

S/L 79
06.02.2024
Court. No. 3
Suwayan

WPA 6268 of 2022

**Hari Mistry @ Haralal Mistri
Vs.
The Kolkata Municipal Corporation & ors.**

Mr. Krishna Das Poddar

...for the petitioner.

*Mr. Alak Kr. Ghosh
Mr. Arijit Dey*

...for the KMC.

1. Both the writ petitioner and the respondents/the Kolkata Municipal Corporation (in short 'the KMC') and its officials are represented by their respective learned Advocates.
2. Leave is granted to the learned Advocate for the petitioner to correct the para No. 7 of the writ petition.
3. On behalf of the respondents/KMC one affidavit-in-opposition has been filed. The affidavit-in-opposition as filed today be taken on record.
4. In support of the instant writ petition Mr. Poddar, learned Advocate for the writ petitioner at the very outset draws attention of this Court to paragraph No. 4 of the writ petition. It is contended by Mr. Poddar that the present petitioner was absorbed permanently in the post of Mazdoor in the Lighting Department of the KMC as a permanent employee in Group 'D' category with effect from 12.06.2009 and prior to his appointment as permanent employee he served as casual labour as leave

substitute for about 19 years regularly without any break.

5. It is further contended by Mr. Poddar, learned Advocate for the writ petitioner that the petitioner retired on his attaining the age of superannuation on 30.06.2017 after serving less than six months to 10 years as permanent staff. It is further submitted that since as per the prevailing Pension Rules of KMC an incumbent must have to serve for 10 years to get minimum pension the present petitioner was not disbursed with any pensionary benefits. Drawing attention to Annexures P7 and P8 being the order of a co-ordinate Single Bench dated 08.02.2018 as passed by WP 26878 (W) of 2014 and the judgment as passed by a Division Bench of this Hon'ble Court on 29.11.2021 in FMA 1088 of 2019 it is contended by Mr. Poddar, learned Advocate for the writ petitioner that similar such matter was dealt with by the Hon'ble co-ordinate Single Bench and Hon'ble Division Bench wherein the respondents/KMC has been directed to take note of the service of the writ petitioner of the said writ petition as a casual labour in calculating the total length of service for the purpose of disbursement of pension. Mr. Poddar, thus, submits that considering the fact that the present writ petitioner is similarly circumstanced with the writ petitioner in the aforesaid writ petition and in the writ appeal, an appropriate order may be

passed directing the respondents/KMC to calculate the past service of the present writ petitioner on and from the year 1991 and to further direct them to disburse full pensionary benefits as per Regulation 12 under Chapters V, VI and VII of the Corporation of Calcutta Employees (Death cum Retirement Benefit) Regulations, 1982.

6. Mr. Poddar further submits before this Court that challenging the judgment dated 29.11.2021 as passed by the Hon'ble Division Bench in FMA 1088 of 2019 the respondents/KMC has approached the Hon'ble Apex Court in Special Leave Petition which has been dismissed by the Hon'ble Apex Court.
7. *Per contra* Mr. Ghosh, learned Advocate for the respondents/KMC submits before this Court that under no stretch of imagination it can be said that the present petitioner is similarly circumstanced with the writ petitioner in WP 26878 (W) of 2014 and the private respondent in FMA 1088 of 2019. It is further contended by Mr. Ghosh that the present writ petitioner had already received the entire retirement benefits long back without any objection and, therefore, he may be estopped from getting further benefit that is to say pensionary benefit as extended to the writ petitioner in the aforesaid writ petition and the writ appeal.
8. For effective adjudication of the instant lis this Court proposes to look to the Regulation 12 of the

aforementioned Regulations and the same is reproduced hereinbelow in verbatim:

“12. Service qualifying for pension-

Except in the case of compensation pension the service rendered by a whole-time employee whose duty and pay are regulated under the terms and conditions of the Calcutta Corporation in vogue, shall be reckoned as qualifying service for the purpose of pension in the following manner:-

(i) The qualifying service shall commence from the date he takes over charge of a post to which he is first appointed substantively or in the officiating or temporary capacity and continues to hold the same for at least ten years without break provided that the period of service rendered before attaining the age of 18 years shall not be taken as qualifying service for the purpose of these regulations.”

9. On comparative study of the entire materials as placed before this Court with the facts as involved in WP 26878 (W) of 2014, it appears to this Court that the present writ petitioner is almost similarly circumstanced with the writ petitioner in WP 26878 (W) of 2014. It is further appears that Hon'ble Single Bench by its order dated 08.02.2018 duly considered the past service of the writ petitioner though in leave substitute capacity and directed the KMC to revisit the issue on merit.
10. On perusal of the judgment dated 29.11.2021 as passed by Hon'ble Division Bench in FMA 1088 of 2019 as preferred by KMC, the Hon'ble Division

Bench while dismissing the said appeal of the KMC slightly modified the order of the Hon'ble Single Bench by expressing the following view:

“.....

However, we have carefully gone through Regulation 12(i) of the 1982 Regulation and we find that there are three categories of employees which are being mentioned therein. The first one is, substantive employee, secondly officiating category and thirdly, temporary capacity. In respect of three categories, to get eligible pension the employee should hold the post of substantive or officiating category or temporary capacity for at least 10 years without break provided that the period of service rendered before the attaining 18 years of age shall not be taken as qualifying service for purpose of these regulations. The documents exhibited as annexure P3 and P4 which have been taken note of by the learned Single Judge will clearly show that the respondent writ petitioner was working in officiating/temporary category for a continuous period of 240 days in a year and there is record to show that such engagement commenced from 2000.

We are of the view that the learned Single Judge was right in allowing the writ petition setting aside the order dated 21.05.2014 and directing the appellant corporation to revisit the issue on merits. In so far as the operative portion of the impugned order is concerned, we make slight modification and direct the appellant corporation to take note of the service particulars as mentioned in annexure P5 as well as ID card issued to the respondent as a Casual Labour and after examining

those records calculate the total length of service of the respondent/writ petitioner. In any event, we are of the prima facie view that there shall be no difficulty for the appellant to come to the conclusion that the respondent has rendered more than 10 years of service. The appellant cannot revisit the finding recorded by the learned writ court on the issue that the service of the respondent writ petitioner was without break (annexure P4)”

11. On perusal of the judgment of the Hon’ble Division Bench as discussed (Supra) this Court, thus, finds that the appellants/KMC in the said appeal was directed to take note of the service as a casual labour for calculating the total length of the service of the private respondent/writ petitioner in the said appeal.
12. Coming to the factual aspects of this case it appears that so far as the date of appointment of the present writ petitioner as casual labour as leave substitute prior to his appointment permanently in the category of Group ‘D’ as Mazdoor in Lighting Department on 12.06.2009 is not disputed and, therefore, this Court finds no predicament in directing the respondents/KMC to take note of the service particulars of the present petitioner as and when he has joined as a casual labour as leave substitute for calculating the total length of service of the present writ petitioner.

13. In view of the discussion made hereinabove and keeping in mind the ratio of the judgment as passed in FMA 1088 of 2019 on 29.11.2021 this Court directs the respondents/KMC and its officials to consider the grant of due pensionary benefits after taking note of the past service of the present petitioner as casual labour as leave substitute prior to his appointment to the permanent post in category of Group 'D' as Mazdoor.
14. The respondents/KMC is further directed to come to a logical conclusion with regard to its finding positively within a period of three months from the date of communication of this order.
15. With the aforementioned observation the instant writ petition being WPA 6268 of 2022 is disposed of.
16. Parties to act on the server copies of this order.
17. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)