

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

**RESERVED ON: 11.07.2025
DELIVERED ON: 15.07.2025**

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

WPA 18494 of 2024

KHELARI HELA

VERSUS

STATE OF WEST BENGAL & ORS.

Appearance:-

**Mr. Sankar Biswas, Adv.
Mr. Debnath Mahata, Adv.
Ms. Ananya Adhikary, Adv.**

.....For the Petitioner

Mr. Suman Basu, Adv.

..... for Garulia Municipality

Mr. Sujit Chatterjee, Adv.

.....for the State

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has preferred the present writ petition challenging the order dated 18.06.2024 passed by the Director of Local Bodies, West Bengal, whereby the claim of the Petitioner's deceased mother for grant of pension was rejected.
2. The facts leading to the present case is as follows:
3. The Petitioner's deceased mother was appointed as a casual worker under the Respondent Municipality on 05.09.1979.

4. An extraordinary (special) meeting of the Councillors of the Garulia Municipality was held on 03.08.2005, wherein it was unanimously resolved to absorb/regularise all casual employees appointed prior to 1992. There were 60 such workers serving in the Municipality. Pursuant to the said resolution, the then Chairman of the Respondent Municipality, vide letter No. 246 dated 06.08.2005, forwarded the resolution along with the gradation list of 60 casual workers to Respondent No. 2 (Director of Local Bodies) for necessary approval. The Petitioner's deceased mother's name was in the sr. No. 3 of the said gradation list.
5. Respondent No. 2, vide communication dated 20.02.2006 bearing No. 352/DLB/P-205/15/96, informed the Municipality that the Governor had accorded approval under Section 54(3) of the West Bengal Municipal Act, 1993, for the appointments of the pre-1992 casual workers against the existing vacancies, with effect from their respective dates of joining under the Municipality. Subsequently, the Board of Councillors of the Respondent Municipality, vide Resolution No. 8 dated 28.02.2006, adopted the said proposal in view of the approval granted by the State Government. Hence the Respondent Municipality absorbed all the Pre-92 casual employees.
6. The Petitioner's deceased mother rendered continuous service for a period of 32 years, 9 months, and 26 days, and superannuated on 30.06.2012. It is the Petitioner's contention that in view of her long tenure of service, the deceased was entitled to gratuity, pension, and all other retiral benefits as applicable to similarly situated employees of the Municipality. However, she was only paid a sum of Rs. 21,493/- towards Provident Fund and was

sanctioned a provisional pension of Rs. 3,835/- per month with effect from August 2012.

7. During her lifetime, the deceased made several representations to the Respondent authorities seeking release of her full retiral dues, treating her service from 1979 onwards as qualifying service. Finding no response, she approached this Court by filing WPA No. 6281 of 2019. During the pendency of the said writ petition, she passed away on 21.01.2022. The Petitioner and her sister, being her only legal heirs, were substituted in her place. The said writ petition was disposed of by the coordinate bench of this Court vide order dated 25.04.2024, directing Respondent No. 2 to take a reasoned decision on her claim after granting an opportunity of hearing to the substituted petitioners.
8. Pursuant to the said direction, Respondent No. 2 passed a speaking order dated 18.06.2024, wherein it was held that while the deceased was entitled to gratuity, she was not entitled to pension as she had not completed the minimum qualifying service of 10 years after her absorption as a regular employee.

Submission on behalf of the Petitioner

9. Learned Counsel for the Petitioner submits that the deceased mother of the Petitioner, having rendered more than three decades of service, was similarly situated with other casual workers who have been granted full retiral benefits, including pension. Denial of the same to the Petitioner's mother is arbitrary, discriminatory, and violative of Article 14 of the Constitution of India. Ld. Counsel for the Petitioner relies on *Prasanta Kumar Das Vs State of West Bengal* titled as 2018 (2) CHN (CAL) 534.

Submission on behalf of the Respondent

10. Per contra, Learned Counsel for the Respondent submits that the Petitioner's mother was engaged as a casual worker from 05.09.1979 and was formally absorbed into regular service with effect from 01.03.2006. She retired from service on 30.06.2012, thereby completing only 6 years and 4 months of qualifying service. As per the provisions of the West Bengal Municipal (Employees' Death-cum-Retiring Benefits) Rules, 2003 and the Howrah Municipal Corporation (DCRB) Regulations, 1988, a minimum of 10 years of qualifying service is mandatory for entitlement to pension.
11. Being aggrieved by the denial of full pensionary benefits, the Petitioner has approached this Court by way of the present writ petition.

Legal Analysis

12. This Court heard the submissions advanced by the learned counsel for the respective parties and perused the records placed before it.
13. The Respondent No. 2 rejected the claim of the Petitioner's deceased mother solely on the ground that she had not completed the minimum qualifying service of 10 years for entitlement to pension. According to Respondent No. 2, although she commenced her service with the Respondent Municipality on 05.09.1979, she was absorbed as a permanent employee only with effect from 01.03.2006, and retired on 30.06.2012, thereby falling short of the 10-year qualifying period.
14. This Court recently had the occasion to deal with an identical issue in **WPA No. 5381 of 2024**, concerning the same category of pre-1992 casual workers of the Garulia Municipality. The relevant extract of the judgment is as follows:

“In the instant case, the authority considered the pre-1992 casual workers in a single batch/group, but extended approval of appointment in respect of one set from their initial date of joining and in respect of the other set from the date of their approval. No reason being forwarded for such discriminatory action calls for interference by this Court as the said action suffers from the vice of arbitrariness. Discriminating similarly situated candidates and granting benefit in respect of a handful and denying the same benefit in favour of the rest, amounts to discrimination, contrary to the principle of equality laid down under Article 14 of the Constitution. The same is impermissible in law.

The Municipality admits that employees, similarly placed as that of the petitioner, are receiving pensionary benefit. In such a situation, not extending the same benefit to the petitioner will be sheer injustice, liable to be rectified by this Court.

In view of the above, the impugned order passed by the DLB is held to be untenable in the eye of law and liable to be set aside. The impugned order is, accordingly, set aside. The DLB is directed to treat the petitioner in the same bracket as that of the other fifty-three pre-1992 casual workers and extend similar pensionary benefit as extended in favour of the employees whose service stood approved vide memo dated 20th February, 2006.

The authority is directed to calculate the terminal benefit of the petitioner on and from her initial date of joining and to release the payment, after adjustment of the provisional pension, at the earliest but positively within a period of four months from the date of communication of this order.”

15. The said judgment rendered by the Learned Single Judge was carried in appeal by the State in **MAT 70 of 2024**. The Hon'ble Division Bench, vide order dated 13.08.2024, dismissed the said appeal, affirming the findings of the Learned Single Judge, and directed the Director of Local Bodies to compute the retiral benefits of the petitioner therein by treating the date of initial appointment as the date of regular absorption.
16. The Petitioner is also one among the sixty (60) casual employees whose names appeared in the gradation list that was duly prepared by the Respondent Municipality and subsequently approved by the competent authority, including the Director of Local Bodies and the Board of Councillors. This very gradation list formed the foundational basis for the

regularisation of pre-1992 casual employees in terms of the approval granted under Section 54(3) of the West Bengal Municipal Act, 1993. The Petitioner's deceased mother, whose case is the subject matter of the present writ petition, is similarly situated to those other employees whose services were regularised with retrospective effect from the date of their initial appointment.

17. In view of the above, and particularly in light of the ratio laid down by this Court in *WPA No. 5381 of 2024*, as upheld by the Hon'ble Division Bench in *MAT No. 70 of 2024*, this Court finds no justification for treating the Petitioner's case differently. The Petitioner is similarly circumstanced and stands on equal legal footing with those beneficiaries of the earlier judgment. Therefore, this Court is of the considered view that the case of the Petitioner is squarely covered by the aforementioned binding precedent, and the same principles must be applied in the present matter to avoid any arbitrariness or violation of Article 14 of the Constitution of India.
18. Accordingly, the impugned order dated 18.06.2024 passed by the Director of Local Bodies, West Bengal, is hereby set aside. The matter is remanded back to the Director, Local Bodies with the following directions:

- (i) The Director, Local Bodies shall take a fresh decision on the claim for pension and other retiral benefits under the West Bengal Municipal (Employees' Death-cum-Retiring Benefits) Rules, 2003 after granting an opportunity of hearing to the Petitioner.
- (ii) While doing so, the authority shall treat the deceased mother of the Petitioner as having been permanently absorbed from the date of

her initial appointment, i.e., 05.09.1979, against a sanctioned vacant post, and calculate her qualifying service accordingly.

(iii) Respondent No. 3 Municipality is directed to provide (if not already provided) all the requisite documents to the Director, Local Bodies within a period of 2 weeks.

(iv) Director, Local Bodies shall take the decision within a period of eight weeks from the date of communication of this order. The Petitioner shall be informed about the outcome within one week thereafter.

19. With the above direction, the present writ petition is disposed of.
20. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

