

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 25403 of 2024

**Rekha Pal @ Rekha Gautam.
versus
The Baidyabati Municipality & Ors.**

For the petitioner : Mr. Partha Sarkar,
Mr. Abhijit Basu.

For the Municipality : Mr. Pratick Ch. Das,
Ms. Soma Chowdhury.

Heard on : 11.11.2025.

Judgment on : 11.11.2025

Raja Basu Chowdhury, J (Oral):

1. Being aggrieved with the failure on the part of the Baidyabati Municipality to disburse the retiral benefits in favour of the petitioner who had retired from service with effect from 31st January, 2017, the writ petition has been filed.

2. The respondents would contend that though the petitioner was engaged and had duly discharged duties during her service tenure, she is not entitled to the retiral benefits, since her post was not sanctioned. According to the respondents since the West Bengal Municipal (Employees Death cum Retirement Benefit) Rules, 2003 (in short the "said Rules") can only be made applicable to permanent employees and

since without the approval of the Government the petitioner could not be treated as a permanent employee, the petitioner cannot be entitled to retiral benefit. The affidavit-in-opposition and the affidavit-in-reply thereto filed in Court is taken on record.

3. Having heard the learned advocates for the parties and having considered the materials on record and noting the provisions of Section 54 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the “said Act”) and in particular sub-section(3) thereof, I find that the question that falls for consideration is whether the municipality was competent to appoint an employee other than employees mentioned in sub-section (1) of Section 54 of the aforesaid Act without the approval of the State Government. To appropriately appreciate the above provision Section 54 of the said Act is extracted hereinbelow:

“54. Cadre of common municipal service, appointments, etc. –

[(1) The State Government may constitute cadres for the State in respect of Executive Officers, Health Officers, Engineers and Finance Officers referred to in sub-section (1) of section 53.]

[(2) The State Government shall be the appointing authority of all the officers borne in the cadres constituted under sub-section (1), and shall be the authority to transfer such officers from one municipal area to another:]

[Provided that until the cadre is constituted under sub-section (1), the Board of Councillors may, with the prior approval of the State Government, engage the officers to the posts of Health Officers and Engineers, sanctioned by the State Government, on contract basis or otherwise, and the

qualifications and the recruitment procedure for such engagement shall be such as may be prescribed :

Provided further that the remuneration for such engagement shall be paid from the Municipal Fund.]

(3) The appointment of all other officers and employees [, not included in sub-section (1),] shall be made by the Municipality [with the prior approval of the State Government] [and the order of such appointment shall be issued under the signature of the Executive Officer].

[(3A) The recruitment to the posts not required to be made through the West Bengal Municipal Service Commission constituted under sub-section (1) of section 3 of the West Bengal Municipal Service Commission Act, 2018 (West Ben. Act XII of 2018), shall be made through the open advertisement or through such other method as the State Government may determine from time to time.]

(4) Save as otherwise provided in this Act, the State Government may by rules provide for the [qualifications for] appointment, conditions of service and other allied matters relating to the officers and employees of Municipalities.

[(5) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Act, but subject to the provisions of sub-section (2), the Board of Councillors may, by resolution, decide to engage, on contract basis with the prior approval of the State Government, officers and other employees of a Municipality against such posts of such officers and other employees as may be created under section 53 :

Provided that the remuneration for, and the other terms and conditions of, such engagement shall be such as the State Government may approve.]”

4. It, however, appears that the above section was amended by insertion of the words “with prior approval of the State Government”

and by inserting of the words “the order of such appointment shall be issued under the signature of the Executive Officer” in clause (3) thereof. Such amendments were introduced by successive amendments of the West Bengal Municipal (Amendment) Act, 2017 with effect from 1st October, 2003 and 1st April, 2017, respectively.

5. Admittedly, the petitioner was appointed to the post of clerk in the scale of Rs.3350-6325/- with admissible allowance vide office order No.3/2000-2001 dated 7th April, 2000 that is prior to the aforesaid amendment of sub-section (3) of Section 54 of the said Act, which required prior approval of the State Government for an appointment of an employee. This apart, I find that having regard to the Government Circular dated 6th February, 2023 issued by the Additional Secretary to the Government of West Bengal, a clarificatory order has been issued, the relevant portion whereof is reproduced hereinbelow;

“AND WHEREAS, the West Bengal Municipal Act, 1993 came into force with effect from 13.07.1994 vide this Department’s Notification No.393/C-4/MIA-5/91 Pt. 1 dated 13.07.1994;

AND WHEREAS, before the amendment to the sub-section (3) of section 54 of the West Bengal Municipal Act, 1993 which has come into force with effect from 01.10.2003, the initial appointment/promotion of an employee of Municipalities, other than the officers as mentioned in sub-section (1) of section 54, made by the municipalities against the sanctioned vacancies upto the date 30.09.2003, does not require prior approval of the State Government;

AND WHEREAS, after amendment to the sub-section (3) of section 54 of the West Bengal Municipal Act, 1993 which has

come into force with effect from 01.10.2003, for appointment/promotion of an employee of Municipalities, other than the officers as mentioned in sub-section (1) of section 54, made by the municipalities against the sanctioned vacancies, prior approval of the State Government become mandatory;

NOW, THEREFORE, the Governor, after due consideration, is pleased hereby to make the following amendment to this Department's Order No.207/MA/O/C-4/1A-7/2000 dt. 07.05.2009 (hereinafter referred to as the said order) read with Order No.422/MA/O/C-4/1A-7/2000 dt. 19.08.2009:

Amendments

In the said order,-

(1) In the first para for the words "against sanctioned vacancies holding erstwhile Scale of Pay of Rs. 380-910/-, since revised to Rs. 4000/-8850/-, and below between the period from 14th day of July, 1994 to the 15th day of October, 2000", the words "against sanctioned vacancies between the period from 14th day of July, 1994 to the 30th day of September, 2003 in respect of all other officers and employees not included in sub-section (1) of section 54 of the West Bengal Municipal Act, 1993" shall be substituted;

(2) (a) in the last para for the words " to authorise the Director of Local Bodies, West Bengal to issue orders according post facto approval of appointments/promotions made by the municipalities against the sanctioned vacancies holding erstwhile scale of Rs. 380-910/-, since revised to Rs. 4000/-8850/- and below within the aforesaid period on case to case basis after due examination/enquiry" the words "to declare that the initial appointments/promotions in respect of all other officers and employees not included in sub-section (1) of section 54 of the West Bengal Municipal Act, 1993, made by the municipalities against the sanctioned vacancies between the period from 14th day of July, 1994 to the 30th day of September, 2003, shall be deemed to have been done as per

*extant provisions of West Bengal Municipal Act, 1993 and has ratification of the State Government" shall be substituted;
(b) the last paragraph of the said order shall be omitted."*

6. In the light of the above order, it is clear since the petitioner was appointed to the post of clerk in the scale of pay of RS.3350-6325/- with retrospective effect from February 2000 and since, it transpires that the petitioner was appointed against a sanctioned vacancy on 7th April, 2000 the petitioner is entitled to the benefit of this Government order. Having regard thereto, since, the appointment was made between 14th July, 1994 to 30th September, 2003, the same is deemed to have been done as per the extant provisions of the West Bengal Municipal Act, 1993 and has the ratification of the State Government.

7. Considering the above, I am of the view that the objection raised by the municipal authorities that the petitioner's appointment being without sanction of the State Government, does not entitle the petitioner to the post-retiral benefits, inter alia, including pension cannot be sustained.

8. The aforesaid clarificatory order issued by the Additional Secretary to the Government of West Bengal dated 6th February, 2023 was not considered in a judgment delivered by a Co-ordinate Bench in the case of *Malay Roy vs. The State of West Bengal & Ors.* in WPA 18159 of 2023. Further in such case, the appointment was in the year of 1985 which is prior to 14th July, 1994 i.e. before the said Act was

enforced. Such judgment is distinguishable on facts and does not assist the respondents.

9. In the light of the above, I am of the view that the respondents ought not have denied the retiral benefits to the petitioner. Accordingly, I direct the respondents and in particular the respondent no.4 to forthwith take steps and disburse the retiral benefits, *inter alia*, including pension within 8 weeks from the date of communication of this order.

10. The writ petition is accordingly disposed of.

11. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

**Pritam
A.R. (Court)**