15. 18.10.2023
Court No.6
KOLE

MAT 1577 of 2023

The State of West Bengal & Anr.
-Versus-
Madhusudan Sanyal & Ors.

With
IA No: CAN/1/2023
With
IA No: CAN/2/2023

Mr. T.M. Siddiqui, Ld. AGP,
Mr. Suddhadev Adak, Adv.

...for the appellants/State.

Ms. S. Sengupta, Adv.,
Mr. R. Guha Thakurta, Adv.,
Ms. Dona Ghosh, Adv.
Ms. Dipa Roy, Adv.
...for the respondent no.1/
writ petitioner.

Mr. Dipak Kumar Mukherjee, Adv.,
Mr. Rajib Mukherjee, Adv.,
Ms. Shreyasi Bhaduri, Adv.

...for the Bhatpara Municipality.

In Re: IA No: CAN/2/2023

This is an application for condonation of delay of Twenty (20) days in filing the appeal, as noted by the Stamp Reporter. Causes shown being sufficient, the delay is condoned.

The application being IA No: CAN/2/2023 is disposed of.

In Re: MAT 1577 of 2023
With
IA No: CAN/1/2023

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

The respondent no.1/writ petitioner, who was an employee of Bhatpara Municipality, approached the learned Single Judge by filing WPA 8835 of 2023 with the grievance that in spite of his superannuation, the admissible gratuity amount was withheld by Bhatpara Municipality.

The learned Judge disposed of the writ petition with the following observations and directions:-

> *"The respondents are directed to immediately take steps for clearing the dues of the petitioner at the earliest but positively by 31st August, 2023 along with interest at the rate of 7% per annum payable on and from the due date till the date of actual payment.*
>
> *In the event the principal along with the interest is not disbursed within the aforesaid time limit, then the petitioner shall be entitled to receive the principal amount along with additional 3% interest, that is, 7%+3%= 10% interest payable on and from the due date till the date of actual payment.*
>
> *It is made clear that the rate of interest is fixed keeping in mind the submission of the learned advocate representing the Municipality that there is acute shortage of funds. The statutory interest submitted by the petitioner, that is, 10% is accordingly not being granted at the initial stage, but if the payment is not made within the stipulated time, then on account of additional interest the respondents will be liable to pay interest at the rate of 10% as mentioned above.*
>
> *It will be open for the Municipality to seek financial assistance from the State respondents in the event the Municipality is not in a position to clear the entire dues of the petitioner."*

Being aggrieved, the State of West Bengal has come up in appeal before us.

Mr. Siddiqui, learned Advocate representing the State, says that the State is aggrieved with the direction on the 'respondents' to clear the dues of the writ petitioner. 'Respondents' include the State authorities. The State is also aggrieved by the liberty granted by the learned Judge to the Municipality to seek financial assistance from the State in the event the Municipality is not in a position to clear the dues of the writ petitioner.

Learned Advocate says that the obligation to pay gratuity to a retiring employee of the Municipality is that of the Municipality. Such financial burden cannot be foisted on the State. Learned Advocate referred to Sections 67 and 69 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the '1993 Act'), which read as follows:-

> *"**67. Municipal Fund. –** There shall be constituted for each Municipality a fund to be called Municipal Fund to be held by the Board of Councillors in trust for the purposes of this Act, and all moneys realized or realizable under this Act and all moneys otherwise received by the Municipality shall be credited thereto.*
>
> ***69. Application of Municipal Fund. –** (1) All moneys credited to the Municipal Fund from time to time shall be applied for payment of all sums, charges and costs necessary for carrying out the purposes of this Act and the rules and the regulations made thereunder or for payment of all sums payable out of the Municipal Fund under any other law for the time being in force.*
>
> *(2) No payment of any sum shall normally made out of the Municipal Fund unless such expenditure is covered by a current budget grant and a sufficient balance of such budget grant is available for the purpose.*
>
> *(3) Whenever any sum is paid for the purposes not covered by the budget grant, the matter shall forthwith be communicated to the Chairman-in-Council who shall take such*

action under the provisions of this Act as may appear to it to be feasible and expedient for covering the amount of such payments."

Learned Advocate then referred to The West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 and in particular, Rules 2(j) and 31(1) of those Rules, which read as follows:-

"2(j) "Pension" except when the term "Pension" is used in contradistinction to gratuity, 'Pension' includes gratuity;

31(1) the pension under these rules shall be paid by the Municipality or Notified Area Authority from its own fund."

Learned Advocate also referred to Section 56 of the 1993 Act and in particular, sub-section (2) thereof, which reads as follows:-

*"**56. Salaries and allowances of officers and employees. –** ... (2) The Municipality may also provide for pension, gratuity, provident fund, incentive, bonus, reward or penalty for its officers and employees in accordance with such rules, norms, scales and conditions as may be prescribed."*

Relying on the aforesaid provisions of law Mr. Siddiqui argued that the State cannot be made liable for the gratuity dues of the retiring employees of the Municipality, in any manner whatsoever.

Mr. Mukherjee, learned Advocate representing the Municipality, says that the Municipality is not averse to paying the gratuity dues of the retired employees. However, the Municipality does not have requisite funds. The State should make available funds to the Municipality by way of loan or otherwise to enable the

Municipality to pay the gratuity dues of the retiring employees.

Mr. Mukherjee relied on the decision of a co-ordinate Bench rendered on October 11, 2023 in FMA 385 of 2023 (*The State of West Bengal & Ors. – vs. – I Sustain Energy Pvt. Ltd., & Ors.*).

In that case, the Municipality had engaged a private contractor to do certain works. The contractor completed such work but did not receive payment. Accordingly, the contractor approached the writ Court. The learned Single Judge allowed the writ petition by directing the 'respondents' to pay the admissible dues of the contractor. Since the 'respondents' included the State Authorities, the State preferred the aforesaid appeal being FMA 385 of 2023. It was submitted on behalf of the State that before awarding the work to the contractor, administrative approval or financial sanction was not taken by the Municipality from the State. Therefore, the State cannot be made liable for the Municipality's dues to the contractor on account of the concerned work. The co-ordinate Bench observed that considering the scheme of the 1993 Act and the various provisions which deal with financial assistance from the State Government and loans respectively as also the powers of the State, it is seen that there is a deep and pervasive governmental control over the Municipal

Administration. Accordingly the co-ordinate Bench passed the following directions:-

> *"8. Therefore, we are of the view that the Government should sanction the requisite funds as a loan to the municipality and the same can be recovered from the Municipality in a phased manner or as the Government may desire.*
>
> *9. In order to give effect to such a direction, reasonable time has to be given to the Government so that necessary funds are sanctioned to the municipality with a direction to effect payment to the respondent/ writ petitioner and also placing conditions as to how the money, which is sanctioned is recovered from the municipal funds.*
>
> *10. Accordingly, the order and directions issued by the learned Single Bench in the impugned order is slightly modified by directing the appropriate authority of the Government of West Bengal to sanction a sum of Rs.3,66,04,735/- to the respondent/ municipality within a period of six weeks from the date of receipt of server copy of this order. On receipt of the funds, the municipality shall disburse the same to the respondent/ writ petitioner and obtain a no dues certificate from the respondent/ writ petitioner.*
>
> *11. The State Government is at liberty to pass appropriate directions while releasing the funds as to how the funds may be recovered from the Municipality either in full or in instalments, as the Government may so desire."*

The facts of that case were completely different. The provisions of law pertaining to payment of gratuity to a retiring employee of a Municipality were not in issue before the co-ordinate Bench. In our considered opinion, that decision does not come to the rescue of the Municipality in the facts of the present case.

We have considered the rival contentions of the parties. The provisions of law referred to above, make it very clear that the obligation to pay gratuity to a retiring employee of a Municipality is that of the Municipality alone. How the Municipality is going to discharge such obligation is for it to decide. The Municipality cannot as a matter of right require the State to make available funds for discharging such obligation. If the State Government decides to come to the rescue of the Municipality voluntarily or on a request made by the Municipality, that is a different question altogether. However, the financial liability of the Municipality on account of payment of gratuity to its retiring employees, cannot be foisted partly or wholly on the State Government.

Accordingly, we modify the order under appeal by deleting the portions of the order which tend to put the liability for payment of gratuity to the writ petitioner on the State Government. The other portions of the order shall remain the same, i.e., the Municipality is obliged to pay the admissible gratuity to the writ petitioner.

However, having observed and directed as above, we feel impelled to add a few words. Our State professes to be a “Welfare State”. The fact that an employee having served a Municipality for long years is not receiving gratuity which he is legally entitled to, for the alleged financial crunch of the Municipality, should concern the State. Although a Municipality is an autonomous statutory body, deep and pervasive governmental control over a Municipality is undeniable. Hence, in our opinion, although the State may not be legally obliged to pay the gratuity dues of a retired employee of a Municipality, since payment of gratuity is a welfare measure, we feel that the State should step in and try to ensure in whatever manner it deems fit, that the respondent/writ petitioner receives the admissible gratuity.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1577 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)