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W.P.A. 20247 of 2018

Sri Prabir Kumar Roy

-vs-

The State of West Bengal & Ors.

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
Mr. Komal Singh

....for the petitioner.

Ms. Chandrani Bhattacharyya,
Mr. Bhargabi Banerjee

....for the Kamarhati Municipality.

Mr. Swapan Kumar Datta,
Mr. Tapas Kumar Dey

....for the State.

The writ petition pertains to settlement of pension case of the petitioner who retired on superannuation on 31st December, 2014 from the post of Collecting Sarkar in Kamarhati Municipality. Petitioner was appointed on 1st June, 1990 as Majdoor on substantive basis vide appointment letter dated 5th June, 1990 and subsequently he was promoted to the post of Conservancy Inspector vide order dated 29th March, 1995 with effect from 1st April, 1995 and subsequently, he was promoted to the post of Collecting Sarkar with effect from 1st October, 1999 with the notional fixation from 1st October, 1997 vide order dated 4th December, 2000.

Mr. Ghosh, learned advocate appears on behalf of the petitioner and submits that after his

superannuation he has been sanctioned provisional pension that too based on the service which he rendered as Majdoor with effect from 1st June, 1990 and his subsequent promotions to the post of Conservancy Inspector and Collecting Sarkar was not taken into consideration by the respondent authorities while processing the pension case of the petitioner and releasing the provisional pension in his favour. Petitioner prays for finalization of pension case taking into account the post which he manned till his superannuation i.e. Collecting Sarkar.

In support of such submission made on behalf of the petitioner reliance has been placed on the Government Orders dated 28th June, 2004, 7th May, 2009 and 19th August, 2009 issued by the Department of Municipal Affairs, Government of West Bengal which relate to sanction of approval/post facto approval regarding appointment of staff of municipalities in the State and according to the petitioner he is coming within the purview of these three aforementioned Government Orders which make him entitled to receive the retiral dues on successfully completing his tenure.

Mr. Dattta, learned Additional Government

Pleader appears on behalf of the State respondents and submits that considering the appointment of the petitioner against the post of Majdoor with effect from 1st June, 1990 provisional pension has already been sanctioned but dispute has been raised relating to the promotion made in favour of the petitioner first to the post of Conservancy Inspector and subsequently to the post of Collecting Sarkar. It has been submitted that appropriate respondent authorities should be directed to find out whether the petitioner was promoted against the sanctioned vacancy first as Conservancy Inspector and subsequently as Collecting Sarkar based on the provision being made in Government Order dated 7th May, 2009 wherein it has been provided that the Government should decide the issue of granting approval/post facto approval on a case to case basis with regard to the appointment/promotion of the staff of Municipalities for releasing retiral dues. Therefore according to Mr. Datta if necessary direction is given upon the concerned respondent authorities such exercise shall be carried out to find out whether the petitioner was promoted against the sanctioned vacancy first as Conservancy Inspector and subsequently as Collecting Sarkar.

Ms. Bhattacharyya, learned advocate appears on behalf of the Kamarhati Municipality and submits that the petitioner was appointed on substantive basis first as Majdoor and subsequently was promoted to the post of Conservancy Inspector and thereafter as Collecting Sarkar and necessary steps were taken on behalf of the municipality to forward this issue relating to promotion of the petitioner to the concerned authority of the State Government but no formal approval in support of the petitioner's promotion till date has been accorded. It has further been submitted that if necessary direction is given by this Court for processing the pension case of the petitioner the municipality shall take steps for forwarding the case of the petitioner to the concerned authorities of the State Government for early release of retiral dues taking into consideration the promotions made in his favour subsequent to his appointment as Majdoor.

This Court has considered the rival submissions made on behalf of the parties and has perused the relevant records available on records as well as the Government Orders issued from time to time by the Department of Municipal Affairs, Government of West Bengal relating to grant of

approval/post facto approval in favour of the staff of the municipality.

On reading of three Government Orders dated 28th June, 2004, 7th May, 2009 and 19th August, 2009, it appears to this Court that the appropriate authorities in the State Government have already decided the issue that those staff who were appointed within the period i.e. 1st January, 1986 to 13th July, 1994 are entitled to get retiral dues and their approval would be deemed to have been accorded if such appointment is made against the sanctioned post. Petitioner was appointed initially as Majdoor on 1st June, 1990 and was placed in regular scale of pay therefore in case of consideration of his approval the Government Order dated 28th June, 2004 squarely applies. Subsequent promotions of the petitioner first as Conservancy Inspector and thereafter as Collecting Sarkar with effect from 1st April, 1995 and 1st October, 1999 respectively are also covered by the Government Orders dated 7th May, 2009 and 19th August, 2009. This Court finds it apposite for better understanding to quote the Government Order dated 7th May, 2009 below:-

*“Government of West Bengal
Department of Municipal Affairs
Writers’ Buildings
Kolkata –700001*

ORDER

No.207/MA/O/C-4/1A-7/2000 dated, Kolkata the 7th day of May, 2009

WHEREAS it appears that a considerable number of appointments/promotions were made in a number of Municipalities against sanctioned vacancies holding erstwhile Scale of Pay of Rs. 380-910/-, since revised to Rs.4000-8850/- and below between the period from the 14th day of July, 1994 to the 15th day of October, 2000 (hereinafter referred to as the aforesaid period);

AND WHEREAS in absence of approval of the State Government the Municipalities are facing difficulties relating to the finalization of pension cases of the retired employees;

AND WHEREAS processing of such cases by the Directorate of Local Bodies, with the approval of this Department, taking considerable time;

NOW, THEREFORE, the Governor, for quick disposal of all pending cases, is pleased hereby to authorize the Director of Local Bodes, West Bengal to issue orders according post-facto approval of appointments/promotions made by the Municipalities against sanctioned vacancies holding erstwhile Scale of Pay of Rs.380-910/-, since revised to Rs.4000-8850/-, and below within the aforesaid period on case to case after due examination/enquiry.

By order of the Governor,
Sd/- K.C. Mondal
Spl. Secy. to the Govt. of West Bengal”

No.207/3/MA/O/C-4/1A-7/2000 dated, Kolkata the 7th day of May, 2009”

On reading such Government Order dated 7th May, 2009, it appears that the petitioner was promoted first as Conservancy Inspector and subsequently as Collecting Sarkar within the period of 14th July, 1994 to 15th October, 2000 and considering such aspect by this time concerned respondent authority while processing the pension case of the petitioner was required to accord approval/post facto approval in favour of the petitioner. Taking into consideration the fact that petitioner was appointed against the post of Majdoor with effect from 1st June, 1990 on substantive basis and he was promoted twice as aforesaid and retired on superannuation on 31st December, 2014, after superannuation of the petitioner on the plea that no formal approval has been accorded by the concerned respondent authorities in respect of the promotion of the petitioner first as Conservancy Inspector and subsequently as Collecting Sarkar the retiral benefits cannot be denied.

In this regard reliance has also placed on unreported judgement of the Division Bench dated 19th March, 2021 passed on an intra court appeal being MAT 65 of 2021 (The Baidyabati Municipality & Ors. -vs- Swapan Chatterjee & Anr.) In the said

judgment dated 19th March, 2021 the Hon'ble Division Bench ultimately granted relief in favour of the petitioner considering the facts of the case wherein petitioner was not formally approved as a staff of Baidyabati Municipality as a result whereof the claim of pension of the petitioner was denied by the authorities. On placing reliance on Government Order dated 28th June, 2004 which was referred to in the communication of Director of Local Bodies dated 23rd August, 2018 ultimately the Hon'ble Division Bench held in favour of the writ petitioner directing the authorities to process the pension case of the petitioner upon according necessary approval.

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 Sakar 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.

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, upon usual undertakings.

(Saugata Bhattacharyya, J.)