28.
16-10-2023
(Ct. no.06)
debajyoti

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

MAT 1645 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023
+
CAN/3/2023

Bhatpara Municipality
Vs.
Dipnarayan Bandyopadhyay & Ors.

Mr. Dipak Kumar Mukherjee,
Mr. Rajib Mukherjee,
Ms. Shreyasi Bhaduri
... For the Appellant.

Mr. Rananesh Guha Thakurta,
Ms. Senjuti Sengupta,
Ms. Dipa Roy
... For Respondent No.1.

Mr. Md. T. M. Siddiqui, learned AGP,
Mr. Saptak Sanyal
... For the State.

Mr. Dibashis Basu,
Ms. Ranjana Chatterjee,
Mr. Arun Bandyopadhyay
... For Union of India.

In re : CAN 3 of 2023

This application has been taken out for adding Union of India, Secretary, Ministry of Railway and Secretary, Ministry of Defence, as respondent nos.6, 7 and 8 in this appeal. They were not parties to the writ petition.

The writ petition pertains to non-payment of the gratuity dues of employees of Bhatpara Municipality, who retired from service. The learned Judge allowed the writ petition directing the Municipality to disburse the gratuity amount to the writ petitioner. Being aggrieved, the Municipality is in appeal before us.

One of the grounds urged by learned Advocate for the Municipality is that it has no funds. Huge sums of money are due to the Municipality from the Central Government on account of service charges. Accordingly, the Union of India and the Secretaries of the two Ministries indicated above have been sought to be added as respondents.

Learned Advocate for the Municipality says that once they are added as respondents, direction can be issued on them for liquidating the dues of the Municipalities so that the Municipality can pay the gratuity dues of the employees, who have retired.

We are unable to accede to the prayer of the Municipality. This is not a writ petition of the Municipality. In any event, the retiring employees are not concerned with what moneys are due to the Municipality from third parties. We are not going to allow this Court to be used as a 'debt collecting court' for the benefit of the Municipality. Nothing stops the Municipality from initiating appropriate legal action against the parties, including the Central and State Governments, for recovering what it says are its lawful dues from such parties.

We reject the prayer for addition of the Union of India and the two Ministries as respondents in this appeal.

CAN 3 of 2023 is dismissed.

In re : IA CAN 1 of 2023

This is an application for condonation of delay of 38 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 1645 of 2023, CAN 2 of 2023

The writ petitioner prayed for disbursal of the gratuity amount after his retirement from service. The same not having been paid by the Municipality, the writ petitioner approached the learned Single Judge.

The learned Judge recorded the submission made on behalf of the Municipality, which was two fold. Firstly, it was submitted that the Municipality has no funds. Secondly, it was submitted that a huge sum of money is due and payable to the Municipality by the State Government and until such dues are cleared by the State, the dues of the retired employees cannot be paid. The learned Judge rejected such argument and disposed of the writ petition with the following observations and directions:

> *"In the instant case PPO was issued long back and till date the petitioner has not been paid the dues. Such stand of the respondents cannot be accepted under any circumstances.*
>
> *The authority is duty bound to disburse the dues of the petitioner along with interest.*
>
> *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 entitle 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 Municipality is before us by way of this appeal.

We have heard learned Counsel for the Municipality at length. He has argued the following points:

The Municipality has no funds from which the retiral benefits of the ex employees can be paid.

The State Government and the Central Government owe huge sums of money to the Municipality on account of property tax and service charges respectively. Till such dues are paid to the Municipality, it is not in a position to pay the retiral benefits of the ex employees.

Before the 74th Amendment to the Constitution took place, a Municipality had a free hand in the matter of employment of its employees. After the Amendment, the entire thing is under the control of the State Government. For all practical purposes, the employees of the Municipality are employees of the State Government. It is the State Government which should take care of the retiral benefits of the ex employees of the Municipality.

Referring to Sections 67 and 68 of the West Bengal Municipal Act, 1993, it is submitted that the Board of Councillors is merely a trustee of the municipal funds. All moneys received on account of municipal funds, are to be paid into the Government treasury.

Learned Advocate for the Municipality submitted that a direction should be issued on the State Government for liquidating the dues of the Municipality so that the Municipality can pay the retiral benefits of its ex-employees.

We are not impressed with the argument advanced on behalf of the Municipality. If the Municipality is suffering from financial crunch by reason of withholding of its dues by the State Government or the Central Government, it is free to take legal steps against those Governments. Neither the employees of the Municipality, who have retired after serving the Municipality for years together, nor this Court is concerned in the present proceedings with the internal dispute between the State and the Municipality or the Central Government and the Municipality. As rightly observed by the learned Single Judge, paucity of fund cannot be a lawful ground for not paying the retiral benefits of an ex employee including gratuity.

In view of the aforesaid, we see no reason to interfere with the order under appeal. The appeal and the connected application are dismissed.

The learned Judge had directed payment of the gratuity dues of the writ petitioner by August 31, 2023, along with interest @ 7% p.a. In default, additional 3% interest is to be paid. We merely extend the time period for payment of the dues of the writ petitioner till December 31, 2023. If payment is made within that period, the applicable rate of interest will be 7% p.a. If payment is not made within December 31, 2023, interest @ 10% will be payable. Apart from the aforesaid, the other portions of the order impugned remain unaltered.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)