

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 17337 of 2021

Gobinda Ghosh
Vs.
The Director, Directorate of Local Bodies,
Government of West Bengal & Ors.

For the writ petitioners	:-	Mr. Sabyasachi Chatterjee, Adv. Ms. Debolina Sarkar, Adv. Mr. Badrul Karim, Adv. Ms. Priyanka Paul, Adv.
For the State	:-	Mr. Ayan Banerjee, Adv. Ms. Debashree Dhamali, Adv.
For the Kamarhati Municipality	:-	Ms. Chandrani Bhattacharya, Adv. Ms. Bhargabi Banerjee, Adv.
Hearing concluded on	:-	08.09.2022
Judgment on	:-	21.09.2022

Amrita Sinha, J.:-

The petitioner is a retired employee of the Kamarhati Municipality. He retired from service on attaining his normal age of superannuation on 31.12.2016. He has approached this Court praying for a direction upon the respondent authorities to pay his terminal dues as applicable to the Collecting Sarkar, the post from which he retired.

The petitioner was appointed as Mazdoor on 01.06.1990 and thereafter his service was confirmed by the Board of Commissioners of the Municipality. The petitioner was promoted to the post of Collecting Sarkar with effect from 01.04.1995 as per the resolution of the Board of Councillors adopted in the meeting held on 22.02.1995. The promotion was to be confirmed after six months of satisfactory service in the promoted post. The petitioner was due to receive pay according to the scale of pay with other admissible allowances for the post.

The Executive Officer, Kamarhati Municipality issued retirement notice in favour of the petitioner intimating him that under the West Bengal Municipal Employees' DCRB Rules, 2003 of the Bengal Municipal Act, 1932, he would retire on 25.12.2016, and his retirement will be on and from 31.12.2016.

The service book of the petitioner mentions that the initial appointment of the petitioner as Mazdoor was against a vacant sanctioned post as per the Bengal Municipal Act, 1932.

The grievance of the petitioner is that after retirement he was not paid the terminal dues as applicable to the promotional post of Collecting Sarkar. The petitioner is being paid terminal dues as applicable to the post of Mazdoor, i.e., the post in which he was initially appointed.

Being aggrieved by the act on the part of the respondent authorities in paying terminal dues at the reduced rate, the petitioner filed a writ petition in this Court. The said writ petition was disposed of granting liberty to the petitioner to make representation before the Director of Local Bodies highlighting his grievances. Pursuant to the said leave granted by the Court, representation was filed and the same was considered.

The Director of Local Bodies passed a reasoned order rejecting the prayer of the petitioner by observing that the promotion of the petitioner to the post of Collecting Sarkar was made arbitrarily on pick and choose basis without consideration of relevant rules and procedures. No prior/post facto approval of appointment has been sought for or obtained from the Government as per Section 54(3) of the West Bengal Municipal Act, 1993, as amended. Board of Councillors is not empowered by law to promote anybody without prior permission/approval from the Government.

The reasoned order passed by the Director of Local Bodies is under challenge in the present writ petition.

The petitioner relies upon an order dated 07.05.2009 issued by the Department of Municipal Affairs mentioning that considerable number of

appointments/promotions were made in a number of municipalities against sanctioned vacancies between the period 14.07.1994 to 15.10.2000. In the absence of approval of the State Government, the retired employees were facing difficulties in finalization of their pension cases. For quick disposal of all pending cases, the Governor authorized the Director of Local Bodies to accord post facto appointment/promotion made by the Municipalities against sanctioned vacancies, on case to case basis, after due examination/enquiry.

The petitioner submits that as he was promoted to the post of Collecting Sarkar in the period as mentioned in the aforesaid Government Order, accordingly, he should get the benefit of the post facto approval in terms of the aforesaid Government Order.

It has been contended that promotion was given to the petitioner in accordance with the convention prevailing at the relevant point of time and the petitioner served in the promotional post since the date of his promotion till the date of his retirement.

It has been argued that as the petitioner rendered service and was given pay as applicable to the promoted post, as such, the respondents are liable to pay the terminal benefits in accordance with the promotional post.

In support of the aforesaid stand the petitioner relies upon an unreported order dated 04.04.2022 passed by a coordinate Bench of this Court in **WPA 20247 of 2018 (Prabir Kr. Roy -vs- The State of West Bengal & Ors.)** in respect of a retired employee of the Kamarhati Municipality directing the respondent authorities to process and finalize the pension case of the petitioner taking into account the promotion made and release retiral dues by according post facto approval, if required.

It has been argued that the petitioner is similarly placed as that of Prabir Kumar Roy (supra) and similar order may be passed in the present case.

Kamarhati Municipality has filed an affidavit wherein it has been mentioned that the Municipality forwarded necessary documents to the office of the

respondent no. 1 for according post facto approval of the service of the employees. Repeated correspondences were made by and between the Director of Local Bodies and the Municipality over this issue. It has been mentioned that the Municipality took utmost effort to ensure that the interest of the employees is protected.

In the communication dated 4th April, 2012 the Municipality intimated to the Director of Local Bodies that promotion was given to fifty employees to the higher post within the sanctioned strength for proper administration during the period 14.07.1994 to 15.10.2000. It has been submitted that even after thirteen long years of correspondence, post facto approval has not been approved from the end of the Director of Local Bodies. Out of fifty employees, six have already died and twelve have retired from service.

At the relevant point of time the gradation list was not prepared and as per convention, promotion was given. It is only after the Government Order was passed on 07.05.2009 that the practice of preparing a proper gradation list was initiated. The promotion list of the fifty employees made during the period from 1994 to 2000 was sent for approval to the Director of Local Bodies on repeated occasions.

It has been submitted that terminal benefits are released under the instruction of the Director of Local Bodies and the Municipality cannot take a decision in the matter independently.

Affidavit has been filed on behalf of the Department of Urban Development and Municipal Affairs. The affidavit mentions that though the initial appointment of the petitioner as Mazdoor was approved, but the promotion of the petitioner as Collecting Sarkar on and from 01.04.1995 has not been approved. Before granting promotion to the petitioner, the Municipality did not obtain prior approval.

The case records of the petitioner were duly examined in terms of the order passed by this Court in the earlier writ petition filed by the petitioner and it was concluded that the promotion of the petitioner was made arbitrarily on pick and choose method without following the relevant recruitment rules and procedure and as such the prayer of the petitioner for according post facto approval to the

promotional post has been rejected. It has been contended that the petitioner failed to show that the promotion was made following the recruitment and promotion rules.

It has been argued that the Government Order dated 07.05.2009, subsequently amended by order dated 19.08.2009, deals with only appointments/promotions made against sanctioned vacancies. As the petitioner has failed to show that he was promoted against a vacant sanctioned post, as such, he will not be benefitted by the aforesaid Government Orders.

Prayer has been made for dismissal of the writ petition.

I have heard the rival contentions made on behalf of both the parties. There is no dispute with regard to the initial appointment of the petitioner in the post of Mazdoor. The service of the petitioner in the said post has duly been approved and the petitioner is getting his terminal benefits as applicable to the said post.

Dispute arose with regard to the promotion of the petitioner as Collecting Sarkar on and from 01.04.1995. The fact that during that period of time the Municipalities followed the convention of promoting persons for want of a proper gradation list is evident from the Government Orders passed in the year 2009. The Government Orders accept the fact that appointments/promotions were made by number of Municipalities against sanctioned vacancies without taking approval of the Government.

To resolve the issue, the Government by the aforesaid notifications, made it clear that for quick disposal of all pending cases of retired employees, the Director of Local Bodies was authorised to accord post facto approval of appointments/ promotions made during the period 14.07.1994 to 15.10.2000. The promotion of the petitioner was with effect from 01.04.1995, that is, within the mischief period as mentioned in the aforesaid Government Orders.

The Municipality has disclosed before this Court that for proper running of the administration during the aforesaid period, employees were

promoted to the higher posts within the sanctioned strength. The same implies that the promotion of the petitioner was against a sanctioned vacancy.

The Municipality has also disclosed in the affidavit that the promotion was given as per the usual practice at that relevant point of time. As a regular gradation list was not in place, the Municipality followed the practice of giving promotion to the next higher post if a vacancy existed within its sanctioned strength.

No case has been made out by the department that promotion was given to the petitioner by depriving an eligible candidate. None of the employees have approached the authority with the allegation that the petitioner was given the benefit of promotion by depriving his/ her legitimate claim. The Director of Local Bodies simply presumed that 'pick and choose' method has been adopted. The said authority failed to appreciate that the amended Government Order dated 19.08.2009 mentions that approval of State Government will not be required in cases where resolutions were adopted by the Board of Councillors of the Municipalities for making appointments/ promotions against the sanctioned vacant posts. Promotion of the petitioner was made as per the resolution adopted by the Board of Councillors of the Municipality and accordingly, the 'pick and choose' ground taken to reject the prayer of the petitioner cannot be substantiated.

In the present case, resolution was duly adopted by the Board of Councillors to promote the petitioner and the Municipality has asserted that the promotion was against sanctioned vacancy. As such, the grounds taken for rejecting the prayer of the petitioner are liable to be set aside.

The petitioner performed his duties in the promotional post for a considerable period of time and despite repeated requests made by the Municipality, the Government, for no plausible reason, failed to accord approval to the promotion of the petitioner.

It will be highly unfair and unjust on the part of the Municipality to reject the prayer of the petitioner for disbursing his terminal benefits as applicable to the promotional post. It was the duty of the employer to cure the technical defects, if any, to ensure that the retired employee do get the terminal dues without any unnecessary harassment.

It is too late in the day to reject the prayer of the petitioner after the Municipality extracted service from the petitioner in the promotional post for more than two decades.

In *Prabir Kr. Roy (supra)*, in a matter relating to the self same municipality, the Court directed the respondent authorities to release the retiral dues of the employee taking into account the promotion made in his favour.

The Hon'ble Supreme Court consistently held that terminal benefits are not bounty and are valuable rights in the hands of the retired employees. The same is recognition of the long satisfactory service rendered by the employee. The same ought not to be refused or rejected on flimsy grounds.

In view of the above, this Court is of the opinion that the terminal benefits of the petitioner as applicable to the promotional post cannot be rejected on technical ground(s), that too, after the employee served in the promotional post for a considerable period of time.

Remanding the matter back to the Director of Local Bodies for taking a fresh decision in the matter will be a time consuming process. The petitioner has long retired from service and he ought not to be kept waiting for so long for getting his retirement benefits as per his proper scale of pay. As such, the writ petition is disposed of by this Court in the following manner.

The respondent authorities are directed to finalize the terminal dues of the petitioner in the promotional post and to issue revised Pension Payment Order in his favour. For settling the terminal dues, the respondent authorities, if required, shall issue post facto approval to the promotional post of the petitioner.

The revised Pension Payment Order shall be issued in favour of the petitioner at the earliest, but positively within a period of four months from the date of communication of this order and payment in terms of the revised PPO shall be made immediately thereafter.

The impugned reasoned order of the Director of Local Bodies is set aside.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)