

D/L
Item No. 23
20.07.2023
KOLE

MAT 1775 of 2022

**The State of West Bengal & Ors.
-Vs.-
Debdas Saha & Ors.**

*Mr. Tapan Kr. Mukherjee, Sr. Adv.
Mr. Pinaki Dhole,
Mr. T. Sinha,*

...for the appellants.

*Mr. Partha Sarkar,
Mr. Abhijit Basu,*

...for the respondent/writ petitioner.

Mr. Dipankar Mondal,

...for the Municipality.

The respondent no. 1/writ petitioner was appointed as a casual employee in Chakdaha Municipality in the year 1988. In 1996, he was absorbed in a sanctioned vacant post, in terms of G. O. No. 103/MA/O/C-9/M2A-13/94 dated March 19, 1996. The said memo reads as follows:-

“WHEREAS it was brought to the notice of the Govt. that some municipalities resorted to engagement of Casual Workers in spite of Govt. decision restricting engagement of such workers, which was reiterated from time to time by issue of Circulars;

AND WHEREAS for sometime past the question of absorption of Casual and such other Categories of Workers engaged as such from time to time in different municipalities has been under the active consideration of the Govt;

NOW THEREFORE, after careful consideration and in continuation of para 2 of this, Department Order No. 50/MA/O/C-9/2A-17/95 dated 02.05.95 the Governor is further pleased to determine in accordance with the provisions is further pleased to determine in accordance with the

provisions of Sub-section 3(A) of Section 54 of the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993) that duly qualified Casual Workers who were engaged by different municipalities upto 31.12.1991 and are still continuing as such will be eligible for absorption in the duly sanctioned vacant Group 'C' posts within the approved staffing patters of the municipalities strictly on the basis of seniority and with prior approval of the Board of Councillors subject to the fulfillment of other terms and conditions laid down under the Labour Deptt. Memo No. 100-EMP/1M-17/79(Pt) dated 13.03.96 read with Memo Nos. 1700 EMP of 3.8.79 and 1650 EMP dated 28.8.80."

The Board of Councillors of the Municipality recommended the name of the writ petitioner to the Directorate of Local Bodies for according approval. No such approval was accorded.

In the year 2014, the writ petitioner had approached this Court by filing WP No. 20716(W) of 2014 for a direction upon the authorities to disburse *ad hoc* pension in his favour since he had retired by that time. By an order dated July 24, 2014, a learned Single Judge disposed of the writ petition.

The operative portion of the said order reads as follows:-

"__Accordingly, the Principal Secretary, Department of Municipal Affairs, Kolkata, the respondent no. 1 is directed to consider the matter with regard to grant of ad hoc pension by passing a reasoned order within six weeks from the date of presentation of a copy of the certified copy of this order after giving an opportunity of hearing to the petitioner and to a representative of the Chakdaha Municipality and after having the records and documents, including the certificate appearing at page 25 of the writ petition and after considering the notifications appearing at pages 58 and 59 of the writ petition and other notifications, if any. If it is found that the petitioner is entitled to pension, the respondent no. 1 shall issue appropriate directions forthwith

thereafter in accordance with law. It is, however, made clear that I have not gone into the merits of the matter and all points are left open to be dealt with by the respondent no. 1.”

Pursuant to such order, the Principal Secretary to Government of West Bengal passed a reasoned order which was communicated to the writ petitioner under cover of a letter dated February 17, 2015. The writ petitioner’s claim was rejected.

The last paragraph of the said reasoned order reads as follows:-

“Hence, as the petitioner was absorbed by the Municipality in terms of Govt. Order No. 103/MA/O/C-9/M2A-13/96 dated 10-03-1996 and Memo No. 292/DLB/C-3/3 GM-2/92(119) dated 22-01-1997 subject to the fulfillment of terms and conditions laid down under the Labour Department’s Memo No. 100-EMP dated 28-08-1980 which are not in effect as per Chief Secretary’s aforesaid order dated 02-12-2009, so any other order for regularization/approval of service etc. shall not take effect.”

Challenging the aforesaid order of the Principal Secretary, the writ petitioner approached the learned Single Judge in the present round of litigation. By the judgment and order dated November 15, 2019, impugned in this appeal, the learned Judge allowed the writ petition. The operative portion of the impugned order reads as follows:

“In view of the foregoing discussion made above I allow the Writ Petition by quashing the impugned undated order being annexure ‘P-16’ to the writ petition and direct the Director of Local Bodies, Government of West Bengal/respondent no. 4 to grant post facto approval to the appointment of the writ petitioner from the date of his absorption in the respondent

Municipality in the sanctioned post as a “Ledger Clerk” by the resolution of the Board of Councillors of the Municipality dated 01.07.1996, as per Government order no. 207/MA/O/C-4/1A/2000 dated 7th May, 2009 and Government order no. 422/MA/O/C-4/1A/2000 dated 19th August, 2009 issued by the Government of West Bengal, Department of Municipal Affairs and direct the respondent authorities concerned to make payment of all post retiral benefits including pension to him as of a permanent employee of the respondent/Municipality. The whole exercise of approval and payment of all such post retiral dues to the petitioner must be completed by the respondents concerned within 12 weeks from the date of communication of this order. In case of default in making payment of all post retiral dues within the aforesaid stipulated period respondents shall pay the same with interest to the petitioner at the rate of 6% from the date of retirement till the date of actual payment of such arrears.”

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

Learned Advocate for the respondent/writ petitioner pointed out at the very outset that the order of the learned Single Judge has been carried out. In terms of that order, the Government accorded post-facto approval to the absorption of the writ petitioner in the sanctioned vacant post and consequently disbursed the pensionary benefits to the writ petitioner. After complying with the order, the present appeal has been preferred against that order.

Mr. Dhole, learned Advocate, representing the appellant says that the learned Single Judge’s order was implemented under threat of contempt. There are legal points to be considered in the appeal. The memo of 1996 is not applicable to the writ petitioner.

We are of the opinion that this appeal is really not maintainable inasmuch as it has been filed after the order of the learned Single Judge has been given effect to by the appellants. This court is not inclined to carry out an academic exercise. All points of law that learned Advocate for the State would like to urge may be done so in some other appropriate proceedings.

The appeal is, thus, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)