

27.09.2023
Item No.35
Court No.6.
S. De

**M.A.T. 1097 of 2021
with
I.A. No. CAN/2/2022**

**The Director of Local Bodies & Ex-Officio Joint
Secretary, Government of West Bengal.
Vs
Jitnarayan Banerjee & Ors.**

Mr. Shamimul Bari, ...for the appellant.

Mr. Subhasis Bandopadhyay,
...for the Municipality.

Mr. Partha Sarkar,
...for the respondent.

Mr. Tapan Kr. Banerjee,
Ms. Tuli Sinha,
...for the State.

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

This appeal is directed against a judgment and order dated September 20, 2019, whereby the writ petition of the respondent no.1 herein being WP No. 713(W) of 2019, was disposed of. The appeal is at the instance of the Director of Local Bodies, Government of West Bengal.

The respondent no.1 approached the learned Single Judge with the grievance that although he had been appointed as a Helper in Burdwan Municipality with effect from November 1, 2001, against a

sanctioned vacant post, his pension and other retiral benefits have been wrongfully withheld after his superannuation.

The learned Single Judge came to a finding that indeed the writ petitioner was appointed in a sanctioned vacant post as a Street Light Helper. The learned Judge also recorded the submission of learned advocate for the Municipality that the post concerned was a sanctioned vacant post. The learned Judge disposed of the writ petition with the following direction :

“Considering the submissions as advanced by the learned advocates for the parties and after perusing the record, I direct the respondent no.2, the Director of Local Bodies, Government of West Bengal to give post facto approval on the appointment of the petitioner for the post of ‘Street Light Helper’ in view of the order dated 01.11.2011 issued by the Chairman Burdwan Municipality against the sanctioned vacant post and thereby the respondent no.4, the Director of Pension, Provident Fund & Group Insurance will issue Pension

Payment Order in favour of the petitioner and accordingly the Chairman/Administrator Burdwan Municipality will disburse the pension and other retiral benefits of the petitioner by 10th December, 2019.”

Being aggrieved, the Director of Local Bodies has come up by way of this appeal.

Mr. Bari, learned advocate appearing for the appellant submits that firstly, no permission of the State Government was taken by the Municipality prior to appointing the respondent no.1/writ petitioner. Secondly, the submission made on behalf of the Municipality to the effect that the concerned post was a sanctioned vacant post is factually not correct. Mr. Bari submitted that the claim of the writ petitioner may be referred to the Director of Local Bodies who never had any occasion previously to consider the writ petitioner's claim.

Learned advocate for the writ petitioner is agreeable to this suggestion and says that the Director of Local Bodies should take an independent impartial decision relying on all relevant Government Circulars and the relevant reports of the Municipality which have been filed in Court.

Accordingly, we direct the Director of Local Bodies & Ex-Officio Joint Secretary, Government of West Bengal, to consider the writ petitioner's claim for retiral benefits, in accordance with law, and also in light of the Order No. 110/UDMA-25011(11)/109/2022-LSG SEC dated February 6, 2023, issued by the Department of Urban Development & Municipal Affairs, Government of West Bengal and any other Circulars or papers that the writ petitioner may present before the Director of Local Bodies. The Director of Local Bodies shall take a reasoned decision in the matter within a period of eight weeks from the date of receipt of a copy of this order along with all relevant documents from the writ petitioner, after affording an opportunity of hearing to all concerned parties including the writ petitioner or his authorized representative and the Municipality. In the event, the Director of Local Bodies finds that there is merit in the claim of the writ petitioner, necessary consequential orders will be passed forthwith so that the retiral benefits of the writ petitioner are released as early as possible and not later than two months from the date of the decision taken by the Director of Local Bodies.

Learned advocate for the respondent no.1/writ petitioner says that other persons identically placed as the writ petitioner have been receiving retiral benefits

after their superannuation. Papers relating to some such cases are available with the writ petitioner. We permit the writ petitioner to place such papers before the Director of Local Bodies who shall duly consider the same. He must keep in mind that all persons similarly circumstanced must receive similar treatment from the State. We are sure that although the Director of Local Bodies is the appellant in the present appeal, in view of the high and responsible office that he holds, he will take an impartial decision in the matter strictly in accordance with law observing the principles of natural justice.

The order under appeal is set aside.

MAT 1097 of 2021 is disposed of along with the application being I.A. No. CAN 2 of 2022.

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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)