

28.09.2020

Item No.09
Court No.11
Avijit Mitra

W.P.A. No. 6091 of 2020 (Via Video Conference)

**In re: Sumit Kumar Sen
- Versus -
State of West Bengal & Ors.**

Mr. Soumya Majumder

Ms. Sanjukta Dutta

For the Petitioner

Mr. Pantu Deb Roy,

Mr. Ananda Farmania

For the State Respondents

Mr. Swapan Kumar Mazumder

For the Municipality

The first grievance of the petitioner is that Nabadwip Municipality (in short, the municipality) had illegally denied him promotion to the post of Assessment-in-Charge on and from 21st August, 2015. The second grievance of the petitioner is that though he had retired from the post of Clerk-cum-Supervisor, PWD on 31st March, 2019, his pensionary benefits have been illegally withheld.

Mr. Majumder, learned advocate appearing for the petitioner argues that though the petitioner had the appropriate qualification for appointment to the post of Assessment-in-Charge, his promotion to the said post was illegally rejected by an order dated 20th March, 2014.

He submits that the petitioner was initially appointed to the post of P.W. Supervisor-cum-Clerk in the scale of Rs. 300-685/-. The said post was redesignated as Clerk-cum-Supervisor, PWD and he was confirmed in service with effect from 1st April, 1982. As he was a regular employee working in a sanctioned post, he was allowed to opt for pension under the pension scheme. A retirement notice was thereafter issued to the petitioner on 12th March, 2018 intimating that he would be attaining 60 years of age on 6th March, 2019 and that he shall retire with effect from 31st March, 2019. The pension papers as forwarded by the municipality were surprisingly returned by memo dated 5th April, 2019, issued by the Assistant Director, Pension, Provident Fund and Group Insurance with an audit observation that *“as per notification No.15/C-9/MIM-3/81 dt. 20-04-82 of L.G.U.D. Deptt. there is no such post of Clerk-Cum-Supervisor, P.W.D., please clarify the matter”*.

He submits that there is no dispute that the petitioner had rendered continuous service in the post of Clerk-cum-Supervisor, PWD till his retirement and he was regularly paid his salaries and his scale of pay was also revised in terms of ROPA Rules. Having utilised such service in the post of Clerk-cum-Supervisor, PWD, the authorities cannot now take a stand that as the name of the petitioner's post does

not feature in the said government order dated 20th April, 1982, he cannot be disbursed the pensionary benefits and such action is absolutely illegal and unreasonable.

He further submits that pensionary benefits were disbursed in favour of persons similarly situated with the petitioner even though the posts held by them also did not feature in the said government order dated 20th April, 1982.

Mr. Swapan Kumar Mazumder, learned advocate appearing for the municipality submits that the petitioner was denied promotion to the concerned post of Assessment-in-Charge as he did not have the requisite qualification and there is no infirmity in such decision and as such no interference is called for.

He submits that all the pension papers were forwarded by the municipality to the appropriate authority vide memo dated 25th January, 2019 and upon scrutiny of the same it had been found that the post in which the petitioner rendered service does not feature in the government order dated 20th April, 1982. The formal approval of appointment of the petitioner to the post of Clerk-cum-Supervisor, PWD had been withheld by the State. The memo dated 25th January, 2019 issued by the Chairman of the municipality, as produced, be kept on record.

Mr. Deb Roy, learned advocate appearing for the State respondents submits that the post in which

the petitioner rendered service admittedly does not feature in the government order dated 20th April, 1982 and as such appropriate clarification was sought for by the audit authority by a memo dated 5th April, 2019. The post in which the petitioner rendered service is not an approved and sanctioned post and as such the government cannot be saddled with any obligation to disburse the pensionary benefits.

Heard the learned advocate appearing for the respective parties and considered the materials on record.

The argument of Mr. Mazumder that the petitioner had been illegally denied promotion to the post of Assessment-in-Charge is not acceptable to this Court. It clearly appears from the memo dated 20th March, 2014, annexed at page 72 of the writ petition, that the petitioner did not have the appropriate qualification for the said post. Once the petitioner retired on 6th March, 2019, the master-servant relationship ceased and the relationship existed only for giving terminal benefits on the basis of the situation that existed on the date of retirement. Thus having retired and having not challenged the order of denial of promotion earlier, the petitioner cannot claim retrospective promotion in the concerned post.

Indisputably the petitioner was initially appointed to the post of PW Supervisor-cum-Clerk in

the scale of Rs.300-685/- and thereafter the post was redesignated as Clerk-cum-Supervisor, PWD. The petitioner rendered service in the said post till the date of his retirement and during the entire service period he was disbursed his salaries. Accepting the petitioner to be an approved staff, the retirement notice was also issued by the competent authority. Having extracted service from the petitioner for more than 30 years, the respondents cannot now deny payment of pensionary benefits on a purported ground that the post in which the petitioner had rendered service does not feature in the government order dated 20th April, 1982. A perusal of the government order dated 20th April, 1982 would reveal that there are various posts of clerk in the scale of pay granted to the petitioner. Nomenclature of the particular post cannot be the sole determinative feature. For lack of formal correction of the name of the post, the respondents cannot withhold the petitioner's pensionary benefits. The pay scale enjoyed by the petitioner finds place in the government order dated 20th April, 1982. Subsequently, his pay was also revised and he was allowed to opt for pension. Such pay fixation would not have been allowed and pension option would not have been accepted, had the petitioner worked in an unsanctioned post. From the contents of the memo dated 25th January, 2019 issued by the Chairman of

the municipality it is explicit that the petitioner had worked in a sanctioned post. In the said conspectus, I am of the opinion that the impugned audit observation as incorporated in the memo dated 25th January, 2019 cannot stand in the way towards disbursement of pensionary benefits in favour of the petitioner.

Accordingly, this Court directs the State respondents to disburse the pensionary benefits in favour of the petitioner, subject to compliance of necessary formalities, if any, within a period of six weeks from the date of communication of this order.

Needless to observe the municipality shall forward all the pension papers to the respondent no.4 within a period of two weeks from the date of communication of this order.

With the above observations and directions, the writ petition is disposed of.

There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Tapabrata Chakraborty, J.)