

(2022) 08 CAL CK 0040

In the Calcutta High Court

Case No : M.A.T. No. 717 Of 2018, I.A. No. CAN/2/2021

Tarapada Nandy

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 08 CAL CK 0040

Hon'ble Judges : Arijit Banerjee, J; Rai Chattopadhyay, J

Bench : Division Bench

Advocate : Kajal Roy, Biplab Ranjan Bose, Pinaki Dhole, Kakali Samajpaty

Judgement

Rai Chattopadhyay, J

(1) The appellant was an employee of Bansberia Municipality, who retired from service on October 31, 2009. This is the second round of litigation which the appellant is pursuing against his parent department, with his claim for pensionary benefits, which he claims to be entitled to in accordance with the existent law.

(2) The first writ petition of the appellant was W.P.No. 30228(w) of 2014, which was disposed of vide order of this court dated April 7, 2016, when the following directions were issued :

"...Director of Local Bodies, West Bengal, is directed to process the pension papers of the writ petitioner, who retired from Bansberia Municipality on 31st October, 2009, taking into account the office order of the State Government dated 28th June, 2004,.....".

(1) In connection with the said writ petition, the Director of Local Bodies wrote a letter dated July 5, 2016, that pension papers of the present appellant could not be processed due to the reason of his not being a permanent appointee, i.e, in the post of 'Accounts Clerk', under CUDP-III project and the said post not being a

sanctioned one, approval to his appointment could not be accorded in terms of Government Order dated July 28, 2004. That, since approval of appointment could not be granted, pension also could not be granted to him. The said letter dated July 5, 2016, was the subject matter of the present writ petition, in connection with which, the present appeal has arisen.

(2) The appellant alleges sheer inaction on part of the respondents, the State and the Municipality, in complying with the Hon'ble Court's order as above and affording him pension at an appropriate rate, commensurate with the benefits he used to enjoy during his service and also commensurate with what his similarly placed erstwhile co-employees are receiving. This has prompted him to pursue the present round of litigation by filing the writ petition being W.P.No. 20254(w) of 2016. The order dated February 13, 2016, which is impugned in this appeal, has been delivered by Ld. Single Judge, in the said writ petition.

(3) It would be beneficial to briefly look into the factual background of the case, before delving in the order impugned, as mentioned above.

(4) The appellant has relied on the letter of Bansberia Municipality, dated January 27, 1986, to say that by dint of the same he was appointed as an "Accounts Clerk" with the said Municipality. In the said letter, the employer had specified the terms of his appointment, like scale of pay, and tenure, i.e, six months period extendable to one more year, upon satisfactory completion of initial six months. It was stipulated that the appellant would have no right to be permanently absorbed. Since the date of his appointment, the appellant has continuously been employed and engaged under the respondent Municipality.

(5) Thereafter the appellant has relied on three resolutions of the Municipality, i.e, (i) dated April 30th, 1988, (ii) December 31, 1991 and (iii) March 31, 1992, to contend that his service with the Bansberia Municipality has been made permanent by the employer vide unanimous decision reflected in those resolutions along with the other employees engaged in the CUDP-III project of the Municipality. On perusal of the copies of those it appears that 9 (nine) permanent posts of different categories were created, and against 5 (five) of those, the following five employees were absorbed as permanent :

Sl.

Name

Date of Appointment

Date of Absorption

(1)

SatyabrataMaulik

8.2.84

1.4.88

(2)

Dipak Kumar Bhattacharya

1.7.87

1.4.88

(3)

Jay Shankar Das

1.2.86

1.4.88

(4)

Gopal Bhattacharya

1.2.86

1.4.88

(5)

Tarapada Nandi

1.2.86

1.4.88

(6) The resolution dated March 31, 1992, however, narrates the decision of the Board regarding the relevant date to be April 1, 1992, i.e, the date from when the appellant should be treated as a permanent employee of the said Municipality.

(7) The decision of the Board as above was duly communicated to the respondent No. 2, i.e, the Directorate of Local Bodies, which by its letter dated July 13, 1992, informed the Municipality about the onward transmission of the same to the Municipal Affairs Department of the State.

(8) According to the appellant, the fact as stated above, read with the amended provision of the West Bengal Municipal (Employee's Death cum Retirement Benefits) Rules, 2003, which came into effect from August 2003 and enforced entitlement of an employee rendering service for not less than 7 (seven) years, to death/retiring gratuity, duly qualify him for the retirement benefit, including pension as claimed by him.

(9) Further, the appellant relies on Memo No 300/MA/C/C-4/1A-7/2000 dated June 28th, 2004, issued by the Department of Municipal Affairs of the State. This is the ex-post facto approval of the appointments/promotions, made by the urban local bodies against sanctioned vacancies during the period from January 1, 1986, to July 13, 1994. The appellant urges that he is definitely entitled to be benefited under the said order.

(10) The appellant also referred to a letter dated September 20th , 2004, of the Chairman, Bansberia Municipality, written to the Director of Local Bodies, requesting him to move the government for according approval of appointment regarding the four employees, including the appellant, which remained not adhered to or acted upon, by the State, so far as the appellant is concerned, whereas the other persons named therein have been preferentially treated and allowed approval of appointment and all retrial benefits. Thus, the appellant has been discriminated against unreasonably. He said that he has been treated unequally and differently from the other employees, who are said to have been similarly circumstanced as him. They have been accorded approval of service and are drawing retirement benefits. Thus, he has been deprived of the constitutional protection of equality, as a bonafide and law abiding citizen. The appellant urges that due to the purported inaction of the respondent authorities, his vital statutory and constitutional rights have been jeopardised, for which he seeks remedy in the court.

(11) At this juncture we may consider for a while, the decision of the Ld. Single Judge, which is impugned in this appeal and the reasons recorded for arriving at the same.

(12) The impugned order dated February 13, 2018, would reveal that the Ld. Single Bench dwelled on the following points of facts, firstly – that the appointment of the appellant was coterminous with the project works under the CUDP-III project, when the post of the appellant was abolished. Next – that no other staff engaged in CUDP-III project was made permanent by the State. Then – that the claim of the appellant could not be sustained in law. Upon the findings as above, writ petition of the appellant was dismissed.

(13) In this appeal court Ld. Advocate of the appellant has vehemently raised challenges against the said impugned order. By relying on appropriate documents, he has pointed out that the Board of the concerned Municipality, after evaluating the performance of the appellant and after perceiving the necessity of the appellant to be retained with it, had unanimously resolved to retain him against the permanent vacancy with effect from April 1, 1992. The decision of the Board of Councillors of the Municipality was duly forwarded to the Directorate of Local Bodies, which they also acknowledge, but they took no steps either for approving the service of the appellant or granting him appropriate service benefits. According to him, in doing so, the respondent authorities have not only remained benumbing to the cause of the appellant but also seriously injured and prejudiced legal and constitutional rights of him, in as much as, certain other employees of the said Municipality, similarly circumstanced with the appellant have been accorded approval in service and also appropriate pensionary benefits. He submits that in this way his client has been discriminated against, without any just cause, which the Ld. Single Bench failed to consider and this appeal court may remedy it.

(14) State opposes the grounds and prayer of the appellant- and supports the

impugned order. It has been submitted that to accord the appellant the status of a permanent employee with the respondent Municipality, approval of the State is a pre requisite and that for approval of the State for such a proposal of the Municipality, their communication to the State to that effect is a pre requisite. It has further been submitted that unless the proposal of the Municipality for permanent absorption of the appellant is approved by the State, he cannot be treated as a 'permanent' employee of the Municipality and cannot be allowed whatsoever benefit like the others. In this case, according to the State, the Municipality has failed to forward appellant's name, unlike others, who are said to be similarly circumstanced as the appellant, for approval of the State. Hence, it is submitted that the State could not consider appellant's case for approval.

(15) The contentions of the State as above are not supported by the respondent Municipality in this case. According to it, the Board of Councillors had accepted unanimously the name of the appellant along with the other four employees to be forwarded to the Director of Local bodies for approval by the State. Ld. Advocate on behalf of the Municipality has aptly assisted the court with copies of letters dated September 20, 2004 and December 23, 2004, to demonstrate that due onward transmission of the communication regarding the issue had been made but for reasons best known to the sanctioning authority, it maintained kept uncanny silence regarding the appellant's matter. The respondent Municipality, in no uncertain terms, accepts the appellant's claim to be a justified one.

(16) The appellant's appointment in the Municipality and his continuous service with the same till the date of his superannuation – is an undisputed fact in this appeal. State has not even challenged the subject matter of the resolutions of the Municipality dated April 30, 1988 and March 31, 1992, whereby the Municipality resolved the appellant to be accommodated against a permanent post, w.e.f. April 1, 1992. State's challenge lies in the fact that such decision of the Municipality has never been communicated to it with a prayer that necessary approval may be granted in case of the appellant. It has expressed its inability to act in this regard in absence of any such prayer made by the Municipality.

(17) This plea of the respondent State is utterly baseless and unfounded, in view of the letters dated September 20, 2004 and December 23, 2004, which were produced in Court by the respondent Municipality. Those letters clearly support the Municipality's claim that the proposal had duly been made to the State. Receipt of those letters is not denied or disputed by the State.

(18) Fact remains that the following employees of the respondent Municipality are getting regular pension after their superannuation :

- (i) Satyabrata Moulik,
- (ii) Gopal Bhattacharya, and
- (iii) Basudeb Chatterjee.

(19) SatyabrataMoulik and Gopal Bhattacharya are the persons who had been

made permanent, along with the appellant, vide the Municipality's resolutions dated April 30, 1988 and March 31, 1992. Order of Chairman of the Bansberia Municipality dated May 27, 1992, clearly spells out that service of the following persons are confirmed w.e.f. April 1, 1992 :

- (i) Satyabrata Maulik,
- (ii) Amal Kumar Biswas,
- (iii) Tarapada Nandi,
- (iv) Gopal Bhattacharjee,
- (v) Joy Sankar Das and
- (vi) Basudeb Chatterjee.

(20) All these employees, along with some others, are now enjoying pension after superannuation, excepting the appellant. According to the State, since his name has not been approved by it, due to lack of appropriate communication by the Municipality proposing such approval, he is not entitled to the benefit like his peers. As discussed earlier, this claim of the State would not have any legs to stand upon in view of letters dated September 20, 2004 and December 23, 2004.

(21) On the question of the appellant being similarly circumstanced with the other employees, who have been allowed pension, this court is of the view that by placing sufficient document containing tangible evidence of that, the appellant has been able to duly satisfy the court about the same. One can even say that the appellant seems to be on a better footing than the other employees named above, in as much as, the appellant's appointment letter dated January 27, 1988, shows his appointment to be with the Municipality as an "Accounts Clerk" and not for any particular project, like CUDP-III. It is worth mentioning that, the claim of the Director of Local Bodies in its letter dated July 5, 2016, that the appellant was appointed as 'Accounts Clerk' under CUDP-III project, appears to be only imaginary, baseless and unfounded, in view of the appointment letter of the appellant dated January 27, 1986. In view of the other documents produced by the appellant there can be no doubt that since his appointment, the appellant has rendered continuous and uninterrupted service and has been confirmed against a permanent vacancy in the Municipality.

(22) Hence, on the discussions made above, this court has no hesitation to hold that sheer and gross inaction on the part of the State to consider and take steps on the basis of the letter of the Municipality dated September 20, 2004 and that of the Directorate of Local Bodies dated December 23, 2004, till date, has immensely prejudiced and jeopardized the appellant's rights to his post retirement benefits relating to service. No doubt, that the same has caused gross discrimination depriving the appellant of his rightful dues.

(23) On the anvil of the factual findings as recorded above, the appellant's plea of prejudice to his right of equality before law and equal protection of laws under

Article 14 of the Constitution of India appears to have strengthened its vigour.

(24) In a case reported in AIR 1984 SC 1361 (A.L.Kalra vs P.E.Corporation) the Hon'ble Apex Court has approvingly quoted the following passage from the Royappa's case (E.P.Royappa vs State of Tamil Nadu AIR 1974 SC 555):-

"The basic principle which therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of pedantic or lexicographic approach. We cannot countenance any attempt to turnicate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinate limits. From a positivistic point of view, equality is antithetic to arbitrariness. Infact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14 and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State Action and ensure fairness and equality of treatment".

(25) In the case of A.L. Kalra the Hon'ble Supreme Court has been pleased to even reject the proposition that Article 14 required comparison with persons similarly placed, as mentioned below:-

"Para 17 - Before we deal with the contentions raised on behalf of the appellant, it is necessary to dispose of a contention having a flavour of a preliminary objection raised by Mr.Lal Narayan Sinha on behalf of the respondent - Corporation. It was urged that in the absence of any specific pleading pointing out whether anyone else was either similar situated as the appellant or dissimilarly treated the charge of discrimination cannot be entertained and no relief can be claimed on the allegation of contravention of Article 14 or Article 16 of the Constitution. It was submitted that the expression "discrimination" imports the concept of comparison between equals and if the resultant inequality is pointed out in the treatment none can say that equal protection of law has been denied. Expanding the submission, it was urged that the use of the expression 'equality' in Article 14 imports duality and comparison which is predicated upon more than one person or situation and in the absence of available material for comparison, the plea of discrimination must fail. As a corollary, it was urged that in the absence of material for comparative evaluation not only the charge of discrimination cannot be sustained but the executive action cannot be struck down on the ground that the action is per-se arbitrary. Proceeding along, it was urged that making law is a matter of legislature policy and the decree of reasonableness in every such law is equally a matter of policy and policy of the legislature is not judicially reviewable on the specious plea that it is either arbitrary or unreasonable.

Para 18 - It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed”.

(26) The theory that highly placed persons in the ruling elite by and large act responsibly and do not act arbitrarily and capriciously has not been accepted by the Supreme Court. In the case of Delhi Transport Corporation vs. Workers reported in AIR 1991 SC 101, Sawant, J. repelled the contention put forth in the following words:-

“232 - The “High Authority” theory so called has already been adverted to earlier. Beyond the self-defusing and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for sometime in the past. But it’s unrealistic pretensions were soon noticed and it was buried without even so much as an ado to it. Even while Justice Shah, J. in his dissenting opinion in Moti Ram Deka vs. General Manager N.E.F Railways, Maligaon, Pandu, reported in AIR 1964 SC 600 had given vent to it, Dasgupta, J. in his concurring judgment but dealing with the same point of unguided provisions of Rule 148 (3) of the Railway Establishment Code, had not supported that view and had stuck down the rule as being violative of Article 14 of the Constitution.”

(27) Another authority may be referred to, i.e, K.S Vidyarthi Vs. State of U.P reported in 1990 4 JT 2011 (SC), wherein the Hon’ble Apex Court has been pleased to hold that if it is shown that the impugned State action is arbitrary and therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved person.

(28) Upon the entire discussion as above, we find no cogent and sufficient grounds in the impugned order dated February 13, 2018, to uphold the same. The findings of the Ld. Single Bench, as discussed in paragraph (15) of this judgment are not based on sufficient materials. Instead, we find that the same is liable to be set aside for the reasons discussed above.

(29) Hence the judgment and order dated February 13, 2018, of the Ld. Single Bench, in W.P.No 20254(w) of 2016 is hereby set aside.

(30) We hereby direct the respondent State authority to immediately act upon the letter dated September 9, 2004, of the Bansberia Municipality, with respect to the present appellant, by according approval to his service, from the date of his permanent appointment. We further direct the concerned respondent to release to him all consequential benefits applicable to him, including pension, immediately after approval of his service. The entire exercise, as above, shall be concluded within a period of 3 (three) months from the date of this order.

(31) With the above directions the appeal and the connected application are

disposed of. Interim order, if any, stands vacated.

(32) Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.