

04.04.2023
Item No.12
Court No.6.
S. De

**M.A.T. 92 of 2023
with
I.A. No. CAN 1 of 2023**

**Sumit Kumar Sen.
Vs
The State of West Bengal & Ors.**

Mr. Soumya Majumder,
Ms. Sanjukta Dutta,
...for the appellant.
Mr. Swapan Kr. Mazumder,
Mr. Saptarshi Mazumder,
...for the Nabadwip Municipality.
Mr. Jahar Lal De,
Mr. Rudranil De,
...for the State.

By consent of the parties the appeal and the connected application are taken up together for hearing.

The appellant retired from the service of Nabadwip Municipality on March 31, 2019. With the grievance that his retiral benefits were wrongfully withheld, he had approached a learned single Judge of this Court by filing WPA No.6091 of 2020. That writ petition was disposed of by directing the State respondents to disburse the pensionary benefits of the appellant/writ petitioner within six weeks from the date of the order.

Pension Payment Order was issued in favour of the appellant herein. However, according to the

appellant, although he is entitled to the benefit of pay revision under Revision of Pay and Allowances 2019 (ROPA 2019), his pensionary benefits have not been calculated taking into consideration the pay revision under ROPA 2019. With this grievance, he approached the learned single Judge in the present round of litigation. By the judgment and order impugned in this appeal, the learned single Judge directed the Chairman of the Nabadwip Municipality to consider the appellant's entitlement to the benefit of ROPA 2019 and if the Chairman found the appellant to be so entitled, then to release the applicable benefits in his favour.

Being aggrieved, the writ petitioner has come up by way of this appeal.

Mr. Mazumder, learned advocate appearing for the appellant/writ petitioner says that since the Municipality has denied the benefit under ROPA 2019 to the appellant, it would be an exercise in futility to have the matter heard before the Chairman of the Municipality. Obviously, the Chairman will not deviate from the earlier decision of the Municipality.

We have heard learned counsel for the parties.

Learned advocate for the Municipality, on instructions says that the appellant is not entitled to the benefit under ROPA 2019. The PPO was issued in

November 2020 after taking into account all benefits that the appellant is entitled to.

Mr. Mazumder, learned advocate appearing for the appellant has drawn our attention to a Government of West Bengal Resolution dated December 26, 2019 (Page 16 of affidavit-in-opposition of the Municipality). The material portion of the Resolution is set out hereunder :-

“In Finance Department Resolution No.8071-F(P) dated the 27th November, 2015 the Government constituted a Pay Commission to examine the present structure of pay and conditions of service of the employees of Municipalities. Municipal Corporations, Notified Area authorities and Industrial Township Authorities after taking into account the prevailing pay structure under the Central Government, Public Sector Undertakings, other State Governments etc., and to furnish recommendations for changes which may be desirable and feasible. The Commission has submitted its report on the 13th September, 2019.

After careful consideration of the recommendations of the Sixth Pay Commission, the Governor has been pleased to decide that the structure of pay and other conditions of service in respect of the employees of the Municipalities including Notified Area Authorities and Industrial Township

Authorities will be as set out in the following paragraphs.

1. Date of effect – *The revised pay structure under this resolution shall be deemed to have come into force on the first day of January 2016 notionally with actual financial effect from 01.01.2020.”*

Admittedly, the appellant superannuated on March 31, 2019. The effect of the aforesaid resolution, in our considered opinion, is that the pensionary benefits of the appellant will have to be calculated by allowing notional revision of scale of pay of the appellant under ROPA 2019. This is because the revised pay structure under the resolution shall be deemed to have come into force on January 1, 2016 and the appellant retired thereafter. No doubt that the appellant will not be entitled to actual financial benefit, in the sense that he will not be entitled to arrears on the basis of the notional revision of scale of pay. However, the respondents have erred in calculating the appellant's pensionary benefits without allowing for notional revision of his scale of pay under ROPA 2019.

Accordingly, the order under appeal is set aside. We direct the Municipality to follow the procedure enumerated in Rules 3, 4 and 5 of the West Bengal Employees (Death-Cum-Retirement Benefit) Rules, 2003 and calculate the applicable pensionary benefits

of the appellant after allowing for notional revision of his scale of pay under ROPA 2019. Once the procedure prescribed in Rules 3, 4 and 5 in 2003 Rules is completed and the relevant records are sent to the Director of Pension, Provident Fund and Group Insurance, which will be done within six weeks from the date of communication of this order to the concerned authority, the Director of Pension, Provident Fund and Group Insurance shall issue fresh Pension Payment Order within six weeks thereafter. Needless to say that the actual disbursement of the benefits under fresh PPO shall be made by the concerned authority within four weeks of issuance of the Pension Payment Order.

The applicable medical allowance and ad hoc payment which the appellant may be entitled to shall also be released in his favour within a period of eight weeks from the date of communication of this order to the concerned authority, after adjusting all payments already made to the appellant.

Accordingly, MAT 92 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

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.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)