

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Apurba Sinha Ray

***M.A.T. 592 of 2024
(CAN 2 of 2024)***

***The Director of Local Bodies,
Government of West Bengal.
-Vs-
Deb Kumar Banerjee & Ors.***

For the Appellants : Mr. Alok Kr. Ghosh, Adv.,
Mr. Subhrangsu Panda, Adv.,
Ms. Ina Bhattacharyya, Adv.,
Ms. Mithu Singha Mahapatra, Adv.

For the State : Mr. Jayanta Samanta Jr. Govt .Adv.,
Mr. Manas Kumar Sadhu, Adv.

For the Garulia Municipality : Mr. Suman Basu, Adv.,
Ms. Debanwita Pramanik, Adv.

For the Respondent No.1. : Mr. Sankar Biswas, Adv.,
Mr. Debnath Mahata, Adv.,
Ms. Ananya Adhikary, Adv.

Heard on : 13.08.2024

Judgment on : 13.08.2024

Joymalya Bagchi, J. :-

1. Respondent No.1/writ petitioner was appointed as a casual employee by the Chairman, Garulia Municipality under the Conservancy Department with effect from 04.06.1991 against sanctioned vacant post. He worked continuously at the said post. On 06.08.2005, Board of Councillors took an unanimous decision for absorption and regularization of pre-1992 casual workers according to gradation list against sanctioned vacant posts and the remaining vacant posts through promotion and/or recommendation from Employment Exchange. The resolution was duly communicated to the Director of Local Bodies on 06.08.2005 for filling up 61 sanctioned posts.
2. By letter dated 12/13.02.2007, the Director of Local Bodies gave approval to the appointment of seven pre-1992 casual workers (akin to respondent no.1/writ petitioner) against sanctioned posts from the date of their joining such posts under Garulia Municipality. However, the appointment of respondent no.1/writ petitioner was approved by the Director of Local Bodies vide letter dated 12.02.2007 on and from the said date and the Board of Councillors took a resolution to absorb respondent no.1/writ petitioner as a permanent employee with effect from 12.02.2007. Respondent No.1/writ petitioner superannuated from the post on 28.02.2015 and applied for pension. His prayer was not considered by the authorities and he approached this Court in WPA 22690 of 2023 wherein the Hon'ble Single Judge directed the Director of Local Bodies to consider his prayer for release of

pensionary benefits. The Director of Local Bodies by impugned order held respondent no.1/writ petitioner was appointed as a permanent employee with effect from 12.02.2007 and, therefore, had rendered qualifying service for eight years and seventeen days which is less than the period of qualifying service i.e. 10 years which would entitle him to pension. The authority referred to Memo. No.230/MA/O/C-9/2P-6/2009 dated 09.06.2009 which, inter alia, provides an employee must complete minimum qualifying service of ten years to be entitled for pension. The authority also held the decision to absorb the pre-1992 causal workers by the Board of Councillors vide resolution dated 03.08.2005 was not in consonance to the Government Order No.292/DLB/C-5/3GM-2/92(4) dated 22.01.1997.

3. Being aggrieved by the aforesaid decision, respondent no.1/writ petitioner again approached this Court. After hearing the parties, Hon'ble Single Judge by impugned judgment, inter alia, held as similarly circumstanced seven pre-1992 causal employees who had been granted pension, respondent no.1/writ petitioner was also entitled to similar relief.
4. Learned Advocate for the appellants-Director of Local Bodies argued respondent No.1/writ petitioner was appointed as a permanent employee against sanctioned post with the prescribed scale of pay in 2007. His prior period of service as a causal employee cannot be treated as qualifying service under 2003 Rules.

5. In response, learned Advocate for respondent no.1/writ petitioner referred to letter No.411/P2P/18/85 dated 17.05.1986 issued by the Department of Local Government and Urban Development wherein it was, inter alia, provided counting of qualifying service for pension who were initially appointed on a fixed pay (because no scales of pay were prescribed for the posts) but were subsequently brought under regular scale of pay, his service rendered on fixed pay shall be counted towards qualifying service for pension provided a certificate is furnished by the appointing authority to the effect that his service was rendered on fixed pay and was whole time in nature.
6. By order dated 24.06.2024, this Court called upon the State to submit an affidavit clarifying applicability of the aforesaid memo to pre-1992 casual workers who were subsequently absorbed vis-a-vis their claim for pension. Pursuant to our order affidavit has been placed on record wherein it is clarified that the letter related to employees appointed on fixed pay to various posts where scale of pay had not been notified prior to 1982. It did not apply to casual employees who were appointed at a fixed pay against posts for which scale of pay had been prescribed unless their appointments were against the said scale of pay.
7. The moot question which falls for decision is whether respondent no.1/writ petitioner is entitled to pension in view of grant of pension to seven other pre-1992 casual employees who were absorbed in the Municipality.

8. It is contended respondent no.1/writ petitioner had been appointed as a casual employee against sanctioned post by Garulia Municipality since 1990. He was continuously working at the said post as a whole time employee. On 03.08.2005 a resolution was taken by the Board of Councillors to absorb the pre-1992 casual employees against 61 sanctioned vacant posts. By letter dated 06.08.2005, the resolution was communicated to the Board of Local Bodies. Board of Local Bodies approved the absorption of pre-1992 casual employees in a phased manner. On 12.02.2007 approval of absorption of seven pre-1992 casual employees against vacant posts were made with effect from their date of joining to such posts under Garulia Municipality. However, with regard to respondent No.1/writ petitioner the approval was granted by the Director of Local Bodies for appointment against sanctioned vacant post from 2007. The recommendation for absorption of respondent no.1/writ petitioner had been made along with the seven other pre-1992 casual employees for absorption against vacant posts. No reason is forthcoming why the seven casual employees were absorbed from their date of initial joining to the said posts while respondent no.1/writ petitioner was appointed prospectively with effect from 12.02.2007. This discriminatory stance has had a cascading effect on respondent no.1/writ petitioner's right to pension. While the superannuated employees falling in the group of seven pre-1992 casual employees were granted pension considering their qualifying service from the date of their joining as casual employees

against sanctioned vacancy, respondent No.1/writ petitioner's claim was negated by holding that his qualifying service would be calculated from the date of his joining i.e. 12.02.2007.

9. In spite of repeated queries neither the appellant-Director of Local Bodies nor the respondent/State was able to enlighten the Court why the absorption of respondent no.1/writ petitioner under the same scheme applicable to seven pre-1992 casual employees was prospective while that of the other seven employees were with effect from the date of their joining the posts in 1990. Unable to justify this dichotomy it was argued in the event the appeal is allowed, steps shall be taken to recall the pension granted to the other employees.
10. Pension is a constitutional right and not a bounty. It cannot be denied through discriminatory action of the State. Appellant approved seven pre-1992 casual workers for absorption against sanctioned posts from the dates of their initial appointments to such posts. The periods of their qualifying services being calculated from their dates of initial appointments they were entitled to pension. Though respondent no.1/writ petitioner was also absorbed as permanent employee pursuant to the same process, appellant for reasons unknown appointed him with effect from 2007. As a result, he was denied pension not having completed qualifying service of 10 years at the time of his superannuation.
11. Absorption of the seven pre-1992 casual employees and that of respondent no.1/writ petitioner were pursuant to the same resolution

forwarded by the Municipality for approval of the appellant. But appellant's discriminatory stance in absorbing respondent no.1/writ petitioner from 2007 while other seven pre-1992 casual employees from the dates of their initial appointment has denied the former a vital right to pension. The respondent no.1/writ petitioner and the other seven pre-1992 casual employees who were absorbed pursuant to the same resolution of the Municipality comprise a homogenous class who were regularized under the same scheme. Appellant could not have created an artificial distinction within the class and approved absorption of some of them from the dates of their initial joining while respondent no.1/writ petitioner from the date of his appointment as permanent employee. A scheme for absorption of casual employees to permanent employment must apply uniformly and the State as a model employer cannot pick and choose the casual employees and create an artificial class within a class by issuing letters of appointment to some of them from the dates of their casual engagement and for others like respondent no.1/writ petitioner prospectively from the date of their absorption.

12. Through this arbitrary and discriminatory act, respondent no.1/writ petitioner has been deprived of his pension while the other seven pre-1992 casual employees have been granted pensionary benefits. Nothing is placed on record to show their pensions have been recalled. An evasive stance has been taken in the report that it would be recalled if the relief is denied to the respondent no.1/writ petitioner. To

remove the vice of discriminatory treatment, this Court is of the view respondent no.1/writ petitioner ought to be deemed to be appointed as a permanent employee from the date of his initial appointment for the purpose of computing his qualifying service under the 2003 Rules.

13. Reliance has been placed on an unreported decision of a judgment delivered by a Hon'ble Coordinate Bench in *Mantu Kumar Prodhan vs. The State of West Bengal & Ors.*¹ In the said case, the claim of the employee to add his service as a casual employee prior to his absorption was rebutted, inter alia, on the ground that the decision of the Municipality concerned was not under challenge. Moreover, no discriminatory treatment of the said employee vis-à-vis other casual employees in the matter of their respective dates of absorption as permanent employees had fallen for consideration. The judgment is distinguishable on facts.
14. For these reasons, we are inclined to set aside the impugned order passed by the Director of Local Bodies and remand the matter before the said Director who shall after giving an opportunity of hearing to respondent no.1/writ petitioner take a fresh decision thereon within eight weeks from date of communication of this order under the 2003 Rules by deeming respondent no.1/writ petitioner was absorbed as permanent employee from the date of his initial appointment in the Municipality against sanctioned vacant post as per extant rules for the purpose of calculating his qualifying service. Decision so taken shall

¹ MAT 1686 of 2023 (Delivered on 14.12.2023).

be communicated to respondent no.1/writ petitioner within one week thereof.

15. With these directions, appeal and connected application are disposed of.
16. There shall be no order as to costs.
17. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)

as/akd