

WPA 18407 of 2018

**Bijoy Majumder
Vs.
The State of West Bengal & Ors.**

Mr. Kamalesh Jha
Mr. Biswajit Tiwari
Ms. Srabani Biswas

... ... for the petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mandal
Mr. Anirban Saha Ray

... ... for the respondent nos.2 to 4

Writ petition is taken up for consideration in presence of the learned advocates representing petitioner and Birnagar Municipality. However, in spite of service of notice upon the State respondents, State is not represented today.

The writ petition has been instituted, inter alia, claiming sanction of pensionary benefits in favour of the petitioner, who was a Group-D staff of Birnagar Municipality. It has been submitted that after superannuation of the petitioner on attaining age of sixty years though gratuity has been released in favour of the petitioner but pension has not been sanctioned on the ground that length of service of the petitioner fell short of ten years.

Learned advocate representing the petitioner submits that pension of the employees of Municipalities is governed by the West Bengal Municipal (Employees' Death-cum-Retiring

Benefits) Rules, 2003. It is also contended that since this Rules of 2003 is a beneficial provisions for releasing retiral dues in favor of the superannuated employees of municipal bodies the provisions of the same ought to be interpreted liberally in favour of the employees. It is also contended that though length of service of the petitioner fell short of required qualifying service but since the petitioner has rendered service as an approved staff for a considerable period of time the same ought to have been taken into consideration while taking decision in releasing pension in favour of the petitioner. In support of such contention reliance has been placed on the order of the Coordinate Bench dated 30th August, 2018 passed on a writ petition being WPA 26893 of 2014. Affidavit-in-reply filed on behalf of the petitioner is taken on record.

Mr. Bhattacharya, learned advocate representing the Municipality has opposed the prayer of the petitioner on the ground that there is no such provision which makes the petitioner entitled to receive pensionary benefits in the event it is found that petitioner's qualifying service fell short of 10 years. Affidavit-in-opposition filed on behalf of the Municipality is taken on record.

Having considered the submissions made on behalf of the petitioner and the Municipality this

Court finds it fit to direct Secretary, Municipal Affairs Department, Government of West Bengal to take decision on the claim of the petitioner upon considering the representation to be made by the petitioner within three weeks from date claiming pensionary benefits.

If such representation is made within aforesaid time by the petitioner, on receipt of the same the Secretary, Municipal Affairs Department is directed to pass a reasoned order after granting opportunity of hearing to the petitioner or the representative of the petitioner and one representative of the Municipality within a period of 12 week thereafter.

While taking decision opportunity shall be provided to the petitioner to rely upon the relevant orders and decisions passed by this Court on same circumstances.

The writ petition stands disposed of. There shall be no order as to costs.

Leave is granted to the learned advocate for the petitioner to correct cause title in order to add Secretary, Municipal Affairs Department, Government of West Bengal as party respondent.

Since no one is representing the State respondents the learned advocate for the petitioner is directed to communicate this order along with a

copy of the writ petition to the Secretary, Municipal Affairs Department within a period of seven days.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)