

14.12.2023
Item No.12.
Court No.6.
AB

**M.A.T. 1686 of 2023
With
CAN 1 of 2023**

**Mantu Kumar Prodhan
Vs
The State of West Bengal & Ors.**

Ms. Rita Patra,
Ms. Pusmita Dasfor the Appellant.

Mr. Lalit Mohan Mahata,
Mr. Rudranil Defor the State.

Mr. Koushik Chatterjee,
Mr. Nilanjan Adhikarifor the Municipality.

This appeal is directed against a judgment and order dated November 25, 2021, whereby the application of the appellant/writ petitioner for restoration of the writ petition, which had been dismissed for default earlier, was dismissed. The learned Single Judge considered the writ petitioner's case on merits and found that the writ petition was merit-less. An additional ground on which the learned Judge declined to restore the writ petition, is that His Lordship opined that the writ petitioner was not at all diligent in pursuing his remedy. Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the parties at some length.

The only issue is whether the appellant is entitled to receive pensionary benefits.

It is not in dispute that the appellant was engaged as a casual worker by Contai Municipality on January 9, 1985. He continued to render service as a casual worker till December 31, 2009. By a Memorandum dated December 3, 2009, the Director of Local Bodies informed the Chairman of Contai Municipality that the Governor had been pleased to accord approval to the appointments of 19 Pre'92 Casual Workers in the sanctioned vacant posts as mentioned against each of them in Annexure "A" to that Memo, under Contai Municipality, on the basis of eligibility and seniority, with prospective effect from the date of their joining such posts in the usual scale of pay and allowances. Annexure "A" to the said Memo included the name of the present appellant against sr. no.14.

Pursuant to such communication by the Director of Local Bodies, the Chairman of the Municipality addressed a letter dated December 29, 2009 to the appellant intimating that the Board of Councillors of the Municipality had appointed the appellant in the post of clerk in the Revised Pay Structure with effect from January 1, 2010. The appellant was directed to submit his joining report within January 7, 2010.

It is also an admitted fact that the appellant retired from service on August 31, 2010.

Prior to his retirement, the appellant had made several representations, the last of which appears to be of March 30, 2010, to the Chairman of the Municipality requesting that he be extended the benefits under the Death Cum Retirement Benefit Rule, 1986, after his retirement. With the grievance that his representations were not considered by the Municipality, the appellant, in an earlier round of litigation, had approached a learned Judge of this Court by filing W. P. No.7212 (W) of 2010. By an order dated July 13, 2012, the learned Judge disposed of the writ petition by directing the Chairman in the Municipality to consider the representation of the appellant within a period of four weeks from the date of communication of the order, after giving an opportunity of hearing to all parties and by passing a reasoned order.

Pursuant to such order of this Court, the Chairman of the Municipality heard the appellant and passed an order dated February 11, 2013, to the following effect:

“Petitioner Mantu Kumar Pradhan submitted his representation on 30.03.2010 wherein he prayed for disbursement of his Retirement Benefits (Pension & Gratuity). From the office record it appears that he was appointed in the Regular Establishment of this office on 01.01.2010 vide G.O. No.1659/DLB/B-409/15-96(pt.) Dt. 03.02.2009 and he was retired in the afternoon of 30.09.2010. So his length of service is less than one year. So he is not entitled to get Pension as per Provision of West Bengal Municipal (Employees’ Death Cum Benefit) Rules 2003 and HMC (D.C.R.B.) Regulation 1988.

But he may be allowed Gratuity for ½ months emoluments i.e. Rs.5,785/- (Rupees Five Thousand Seven Hundred and Eighty Five) only”.

It appears that the appellant made representations against the order dated February 11, 2013, passed by the Municipality. Alleging non-consideration of such representations, the appellant approached the learned Single Judge in the present round of litigation. His writ petition was dismissed for default. He applied for restoration of the writ petition. While considering the restoration application, the learned Judge delved into the merits of the writ petitioner's claim and concluded that his claim for pensionary benefits is not tenable in law. On that ground and also on the ground of indifference on the part of the writ petitioner in proceeding with the writ petition, the learned Judge dismissed the restoration application.

Learned Advocate for the State, with reference to the affidavit-in-opposition filed on behalf of the State, has argued that from his initial date of engagement i.e. January 9, 1985, till December 31, 2009, the appellant worked as a casual employee. He was made a permanent employee only on January 1, 2010. After that he worked only for about eight months before he retired on August 31, 2010. Hence, he is not entitled to pensionary benefits as he did not render service for the minimum period prescribed for being eligible for pension i.e., 10 years as permanent employee.

Learned Advocate for the State has drawn our attention to a Memorandum dated June 9, 2009, (page 6 of affidavit in opposition of the State), issued by the Department of Municipal Affairs, Government of West Bengal, which is to the effect, inter alia, that “an employee of the Urban Local Body retiring in accordance with the provisions of West Bengal Municipal (Employees Death Cum Retiring Benefits) Rules, 2003 and HMC (D.C.R.B.) Regulation, 1988, and before completion of minimum qualifying service of ten years shall not be entitled to pension, but he shall continue to be entitled to gratuity”.

Learned Advocate also drew our attention to the West Bengal Municipal (Employees Death Cum Retirement Benefits) Rules, 2003. Rule 1(3) of the said Rules clearly states that the Rules would apply to all the whole-time permanent employees under the employment of Municipalities. We, therefore, find that the appellant served as a permanent employee under the Municipality only from January 1, 2010 till his retirement on August 31, 2010. In other words, he did not serve for the minimum required period of ten years as permanent employee.

We also note that the sanction accorded by the Hon’ble Governor as communicated to the Chairman of the Municipality by the Director of Local Bodies by his letter dated December 3, 2009, was “prospective” from the date of joining by the relevant employee.

Hence, it cannot be said that such sanction regularized the appointment of the appellant as a permanent employee with effect from his initial date of engagement.

Another reason as to why we decline to interfere is that the order of the Chairman of the Municipality passed on February 11, 2013, in pursuance of this Court's order dated July 13, 2012, had never been challenged by the appellant before any competent forum. That order has attained finality.

While it may be unfair that a person, serving the Municipality for 25 years albeit as a casual employee for 24 years and permanent employee only for about eight months, will not be entitled to pension as per the applicable Law and the extant Rule and although we may have sympathy for such a person, we cannot grant relief only on the basis of sympathy. We have to pass order within the four corners of law.

In view of the aforesaid, we are unable to grant any relief to the appellant. The appeal and the connected application are dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)

