

ML- 18.01.2024
294 Ct.15
rkd

W.P.A. 4262 of 2016
(IA NO: CAN 1/2016 (Old No: CAN 10850/2016), CAN 2/1016 (Old
No: CAN 10869/2016))

Rafiqul Hasan & Ors.

-vs-

The Chairman, Dum Dum Municipality & Ors.

Mr. Saptarshi Roy,
Mr. Siddhartha Roy,
Ms. Kakali Das Chakraborty

....for the petitioners.

Mr. Biswabrata Basu Mallick,
Ms. Parna Roy Choudhury

....for the State.

Petitioners are the resident medical officers of Dum Dum Municipality who were appointed on different dates by the concerned authorities.

It has been submitted by the learned advocate representing the petitioners that petitioners have retired in the meantime barring few who are serving on extension. Petitioners pray for settlement of pension upon granting of post facto approval. In course of hearing an order dated 6th February, 2023 issued by the Additional Secretary to the Government of West Bengal, Department of Urban Development and Municipal Affairs (Municipal Affairs Branch) has been placed before this Court whereby previous circular applicable in the field was amended by inserting Clause 2(a).

In addition thereto, reliance has been placed on behalf of the petitioners on the order dated 23rd March, 2022 passed by this Court on WPA 4259 of 2016 (Dr. Sakti Lal Choudhury –vs- The Chairman, Dum Dum Municipality & Ors.) and the judgment of the Hon’ble Division Bench dated 13th October, 2023 whereby the order dated 23rd March, 2022 passed by this Court in the writ petition of Dr. Sakti Lal Choudhury (supra) has been affirmed.

It has further been submitted on behalf of the petitioners that the case of the present petitioners is covered by the order dated 23rd March, 2022 passed by this Court in Dr. Sakti Lal Choudhury (supra) and the judgement of the Hon’ble Division Bench dated 13th October, 2023. Petitioners pray for similar order in consideration of the order passed by this Court previously as relied on during course of hearing.

Dum Dum Municipality is not represented today. However, State respondents are represented by Mr. Basu Mallick, learned advocate.

Having considered the submissions made on behalf of the parties and in consideration of the order dated 23rd March, 2022, it appears that this Court decided the issue in favour of the petitioner

in WPA 4259 of 2016 in the light of the relevant circulars available at the material point of time and relevant statutory provisions when circular letter dated 6th February, 2023 was not existing.

Now in view of issuance of circular letter dated 6th February, 2023 the situation has been substantially changed due to insertion of Clause 2(a) in the said circular. For better understanding of the issue Clause 2(a) of the circular dated 6th February, 2023 is quoted below:

“(2) (a) in the last para for the words “to authorise the Director of Local Bodies, West Bengal to issue orders according post facto approval of appointments/promotions made by the municipalities against the sanctioned vacancies holding erstwhile scale of Rs.380-910/-, since revised to Rs.4000/- - 8850/- and below within the aforesaid period on case to case basis after due examination/enquiry” the words “to declare that the initial appointments/promotions in respect of all other officers and employees not included in sub-section (1) of section 54 of the West Bengal Municipal Act, 1993, made by the municipalities against the sanctioned vacancies between the period from 14th day of July, 1994 to the 30th day of September, 2003, shall be deemed to have been done as per extant provisions

of West Bengal Municipal Act, 1993 and has ratification of the State Government” shall be substituted;”

Having considered the aforesaid situation, this Court finds it apt to direct the Director of Local Bodies being the respondent no.6 to decide the issue relating to granting pension in favour of the petitioners upon according post facto approval in their favour in consideration of the circular dated 6th February, 2023 within a period of twelve weeks from the date of communication of this order after granting opportunity of hearing to the petitioners or their one representative.

The decision to be taken by the respondent no.6 is to be communicated to the petitioners within one week thereafter.

However, it is made clear while taking decision the respondent no.6 shall follow the decision of this Court dated 23rd March, 2022 and the judgement of the Hon’ble Division Bench dated 13th October, 2023 passed in MAT 890 of 2022 (State of West Bengal & Anr. –vs- Dr. Saktilal Choudhury & Ors.).

With the aforesaid direction and observation the writ petition stands disposed of.

Applications, if pending, also stand

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.)