

WPA 4259 of 2016

Dr. Sakti Lal Choudhury

Vs.

The Chairman, Dum Dum Municipality & Ors.

Mr. Saptarshi Roy

Ms. Arkadipta Sengupta

Mr. Siddhartha Roy

Ms. Kakali Das Chakraborty

...for the petitioner

Mr. Amal Kumar Sen, Ld. AGP

Mr. Lal Mohan Basu

..for the State

Mr. Amales Ray

Mr. Aman Gupta

...for the Municipality

The writ petition pertains to sanction of pension in favour of the petitioner who worked in the post of Resident Medical Officer in Dum Dum Municipality. Petitioner was appointed temporarily on the post of Resident Medical Officer (for short “RMO”) on probation for a period of six months and was placed in the scale of pay of Rs. 2,200/--4,000/-. Such appointment letter dated 6th June, 1998 is at page 19 of the writ petition. Subsequently, the concerned authority of Municipality by adopting a resolution dated 29th December, 1998 confirmed the service of the petitioner as RMO with effect from 1st December, 1998 in the existing scale of pay which he was enjoying from the date of his

appointment. Petitioner completed his tenure and finally superannuated on 31st August, 2015 from the said post of RMO. After superannuation of the petitioner contemporaneously no steps were taken for sanction of retiral benefits due to want of approval from the Director of Local Bodies, Government of West Bengal which according to the respondent authorities was required in terms of Section 54 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the “Act of 1993”). Due to such non-grant of retiral dues the present writ petition was triggered which was disposed of vide order dated 10th November, 2016 by a coordinate Bench wherein the coordinate Bench on placing reliance on the judgement dated 30th January, 2008 passed in MAT 704 of 2007 (Chairman, Dum Dum Municipality & Ors. Vs. Dr. Debranjana Biswas & Anr.) allowed the writ petition which cast an obligation upon the respondent authorities to release the retiral benefits.

Being aggrieved by such order dated 10th November, 2016 the State-respondents preferred intra Court appeal being MAT 588 of 2017 before the Hon’ble Division Bench and the same was disposed of vide order dated 27th November, 2017 wherein the order of the coordinate Bench dated 10th November, 2016 was set aside on the ground that the case of the present petitioner relates to grant of retiral dues is not akin to the case of one Dr. Debranjana Biswas, therefore the

decision of the coordinate Bench passed on this writ petition on 10th November, 2016 was found to be erroneous. While disposing of the intra Court appeal preferred by the State-respondents the Hon'ble Division Bench observed that the matter shall be heard afresh by the learned single Judge having appropriate determination upon exchange of affidavits. Pursuant thereto parties have filed affidavits as well as rejoinder has been filed by the writ petitioner upon obtaining necessary leave from this Court.

Matter pursuant to the direction of the Hon'ble Division Bench is heard by this Court in presence of the learned advocates representing the writ petitioner, State of West Bengal and Dum Dum Municipality.

Mr. Saptarshi Roy, learned advocate appears on behalf of the writ petitioner and submits that the petitioner was appointed against the sanctioned post of Resident Medical Officer firstly on probation and thereafter he was confirmed vide necessary resolution adopted by the Municipality. He successfully completed his tenure and retired on 31st August, 2015 therefore he cannot be denied his right to receive retiral dues after rendering service about 17 years.

In support of such submission attention of this Court has been drawn to the relevant part of service book of the petitioner which is at page 80 of the rejoinder wherefrom it appears that the respondent

authorities made insertion that petitioner's appointed is on substantive basis and he was granted benefit of re-fixation of pay periodically. Based on such service book it has been contended that if the petitioner had not been appointed on substantive basis his pay could not be fixed in regular scale of pay which got revised periodically along with other approved officers of the Municipality.

Another limb of submission advanced on behalf of the petitioner centers around the two orders issued by the Governor of the State which are dated 7th May, 2009 as well as 19th August, 2009. By subsequent order dated 19th August, 2009 the previous order dated 7th May, 2009 got amended and the order dated 19th August, 2009 is quoted below.:-

"No. 422/MA/O/C-4/1A-7/2000 Dtd. Kolkata, the 19th day of August, 2009

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

Amendments

In 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 in Rs.4000-8850/- to the Scale of pay of Rs.245-455/- since revised to Rs.2850-4880/- shall be substituted.
- 2] after the last para the following new paragraph shall be inserted.

The Governor to 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.220-288/- 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 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.”

It is the contention of the petitioner that since such order pertains to appointments/promotions in the Municipality within the period in between 14th July, 1994 and 15th October, 2020 whereas petitioner was appointed on 1st June, 1998; therefore such order dated 19th August, 2009 does apply in case of the petitioner which negates the objection of the respondent authorities that against the appointment of the petitioner no approval was accorded by them.

Mr. Amal Ray, learned advocate appears on behalf of the Municipality and he has submitted on the basis of Section 54 of the Act of 1993 that at the relevant point of time when the petitioner was appointed in the post of RMO the Director of Local Bodies was the approving authority and subsequently by way of an amendment effective from 2nd September, 2002 State Government became the approving authority. However, no specific submission has been made on behalf of the Municipality that petitioner's appointment was not made against sanctioned post. It is contended on behalf of the Municipality that

processing of pension case of the petitioner has been stalled since objection has been raised by the State authorities relating to grant of approval in favour of the petitioner.

Mr. Amal Kr. Sen, learned Additional Government Pleader appears on behalf of the State-respondents and submits that in terms of Section 53 of the Act of 1993 the Municipality may have one Medical Officer at one point of time and not beyond that and from the record it appears that Dr. Debranjana Biswas was holding the post of Medical Officer when the petitioner was appointed on 1st June, 1998 therefore his appointment against the post of Medical Officer cannot be considered as an appointment against sanctioned post. According to the State-respondents petitioner ought not to have been considered as RMO who was appointed against the sanctioned post and as such, is not entitled to receive the retiral dues.

This Court has considered the rival submissions made on behalf of the parties and also perused the relevant documents available on record wherefrom it appears that the petitioner was appointed as RMO firstly on temporary basis for a period of six months on probation with effect from 1st June, 1998 and subsequently he was confirmed vide a resolution of the Municipality dated 29th December, 1998. From such appointment he discharged his duty as RMO and finally

superannuated on 31st August, 2015. Previously the coordinate Bench while allowing the present writ petition by passing order dated 10th November, 2016 found the issue involved in this writ petition being covered by the judgement of the Division Bench dated 30th January, 2008 passed on MAT 704 of 2007 but such view has subsequently been negated by the Hon'ble Division Bench vide a judgement dated 27th November, 2017 keeping in view of the fact that the said Dr. Debranjana Biswas was appointed in terms of the relevant provisions of the Bengal Municipal Act, 1932 which is not the case of the present petitioner since his appointment was made under the relevant provisions of the Act of 1993. Therefore, this Court is tasked to consider the issue involved in this writ petition afresh on affidavits in terms of the direction as contained in the order of the Hon'ble Division Bench dated 27th November, 2017.

On careful consideration of the rival contentions of the parties it appears to this Court that the order dated 19th August, 2009 passed by the authority amending the previous order dated 7th May, 2009, comes in aid of the petitioner while determining the issue of appointment of the petitioner qua approval thereof by the State-respondents. Since, the petitioner's date of appointment is 1st June, 1998 and he was placed in the scale of pay of Rs. 2,200/- - 4,000/- therefore this

Court finds that there is no bar in applying the said order dated 19th August, 2009 while deciding the issue of grant of approval against the appointment of the petitioner in the said post of RMO.

It also does not escape the notice of this Court on chronological analysis of the facts enumerated above that from the date of appointment of the petitioner he was placed in the regular scale of pay and his scale of pay got periodically re-fixed in terms of the rules relating to fixation of pay applicable to the approved employees of the Municipalities.

In addition thereto at no point of time during tenure of the petitioner he was intimated that he was holding the post which is not being approved by the concerned State-respondents since his appointment was not against the sanctioned post; therefore from the perspective of the writ petitioner it appears to this Court that it was not possible for him to comprehend that he was not holding the sanctioned post on substantive basis.

In the above conspectus, this Court finds it apposite to direct the respondent authorities to process the pension case of the petitioner and sanction his entire retiral dues which is admissible to him upon completing the necessary formalities and issue Pension Payment Order accordingly. While disposing of the pension case of the petitioner the concerned respondent authorities is

also directed to issue post facto approval, if necessary, in favour of the petitioner and release the retiral dues including pension within a period of 12 (twelve) weeks from the date of communication of this order.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Saugata Bhattacharyya, J.)