

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.18159 of 2023

with

I.A. No. C.A.N. 1 of 2024

MALAY ROY

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Ranjit Kumar Jaiswal, Adv.,
Mr. Nandalal Pradhan, Adv.

For Raiganj Municipality : Mr. Arka Kumar Nag, Adv.,
Mr. Sirsanya Bandopadhyay, Adv.,
Ms. Deboleena Ghosh, Adv.

Hearing concluded on : 27.01.2025

Judgment on : 05.02.2025

Kausik Chanda, J.:-

It is the case of the petitioner that his deceased wife was appointed as an Assistant Teacher at Mohanbati Free Primary School under Raiganj Municipality in the year, 1985. Her service was confirmed to the post of Assistant Teacher by a resolution of the Board of Councillors of the Municipality which was communicated to her by a letter of the then Chairman dated May 9, 1996. Subsequently, the wife of the petitioner was transferred along with some other teaching and non-teaching staffs to the Assessment Department of the Municipality by an order dated August 31, 2001. The wife of the petitioner subsequently died on July 22, 2018, in harness. The petitioner's wife rendered her service to the Municipality for about 33 years. The Municipality, however, declined to release the death-cum-retiral dues of the petitioner's wife i.e. family pension, gratuity, provident fund and other dues. The petitioner was compelled to file WPA 6918 of 2019 before this Court seeking release of the terminal benefits as indicated above. A Coordinate Bench of this Court by an order dated August 14, 2019, directed the Chairman of the Municipality to release the terminal dues, if the petitioner is entitled to the same. The Chairman, thereafter, in compliance with the said order dated August 14, 2019, by an order dated April 27, 2023, directed to release Rs.5,76,947/- as provident fund dues of the deceased and the unpaid salary. The Chairman, however,

declined to grant family pension on the ground that the post, in which the petitioner's wife was appointed, was not sanctioned by the State.

2. The learned advocate appearing for the petitioner has argued that the appointment of the petitioner's wife was made following a resolution adopted by the Board of Councillors of the Municipality who was the appointing authority. The wife of the petitioner was subsequently transferred to the Assessment Department. The deceased wife of the petitioner was also paid regular salary by the Municipality. After accepting her regular service for more than 33 years, pensionary benefits of the deceased-wife of the petitioner cannot be denied. It has also been argued that since the deceased employee was appointed in the year 1985, the West Bengal Municipal Act, 1993, cannot be applied to the petitioner to argue that her service was not approved by the State.

3. On behalf of the Raiganj Municipality, it has been submitted that the deceased wife of the petitioner was engaged in an unapproved, unsanctioned post under the Raiganj Municipality. While the petitioner claims his wife joined in 1985, the only confirmation available is from May 9, 1996, which raises doubts about the validity of her employment.

4. Even assuming that her engagement was made in 1985, her appointment would fall under Section 66(2)(ii) of the Bengal Municipal Act, 1932, and, if it is considered to have been made in 1996, under Section 53(3) and (4) of the West Bengal Municipal Act, 1993, in both scenarios,

approval from the State Government was required, but no such approval was obtained for her post.

5. The Municipality does not have the legal authority or financial capacity to grant death-cum-retiral benefits, which can only be sanctioned by the State Government for employees in approved posts. The deceased employee was engaged on a temporary, casual basis and was fully aware of her employment status. At no point did she claim parity with regular employees in sanctioned posts.

6. The petitioner's wife was transferred to the Assessment Department in 2001, but she remained in an unsanctioned post, and her maternity leave was regularised as extraordinary leave by the Hon'ble High Court. This did not alter the irregular nature of her employment.

7. I am of the view that the facts and circumstances of this case do not justify the prayers made in this writ petition.

8. This Court, by an order dated July 15, 2024, directed the Raiganj Municipality to file an affidavit declaring whether throughout her service, the deceased wife of the petitioner was paid salary like a regular employee of the Municipality.

9. It was further directed that the affidavit should disclose whether the salary of the deceased-wife of the petitioner was paid from the own-fund of the Municipality or from the fund provided by the State.

10. In compliance with the said order, the Municipality filed an affidavit. The affidavit disclosed that the deceased employee was paid remuneration

from the limited funds of the Municipality as a temporary unsanctioned/unapproved employee, not as a regular employee. Her salary and other benefits were not paid from the State Exchequer. The deceased-employee was well aware of the status of her employment and during her lifetime, she never raised any claim of parity with that of any employee in a regular sanctioned post.

11. I am of the view that the aforesaid facts make it clear that the deceased-wife of the petitioner was not a regular employee of the Municipality appointed against a sanctioned post by the State.

12. I also find substance in the argument advanced on behalf of the Municipality that Sections 53(3) and (4) of the Bengal Municipal Act, 1993 as well as Section 66(2)(ii) of the Bengal Municipal Act, 1932 require sanction of the State for regular employment under the Municipality.

13. Such an employee of the Municipality cannot claim for pensionary benefits and other terminal benefits at par with the other employees of the Municipality, who have been appointed with due approval from the State against a sanctioned post of the Municipality.

14. Granting retiral benefits to employees in unsanctioned posts would strain the Municipality's resources, negatively affecting its ability to provide public services. It would also set a precedent for other claims that could further undermine the Municipality's financial stability. Therefore, I find no merit in this writ petition.

15. Accordingly, W.P.A. No.18159 of 2023 is dismissed and I.A. No. C.A.N. 1 of 2024 is disposed of.

16. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)