

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 737 of 2024

With

IA No.: CAN 1 of 2024

The Board of Councillors of Nabadwip Municipality & Anr.

Vs.

Susan Mukhopadhyay & Ors.

With

FMA 1061 of 2024

With

IA No.: CAN 1 of 2024

The Board of Councillors, Nabadwip Municipality & Anr.

Vs.

Sushovan Chandra & Ors.

For the appellants	: Mr. Swapan Kumar Mazumdar, Advocate Mr. Saptarshi Mazumdar, Advocate
For the respondent no.1/ Writ petitioners	: Mr. Tulsi Das Maity, Advocate Ms. Namita Basu, Advocate Mr. Pradip Kumar Ghosh, Advocate
For the State	: Mr. Bibek Jyoti Basu, Advocate Mr. Bikramjit Mandal, Advocate

Heard & Judgment on : January 20, 2025

DEBANGSU BASAK, J.:-

1. Two appeals are at the behest of the Municipality and directed against the orders passed by the learned Single Judge disposing of two writ petitions.

2. It is the contention of the appellants that, the appellants paid retiral benefits of the superannuated employees/writ petitioners in consonance with the ROPA, 2009. Thereafter, on the ROPA, 2019 coming into effect, Pension Payment Order was issued by the State without reference to the appellant/Municipality.
3. Learned Advocate appearing for the appellants relies upon Section 23(4) and (5) of the General Clauses Act, 1897 to contend that, it is the liability of the State Government to pay such employees.
4. State and the writ petitioners/private respondents are represented.
5. Liability of the Municipality to pay the retiral and service benefits of the writ petitioners/private respondents cannot be disputed. Writ petitioners/private respondents superannuated as employees of the Municipality.
6. Enhancement of the receipt of pensionary benefits due to ROPA, 2019 or in other provision, by which, retired employee becomes entitled to higher retiral benefits must be paid by the employer whose liability it is to pay.
7. In the present case, the liability is squarely of the Municipality. A Writ Court need not enter into the arrangement of funds or its absence, if there be any, between the Municipality and the State Government with regard to payment of the enhanced portion of the retiral benefits. A Writ Court should enter into either macro or micro managing the funds of a Municipality.

8. We find no relevance of Section 23 of the General Clauses Act, 1897 in the factual matrix of the present case. Section 23 of the Act of 1897 makes provisions from of rules or bylaws after previous publication. Those provisions cannot be brought in to assist the appellant in avoiding its liability to pay the service or retiral benefits of its employees.
9. Learned Single Judge directed payment of the enhanced portion of the retiral benefits along with the interest for the writ petitioners. In respect of one of the writ petitioners, service benefits in addition to retiral benefits were directed to be paid.
10. We find no infirmity in such directions for the appeal Court to intervene.
11. We, however, clarify that payments, if any, already made may be adjusted against the receivable by the concerned employee.
12. **FMA 737 of 2024** and **FMA 1061 of 2024** along with all connected applications are **disposed of**.

(Debangsu Basak, J.)

13. I agree.

(Md. Shabbar Rashidi, J.)