

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

WPA 11763 of 2020

CAN 1 of 2025

Badal Chandra Maiti

Versus

The State of West Bengal & Ors.

For the petitioner.	:	Mr. Chitta Ranjan Chakraborty Mr. Dip Jyoti Chakraborty Mr. Sumit Banerjee
For the respondents/State	:	Mr. Tarun Kumar Ghosh Ms. Sharmila Dev
For the respondent No.3/K.M.D.A	:	Mr. Satyajit Talukdar Mr. Arindaom Chatterjee

Heard & Judgment on : 26th February, 2025

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The petitioner in the instant writ petition served as an employee of Kolkata Improvement Tribunal within the domain of erstwhile Kolkata Improvement Trust, presently known as Kolkata Metropolitan Development Authority(in short KMDA) was due to retire from his service on 31.03.2011 functioning as a Nazir.

However, the Presiding Judge of the tribunal issued an office order directing him to continue with his service on an extension for seven months henceforth. The office order being No. 101 of 21.03.2011 issued by the Kolkata Improvement Tribunal is replicated as follows:

"The Tribunal is now supported by only 10 altogether against the staff strength of 25. Proposal of filling the vacancies including that of the Superintendent has been pending. There is no immediate scope to find any appropriate substitute within the Tribunal in its present State or otherwise. Absence of Shri Maiti at the moment without any replacement will cause interruption to the working of Tribunal. Shri Maiti has been physically fit and mentally alert and has expressed his willingness to continue by an application. Under the Tribunal rules regarding superannuation-extension of service may be granted by the President for not more than one year at a time but an employee who has attained the age of 60 years cannot be retained save in very exceptional circumstances. Under the aforesaid unavoidable and forced circumstances in absence of any alternate measure available, in order to guard against any disruption to the administration of the Tribunal, the service of Shri Maiti be retained for one year with effect from 25.03.2011 in accordance with the provision of the Rule 3 of Rules regarding condition of service, recruitment and superannuation of employees of Calcutta Improvement Tribunal, 1951. The retention of Shri Maiti in service be brought to the notice of the Principal Secretary to the Government of West Bengal, Urban Development Department with a copy of this order"

Such retention of service of the petitioner by dint of office order No. 101 of 21.03.2011 was forwarded to the office of the

Principal Secretary, Government of West Bengal, Urban Development Department through a communication dated 21st March, 2011 with an explanation as to the reason for extension of service required from the petitioner beyond the age of 60 years. Through a communication dated 20th April, 2011 addressed to the Officer on Special Duty, Kolkata Improvement Trust, the Presiding Judge of the Tribunal sought for release of the salary of the employees, functioning on extension granted beyond the period of retirement. Subsequently, on 30th April, 2011 a communication was addressed to the Principal Secretary to the Government of West Bengal, Urban Development Department conforming Rule 3 of the Rules concerning the condition of service required and superannuation of employees of Kolkata Improvement Tribunal, 1951 with a request to disburse the salaries of employees who served beyond the period of retirement. Vide communication dated 12th October, 2011 the OSD and ex officio Deputy Secretary to the Government of West Bengal addressed to the opinion of the Finance Department as follows:

" The proposal is regretted. Administrative Department may start the process of recruiting fresh candidates in place of the superannuated staffs, instead of insisting with such proposals".

Such communication implied that the service of the retired employees should be discontinued without granting them an extension to serve the tribunal and to initiate fresh recruitment

process. On receipt of the communication from the concerned Department as aforesaid the presiding Judge of the Tribunal asked the petitioner to relinquish the charge of his service to the accountant on 31st October, 2011. After delivering the charge as aforesaid the petitioner had on repeated occasions requested the concerned authority to disburse his arrear salary for seven months having functioned as the Nazir on an extension after retirement at the Tribunal but in vain. Consequently, he sought relief through a communication dated 12th October, 2011 and final representation on 21st September, 2020 to disburse his arrear salary for seven months which were not acted upon by the concerned authorities. The petitioner consequently filed the instant writ petition seeking for relief of disbursement of arrear salary for seven months in view of the order No. 101 of 21.03.2011 passed by the Presiding Judge of the Kolkata Improvement Tribunal having rendered his service as aforesaid.

The Learned Advocate representing the petitioner submitted another employee of the aforesaid tribunal had continued with his service upon retirement in similar terms as that of the petitioner and had filed a writ petition being WPA 21110 of 2022 before this Hon'ble Court and the Coordinate Bench of this Court vide order dated 26th September, 2022 had directed the competent authority to release his

arrears of pay with regard to the period served by him on extension. The learned advocate representing the petitioner further submitted that the instant petitioner had served for seven months from April, 2011 till 31st October, 2011 in the post of Nazir and was entitled to the salary of seven months for the service rendered by him.

The Learned Advocate representing the respondents/State submitted that the retention of the instant petitioner was in accordance with the Rule 3 of the Rules concerning condition of service recruitment and superannuation of the employees of the Kolkata Improvement Tribunal, 1951 by dint of an order passed on 21.03.2011. It was further submitted that in compliance with the aforesaid Rule the extension of service could have been granted by the Presiding Tribunal for a period not more than one year at a time. The petitioner had rendered seven months service which fell within the ambit of one year as stipulated statutorily under Rule 3 of the aforesaid Rules and no circumstances could preclude the petitioner from being granted the salary of seven months pay.

The Learned Advocate representing the respondent No.3/KMDA conformed to the submissions of the learned advocate representing the State/respondents and adopted the same.

The extension of service for seven months had been rendered by the petitioner legally on direction of the superior authority without

any fault of his own. The petitioner is entitled to receive the arrear salary for seven months which is legally due to him.

The petitioner is to file a representation before the concerned authority within three weeks of passing of this order and the concerned authority is to disburse the salary of seven months within a period of four weeks thereafter.

The facts and circumstances agitated in the writ petition apart from the point of entitlement of arrear salary to the extent of seven months having been dealt with, had been considered to be not objected to by the respondents.

Accordingly, the instant writ petition and connected application are disposed of.

Parties to act on a server copy of this order duly downloaded from the official website of this Court.

c.m.

(Ananya Bandyopadhyay, J.)