

03.
19.03.2021.
Ct. No. 11.
F.B.

**MAT 65 of 2021
with
IA No. CAN 1 of 2021**

**The Baidyabati Municipality & Ors.
-Vs.-
Swapan Chatterjee & Anr.**

**Mr. Partha Sarathi Bhattacharyya,
Mr. Kumaresh Dalal
..... For the Appellants.**

**Mr. Parth Sarkar,
Mr. Abhijit Basu
..... For the Respondent
No. 1.**

**Mr. Ashim Kumar Ganguly,
Mr. Bellal Shaikh
..... For the State.**

The short question which arises in this appeal relates to whether the Private Respondent No. 1 is entitled to pensionary benefits after completing long 32 years of service with the Respondents/Baidyabati Municipality (for short, the Municipality).

By the order of the Hon'ble Single Bench dated 11th of December, 2020 in WPA 8749 of 2020, the parties involved namely, the Writ Petitioner/the present Private Respondent No. 1, Municipality who are the present appellants and the State Respondents were directed to take steps in co-ordination with the Director of Pension, Provident Fund and Group Insurance (for

short, the *DPPF&G*) to clear the retirement dues of the private respondent within a time period of six months.

The Municipality is before this Court with the appeal. The Municipality argues through Learned Senior Counsel, Mr. Bhattacharyya, that in respect of certain Audit Observations dated 4th of March, 2021 received from the Assistant *DPPF&G*, Government of West Bengal by the Chairperson, Board of Administrator (for short, *BOA*) of the Municipality, the Municipality is not in a position to take steps to process the pension case.

At this juncture, it would be relevant for this Court to quote the Audit Observations which, *inter alia*, at Serial Nos. 1 and 2 thereof read as follows:-

“Audit Observations:

1. *P.S.A is requested to go through the “Reasoned Order” dated 08-09-14 of the Director of Local Bodies, Government of West Bengal where in it is stated that, “..... absorption of Casual workers are not being considered by this Directorate as of now. Hence approval for regularization of appointment of Writ petitioners who happens to be casual workers cannot be accorded at present”. It may be mentioned in this connection that in terms of G.O. 472/MA/O/C-4/1A-9/97 dated 20-08-2003 this office issues P.P.O for the whole time PERMANENT EMPLOYEES under employment of the*

Municipalities and Notified Area Authorities. Hence, P.S.A. may move to the office of the Director of Local Bodies, Govt. of West Bengal for the regularization of the service of the incumbent in the instant case for further action from this end.

2. *In addition to the above P.S.A is aware of the fact that the I.P.F.(s) under ROPA 1998, Ropa-2009 & Ropa-2019 as well as CAS benefits, if applicable need be checked and verified by the D.L.B. W.B. before finalizations of the case here”.*

Although this Court is baffled by the idea that the private respondent could continue in service for long 32 years at a scale of pay which has been regularly enhanced along with admissible benefits such as Career Advancement Scheme (for short, CAS), all of which are evident from the Service Book (SB) produced by the Municipality in Court today, from a better grip on the facts this Court is taken to pages 31 and 36 of the application by Learned Counsel for the writ petitioners/the private respondents to provide an answer to the Audit Observations.

It would be again illustrative for this discussion to quote the query raised before the Director of Local Bodies (for short, DLB) by the Chairman of the Municipality on the 20th of November, 2017 with regard to approval of the post of Pump Operator held by the private respondent under the Municipality. It would be

relevant to state that the name of the private respondent appears at Serial No. 2 of the Memo dated 20th of November, 2017, which finds place at page 31 of the stay application.

Responding to the Memo dated 20th of November, 2017, the DLB, West Bengal wrote to the Chairman of the Municipality on the 23rd of August, 2018 and such communication requires to be quoted in full for the benefit of this discussion:-

“No. 1114/DLB/B-504/15-2016

Dated, Kolkata, the 23rd August, 2018.

*From: The Director of Local Bodies, West Bengal,
&
Ex-Officio Special Secretary to the Govt. of W.B.
Department of U.D & M.A.*

*To: The Chairman,
Baidyabati Municipality,
P.O. Sheoraphuli & Dist. Hooghly.
PIN- 712223.*

*Sub: Approval of appointment as per G.O. No.
300/MA/O/C-4/1A-7/2000 dt. 28.06. 2004
Ref: Your No. 1988/A-45 dated 20.11.2017.*

Sir,

With reference to above, this is to inform you that as per provisions of the order of erstwhile Department of Municipal Affairs, Govt. of West Bengal vide G.O. No. 300/MA/O/C-4/1A-7/2000 dt. 28.06.2004, no approval of this Directorate is required for the appointments that fall under the purview of the aforesaid order.

Yours sincerely,

*Director of Local Bodies, West Bengal &
Ex-Officio Special Secretary to the Govt. of West
Bengal Department of U.D. & M.A”.*

Therefore, Mr. Sarkar, Learned Counsel for the private respondent, submits and, to the mind of this Court not without merit, that the issue of approval stands settled by the reply of the *DLB* dated 23rd of August, 2018. It is a matter of admitted records that appointments made by the Municipality prior to 1996 were covered by such reply of the *DLB* dated 23rd of August, 2018 (*supra*). It is therefore submitted that the private respondent having been first appointed in 1989 is covered by the deemed approval as underscored by the communication of the *DLB* dated 23rd of August, 2018. It is further submitted that any other view such as taken by the *DLB* following a direction of the Hon’ble Court in W.P. 13378 (W) of 2014 and, such earlier view is dated the 8th of September, 2014 at pages 48 to 50 of the stay application, must be said to have merged with the subsequent view of the *DLB* as expressed by the communication dated 23rd of August, 2018.

Learned State Counsel, Mr. Ganguly, submits that in the event, the Service Book is prepared and forwarded to the appropriate authority of the Government, i.e. the *DPPF&G*, steps shall be taken to process the pension papers of the private respondents.

Having regard to the above discussion, Point no. 1 of the Audit Observations (supra) on the issue of requirement of further approval to the post occupied by the private respondent prior to his retirement stands answered in the affirmative in favour of the private respondent.

Now with regard to Point no. 2 of the Audit Observations connected to the grant of benefits under ROPA as well as CAS to the private respondent for verification and finalisation, this Court had the opportunity to peruse the Service Book in original as produced by the Municipality. From the Service Book the following clearly transpire: *a)* that the private respondent was designated in the regular post of Pump Operator under the department of water bodies; *b)* that the private respondent was appointed to a substantive pay band and grade pay which included, *inter alia*, the calculation starting from the basic pay; *c)* upon completion of the prescribed period of service, the appellants received the CAS in terms of the applicable Government Orders; *d)* that the office order dated 22nd of August, 1988 issued by the Chairman of the Municipality appoints the private respondent along with others and the language of such appointment shows as follows:-

“The under-mentioned persons are hereby appointed in the post of ‘Pump Operator’ in the scale of Rs. 260-7-295-8-311-10-421-12-481-14-537/- plus usual allowances as admissible under rules to the municipal employees purely on temporary and provisional basis with effect from the 1st. September, ’88 and until further order.

Their services are transferable from one pump station to another under this municipality and they are liable to perform shift duties.

They should report for duty to the Asstt. Supdt., Water Works Deptt”;

e) The nature of the appointment offered on the 22nd of August, 1988 shows the appointment to be in a regular post carrying regular administrative duties and at the entry level of pay; and f) such appointments have been covered under the scope of deemed approval by the communication of the *DLB* as referred to above and dated 23rd of August, 2018 (*supra*).

Therefore, on the basis of the original Service Book and the entries made therein, this Court is of the further view that Point no. 2 of the Audit Observations also stands affirmed in favour of the private respondent.

In the light of the above observations, the Municipality is directed to place the Service Book within 48 hours before the *DPPF&G*, who shall process the pension papers of the private respondent within a further period of a week from thereafter and take steps

to disburse the pension amount on regular basis with effect from April, 2021 with all arrears paid in three equal monthly instalments.

For the above reasons, the order of the Hon'ble Single Bench is not interfered with.

Since arguments have proceeded on the basis of the records as produced, affidavits were not invited. Other allegations made are therefore deemed to be denied and disposed.

MAT 65 of 2021 with **CAN 1 of 2021** are thus **disposed of.**

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

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

(Hiranmay Bhattacharyya, J.) (Subrata Talukdar, J.)