

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 5381 of 2023

Parwati Bansfore

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Sankar Biswas, Adv. Mr. Debnath Mahata, Adv. Ms. Ananya Adhikary, Adv.
For the Municipality	:-	Mr. Suman Basu, Adv.
For the State	:-	Mr. Jayanta Samanta, Adv. Mr. Manas Kumar Sadhu, Adv.
Hearing concluded on	:-	04.09.2023
Judgment on	:-	12.09.2023

Amrita Sinha, J.:-

The reasoned order passed by the Director of Local Bodies ('DLB' for short), allegedly in compliance of the direction passed by this Court in WPA 13392 of 2022 (Smt. Parwati Bansfore –vs- State of West Bengal & Ors.), communicated to the petitioner vide communication dated 1st December, 2022, is impugned in the present writ petition.

By the said order the DLB rejected the prayer of the petitioner for grant of pension and allowed only gratuity in her favour. The petitioner is aggrieved by the same.

Primary allegation of the petitioner is that she is a victim of discrimination. Employees standing on a similar footing have been held eligible to receive pension, but DLB refused to grant pension in her favour on the ground that she did not complete minimum qualifying service period of ten years.

The petitioner joined service on 4th December, 1990 as majdoor under Garulia Municipality and claims to have worked in the said post continuously till

her normal age of superannuation on 31st December, 2014. Initially the petitioner joined as a casual staff but thereafter her service was approved by the DLB on and from February, 2007.

The petitioner submits that similarly placed pre-1992 casual workers were absorbed against existing sanctioned vacancies by the DLB vide order dated 20th February, 2006 with effect from their date of joining such post. Approval of appointment against sanctioned vacant posts was given from the date of their joining in respect of fifty-three pre-1992 casual workers, but for the reasons best known to the authority, the petitioner's service was approved for absorption only from February, 2007.

Discrimination has been alleged in granting approval of appointment in respect of similarly placed pre-1992 casual workers.

It has been submitted that one Arup Kumar Ghosh, who joined service on 5th October, 2016 and retired from service in December, 2022, has been held eligible for getting full pension and gratuity but the petitioner has been held entitled for gratuity only and ineligible to receive pension.

It has been submitted that the petitioner has rendered nearly twenty-four years of long, uninterrupted, continuous service in the Municipality and as such the petitioner ought to be held eligible for pensionary benefit and pension ought to be released in her favour.

It has been argued that the petitioner has been illegally and arbitrarily discriminated against employees who stand on the same footing. Prayer has been made for setting aside the impugned order passed by the DLB and for directing grant of pension and other retiral dues in her favour.

In support of the aforesaid contention the petitioner relies upon the following decisions:

- i) ***UP State Sugar Corp. Ltd & Ors. -vs- Kamal Swaroop Tondon*** reported in ***(2008) 2 SCC 41*** paragraphs 14 and 35.

- ii) ***Prasanta Kumar Das –vs- State of West Bengal*** reported in **2018(2) CHN (Cal) 534** paragraphs 2, 11 and 15.
- iii) ***The Union of India & Ors. –vs- M. Devendran*** reported in **2022(1) CHN (Cal) 137** paragraphs 8 and 12.
- iv) ***Jnan Ranjan Das –vs- South Bengal State Transport Corporation*** reported in **2022(5) CHN (Cal) 274** paragraphs 34, 44 and 45.
- v) Unreported judgment passed by a coordinate Bench of this Court dated 3rd August, 2023 in WPA 7881 of 2022 in the matter of ***Goalbadan Mandal –vs- State of West Bengal & Ors.*** paragraph 7.

Per contra, learned advocate representing the Municipality admits that similarly placed candidates as that of the petitioner was duly paid pension. The Municipality admits that the petitioner joined service in the Municipality on casual basis on 4th December, 1990. Her service was approved on regular, permanent basis on and from 12th February, 2007 and she remained in service till 31st December, 2014. Provisional pension was paid to her after superannuation. As the DLB objected in granting pension in favour of the petitioner on and from her initial date of joining accordingly, provisional pension which was granted in her favour has been discontinued with effect from 1st December, 2022.

Learned advocate representing the State respondents defends the impugned order of the DLB and submits that as the service of the petitioner was regularised on and from 12th February, 2007, accordingly, the period during which the petitioner served on casual basis cannot be taken into consideration for calculating her pensionable service period.

I have heard and considered the rival submissions made on behalf of all the parties and have perused the materials on record.

The sheet anchor of the petitioner's case is discrimination. The contention of the petitioner is that similarly placed pre-1992 casual workers were held to be entitled for pensionary benefit as they were granted approval in service on and

from their initial date of joining. There was total sixty vacancies in the Garulia Municipality which stood sanctioned by the DLB. By communication dated 20th February, 2006 DLB accorded approval of fifty-three employees on and from their date of joining in the post, but the communicating memo regarding approval of rest pre-1992 casual employees dated 12/13th February, 2007 has been given effect from the date of issuance of the said memo.

No reason has been mentioned in the affidavit filed on behalf of the DLB as to why fifty-three employees were approved on and from the date of their joining, whereas the rest seven were approved from the date of their approval. In fact, the affidavit on behalf of the DLB does not address the issue of discrimination at all.

As the employees were initially appointed on casual basis and thereafter their service stood approved in phases, there is no reason as to why similar benefit cannot be extended to all the employees who were appointed in and around the same time on similar terms and conditions.

DLB approved the absorption by treating all the employees as 'pre-1992 casual workers'. No differentiation has been made amongst the workers who were appointed prior to the year 1992. The petitioner joined service on 4th December, 1990, i.e, prior to the cut-off date. It is distinctly evident that the employees whose service stood approved by DLB vide diverse memo dated 20th February, 2006 and 12/13th February, 2007 fall within the same period which was taken into consideration by DLB for approving their service. Only because the approval was made in phases will not disentitle the petitioner to the relief granted in favour of similarly circumstanced employees.

No explanation has been forwarded either in the affidavit or before this Court as to why and how an employee who joined service in October, 2016 and retired in December, 2022 has been found eligible for receiving pension, whereas, the petitioner who served for nearly twenty-four years in the Municipality was held to be ineligible.

The Hon'ble Supreme Court in *Kamal Swaroop Tondon (supra)* reiterated the settled principle that retiral benefits are earned by an employee for long and meritorious services rendered by him/her. They are not paid to the employee gratuitously or merely as a matter of boon. It is paid for dedicated and devoted work by the employee. The Court held that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary and the said power can be exercised by the Court 'to reach injustice wherever it is found'.

In *M. Devendran (supra)* the Hon'ble Division Bench of this Court was pleased to hold that administrative action cannot withstand if it is aimed at a discriminatory action denying the right of similarly circumstanced persons. The authorities must act fairly, transparently and equality must be maintained as discriminatory action offends Article 14 of the Constitution.

In *Jnan Ranjan Das (supra)* the Division Bench of this Court held that the authority while applying the provision of a scheme is under an obligation to extend the benefit to similarly situated persons.

In *Goalbadan Mandal (supra)* the Court held that the authority cannot take advantage of their own wrong and penalize the petitioner by refusing to grant pension on the ground of deficiency in the qualifying period of service.

In the instant case, the authority considered the pre-1992 casual workers in a single batch/group, but extended approval of appointment in respect of one set from their initial date of joining and in respect of the other set from the date of their approval. No reason being forwarded for such discriminatory action calls for interference by this Court as the said action suffers from the vice of arbitrariness. Discriminating similarly situated candidates and granting benefit in respect of a handful and denying the same benefit in favour of the rest, amounts to discrimination, contrary to the principle of equality laid down under Article 14 of the Constitution. The same is impermissible in law.

The Municipality admits that employees, similarly placed as that of the petitioner, are receiving pensionary benefit. In such a situation, not extending the

same benefit to the petitioner will be sheer injustice, liable to be rectified by this Court.

In view of the above, the impugned order passed by the DLB is held to be untenable in the eye of law and liable to be set aside. The impugned order is, accordingly, set aside. The DLB is directed to treat the petitioner in the same bracket as that of the other fifty-three pre-1992 casual workers and extend similar pensionary benefit as extended in favour of the employees whose service stood approved vide memo dated 20th February, 2006.

The authority is directed to calculate the terminal benefit of the petitioner on and from her initial date of joining and to release the payment, after adjustment of the provisional pension, at the earliest but positively within a period of four months from the date of communication of this order.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)