

W.P.A. 8604 of 2015

**Asit Ranjan Chatterjee
Vs.
The State of West Bengal & Ors.**

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Santanu Maji
Ms. Rajarshi Tah

....for the petitioner

Mr. Saunak Bhattacharya
...for the AMC

The petitioner, inter alia, has prayed for release of pensionary benefits on completion of formalities on his superannuation on 31st October, 2014. The learned advocate representing the petitioner submits that initially he was appointed on temporary basis as sweeper under Dishergarh Notified Area Authority vide letter dated 3rd December, 1988 and subsequently the concerned authority of Dishergarh Notified Area Authority by letter dated 17th July, 1989 informed the petitioner that decision has been taken by the authority to absorb him in the post of sweeper on certain terms and conditions. One of such terms and conditions was placement of petitioner on probation for a period of one year with effect from 1st June, 1989. By the said letter dated 17th July, 1989 petitioner was placed on regular scale of pay at Rs. 230/- and it was also intimated to the petitioner that the age of superannuation would be 60 years but that is

subject to confirmation of the petitioner on successful completion of probationary period. This Court has been apprised that the service book in respect of service rendered by the petitioner as sweeper under Dishergarh Notified Area Authority was opened and the same was duly maintained by the authority as it emanates from page 31 onwards of the writ petition.

Another limb of submission of the petitioner is that service of the petitioner was confirmed on expiry of probationary period of one year but it has been submitted that there was no formal confirmation of service on completion of probationary period and petitioner was allowed to serve as sweeper on substantive basis from 1st June, 1990 till the date of attaining the age of 60 years in October, 2014.

According to the petitioner since there was no communication of decision by the respondent authority on confirmation of service of the petitioner after probationary period, there has been deemed confirmation of the service rendered by the petitioner.

According to the petitioner after serving for a period of 25 years at the time of attaining age of 60 years the claim of the petitioner for pensionary benefits cannot be denied by issuing termination order vide letter dated 11th December, 2013.

The Asansol Municipal Corporation is represented by Mr. Saunak Bhattacharya, learned advocate who

submits that the petitioner was initially appointed under Dishergarh Notified Area Authority and subsequently worked under Kulti Municipality. Kulti Municipality merged with Asansol Municipal Corporation in the year 2016. Therefore, according to Asansol Municipal Corporation petitioner retired while working under Kulti Municipality. The learned advocate for the Corporation has made attempt to defend the termination letter dated 11th December, 2013 in the backdrop of facts of the case and taking into consideration initial appointment of the petitioner as temporary sweeper. It has also been submitted that albeit petitioner was permitted to discharge duty as probationer but there was no formal confirmation of service of the petitioner on expiry of probationary period. Therefore, there is no ambiguity in issuing termination notice.

This Court has heard the learned advocates representing the parties and perused the relevant documents available on record.

It transpires that vide letter dated 11th December, 2013 a termination letter has been attempted to be slapped upon the petitioner in order to deny his pensionary benefits. But on perusal of such letter dated 11th December, 2013 it appears that such letter was issued under the heading “NOTICE OF SUPERANNUATION”.

Furthermore, there is nothing on record which would demonstrate that on expiry of one year probationary period commencing on an from 1st June, 1989 the probationary service of the petitioner was not confirmed rather presumption goes in favour of the petitioner in view of the subsequent fact that petitioner was allowed to discharge his duty as sweeper on substantive basis till the date of his superannuation on attaining 60 years in the month of October, 2014.

In view of aforesaid facts, the decision to terminate the petitioner, though it appears that it is a notice of superannuation, cannot be countenanced and the same stands set aside. However, setting aside of the termination order dated 11th December, 2013 will not affect the right of the petitioner to receive gratuity, provident fund and benefits of GSLI.

The Director of Local Bodies, Government of West Bengal being the respondent no. 2 is directed to take decision on right of the petitioner to enjoy pensionary benefits keeping in view of the fact that the petitioner rendered service on substantive basis and on enjoying regular scale of pay from 1st June, 1989 till October, 2014 by passing a reasoned order within a period of 12 (twelve) weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or his representative and the representative of Asansol Municipal Corporation. Asansol Municipal

Corporation is also directed to produce relevant records relating to service of the petitioner before the respondent no. 2 in order to facilitate the respondent no. 2 to take decision on the right of the petitioner to receive pensionary benefits, if necessary, upon granting post facto approval.

With the aforesaid directions, 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.)