

05 25.09.2023
rkd Ct.15

W.P.A. 29287 of 2015

Krishna Gopal Nath
-vs-
State of West Bengal & Ors.

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha

....for the petitioner.

Mr. Pantu Deby Roy,
Mr. Subrata Guha Biswas

....for the State.

The writ petition is taken up for consideration today in presence of the learned advocates representing the petitioner and the State respondents.

However, in spite of serving notice upon the Naihati Municipality the said Municipality is not represented today.

Affidavit-of-service was filed on behalf of the petitioner on the last occasion showing service of notice on the Municipality and in consideration of the said affidavit-of-service there was a specific direction passed by this Court on 21st September, 2023 observing that in view of absence of representation on behalf of the Naihati Municipality hearing was adjourned on 21st September, 2023. However, on the next date if this Court finds that there is no representation on behalf of the said Municipality the writ petition shall be dealt with in

absence of the learned advocate of the Municipality.

In view of aforesaid situation with regard to absence of representation on behalf of the Municipality this Court has no other alternative but to consider the writ petition finally.

The learned advocate representing the petitioner submits that the petitioner was appointed as Conservancy Supervisor pursuant to the resolution adopted in the meeting of the Board of Councillors, Naihati Municipality (hereinafter referred to as the "said Municipality") dated 29th June, 1998 since it was found that the post against of which petitioner's appointment was considered, was lying vacant. Accordingly, vide appointment letter dated 30th June, 1998 petitioner was appointed on substantive basis as Conservancy Supervisor with effect from 1st July, 1998 and he was placed on a regular scale of pay of Rs.980-1755/-. Subsequently, appointment of the petitioner stood confirmed vide order of the Chairman of the said Municipality dated 10th March, 1999 with effect from 1st February, 1999 in the existing scale of pay.

On perusal of the document which is annexed at page 21 of the writ petition, it appears that in the said letter dated 10th March, 1999 of the

Chairman petitioner's name was appearing at serial No.85. Ultimately petitioner retired on superannuation on 30th June, 2013. In view of date of superannuation of the petitioner on attaining 60 years the Chairman of the said Municipality by issuing notice dated 17th July, 2012 asked the petitioner to meet the accounts department of the Municipality for calculation on retirement benefit and preparation of pension papers. Such retirement notice dated 17th July, 2012 is at page 25 of the writ petition.

It has been contended on behalf of the petitioner upon placing reliance on the Government Orders dated 7th May, 2009 and 19th August, 2009 that the petitioner is entitled to get the benefit of these two Government Orders in view of the fact that date of appointment of the petitioner was 1st July, 1998 whereas Government Order dated 7th May, 2009 prescribes that post facto approval of appointment/promotion needs to be granted in favour of the employee of the Municipality in the event the employee is appointed against sanctioned vacancy within the period from 14th July, 1994 to 15th October, 2000.

On behalf of the petitioner reliance has also been placed on the judgment of this Court delivered

on 4th April, 2022 which is reported in **AIR Online 2022 Cal 703 (Prabir Kumar Roy -vs- -State of West Bengal)**.

Reliance has also been placed on the judgment of the Hon'ble Division Bench dated 14th December, 2022 passed on an intra Court appeal being **MAT 1308 of 2022 (State of West Bengal & Ors. – Prabir Kumar Roy & Ors.)** whereby the Hon'ble Division Bench was pleased to dismiss the intra Court appeal preferred by the State respondents against the judgment delivered in **Prabir Kumar Roy** (supra).

Mr. Deb Roy, learned Additional Government Pleader represents the State respondents and submits in reference to the order of the Director of Local Bodies, West Bengal dated 29th April, 2014 read with Government Order dated 6th February, 2023 that the petitioner needs to be appointed initially against the sanctioned vacancy.

It is also contended that in view of the Government Order dated 6th February, 2023 if initial appointment of the petitioner was outside the purview of Section 54(1) of the West Bengal Municipal Act, 1993 and if such appointment is against the sanctioned post in that event there is no impediment in considering the prayer of the

petitioner in terms of the said Government Order dated 6th February, 2023.

Having considered the submissions made on behalf of the petitioner and the State respondents and on perusal of the relevant materials available on record, it appears that the petitioner was appointed as Conservancy Supervisor on 1st July, 1998 and was placed on regular scale of pay and subsequently service of the petitioner was confirmed with effect from 1st February, 1999 in terms of the order of the Chairman of the said Municipality dated 10th March, 1999. Petitioner worked as regular Conservancy Supervisor for the period from 1st July, 1998 till 30th June, 2013 and thereafter retired on superannuation. It also appears that petitioner enjoyed regular scale of pay as approved Conservancy Supervisor and there was no demur made by the State respondents as well as the said Municipality during the aforesaid tenure of the petitioner against his appointment.

On scrutiny it also appears that the condition stipulated in Government Order dated 7th May, 2009 read with Government Order dated 19th August, 2009 is fulfilled so far service of the petitioner is concerned in view of his appointment

with effect from 1st July, 1998. The scale of pay as indicated in the appointment letter dated 30th June, 1998 does not show that petitioner is not entitled to get the benefit of the Government Orders dated 7th May, 2009 and 19th August, 2009. In terms of the submission made on behalf of the State respondents only test which is required to be fulfilled is appointment of the petitioner in sanctioned vacancy in reference to the relevant Government Orders. The long tenure of the petitioner from 1st July, 1998 to 30th June, 2013 as Conservancy Supervisor on enjoying regular scale of pay corroborates the contention of the petitioner that he was appointed on a sanctioned post in consideration of the fact that there was no objection made by the State respondent and the said Municipality during such tenure of the petitioner. It is only after the superannuation of the petitioner by issuing memo dated 29th April, 2014 Director of Local Bodies raised the issue relating to sanctioning of post which was manned by the petitioner for a period of approximately fifteen years.

In view of aforesaid facts, the Director of Local Bodies by issuing memo dated 29th April, 2014 ought not to have issued such objection at

the time of settling the retiral dues of the petitioner.

The issue of right of the employees of Municipality to receive retiral dues by virtue of Government Orders dated 7th May, 2009 read with 19th August, 2009 has been considered by this Court in **Prabir Kumar Roy** (supra).

Vide judgment dated 4th April, 2022 passed in **Prabir Kumar Roy** (supra) this Court has granted identical relief in favour of the petitioner therein and the said order was assailed before the Hon'ble Division Bench by the State respondents but such challenge failed since the appeal preferred by the State respondents was dismissed vide order dated 14th December, 2022.

In view of aforesaid scenario and upon placing reliance on the judgment delivered by this Court in **Prabir Kumar Roy** (supra) the order of the Director of Local Bodies, Government of West Bengal dated 29th April, 2014 is set aside.

The concerned respondent authorities are directed to settle the retiral dues of the petitioner and release the same within eight weeks from the date of communication of this order, if necessary upon granting post facto approval in terms of the aforesaid relevant Government Orders.

With the aforesaid direction the writ

petition is disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)