

32 16.07.2024
AN Ct. No. 01

MAT 2211 of 2023
with
IA No. CAN 1 of 2024
CAN 2 of 2024

The State of West Bengal & anr.
Vs.
Tapas Dey Sarkar & Ors.

Mr. T. M. Siddiqui, Id. AGP
Mr. Suddhadev Adak

... For the Appellants

Ms. Senjuti Sengupta
Mr. Rananeesh Guha Thakurta
Ms. Dipa Roy

... For respondent no. 1

Mr. Shiv Shankar Banerjee
Mr. N. Paul

... For Bhatpara Municipality

1. We have heard learned counsel for the parties so represented.

2. The issue involved in this appeal was considered by this Court in a batch of cases in MAT 2179 of 2023 [The State of West Bengal & anr. vs. Om Prakash Shaw & ors.] on 01.07.2024. The operative portion of the order reads as follows:

“7. The learned Single Bench after considering the matters on merits held that the Municipality is bound to disburse the dues to the writ petitioners along with interest and accordingly directed the Municipality to immediately take steps for clearing the dues of the writ petitioners at the earliest but positively by 31st October, 2023 along with interest at the rate of 7% per annum payable on and from the due date till the date of actual payment. There were other conditions also imposed in the event the payment is not made within the time fixed.

8. It is not in dispute that the writ petitioners have received the gratuity amount along with the interest as directed by the learned Single Bench.

9. The State has preferred these appeals in the light of the observations made by the learned Single Bench to the effect that it will be open for the Municipality to seek financial assistance from the State in the event the Municipality is not in a position to clear the entire dues.

10. The State is justified in contending that in terms of Rule 31(1) of the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 the pension shall be paid by the Municipality or Notified Area Authority from its own fund. That the 5 Municipality is empowered by law to function as self Government and impose taxes as envisaged in the West Bengal Municipal Act, 1993 to generate their own funds. Further, in terms of Section 56(2) of the West Bengal Municipal Act, 1993, the Municipality may provide for pension, gratuity, provident fund, incentive, bonus, reward or penalty for its officers and employees in accordance with such rules, norms, scales and conditions as may be prescribed. Thus, the scheme of the Act appears not to put any unfettered obligation upon the State for payment of pension and gratuity to any retired employee of the Municipality. Further, the State has placed on record that as per the administrative arrangement, the State Government is granting fund for the purpose of payment of 40% of the pensionary amount and the rest 60% of the pensionary amount will have to be paid by the Municipality from their own funds and so far as gratuity is concerned, the Municipality have to bear the entire responsibility regarding payment thereof.

11. In such circumstances, it would not be appropriate to make any observations or issue any directions that the Municipality is to seek financial assistance from the State in the event they are not in a position to clear the entire dues as claimed by the writ petitioners. The powers and duties of the Municipality 6 have been clearly circumscribed under the provisions of the Act and the relevant Rules.

12. That apart, on facts the observation has become superfluous as on date in the light of the undisputed position that the gratuity payable to the writ petitioners have been paid by the Municipality together with the interest as ordered by the learned Single Bench.

13. Therefore, we are of the view that the aforementioned paragraph in the impugned order has to be deleted.

14. Accordingly, the appeals are allowed to that extent and the observation made by the learned Single Bench that it will be open for the Municipality to seek financial assistance from the State in the event the Municipality is not in a position to clear the entire dues of the petitioners stand set aside and deleted.”

3. Following the above order, the appeal is **allowed** to that extent and the observations made by the learned Single Judge that it will be open for the Municipality to seek financial assistance from the State in the event the Municipality is not in a position to clear the entire dues of the petitioners stand set aside and deleted.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)