

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**RESERVED ON: 24.06.2025
DELIVERED ON: 04.07.2025**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

**WPA 14515 OF 2023
WITH
CAN 1 OF 2024**

SWAPAN KUMAR DEBNATH

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

**Mr. Indradeep Pal, Adv,
Mrs. Saugata Pal Das, Adv.**

.....**For the Petitioner**

**Mr. Swapan Kumar Mazumdar, Adv.
Mr. Saptarshi Mazumdar, Adv.**

..... **for the Municipality**
[Nabadwip Municipality]

**Mr. Jayanta Samanta, Adv.
Ms. Indrani Nandi, Adv.**

.....**for the State**

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has preferred the present writ petition seeking issuance of a writ of Mandamus against the Respondents, directing them to regularize the services of the Petitioner and to release his retirement benefits, including monthly pension, upon issuance of the Pension Payment Order (PPO).

Submission on behalf of the Petitioner

2. The case of the Petitioner is that he was appointed as an Assistant in the Conservancy Department under Nabadwip Municipality by virtue of an appointment letter vide Memo No. 420/NM dated 29.06.1990, issued by the Chairman of the said Municipality, pursuant to Resolution No. 21 passed by the Board of Commissioners in their meeting dated 29.05.1990. Subsequently, vide Memo No. 755/64 dated 08.10.1993, the Chairman confirmed the Petitioner's service in consonance with Resolution No. 18 passed in the meeting held on 30.05.1992. The Petitioner rendered continuous service for 27 years and retired on 31.08.2017. However, till date, no Pension Payment Order has been issued, and no retirement benefits have been disbursed.
3. The Petitioner submits that his case is squarely covered by the judgment dated 24.03.2022 in WPA 32668/2014 titled ***Netai Chandra Singha Vs. The State of West Bengal***, and seeks similar relief.
4. Respondent Nos. 2 and 3, namely the Director, Local Bodies, and Nabadwip Municipality, have filed their respective counter affidavits.

Submission on behalf of Respondent No. 2 (Director of Local Bodies)

5. Respondent No. 2, the Director of Local Bodies, in their affidavit, stated that they are unable to grant approval to the post of Assistant in the Conservancy Department due to the post not being sanctioned. It was further averred that no proposal has yet been received from the Respondent Municipality seeking post facto approval for the Petitioner's appointment. Consequently, they are not in a position to confirm whether the Petitioner was appointed against a sanctioned and vacant post.

6. Learned Counsel for Respondent No. 2 further submitted that the Petitioner was appointed as an Assistant in the Conservancy Department, a post which, according to the consolidated chart of sanctioned posts *vis-à-vis* staff norms for Nabadwip Municipality, stood abolished as of 30.09.2009. As such, it was contended that the Petitioner's case is distinguishable from that of the petitioners in Netai Chandra Singha (*supra*), and therefore, *post facto* approval cannot be granted in the Petitioner's case.
7. Learned Counsel for the Respondents also submitted that the erstwhile Municipal Affairs Department and the present Urban Development & Municipal Affairs Department have, from time to time, issued various Government Orders, including G.O. No. 300/MA/O/C-4/1A-7/2000 dated 28.06.2004, G.O. No. 207/MA/O/C-4/1A-7/2000 dated 07.05.2009, G.O. No. 422/MA/O/C-4/1A-7/2000 dated 19.08.2009, and G.O. No. 110-UDMA-25011(11)/109/2022-I SG SEC dated 06.02.2023. All such orders stipulate that appointments/promotions must be made strictly against sanctioned and vacant posts, in accordance with the Bengal Municipal Act, 1932.
8. It is further the stand of Respondent No. 2 that *post facto* approval has only been granted in cases where the incumbent was appointed against a sanctioned and vacant post, and where the facts were similar to those in Netai Chandra Singha (*supra*). Since the Petitioner's appointment does not fall within that category, the benefit of the said judgment cannot be extended to him.

Submission on behalf of Respondent No. 3 (Nabadwip Municipality)

9. Respondent No. 3, in its reply, stated that the Board of Commissioners of Nabadwip Municipality had engaged 15 candidates, including the

Petitioner, between 1983 and 1990 under the Bengal Municipal Act, 1932. The names of these candidates were forwarded to the Director, Local Bodies, vide office memo dated 13.07.2001 for approval. However, only one candidate's name was approved. Ten out of the remaining fourteen approached this Court by filing WP No. 4228(W) of 2011. This Court, by order dated 06.02.2012, directed the Director, Local Bodies to consider their cases for approval from the date of their respective appointments. However, their claims were rejected on 02.07.2012 based on the judgment of the Hon'ble Supreme Court in **State of Karnataka vs. Uma Devi [(2006) 4 SCC 1]**.

10. The rejection was subsequently challenged by filing individual writ petitions, with WPA 32668/2014 (Netai Chandra Singha) being the lead matter. Relying upon the Division Bench judgment in **Chairman, Dum Dum Municipality vs. Dr. Debranjana Biswas [MAT 704/2007]**, this Court directed the Director, Local Bodies to revisit the issue and to consider the approval of services and post-facto sanction for retiral benefits after granting an opportunity of hearing to the Petitioners and the Municipality.
11. Pursuant to that, all 10 Petitioners received post-facto approval and are now either in service or drawing pension. Respondent No. 3 in its Affidavit further contends that the Petitioner, having retired on 31.08.2017 without approval of his service, could not be extended retiral benefits.

Legal Analysis

12. This Court has heard the submissions made by learned Counsel for the Petitioner as well as Respondent Nos. 2 and 3 and has perused the material on record.

13. From the affidavit-in-opposition filed by Respondent No. 3, it clearly emerges that the Petitioner stands on a similar footing as the petitioner in WPA 32668 of 2014 (Netai Chandra Singha). It has been specifically averred by Respondent No. 3 that the Board of Commissioners of Nabadwip Municipality had engaged fifteen (15) candidates, including the present Petitioner, during the period between 1983 and 1990 under the provisions of the Bengal Municipal Act, 1932. The names of these individuals were duly forwarded to the Director of Local Bodies by way of Office Memo dated 13.07.2001 for seeking formal approval. However, approval was granted only in respect of one candidate, and the remaining 14 were left without confirmation.
14. Out of these fourteen, ten candidates approached this Court by filing WP No. 4228(W) of 2011, wherein this Court, by order dated 06.02.2012, directed the Director of Local Bodies to consider their claims for regularization from the date of their respective appointments. The claims were however rejected by the Director vide order dated 02.07.2012, citing the bar laid down by the Hon'ble Supreme Court in **State of Karnataka v. Uma Devi [(2006) 4 SCC 1]**. Dissatisfied with such rejection, the aggrieved candidates instituted individual writ petitions, with WPA 32668 of 2014 (Netai Chandra Singha) being treated as the lead matter.
15. In view of the foregoing, it is manifest that the judgment rendered by this Court in Netai Chandra Singha (supra) ought to be construed as a judgment *in rem* in respect of the said fourteen candidates whose approval was declined in identical circumstances. Once it is accepted that the Director had treated all fourteen individuals similarly and rejected their cases by a common reasoning, the benefit of the judgment in Netai Chandra

Singha (supra) which culminated in relief being granted to some of these very candidates must logically and legally extend to all those similarly situated. Any artificial distinction among them would amount to discriminatory treatment violative of Article 14 of the Constitution of India.

- 16.** One of the principal objections raised by Respondent No. 2 is that the Petitioner was not appointed against a vacant and sanctioned post and that the post of Assistant in the Conservancy Department stood abolished as on 30.09.2009. On that basis, it is argued that no post facto approval can be granted and that the Petitioner's case is distinguishable from that of the petitioners in Netai Chandra Singha (supra). However, this Court finds it difficult to accept such a contention.
- 17.** The material on record demonstrates that the Petitioner was appointed as an Assistant in the Conservancy Department under Nabadwip Municipality pursuant to Resolution No. 21 passed by the Board of Commissioners in its meeting dated 29.05.1990. His service was later confirmed by the Chairman vide Memo No. 755/64 dated 08.10.1993, based on Resolution No. 18 passed in the meeting held on 30.05.1992. The Petitioner served the Municipality continuously for nearly 27 years and superannuated on 31.08.2017. The letter dated 28.03.2017 issued by Respondent No. 3 further confirms that the Petitioner was serving in the said capacity. Notably, there is no mention in the affidavit of Respondent No. 3 that the post in which the Petitioner served was abolished as of 30.09.2009.
- 18.** Even assuming *arguendo* that such abolition occurred, as alleged by Respondent No. 2, the fact remains that the Petitioner had already completed 19 years of service by that time. It was therefore incumbent upon the Municipality to either seek appropriate regularization from the Director

or to absorb the Petitioner in a suitable equivalent post in terms of settled service jurisprudence, especially where the engagement was not tainted by fraud or misrepresentation.

19. In *Netai Chandra Singha* (supra), the Court recognized the equity and bona fides in the claim of such long-serving employees, and the same rationale must apply here. The Petitioner is similarly circumstanced and cannot be denied the benefit merely on a technical plea raised belatedly. The continuity, duration, and nature of employment weigh in favour of the Petitioner being treated as a permanent employee of the Municipality.
20. In light of the foregoing discussion and in the interest of parity, equity, and justice, this Court is inclined to dispose of the present writ petition in terms of the order dated 24.03.2022 passed in **Netai Chandra Singha v. State of West Bengal (WPA 32668 of 2014)**. Accordingly, Respondent No. 2 is directed to take a reasoned and speaking decision on the Petitioner's claim for regularization of service and release of his retiral benefits, including pension and other consequential dues, after issuance of the Pension Payment Order, within a period of 8 weeks from the date of communication of this order.
21. While doing so, Respondent No. 2 shall have due regard to the observations made in *Netai Chandra Singha* (supra) and in **Chairman, Dum Dum Municipality v. Dr. Debranjana Biswas [MAT 704 of 2007]**. Further, since the Petitioner has already superannuated in 2017, Respondent No. 2 shall also consider granting *post facto* approval for the Petitioner's appointment solely for the purpose of enabling disbursement of retiral benefits. Such consideration shall be undertaken only after affording both the Petitioner and Respondent No. 3 Municipality an opportunity of hearing.

- 22.** Respondent No. 3 Municipality is also directed to cooperate with the proceedings and place all relevant service records and administrative documents before Respondent No. 2 to enable meaningful and just adjudication.
- 23.** Before parting with the matter, this Court deems it necessary to remind all the State authorities and respondent functionaries that the objective of the State in service-related matters must be to ensure resolution of disputes in a fair, equitable, and justifiable manner. The purpose of administrative adjudication is not to thwart the legitimate claims of long-serving employees by resorting to hyper-technical objections or procedural formalities, especially when such objections have the effect of depriving an individual of their rightful dues after decades of public service. It is a settled principle of law that the State, being a model employer, is expected to act with fairness, compassion, and justice in all its dealings with its employees. The Hon'ble Supreme Court has, in a catena of decisions, emphasized that the role of the State is not merely to assert technical pleas to deny benefits, but to safeguard the rights of those who have contributed their lives in the service of public institutions. In the present case, the Petitioner has rendered nearly three decades of continuous service to the Municipality. At the twilight of his life, after superannuation, he finds himself without pension or any form of retiral benefit an outcome that runs contrary to both constitutional principles and the moral obligation of the State to protect the dignity of its employees.
- 24.** The present writ petition is disposed of with the earnest expectation that all respondent authorities shall act in coordination and with due urgency to

ensure that justice is not denied to a retired employee who has faithfully served the Municipality for nearly three decades.

25. All the pending applications stand disposed of.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

