

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

**RESERVED ON: 19.09.2025
DELIVERED ON: 26.09.2025**

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

WPA 26887 OF 2024

SIMA GUPTA

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

Ms. Chandrani Bhattacharya, Adv.

..... for the Petitioner.

Mr. Jayanta Samanta, Adv.

..... for the State.

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has preferred the present writ petition seeking, inter alia, a direction upon the Respondent Municipality to accord post-facto approval to her appointment and subsequent promotion to the post of Clerk, and further to grant and release in her favour the full pensionary and gratuity benefits to which she is legally entitled.
2. The brief facts giving rise to the present writ petition are as follows:
3. The Petitioner was initially appointed as an Attendant under the Respondent Municipality on 15.09.2000. Thereafter, pursuant to the resolution of the Board of Councilors dated 30.10.2005, the Chairman of the Respondent Municipality promoted the Petitioner to the post of Clerk vide Memo No. 411/1(15)/06/BM dated 15.06.2006.

4. During the tenure of her service, the Petitioner was treated as a Government employee and was extended all service benefits under the applicable Rules, including ROPA 2009 and the Career Advancement Scheme. She regularly drew her salary as a Clerk from the Government Treasury. Her service book was duly prepared, maintained, and approved by the Chairman and the Executive Officer of the Respondent Municipality.
5. After rendering unblemished service for a period of 23 years, the Petitioner retired from service on 31.01.2023.
6. By a notice dated 05.02.2023, the Chairman of the Respondent Municipality intimated the Petitioner regarding her retirement with effect from 31.01.2023 and further stated that her service book had already been forwarded to the Director of Local Bodies on 16.01.2023 for verification and approval of pensionary benefits.
7. Despite the aforesaid, till date, the Petitioner's pension and other retiral benefits have not been released. Several representations were made by the Petitioner before the concerned authorities, but the same have remained unanswered.
8. Being aggrieved by the arbitrary inaction of the Respondent Municipality in releasing her lawful retiral dues, the Petitioner has been constrained to approach this Hon'ble Court by filing the present writ petition.

Submission on behalf of the Petitioner

9. Learned Counsel for the Petitioner submits that the Petitioner was appointed on 15.09.2000 and retired from the services of the Respondent Municipality on 31.01.2023, after rendering more than 23 years of unblemished and continuous service. It is contended that by virtue of such long, uninterrupted, and satisfactory service, the Petitioner has acquired a

vested and indefeasible right to receive pension, gratuity, and all other admissible retiral benefits in accordance with law.

10. Learned Counsel further submits that the Petitioner's case is squarely covered by the judgment rendered by this Court in *WPA No. 5283 of 2019*, wherein it was held that an employee who had rendered long service with the Respondent Municipality was entitled to pension and other retiral benefits. In the said case, this Court directed the Respondent Municipality to ensure that the writ petitioner therein was paid all terminal benefits within six months, and, in the interim, directed the release of provisional pension.
11. It is further submitted that the Petitioner, being a retired employee, is presently suffering acute financial hardship due to the non-release of her lawful retiral dues. Despite the lapse of a considerable period since her superannuation, the Respondent Municipality has failed to release even provisional pension. Such prolonged deprivation of pensionary and other retiral benefits is wholly arbitrary, unjust, and violative of the Petitioner's fundamental and statutory rights.

Submission on behalf of the respondent No. 3, Director of Local Bodies

12. A report has been filed on behalf of the Director of Local Bodies. As per the said report, the Petitioner was appointed to a vacant sanctioned post of *Attendant* on 15.09.2000 pursuant to a resolution of the Respondent Municipality, and such appointment is deemed to have been approved under Order No. 110/UDMA-25011(11)/109/2022-LSG-SEC dated 06.02.2023, issued by the Urban Development & Municipal Affairs Department.

13. It is further stated in the said report that the Petitioner was subsequently promoted to the post of Clerk by the Respondent Municipality vide order dated 15.06.2006 with the approval of the Board of Councilors. However, the requisite approval of the State Government, as mandated under the West Bengal Municipal Act, was not obtained at the time of such promotion. It is also clarified that there are no specific guidelines or Government orders permitting the grant of post-facto approval to promotions made by Urban Local Bodies against sanctioned vacant posts beyond 30.09.2003. Accordingly, no such post-facto approval can be extended to the Petitioner's promotion at this stage.
14. Consequently, the Petitioner's name could not be incorporated in the Integrated Online Management System (iOMS) portal, and her service book has not been verified. It is further explained that the Government allocates grant-in-aid for disbursement of salaries and allowances of municipal employees strictly on the basis of approved data as recorded in the iOMS portal.
15. The report further records that under Section 56 of the West Bengal Municipal Act, 1993, the Chairman of the Respondent Municipality is the pension sanctioning authority. However, unless the Petitioner's promotion to the post of Clerk is duly approved by the Government, her name cannot be uploaded in the iOMS portal, and pensionary benefits cannot be sanctioned. It is nevertheless submitted that since the Petitioner's initial appointment to the post of Attendant was duly approved, if the Petitioner is willing to forgo her claim with respect to the promotion, her pensionary benefits can be processed and released on the basis of her substantive post of Attendant.

Submission on behalf of the Respondent No. 5 (Berhampore Municipality)

16. An Affidavit has been filed on behalf of the Respondent Municipality wherein it has been stated that the Petitioner was appointed to a Group-D post on 15.09.2000 and was made permanent vide Order No. 91/02 dated 02.12.2002. The Petitioner was subsequently promoted by the then Chairman of the Respondent Municipality vide Memo dated 15.06.2006, pursuant to the resolution of the Board of Councilors dated 30.10.2005. It is further clarified that the Petitioner had been receiving salary and other service benefits in the promotional post from Government grant-in-aid.
17. The said Affidavit also records that intimation was duly sent to the Director of Local Bodies (DLB) seeking post-facto approval of the Petitioner's promotion, and the last such communication was made on 08.01.2021 in respect of eight employees, including the Petitioner.
18. It is further stated that on 16.01.2023, in view of the Petitioner's impending retirement on 31.01.2023, the original Service Book along with the Integrated Pension Form, Appointment Letter, and copies of the Admit Card and Mark Sheet were forwarded to the DLB for verification and approval. However, vide letter dated 20.01.2021, the DLB directed submission of the approved copy of the Petitioner's I-OSMS profile. Thereafter, by communication dated 04.07.2023, the DLB again requested the Respondent Municipality to take necessary steps for obtaining approval of the Petitioner's appointment and to resubmit the relevant documents.
19. The Respondent Municipality, in response, informed the DLB that since the Petitioner's promotion had been effected without the prior approval of the DLB, the approval of her I-OSMS profile was still pending. It is further

stated that the Respondent Municipality has, from time to time, requested the DLB to grant post-facto approval of the Petitioner's promotion; however, till date, no such approval has been accorded.

Legal Analysis

20. This Court has carefully heard the arguments advanced by the learned counsel appearing for the parties and has also perused the pleadings and materials placed on record.
21. It is an admitted position that the Petitioner was initially appointed as an *Attendant* under the Respondent Municipality on 15.09.2000. Thereafter, pursuant to a resolution of the Board of Councilors dated 30.10.2005, the then Chairman of the Respondent Municipality promoted the Petitioner to the post of *Clerk* vide Memo No. 411/1(15)/06/BM dated 15.06.2006. The Petitioner continued to discharge duties in the said post and rendered more than 23 years of continuous and unblemished service before retiring on 31.01.2023.
22. The stand of the Director of Local Bodies (DLB) is that while the Petitioner's initial appointment to the post of *Attendant* on 15.09.2000 was duly approved by the Government, her subsequent promotion to the post of *Clerk* was never formally approved. The DLB has further contended that there are no specific guidelines or Government orders permitting grant of post-facto approval to promotions made by Urban Local Bodies against sanctioned vacant posts beyond 30.09.2003. Accordingly, it has been urged that no such post-facto approval can be extended to the Petitioner's promotion at this stage, and consequently, her pensionary benefits cannot be processed.

23. Thus, the denial of post-facto sanction to the Petitioner's promotion has directly resulted in the non-release of her pension and other retiral dues, despite her having completed more than two decades of service, including nearly 17 years in the promotional post.
24. Learned counsel for the Petitioner has relied upon the decision of a Coordinate Bench of this Court in **WPA No. 5283 of 2019 (Sri Bhabani Shankar Roy v. State of West Bengal)**, wherein this Court directed the Respondent Municipality to extend pensionary and retiral benefits to an employee who had served in a promotional post. However, it is true that the said case did not involve the issue of post-facto approval of promotions made after 30.09.2003.
25. Nonetheless, from the stand taken by the Respondent DLB itself, it is clear that while there exists a Government policy for grant of post-facto approval to appointments/promotions made prior to 30.09.2003, no rational justification has been provided for fixing such a cut-off date. At the time of the Petitioner's promotion in 2006, neither the Municipality nor the Petitioner could have anticipated that her service in the promotional post would later be excluded from consideration for pension solely on account of a cut-off date fixed retrospectively. The absence of any intelligible criteria or rationale for such discrimination renders the said restriction arbitrary and violative of Article 14 of the Constitution of India.
26. Further, the Petitioner's promotion was effected pursuant to a resolution of the Board of Councilors and approved by the Chairman of the Respondent Municipality. If the Municipality failed to obtain the formal approval of the Government thereafter, the lapse is clearly administrative in nature. The Petitioner, who has rendered long years of service in the promotional post

with full knowledge and recognition of the Respondent Municipality, cannot be penalized for the omission or inaction of the authorities. The settled principle of law is that an employee cannot be deprived of legitimate service and pensionary benefits for no fault of his or her own.

27. In view of the above discussion, this Court is of the considered opinion that the Petitioner's service in the promotional post of Clerk is required to be accorded due recognition. Accordingly, the Respondent DLB is directed to grant post-facto approval to the Petitioner's promotion within a period of four (4) weeks from the date of communication of this order. Upon such approval, the DLB shall verify and approve the Petitioner's service record within a further period of two (2) weeks. Thereafter, the Directorate of Pension, Provident Fund & Group Insurance (DPPG) shall complete the necessary formalities and the Respondent Municipality shall release the Petitioner's pension and all admissible retiral benefits within four (4) weeks.
28. It is made clear that the entire exercise, beginning from the grant of post-facto approval till the disbursement of pensionary benefits, shall be completed within an outer limit of four (4) months from the date of this order.
29. With the aforesaid directions, the present writ petition stands allowed.

(Gaurang Kanth, J.)