

Item No. 17

30.01.2023
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26466 of 2022
Utpala Khan

v.

The State of West Bengal & Ors.

Mr. Samiran Mondal
Mr. Abhinaba Dan
Mr. Nitish Samanta
... for the petitioner.

Mr. Dipankar Mandal
Mr. Abdul Aziz Mondal
... for the Municipality.

Mr. Pinaki Dhole
Ms. Ananya Neogi
... for the State.

The husband of the petitioner was an employee of Chakdaha Municipality. He died-in-harness on December 20, 1993. The petitioner being the widow applied for being appointed on compassionate ground.

By a resolution adopted by the Board of Councillors of the Municipality, the petitioner was provided temporary appointment in February 1994.

By a communication dated July 30, 1996 the Chairman of the Municipality intimated the petitioner that as per the resolution of the Board of Councillors dated July 1, 1996 she was absorbed in the post of bill clerk in the scale of pay together with other allowances with effect from August 1, 1996.

The petitioner is in service till date and she is due to attain her age of superannuation on October 31, 2024.

The petitioner apprehends that in view of non-approval of her service by the State, she may be deprived of her terminal benefits.

The petitioner relies upon a communication made by the Joint Secretary, Government of West Bengal, Urban Development and Municipal Affairs (Municipal Affairs Branch) to the Director, Directorate of Local Bodies with copy to the Chairman, Chakdaha Municipality regarding regularization of employees engaged in Chakdaha Municipality and its approval from the Directorate of Local Bodies.

By the said communication the Director, Directorate of Local Bodies was requested to look into the matter in respect of some employees (Regular) of Chakdaha Municipality and take appropriate action for approval of posts so that their names are included in the IOSMS portal. The petitioner contends that details of the petitioner have duly been forwarded by the Municipality to the Directorate of Local Bodies for post-facto approval of her service.

The petitioner also filed a representation before the Directorate of Local Bodies in November 2022 and alleges that the same has not been taken up for consideration till date.

Reliance has been placed on a judgment delivered by this Court on November 15, 2019 in WP No. 10717(W) of 2015 (Debdas Saha v. The State of West

Bengal & Ors.) on a similar issue in connection with the selfsame Municipality.

Learned advocate representing the Municipality relies upon an order dated September 21, 2020 passed by this Court in WPA 18167 of 2022 in (Bablu Ghosh v. The State of West Bengal & Ors.) wherein the Court directed the Directorate of Local Bodies to take a decision with regard to the prayer of the petitioner for grant of terminal benefits in accordance with law. The petitioner was given liberty to rely upon all documents including the judgments passed by this Court and the Hon'ble Supreme Court in similar matters.

Learned advocate representing the State respondents submits that the documents annexed to the writ petition does not reveal whether the petitioner was appointed after conducting a regular selection process. It is also not clear whether the petitioner was appointed on regular basis or on compassionate ground.

It has been submitted that the judgment relied upon by the petitioner in the matter of Debdas Saha (supra) has been carried forward in appeal which is pending disposal.

Upon hearing all the parties and upon perusal of the documents placed before this Court it appears that though the petitioner is in service from February 1994, her service is yet to be approved by the Government.

The petitioner made representation before the Municipal Affairs Department and before the Directorate of Local Bodies seeking post-facto approval of appointment of her service. No communication has been made by the respondents in response to the representation made by the petitioner.

As the petitioner is due to retire in October 2024, it is incumbent for the respondents to take a decision with regard to her prayer for according post-facto approval of her service.

In view of the above, the Directorate of Local Bodies is directed to take a decision with regard to the representation filed by the petitioner in November 2022 in accordance with law, at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The Director of Local Bodies shall communicate the reasoned order to the petitioner immediately thereafter.

The Director of Local Bodies shall afford an opportunity of hearing to the petitioner and the representative of the Municipality prior to passing a final order in the matter.

The petitioner will be entitled to rely upon all documents including judgments passed by this Court and the Hon'ble Supreme Court in his favour at the time of hearing.

Learned advocate appearing for the petitioner is directed to forward to the aforesaid respondent the correspondences made between the Municipality and the Director of Local Bodies and the documents in support of the claim of the petitioner for grant of terminal benefits at the time of communicating the order of the Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)