

Ml- 07.12.2023
242 Ct.15
rkd

W.P.A. 652 of 2013

Rina Mukherjee

-vs-

The State of West Bengal & Ors.

Mr. Subir Kumar Bhattacharya,
Mr. Falguni Bandyopadhyay

....for the petitioners.

Mr. Sandipan Banejee,
Mr. Sobham Majumder

....for the Purulia Municipality.

Ms. Tuli Sinha

....for the State.

The writ petition is presented, *inter alia*, claiming service benefits including pensionary benefits upon treating the petitioner as an approved staff of Purulia Municipality.

Mr. Bhattacharya, learned advocate representing the petitioner submits that she was appointed by the Chairman of Purulia Municipality vide memo dated 1st June, 1995 and has drawn attention of this Court to page 26 of the writ petition wherefrom it appears that service of the petitioner was confirmed with effect from 1st May, 1995 vide memo dated 1st June, 1995 and the petitioner was placed on regular scale of pay.

It has also been stated that subsequent to the confirmation of the service of the petitioner

name of the petitioner featured in the gradation list prepared by the concerned authority of Purulia Municipality. However, the case of the petitioner was considered by the Director of Local Bodies and vide memo dated October, 2012 a decision was communicated whereby prayer of the petitioner was spurned.

The decision of the Director of Local Bodies communicated vide memo dated October, 2012 is subject matter of challenge in the present writ petition with a prayer to release service benefits if necessary by granting post fact approval in favour of the petitioner.

State respondents as well as Purulia Municipality are represented by learned advocates.

It has been submitted on behalf of the Purulia Municipality that the case of the petitioner was recommended vide resolution dated 30th March, 1996 to the Director for grant of approval but during the tenure no approval was granted.

However, the learned advocate representing the State respondents has defended the decision of the Director of Local Bodies communicated vide memo dated October, 2012 and has made submissions accordingly.

Having considered the submission of

learned advocate representing the parties and on perusal of relevant materials available on record it appears that petitioner's service was confirmed in the Tax Department of the Municipality with effect from 1st May, 1995 vide memo dated 1st June, 1995 and thereafter service of the petitioner was continuously utilised by the Municipality till the date petitioner attained sixty years. Throughout the tenure of the petitioner she was placed on regular pay roll.

However, relying upon certain Government Orders the Director of Local Bodies has refused to accord approval in favour of the petitioner.

During course of hearing an order dated 6th February, 2023 issued by the Additional Secretary to the Government of West Bengal, Department of Urban Development and Municipal Affairs is placed before this Court and the relevant part of the said order whereby amendment has been carried out in the order dated 7th May, 2009 read with order dated 19th August, 2009 is quoted below:

*“(2) (a) in the last para for the words
“to authorise the Director of Local
Bodies, West Bengal to issue
orders according post facto
approval of
appointments/promotions made*

by the municipalities against the sanctioned vacancies holding erstwhile scale of Rs.380-910/-, since revised to Rs.4000/- - 8850/- and below within the aforesaid period on case to case basis after due examination/enquiry” the words “to declare that initial appointments/promotions in respect of all other officers and employees not included in sub-section (1) of Section 54 of the West Bengal Municipal Act, 1993, made by the municipalities against the sanctioned vacancies between the period from 14th day of July, 1994 to 30th day of September, 2003, shall be deemed to have been done as per extant provisions of West Bengal Municipal Act, 1993 and has ratification of the State Government” shall be substituted;”

Since it has been specifically provided in the said Government Order dated 6th February, 2023 that it is permissible to declare initial appointments/promotions in respect of all other officers and employees not included in sub-section (1) of Section 54 of the West Bengal Municipal Act, 1993, made by the municipalities against the

sanctioned vacancies between the period from 14th day of July, 1994 to 30th day of September, 2003 shall be deemed to have been done as per extant provisions of the West Bengal Municipal Act, 1993 and has ratification of the State Government; this Court finds it apt to direct the Director of Local Bodies, being the respondent no.2 to revisit the issue afresh.

Accordingly, the impugned order of the respondent no.2 which was communicated vide memo dated October, 2012 stands set aside.

The respondent no.2 is directed to pass a reasoned order after granting opportunity of hearing to the petitioner or her representative considering of the aforesaid Government Order dated 6th February, 2023 within a period of twelve weeks from the date of communication of this order.

The decision to be taken by the respondent no.2 shall be communicated to the petitioner within one week thereafter.

With the aforesaid direction the writ petition stands disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned

Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)