

14.12.2022
Item No.05
Court No.6.
S. De

**M.A.T. 1308 of 2022
with
I.A. No. CAN/2/2022**

**State of West Bengal & Ors.
Vs
Prabir Kumar Roy & Ors.**

Mr. Swapan Kr. Datta, Sr. Advocate.
Mr. Tapas Kr. Dey,
...for the State/appellants.
Ms. Chandrani Bhattacharyya,
...for the Kamarhati
Municipality/respondent no.5.
Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
Mr. Komal Singh,
...for the writ petitioner/respondent.

This appeal is directed against a judgment and order dated April 4, 2022 whereby the writ petition filed by the respondent no.1 being WPA 20247 of 2018 was disposed of with the following directions :-

“In consideration of the Government Orders dated 28th June, 2004 and 7th May, 2009 and also placing reliance on the unreported judgment of the Hon’ble Division Bench dated 19th March, 2021 in Baidyabati Municipality (supra) this Court directs the concerned respondent authorities to process and finalize the pension case of the petitioner on taking into account the promotions made in favour of the petitioner first as Conservancy

Inspector and subsequently as Collecting Sarkar and release the retiral dues on issuing pension payment order within the period of twelve weeks from the date of communication of this order. While settling the pension case of the petitioner respondent authorities are also directed, if required, to accord post facto approval in favour of the petitioner in respect of his service which he rendered as Conservancy Inspector and subsequently as Collecting Sarkar.”

The writ petitioner was appointed as Majdoor in Kamarhati Municipality on June 5, 1990. Subsequently, he was promoted to the post of Conservancy Inspector vide order dated March 29, 1995 with effect from April 1, 1995 and thereafter he was promoted to the post of Collecting Sarkar vide order dated December 4, 2000 with effect from October 1, 1999. He retired from service on December 31, 2014.

The dispute relates to his pensionary benefits. The petitioner is receiving provisional pension after his superannuation. The Government says that the two promotions were not to posts which were sanctioned vacancies. Hence, approval of such promotions cannot be granted.

The petitioner relies on Government Orders dated June 28, 2004, May 7, 2009 and August 19, 2009. A combined reading of the said Circulars will show that for quick disposal of all pending cases, the Director of Local Bodies, West Bengal, was authorized by the Government to issue orders according post facto approval to appointments/promotions made by the Municipality against the sanctioned vacancies during the period July 14, 1994 and October 15, 2000, having certain scale of pay. It is not in dispute that the writ petitioner's two promotions were granted during the aforesaid period between July 14, 1994 and October 15, 2000. It is also not in dispute that the writ petitioner satisfies the scale of pay mentioned in the Government Orders. The only dispute so far was whether or not the posts to which the writ petitioner was promoted i.e. the posts of Conservancy Inspector and Collecting Sarkar, there was sanctioned vacancy on the dates of his promotion.

In the affidavit-in-opposition filed on behalf of the Municipality at paragraph 5, it is stated as follows :-

“That regarding paragraph no.3 and 4 of the said application, your respondents categorically deny and dispute the same. Respondent no.1 herein was promoted first as Conservancy Inspector against the

sanctioned post of Keshab Singh who retired on 1st November 1993. Subsequently he was promoted again as Collecting Sarkar against the sanctioned post of Sunil Kumar Sarkar who retired on 1st November 1994. All these promotions were given within the period of 14th July 1994 to 15th October 2000 as already stated in the order of Hon'ble Justice Saugata Bhattacharya. Under such circumstances, pursuant to the amended order of Government dated 19th August 2009, no approval was required from the State in the cases of appointments/promotions made by Municipalities.

Enclosed in Annexure P1 collectively are the information on sanctioned posts as stated above and the amended order of Government dated 19th August 2009 for further reference."

In the affidavit-in-reply filed on behalf of the State, there is no specific evasive denial that there was sanctioned vacancy in the post of Conservancy Inspector and Collecting Sarkar on the dates when the writ petitioner was promoted to such posts. There is a general evasive denial. There is a statement in State's affidavit that Section 54 of the West Bengal Municipal Act, 1993 has not been complied with since prior approval of the Government was not taken issuing the orders of promotion. However, Mr. Datta, learned

senior counsel representing the State fairly submits that he cannot improve upon the State's case. Whatever is stated in the affidavit, he has to adopt.

Thus, the State is not in a position to dispute that there was a sanctioned vacancy in the posts to which the writ petitioner was promoted in 1994 and then in 1999. It is not in dispute also that the Circular dated May 7, 2009, applies to the writ petitioner and he is squarely covered by the said Circular.

In view of the aforesaid, although the learned Single Judge did not discuss the issue of sanctioned vacancy in his judgment, we find no infirmity in the direction that the learned Judge has given. The two promotions granted to the writ petitioner are squarely covered by the provisions of deemed approval in the aforesaid Government Circulars. Hence, his pensionary benefits should be fixed taking into account the two promotions that he was given by the Municipality during his service tenure.

We see no reason to interfere with the order impugned.

The appeal being MAT 1308 of 2022 accordingly fails and is dismissed along with the connected application being I.A. No. CAN/2/2022.

The State authorities and the Municipalities shall take all necessary action as expeditiously as

possible so that the pension of the writ petitioner who retired eight years ago, is fixed within a period of twelve weeks from the date of communication of this order to the appropriate authority. If the writ petitioner is entitled to arrear pension as per the applicable Rules, the same shall also be disbursed to him within twelve weeks from the date of communication of this order to the appropriate authority.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)