08.02.2024
13 Ct. No.15
Sws.M

WPA 5851 of 2018

Sudarshan Bhattacharya
vs.
The Kolkata Municipal Corporation & Ors.

Mr. Partha Sarathi Bhattacharya
Mr. Anindya Bose
Mr. Raju Bhattacharya

.....for the petitioner

Mr. Alak Kumar Ghosh
Mr. Arijit Dey

....for the KMC

In the writ petition, *inter alia,* challenge has been thrown to the order dated 3rd August, 2016 passed by the Joint Municipal Commissioner (Revenue), Kolkata Municipal Corporation in terms of the order dated 8th October, 2015 passed by a co-ordinate Bench on the writ petition being W.P.A. 8610 of 2009.

Mr. Partha Sarathi Bhattacharya, learned senior advocate representing the petitioner submits that the impugned order dated 3rd August, 2016 is not in consonance with the order dated 8th October, 2015 passed by the co-ordinate Bench while disposing of the writ petition being W.P.A. 8610 of 2009, therefore the petitioner is entitled to get some more benefits. There is another limb of submission which has been advanced on behalf of the petitioner that the stand taken by the petitioner before the co-ordinate Bench on 8th October, 2015 at the time of disposal of the writ petition being

W.P.A. 8610 of 2009 does not take away right of the petitioner to pursue his remedy if he is not satisfied with the order which is passed in terms of the observations contained in the order dated 8th October, 2015. According to the petitioner, if he is not satisfied with the order dated 3rd August, 2016, it is open to him to challenge the order and accordingly the present writ petition has been instituted questioning the validity of the order dated 3rd August, 2016.

Kolkata Municipal Corporation (hereinafter referred to as 'KMC') is represented by Mr. Alak Kumar Ghosh, learned advocate who has defended the decision dated 3rd August, 2016 and has also submitted that in view of the order dated 8th October, 2015 passed by the co-ordinate Bench on the writ petition being W.P.A. 8610 of 2009, all admissible benefits have already been released in favour of the petitioner, therefore the said order dated 3rd August, 2016 is not open to challenge. Reliance has also been placed on the order of the Municipal Commissioner dated 13th March, 2009, which is at pages 74 and 75 of this writ petition.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record, it appears that the petitioner was working as Sub-Assistant Engineer (c) under KMC with effect from

1989 and disciplinary proceeding was initiated against him which culminated into an order made by the Appellate Authority. In previous writ petition preferred by the petitioner, the order of the Appellate Authority was set aside and the matter was directed to be reconsidered. The Municipal Commissioner passed order dated 13th March, 2009. In the order dated 13th March, 2009, the Municipal Commissioner found that the petitioner remained absent for the period from 18th March, 1989 to 27th June, 2002 and decided his period of absence should be adjusted against his leave and beyond exhaustion of the leave period of absence would be treated as leave without pay, since the petitioner did not render service to the KMC during the said period. It was ultimately directed by the Municipal Commissioner that the order of the Appellate Authority passed in modification of the order of the Disciplinary Authority should take its effect from the date of order of the Disciplinary Authority, that is, 4th March, 1989. It was also decided therein after expiry of punishment period and after joining duty the appellant should be entitled to get all the admissible incremental and promotional benefits as per rules.

The order dated 13th March, 2009 was questioned by the petitioner by instituting the writ petition being W.P.A. 8610 of 2009 and an order was passed while disposing of the said writ petition by the co-ordinate

Bench on 8th October, 2015. While deciding the issue raised in this writ petition, it appears that this order dated 8th October, 2015 will play a significant role. On perusal of the said order dated 8th October, 2015, it transpires that the petitioner virtually took a stand before the co-ordinate Bench that he would not pursue the remedy of having the order dated 13th March, 2009 set aside to get the pensionary benefits; submission was made on behalf of the petitioner to receive all admissible incremental and promotional benefits as per order dated 13th March, 2009. Taking note of such submission made on behalf of the petitioner, the co-ordinate Bench granted leave to the petitioner to make representation before the concerned authority of KMC, if necessary, and KMC was directed to settle claims of the petitioner based on the representation to be made as per leave granted by the Court. On plain reading of the order of the co-ordinate Bench dated 8th October, 2015, it reveals that the connotation used by the co-ordinate Bench 'settlement' was consciously used in view of the stand taken by the petitioner before the co-ordinate Bench for implementation of the order dated 13th March, 2009 for early disbursal of retiral dues.

Pursuant to the order dated 8th October, 2015, Joint Municipal Commissioner (Revenue) passed order dated 3rd August, 2016, wherein it has been specifically recorded that the incumbent has accepted the fixation of pay and accordingly he received his dues as admissible to him on his retirement with effect from 31st October, 2015.

On chronological analysis of facts and the orders passed one after another by the Court as well as the authorities of KMC, it emanates that the Municipal Commissioner vide order dated 13th March, 2009 decided to release admissible incremental and promotional benefits in favour of the petitioner taking note of his absence from 18th March, 1989 to 27th June, 2002 which was virtually accepted by the petitioner as it appears from the order dated 8th October, 2015 passed by the co-ordinate Bench. The co-ordinate Bench in effect directed implementation of the order dated 13th March, 2009 for which leave was granted to the petitioner to make representation in order to assist the authority to make a settlement relating to release of admissible benefits. Pursuant to the said order dated 8th October, 2015, the Joint Municipal Commissioner (Revenue) upon considering the entire gamut of the issue recorded that the admissible benefits were paid to the petitioner, as a result whereof it appears nothing remain left to be revisited again by this Court in the present writ petition in order to extend further service benefits.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Saugata Bhattacharyya, J.)