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12.07.2022
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 20356 of 2019

**Tarun Kumar Mukherjee
-versus
The State of West Bengal & Ors.**

**Mr. Partha Sarkar,
Mr. Abhijit Basu.
...For the Petitioner.**

**Mr. Subhasis Bandopadhyay.
...For the Municipality.**

**Mr. Subhendu Banerjee.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

None appears on behalf of the State respondents in spite of service.

The petitioner was appointed in the post of Assistant Teacher in the Khaja Anower Berh Municipal Free Primary Schools under the Burdwan Municipality on 3rd September, 1994 with effect from 7th September, 1994. He was a candidate sponsored by the District Employment Officer Burdwan. The service of the petitioner was confirmed by the Board of Councillors of the Burdwan Municipality in the year 1995. He retired from service on 31st August, 2018.

The grievance of the petitioner is that after his retirement he has not been paid his terminal dues.

The petitioner prays for a direction upon the respondent authorities for disbursing his terminal dues immediately.

The Chairman of the Burdwan Municipality has filed a report before this Court signed on 30th June, 2022. The report mentions that in spite of several requests forwarded to the Government for approval of the service of the petitioner, the same is pending.

The Chairman has mentioned that post facto approval was granted by the Director of Local Bodies in the case of 1) Ila Ghosh and 2) Sonali Bhattacharjee working as Assistant Teacher of the Municipal School from 1996 and 1995 respectively.

It has been submitted that no order has been issued by the Government authority under Rule 30 of the West Bengal Municipal (Employees' Death-cum-Retirement Benefits) Rules, 2003. Pension shall be paid by the Municipal Authority in terms of Rule 31 of the aforesaid Rules. But due to non-availability of fund from the Government, the terminal dues of the petitioner cannot be paid. The Municipality opined for granting post facto approval to the service of the petitioner so that the superannuation benefits may be disbursed in his favour.

Learned advocate appearing for the petitioner relies upon an order dated 11th December, 2020 passed in WPA 8749 of 2020 in the matter of Swapan Chatterjee -vs- The Baidyabati Municipality & Ors. wherein the Court directed the Municipality to process

the pension papers of the petitioner and to take steps for payment of provisional pension including gratuity to the petitioner till the final pension is paid to him.

Rules 29, 30 and 32 of the West Bengal Municipal (Employees' Death-cum-Retirement Benefits) Rules, 2003 were taken into consideration by the Court.

The Court was of the opinion that the petitioner rendered service in the Municipality for a period of 32 long years and it will be highly illegal and improper on the part of the Municipality in not taking steps to process his retirement dues.

Direction was passed upon the Municipality to forward all the necessary documents of the petitioner to the Director of Pension, Provident Fund and Group Insurance.

The aforesaid order of the Learned Trial Judge was carried in appeal by the Municipality by filing MAT 65 of 2021 with IA No. CAN 1 of 2021 (The Baidyabati Municipality & Ors. -vs- Swapan Chatterjee & Anr.). The Hon'ble Division Bench by an order dated 19th March, 2021 was pleased not to interfere with the order passed by the Learned Single Judge.

The order of the Hon'ble Division Bench was challenged before the Hon'ble Supreme Court in the Special Leave Petition being Petition (s) for Special Leave to Appeal (C) No (s). 7254/2022. The Hon'ble Supreme Court by an order dated 2nd May, 2022 was pleased not to interfere with the impugned order and the Special Leave Petition stood dismissed.

It appears from the orders passed by the Court in the matter of Swapan Chatterjee (supra) that in similar circumstances, direction was given upon the Municipality to forward all documents to the Director of Pension, Provident Fund and Group Insurance for processing the pension file of the petitioner.

Learned advocate appearing for the State respondents submits, upon instructions, that the Municipality did not forward any document of the petitioner to the State Government.

In the absence of the requisite papers, the Government is not in a position to take any decision in the matter.

It appears from records that the petitioner was in service from 1994 till August, 2018. After rendering service for a considerable period of time, the claim of the petitioner for disbursal of retiral dues ought not to be brushed aside by the Municipality and should be followed up in right earnest to ensure that the petitioner receives his terminal benefits.

In view of the above, the instant writ petition is disposed of by directing the Chairman of the Municipality to forward all documents of the petitioner to the office of the respondent No.2, Director of Local Bodies and Ex-Officio Joint Secretary, Department of Municipal Affairs as well as to the Director of Pension, Provident Fund and Group Insurance for taking necessary steps for granting post facto approval to the service of the petitioner and thereafter process the pension papers of the petitioner.

The Municipality shall forward all the documents of the petitioner to the aforesaid authorities within a period of four weeks from the date of communication of this order.

On receipt of the documents from the Municipality, the respondent Nos. 2 and 4 shall take steps to process the pension file of the petitioner within a period of eight weeks thereafter.

The aforesaid authorities shall ensure that the terminal dues of the petitioner are cleared positively within a period of six months from the date of receiving all documents from the Municipality.

The Chairman of the Burdwan Municipality is directed to ensure that the payment of the petitioner is disbursed positively within the time frame as mentioned hereinabove.

The report filed by the Burdwan Municipality dated 30th June, 2022 is taken on record.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)