of the petitioner for the post of 'Burning Ghat Helper' in view of the order dated 20.09.2001(Annexure P1, pages 19 and 20 of the writ petition) issued by the Chairman Burdwan Municipality and thereby the respondent no. 4, the Director of Pension, Provident Fund & Group Insurance will issue Pension Payment Order in favour of the petitioner and thereafter the Chairman/Administrator Burdwan Municipality will disburse the pension and other retiral benefits of the petitioner by 10th October 2019.

With the direction, this writ petition is disposed of.

Since this writ petition is disposed of without calling affidavits, all allegations made in this writ petition are not deemed to have been admitted.

However, there will be no order as to costs.

Let the instruction submitted by Mr. Bandopadhyay be kept on the record.

Urgent photostat certified copy of this order be given to the parties, if applied, upon compliance of necessary formalities.