

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

MAT 1651 of 2023

with

CAN 1 of 2023

The Baidyabati Municipality & Ors.

-Vs-

Sri Tapan Adhikary & Anr.

For the Appellants

:Mr. Partha Sarathi Deb Barman
Mr. Kumaresh Dalal

For the State

:Mr. Ashim Kumar Ganguly, Ld. AGP
Mr. Tarak Karan

For the respondents

:Mr. Partha Sarkar
Mr. Abhijit Basu
Ms. Megha Sarkar

Heard on

: 21.08.2024 & 17.09.2024

Judgment on

: 17.09.2024

Joymalya Bagchi, J.:-

1. The appellant/Baidyabati Municipality has assailed judgment and order dated 11.04.2023 whereby the Hon'ble Single Judge relying on order passed by the Hon'ble Apex Court in *Baidyabati Municipality & Ors.*

*Vs. Sri Swapan Chatterjee & Anr.*¹ directed pension papers of the appellants to be processed and forwarded to the Director of Pension, Provident Fund & Group Insurance for release of final pension. Till then the appellant/Municipality was directed to disburse all retirement dues including provident fund, provisional pension including gratuity to the writ petitioner/respondent.

2. Facts leading to the appeal are as follows :

3. Writ petitioner/respondent was appointed as a casual employee on a daily rated basis for conservancy services on 05.06.91. His service was extended on 05.09.1996 on same terms and conditions under the Sanitary Inspector. Subsequently, by letter dated 11.03.2000 Municipality appointed the writ petitioner/respondent to the post of 'road cooli' in the scale of pay of Rs.2600/- to 4175/-. He enjoyed the said scale of pay as well as increments till 2010.

4. On 2nd June, 2011 Municipality made a proposal for regularisation of pre-1992 casual workers. Name of the writ petitioner featured at serial no. 105 while that of Swapan Chatterjee at serial no. 86. Upon superannuation, pension was not released to Swapan Chatterjee. He approached this Court in WPA 8749 of 2020. Hon'ble Single Judge directed his retiral benefits including pension to be released. Municipality appealed against the said order and referred to audit observations to resist the prayer for release of pension. An Hon'ble

¹ Special Leave to Appeal (C) No(s). 7254 of 2022

Co-ordinate Bench overruled the audit objections and directed for disbursal of pension to Swapan Chatterjee. The judgment was unsuccessfully assailed before the Hon'ble Apex Court in Special Leave to Appeal (C) No(s). 7254 of 2022. Relying on the decision *Baidyabati Municipality* (supra) Hon'ble Single Judge granted similar relief to the writ petitioner.

5. Mr. Deb Barman, learned Counsel for the appellant/Municipality submits the writ petitioner was appointed in 1991 as a casual employee on a daily rated basis against unsanctioned post. Only in 2000 he was appointed to the post of 'road coolie'. However, no prior approval was taken from the Director of Local Bodies. Accordingly, his appointment was not in accordance with law and he cannot be treated on par with regular employees. He further argues case of the writ petitioner/respondent is distinguishable from that of *Baidyabati Municipality*(supra). Unlike the writ petitioner, Swapan Chatterjee had been appointed in 1988 to the post of 'pump operator' against a fixed scale of pay. He received increments as well as benefits under Career Advancement Scheme. Without prejudice to the aforesaid, he also argued dismissal of the Special Leave Petition, *in limini*, does not amount to merger or affirmation of the order passed by the Co-ordinate Bench in MAT 65 of 2021.

6. In reply, Mr. Sarkar submits the writ petitioner stands on the same footing with Swapan Chatterjee. In 1991 the writ petitioner was

appointed as a casual employee for conservancy services. He continued to serve uninterruptedly till 2000. In 2000 he was appointed to the post of 'road coolie' against a fixed scale of pay similar to Swapan Chatterjee. He also enjoyed increments in the said scale of pay till 2010. Under such circumstances, the writ petitioner's case cannot be treated differently from that of Swapan Chatterjee and the writ petitioner is entitled to similar relief. He further submits in other cases involving similarly situated employees direction for release of pensionary benefits have been passed by the Hon'ble Single Judge but the said orders have not been challenged by the Municipality.

7. The moot issue which falls for consideration is whether the writ petitioner can claim parity with Swapan Chatterjee whose claim for pensionary benefits was allowed by an Hon'ble Co-ordinate Bench in MAT 65 of 2021 and the said order had not been interfered with by the Hon'ble Apex Court.

8. Gleaned from the facts of the case it appears the writ petitioner was appointed as a casual daily rated employee in 1991. He continued in such capacity till 2000. In 2000 he was appointed to the post of 'road coolie' against a fixed scale of pay. He also received salary as well as increments under the said scale till 2010. Mr. Deb Barman, learned Counsel argues appointment of the writ petitioner to the post of 'road coolie' was without prior approval from Director of Local Bodies as per Section 54(3) of the West Bengal Municipal ACT, 1993 (1993 Act for

short). However, writ petitioner relied on Memorandum dated 7th May, 2009 issued by the Department of Local Affairs to argue post-facto approval is deemed to be granted for appointments/promotions by the Municipality against sanctioned vacancies holding erstwhile scale of Rs.380-910/- since revised to Rs.4000-8850/- and below.

9. In Swapan Chatterjee's case the employee was appointed on 22nd August, 1988 to the post of 'pump operator' against a fixed scale of pay. His letter of appointment reads as follows :

"The under-mentioned persons are hereby appointment in the post of 'Pump Operator' in the scale of Rs.260-7-295-8-311-10-421-12-481-14-537/- plus usual allowances as admissible under rules to the municipal employees purely on temporary and provisional basis with effect from the 1st September, '88 and until further order.

Their services are transferrable from one pump station to another under this municipality and they are liable to perform shift duties.

They should report for duty to the Asstt. Supdt., Water Works Deptt".

10. From the letter of appointment it is clear on and from 1988 Swapan Chatterjee had been appointed to the post of pump operator against a fixed scale of pay. His appointment was prior to the 1993 Act. By Memorandum dated 28th June, 2004 the department accorded 'deemed post-facto approval' of appointments/promotions to sanctioned vacancies holding erstwhile scale of Rs.380-910/- since revised to Rs.4000-8850/- and below during the period of 1.1.86 to 13.07.94. The memorandum reads as follows :

“WHEREAS it appears that a considerable no of appointments/promotions were made in a number of Urban Local Bodies against sanctioned vacancies holding erstwhile scale of Rs.380-910/- and below during the period from .1.86 to 13.07.94 without obtaining prior approval of the Government and;

WHEREAS in absence of approval of the Government the Urban Local Bodies are facing difficulties relating to the finalisation of pension cases of the retired employees;

NOW THEREFORE, the Government, after due consideration, is pleased to decide that the approval of the Government for such appointments/promotions for the aforesaid period, made against the vacancies in sanctioned posts of the concerned Urban Local Bodies, shall be deemed to have been accorded.”

11. Admittedly, writ petitioner was appointed to the post of ‘road coolie’ against a fixed scale of pay in 2000. Prior to that he was working as a daily rated casual employee. Hence, he is not entitled to get advantage of the aforesaid Memorandum which applies to appointments *de hors* appointment between January, 1986 and July, 1994.

12. Writ petitioner has relied on Memorandum dated 7th May, 2009, to argue the privilege of deemed post-facto approval for appointments/promotions to the Municipality against sanctioned vacancies had been extended to appointments/promotions made during 14th July, 1994 to 15th October, 2000.

13. Memorandum dated 7th May, 2009 reads as follows :

“WHEREAS it appears that a considerable number of appointments/promotions were made in a number of Municipalities against sanctioned vacancies holding erstwhile Scale of Pay of Rs.380-910/-, since revised to Rs.4000-8850/- and below between the period from the 14th day of July, 1994 to the 15th day of October, 2000 (hereinafter referred to as the aforesaid period);

AND WHEREAS in absence of approval of the State Government the Municipalities are facing difficulties relating to the finalisation of pension cases of the retired employees;

AND WHEREAS processing of such cases by the Directorate of Local Bodies, with the approval of this Department, taking considerable time;

NOW, THEREFORE, the Governor, for quick disposal of all pending cases, is pleased hereby to authorise the Director of Local Bodies, West Bengal to issue orders according post-facto approval of appointments/promotions made by the Municipalities against sanctioned vacancies holding erstwhile Scale of Pay 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.”

14. A plain reading of the aforesaid Memorandum would show unlike the 2004 Memorandum, post-facto approval under the Memorandum is to be envisaged on a case to case basis after due examination and enquiry. Thus, in Swapan Chatterjee’s case which is governed by 2004 Memorandum post-facto approval was automatic but in case of the writ petitioner post facto approval as per 2009 Memorandum is to be granted by the Director of Local Bodies on a case to case basis after due examination/enquiry of relevant records. Nothing is placed on record to show such exercise had been undertaken. Hon’ble Single Judge failed to consider this aspect and extended the benefit to the writ petitioner by treating him on par with Swapan Chatterjee.

15. In view of the aforesaid distinguishing feature we are of the opinion it was incorrect on the part of the Hon’ble Single Judge to direct release of pensionary benefits including provisional pension to the writ petitioner by relying on *Baidyabati Municipality* (supra).

16. With regard to the plea that pension had been granted in other cases too, we are of the considered opinion direction to grant pension in those cases without considering impact of 2009 Memorandum cannot

entitle the writ petitioner to similar relief. However, the petitioner is entitled to seek post-facto approval from Director of Local Bodies in terms of the Memorandum dated 7th May, 2009 for grant of pensionary benefits.

17. Accordingly, we give liberty to the petitioner to apply to the Director of Local Bodies for grant of post-facto approval to his appointment for pensionary benefits in terms of the Memorandum dated 7th May, 2009. The said authority after holding due enquiry into all relevant facts including grant of similar relief to other employees and giving an opportunity of hearing to the writ petitioner shall take appropriate decision in the matter within four weeks from date of the application. Once post-facto approval is granted to the appointment of writ petitioner for pensionary purposes, he would be entitled to pensionary benefits in light of the directions in MAT 65 of 2021.

18. Accordingly, Municipality shall process and forward his pension papers to the Director of Pension, Provident Fund and Group Insurance within a month and the said authority shall release his pension within a month of receipt of such papers.

19. With these directions, appeal is disposed of. There shall be no order as to costs.

20. In view of aforesaid disposal of the appeal connected application being CAN 1 of 2023 is also disposed of.

21. Department is directed to communicate a copy of this order to the Director of Local Bodies for due compliance.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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