

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 723 of 2024
(CAN 1 of 2024)
(CAN 2 of 2024)***

***State of West Bengal & Anr.
-Vs-
Samir Khan & Ors.***

**For the Appellant/
State**

: Mr. Lalit Mohon Mahato, AGP, Adv.,
Mr. Jiaul Haque, Adv.

**For the Respondent
No.1/Writ Petitioner**

: Mr. S. Jahan, Adv.,
Mr. Srikanta Dutta, Adv.,
Mr. Prodyot Kr. Roy, Adv.

Heard on : 30.07.2024

Judgment on : 30.07.2024

Joymalya Bagchi, J. :-

Re : C. A. N. 1 of 2024

1. Heard the learned Advocates for the parties.
2. Having considered the averments in the application for condonation of delay and being satisfied, delay in preferring the appeal is condoned.

3. Accordingly, the application being CAN 1 of 2024 is disposed of.

Re : M. A. T. 723 of 2024

4. Appellant has assailed order dated 09.10.2023 passed by the Hon'ble Single Bench directing release of pension in favour of respondent No.1/writ petitioner.
5. Respondent No.1/writ petitioner was appointed as Road Sarkar in Jiaganj-Azimganj Municipality on 07.08.1987. Subsequently, he was appointed as a Bill Clerk in 1988 and continued to work in such capacity. By order dated 20.02.2009 he was appointed as Lower Division Clerk and finally retired from the said post on 31.10.2008. Upon retirement, respondent no.1/writ petitioner's prayer for release of pension was forwarded to the Director of Pension, Provident Fund and Group Insurance but pension order was not released due to defects in the records. Under such circumstances, respondent no.1/writ petitioner approached this Court in WPA 14995 of 2021 and the Hon'ble Single Bench directed the respondent-Municipality to complete necessary formalities as per query raised by the Assistant Director, Pension, Provident Fund and Group Insurance and in the event such formality is completed, the Director was directed to make endeavour to issue Pension Payment Order.

6. Pursuant thereto by order dated 25.11.2021, the Director, inter alia, held respondent no.1/writ petitioner was entitled to pension and directed the pension sanctioning authority to submit relevant papers before the Assistant Director, Pension, Provident Fund and Group Insurance who upon audit of the papers was directed to issue Pension Payment Order within a week.
7. Such order not being acted upon, respondent no.1/writ petitioner again approached this Court and the Hon'ble Single Bench by impugned order dated 09.10.2023 directed Director, Local Bodies to forward documents to Director, Pension, Provident Fund and Group Insurance, West Bengal so that the retiral benefits may be released to respondent no.1/writ petitioner at the earliest.
8. Mr. Mahata for appellant-State contends the appointment of respondent no.1/writ petitioner had not been approved by the Government as per Section 54(3) of the West Bengal Municipal Act, 1993.
9. On the other hand, learned Advocate for the appellant contends his absorption as a regular employee had been approved by the Government vide a Memo. No.2733/DLB/P-503/13-05 dated 22.12.2008. He submits additional papers in support of his plea which is kept with the record.
10. Admittedly, respondent No.1/writ petitioner was working as a temporary employee since 1987 in the service of the respondent-

Municipality. By Memo. No.2733/DLB/P-503/13-05 dated 22.12.2008, State accorded permission to fill up 8(eight) sanctioned vacant posts by absorption of pre-1992 casual workers on the basis of their seniority and qualification. Pursuant to such approval, respondent/writ petitioner was appointed in the post of Lower Division Clerk and rendered services for more than ten years. It is true no prior approval of his appointment had been obtained from the Government. This was an omission on the part of the Municipality which ought not deprive the respondent no.1/writ petitioner of his right to pension as he was otherwise eligible to pension having served for ten years that is the qualifying service for pension as per rules.

11. We are further persuaded to come to this conclusion as the appointment of respondent no.1/writ petitioner was against a sanctioned post after approval had been accorded by the Government for absorption of casual employees as per seniority and qualification.
12. In this backdrop, subsequent approval for appointment of respondent no.1/writ petitioner is a technical formality and cannot be a ground to refuse pensionary benefits. In fact, by order dated 08.08.2022, the Director, Pension, Provident Fund and Group Insurance, Government of West Bengal recorded his satisfaction that respondent no.1/writ petitioner was entitled to pension.

13. For these reasons, we are not inclined to interfere with the impugned order.
14. Appeal and the connected application being CAN 2 of 2024 are accordingly dismissed.
15. There shall be no order as to costs.
16. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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