

07 24.03.2022
rkd Ct.15

W.P.A. 32668 of 2014

Netai Chandra Singha

-vs-

The State of West Bengal & Ors.

Mr. Indradeep Pal,
Ms. Sougata Pal Das

....for the petitioner.

Mr. Swapan Kumar Mazumdar

....for the Nabadwip Municipality.

Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Ms. Sangeeta Roy

....for the State.

The writ petition pertains to approval of appointment of the petitioner as Class IV staff of Nabadwip Municipality. It has been submitted on behalf of the petitioner that he was appointed in the post of Motor Cleaner with effect from 7th May, 1985 vide appointment letter dated 28th May, 1985 and subsequently his appointment was approved by the concerned authority of the municipality vide Memo dated 30th May, 1986 with effect from 7th May, 1986.

It is the case of the petitioner that from the date of his initial appointment on 7th May, 1985 he has been regularly discharging his duty as Class IV

Staff of the said municipality and he was placed on the regular scale of pay as prescribed by the authority which is applicable for fixation of pay of the approved Class IV Staff working in the municipalities in the State. On 22nd May, 2002 the Chairman of the Municipality recommended the case of the petitioner for appointment against the post of ambulance attendant along with some other similarly circumstanced Class IV Staff of the said municipality. In spite of such recommendation being made by the Chairman, the Director of Local Bodies, West Bengal did not take any decision which ultimately prompted the petitioner to file the writ petition being W.P. 4228(W) of 2011 which was disposed of by a coordinate Bench vide order dated 6th February, 2012. By the said order dated 6th February, 2012, the Director of Local Bodies, West Bengal was directed to consider the prayer of the petitioner for approval against a vacant post of Class IV Staff in the said municipality.

Pursuant to such direction of the coordinate Bench, Director of Local Bodies, West Bengal, being the respondent no.2 passed an order dated 29th June, 2012 rejecting the claim of the petitioner. Such order of the Director of Local

Bodies, West Bengal is under challenge in the present writ petition.

Mr. Pal, learned advocate appears on behalf of the petitioner and submits that since he was initially appointed on 7th May, 1985 such appointment should be considered as an appointment in terms of Section 66 of the Bengal Municipal Act, 1932 therefore formal approval of appointment by the respondent no.2 is not required in his case. In addition thereto, it has also been submitted that since he was placed in regular scale of pay from the date of his appointment by no stretch of imagination it can be construed that his appointment was not against sanctioned post. Therefore, he is entitled to get the benefit of *post facto* approval if his appointment is not approved at the material point of time and since by this time petitioner has retired in 2015 necessary direction should be given for releasing his retiral dues.

Mr. Mukerhee, learned Additional Government Pleader appears on behalf of the State respondents and submits that a scheme was formulated vide Memo dated 28th June, 2004 issued by the Governor which is confined to those appointments which were made in the municipality

in between 1st January, 1986 and 13th July, 1994 wherein provision has been made for considering such appointments being approved by invocation of deeming clause. Since the petitioner was appointed prior to 1st January, 1986, on 7th May, 1985 therefore benefit of such scheme as promulgated by order dated 28th June, 2004 does not apply in the case of the petitioner.

It has also been submitted by Mr. Majumdar, learned advocate appearing for the Nabadwip Municipality that considering the date of the appointment of the petitioner on 7th May, 1985 he should come under the purview of Section 66 of the Bengal Municipal Act, 1932 wherein it has been specifically contemplated that if appointment is within one per cent of the vacancies so created in a year for a municipality no formal approval of the authorities is required.

In view of the submissions made on behalf of the parties to this writ petition and having considered the documents available on record including the impugned Memo dated 29th June, 2012 issued by the respondent no.2, it appears that the respondent no.2 proceeded on the basis that there was a requirement of getting approval by

the Director of Local Bodies, West Bengal with regard to appointment of the petitioner. However, it appears that the petitioner was appointed on 7th May, 1985 when indisputably West Bengal Municipal Act, 1993 was not in existence therefore it can be inferred that such appointment was made by the municipal authorities in terms of the relevant provisions of the Bengal Municipal Act, 1932.

Therefore, the respondent no.2 is required to consider the appointment qua approval of the petitioner strictly on the basis of Section 66 of the Bengal Municipal Act, 1932. In this regard, reliance has been placed on the judgment of the Hon'ble Division Bench dated 30th January, 2008 delivered in MAT 704 of 2007 (Chairman, Dum Dum Municipality & Ors. -vs- Dr. Debranjana Biswas & Anr.). The relevant part of the said judgment is quoted below:

“Upon a perusal of the aforementioned facts, what stares us on the face, is that when the Petitioner was appointed on 29.04.1983, and when his services were confirmed on 14.8.1984, the West Bengal Municipal Act, 1993 was not even in existence. On the

contrary, the law that was in existence was the Bengal Municipal Act, 1932.

Learned Counsel for the Writ Petitioner/Respondent no.1 has drawn our attention to the provisions of Section 66 of the said Municipal Act, 1932. It would therefore be apposite to take note of the said provision, here at this stage itself, because the same clearly gave a right upon the Commissioners of the Municipality, not only to determine what Officers and employees were necessary for the Municipality but also gave them the right to create posts of such Officers/employees and to fix their salaries and allowances. The posts of Officers to be created by the Commissioners under sub-section (1) of Section 66 included the post of a Medical Officer. Section 66(1) read with Section 66(3) of the Bengal Municipal Act, 1932 read as under:

“Section 66. Appointment of officers and employees.

(1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder from time to time, determine what officers and what

employees of the Commissioners are necessary for the municipality, create posts of such officers and employees and fix the salaries and allowances to be paid and granted such officers and employees; Provided that no post of an officer or employees shall be created without the prior sanction of the State Government if the number of posts to be so created in a year for a municipality is more than one per cent of the total number of posts of officers and employees as existed in the year immediately preceeding; Provided further that no post carrying a monthly salary of more than one thousand rupees or a salary rising by periodical increments to more than one thousand rupees shall be created without the sanction of the State Government.

(3) The post of officers to

be created by the Commissioners under subsection (1) may include all or any of the following:-

- (a) a Secretary,**
- (b) a Medical Officer,**
- (c) one or more Sanitary Inspectors,**
- (d) a Superintendent of Waterworks,**
- (e) an Assessor,**
- (f) an Office Superintendent,**
- (g) an Accountant;**

Provided that every officer referred to in this sub-section shall possess such qualifications as may be prescribed.”

Upon a perusal of the aforementioned provisions as contained in Section 66 of the Bengal Municipal Act, 1932, we are of the view that at the relevant point of time when the Respondent no.1 was appointed, the Commissioners of the Municipality could have appointed the Writ Petitioner/Respondent no.1. It is nobody's case that the post on which he was appointed was more than one per cent of the total number of posts as contemplated in the 1st

proviso to Section 66 above.

In these circumstances, the attempt on the part of the Municipality to take recourse to the 1993 Act is an attempt, which appears to have been made in desperation.

We are also of the view that having allowed the Respondent no.1 to continue in service uninterruptedly for 16/17 years, it was absolutely arbitrary on the part of the Appellants to make submissions basing their logic on a provision of law which was not even in existence at the time when the Respondent no.1 had been appointed.”

Another point does not escape notice of this Court that the respondent no.2 refused the claim of the petitioner for his fitment against the post of ambulance attendant since such post was offered to one Bimal Kumar Chakraborty and according to the assessment of respondent no.2 there was no availability of such post. It has been submitted specifically on behalf of the Municipality before this Court that apart from the post of ambulance attendant held by said Bimal Kumar Chakraborty there were posts of ambulance attendant lying vacant at the material point of time against which

petitioner could have been approved.

In view of above discussion and on placing reliance on the judgment of the Hon'ble Division Bench in **Dr. Debranjana Biswas** (supra) the impugned order of the respondent no.2 stands set aside so far it relates to the claim of the present petitioner.

Respondent no.2 is directed to revisit the issue afresh and take decision on the claim of the petitioner relating to approval against the post of ambulance attendant within a period of eight weeks from the date of communication of this order taking into consideration the observations made above and the decision of the Hon'ble Division Bench in Dr. Debranjana Biswas (supra). Since the petitioner has already retired on superannuation in 2015 while taking decision on the claim of the petitioner, respondent no.2 shall also consider grant of *post facto* approval in favour of the petitioner for the purpose of release of retiral benefits in his favour. Such decision is to be taken by the respondent no.2 after granting opportunity of hearing to the petitioner and the municipality.

Municipality is also directed to place

necessary records before the respondent no.2 during the course of hearing in order to facilitate the respondent no.2 to take decision in terms of this order passed by this Court today.

The reasoned order to be passed by the respondent no.2 shall be communicated to the petitioner within one week thereafter.

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.)