

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

**RESERVED ON: 10.12.2025
DELIVERED ON: 05.02.2026**

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

WPA 16300 OF 2024

**DR. RAFIQUUL HASAN
VERSUS
THE STATE OF WEST BENGAL & ORS.**

Appearance:-

**Mr. Saptarshi Roy, Adv.
Mr. Siddhartha Roy, Adv.**

..... for the Petitioner

**Mr. Amales Ray, Sr. Adv.
Ms. Mousumi Bhowal, Adv.**

..... for the Municipality

Mr. Rezaul Hossain, Adv.

..... for the State

JUDGMENT

Gaurang Kanth, J.:-

1. The Petitioner, by way of the present writ petition, assails the order dated 09.04.2024 passed by the Director of Local Bodies, West Bengal, whereby the Petitioner's claim for grant of pensionary benefits, upon according post facto approval in terms of the circular dated 06.02.2023, was considered pursuant to and in compliance with the direction of this Court dated 18.01.2024 passed in WPA 4262 of 2016. By the said order, the Director of Local Bodies held that the Petitioner is not entitled to regularisation of service or to any retiral benefits.

2. The facts leading to the filing of the present writ petition are stated hereinbelow.
3. The Petitioner was appointed as a *Residential Medical Officer* on probation vide Memo No. 2363(4) dated 01.03.1994 at Dum Dum Municipal Specialized Hospital & Cancer Research Centre by the Chairman, Dum Dum Municipality, pursuant to a decision taken by the Board of Municipal Commissioners/Councillors. The service of the Petitioner was subsequently confirmed with effect from 01.09.1994.
4. All service related entitlements were extended to the Petitioner, and he has been continuously rendering his services without any interruption. There has been no break in service. The Petitioner's service book was duly prepared and maintained in accordance with law. The Petitioner retired from his service on 31.07.2016.
5. As the Petitioner is entitled to pensionary benefits, and as post facto approval of his appointment is required for such purpose, the Petitioner made several written representations to the Chairman of the respondent Municipality seeking grant of post facto approval. However, no response was received. Consequently, the Petitioner was constrained to file W.P. No. 4262 (W) of 2016, praying, inter alia, for grant of post facto approval and consequential pensionary benefits upon retirement. The learned Single Judge of this Court, by order dated 10.11.2016, disposed of the said writ petition by directing the respondents to act in terms of the judgment dated 30.01.2008 passed by the Hon'ble Division Bench in MAT 704 of 2007 titled *Chairman, Dum Dum Municipality & Ors. vs. Dr. Debranjana Biswas & Anr.*

6. Aggrieved thereby, the respondents preferred an intra-court appeal being MAT 553 of 2017 (*State of West Bengal vs. Rafiqul Islam & Ors.*). By order dated 27.11.2017, the Hon'ble Division Bench set aside the order dated 10.11.2016 and remanded the matter for fresh consideration after exchange of affidavits.
7. In the meantime, a similarly situated person, namely Dr. Shakti Lal Chowdhary, filed a writ petition with identical prayers being WPA 4259 of 2016 titled *Dr. Shakti Lal Chowdhary vs. State of West Bengal*. By order dated 23.03.2022, the learned Single Judge allowed the said writ petition. The respondents challenged the said order by filing an intra-court appeal being MAT 890 of 2022 titled *State of West Bengal vs. Dr. Shakti Lal Chowdhary*. The Hon'ble Division Bench, by judgment dated 13.10.2023, dismissed the appeal and held that Dr. Shakti Lal Chowdhary, Dr. Asit Ranjan Kudu and Dr. Priyadarshi Sarkar were appointed against validly created posts by the Municipality in exercise of powers conferred under the West Bengal Municipal Act, 1993. Accordingly, the respondents were directed to process the pension case of the petitioner therein, sanction his admissible retiral dues upon completion of necessary formalities, issue the Pension Payment Order, and grant post facto approval, if necessary, within a period of 12 weeks.
8. In view of the aforesaid judgment dated 13.10.2023 passed by the Hon'ble Division Bench in MAT 890 of 2022, the learned Single Judge of this Court, by order dated 18.01.2024 passed in WPA 4262 of 2016, disposed of the said writ petition by directing the Director of Local Bodies to decide the issue relating to grant of pension in favour of the Petitioner upon according post facto approval, in terms of the circular

dated 06.02.2023, within a period of 12 weeks after affording an opportunity of hearing to the Petitioner or his authorised representative. It was further clarified that while taking such decision, the Director of Local Bodies shall follow the order dated 23.03.2022 in WPA 4259 of 2016 and the judgment dated 13.10.2023 passed by the Hon'ble Division Bench in MAT 890 of 2022.

9. In purported compliance with the order dated 18.01.2024, the competent authority afforded an opportunity of personal hearing to the Petitioner and thereafter passed a speaking order dated 09.04.2024, whereby the Petitioner's claim for grant of pensionary benefits, upon according post facto approval in terms of the circular dated 06.02.2023, was rejected, holding that the Petitioner is not entitled to regularisation of service or to any retiral benefits.
10. Being aggrieved and dissatisfied with the said impugned order dated 09.04.2024, the Petitioner has preferred the present writ petition.

Submission on behalf of the Petitioner

11. Mr. Saptarshi Roy, learned Counsel appearing on behalf of the Petitioner, submits that the issue involved in the present writ petition is no longer res integra and stands squarely covered by the judgment dated 13.10.2023 passed by the Hon'ble Division Bench of this Court in *MAT 890 of 2022 (State of West Bengal vs. Dr. Shakti Lal Chowdhary)*, which has attained finality. It is further submitted that, notwithstanding the specific directions issued by this Hon'ble Court by order dated 18.01.2024 passed in *WPA 4262 of 2016*, directing the respondent authorities to act strictly in terms of the aforesaid judgment, the

respondent authority has proceeded to pass the impugned order dated 09.04.2024 in complete disregard of the said directions.

12. Learned Counsel for the Petitioner further submits that the Petitioner was in service for more than 20 years. The Respondent has extended all the benefits available to a Govt. Employee to the Petitioner. He was never aware that he was not appointed against a post which was not in existence. All his counterparts and similarly situated people are getting the Pension and other retiral benefits and hence the Petitioner is entitled for post facto approval of his post.
13. In the aforesaid facts and circumstances, the Petitioner is entitled to the grant of pensionary and other retiral benefits, as prayed for.

Submission on behalf of the Respondent Nos. 3 & 4 (Respondent Municipality)

14. Learned Counsel appearing for the Respondent Municipality submits that, in terms of Section 53(4) of the Act, the Board of Councillors is empowered to create posts up to 1% of the total sanctioned strength in a year without obtaining prior approval of the State Government. It is submitted that in the year 1993 there were 200 sanctioned posts under the Respondent Municipality and, accordingly, the Board of Councillors lawfully created two additional posts in exercise of the powers conferred under Section 53(4) of the Act. In the year 1994, the Respondent appointed 4 medical officers against 2 newly created posts. According to the Respondent Municipality, one of the newly created posts was filled by appointing Dr. Sukhendu Bhaumik, while the Petitioner and one Mr. Nitya Gopal Biswas were appointed on the same date against the remaining post.

Submission on behalf of the Respondent No. 2 (State Respondent)

15. Learned Counsel appearing for the State Respondent submits that the appointment of the Petitioner was not made against a duly sanctioned post. It is further submitted that no prior approval of the State Government was obtained in respect of the said appointment. Consequently, the appointment is contended to be irregular and not in accordance with law, and on such ground the Petitioner is not entitled to claim any pensionary or other retiral benefits.

Legal Analysis

16. This Court has heard the learned counsel appearing for the respective parties and has carefully perused the materials placed on record.
17. The Hon'ble Division Bench of this Court, in its judgment dated 13.10.2023 passed in MAT 890 of 2022, held inter alia as follows:

“29. From the affidavit filed by the Municipality, the relevant portion whereof has been extracted above, we find that as on July 1, 1998, i.e., the year immediately preceding the year in which the respondent no. 1 was appointed there were 341 sanctioned posts in Dum Dum Municipality. Only 3 appointments were made by creation of posts in exercise of power under sub-section 4 of Section 53 of the 1993 Act, in the following year. 1% of 341 is 3.41. Hence, the Municipality as per the un-amended sub Section 4 of Section 53 of the 1993 Act, could have created up to 3.41 posts without prior approval of the State Government. Since a fraction of post is incapable of creation, the logical conclusion is that the Municipality could create up to 3 posts of officers/employees without prior sanction of the State Government. We find from the affidavit of the Municipality that within the period stretching from 01.01.1998 to 31.08.1998, only 3 officers/employees who did not fall within the meaning of officers as referred to in Section 53(1) of the 1993 Act, were appointed in exercise of power under Section 53(4) of the said Act. They are Dr. Saktilal Choudhury (writ petitioner), Dr. Asit Ranjan Kundu and Dr. Priyadarshi Sarkar.

30. *In view of the aforesaid we must hold that the respondent no. 1 /writ petitioner was validly appointed by the Municipality in exercise of power under section 53(4) of the 1993 Act as that section stood prior to the 2002 amendment. Hence, neither prior sanction of the State Government for appointment of the writ petitioner was necessary nor can he be denied pensionary benefits. The question of the writ petitioner being appointed in a*

sanctioned vacant post also does not arise as the post in which he was appointed was one validly created by the Municipality in exercise of power conferred on it by the 1993 Act.

31. *Accordingly, we agree with the conclusion reached by the learned Single Judge although we disagree with His Lordship's reasoning. We therefore do not interfere with the order under appeal. We affirm the operative portion of the order and direct the appellants to release the pensionary benefits of the respondent. No. 1/ writ petitioner in terms of the order of the learned Single Judge. However, we extend the time period to do so by 8 weeks from date."*
- 18.** The Review Petition filed against the aforesaid judgment was dismissed, and no Special Leave Petition has been preferred therefrom. The said judgment has thus attained finality. It is also undisputed that the Respondent Municipality has extended the benefit of the said judgment to the petitioner therein.
 - 19.** In the present case, the Petitioner was appointed as a Resident Medical Officer on probation vide Memo No. 2363 (4) dated 01.03.1994 at Dum Dum Municipal Specialized Hospital & Cancer Research Centre by the Chairman, Dum Dum Municipality, pursuant to a decision of the Board of Municipal Commissioners/Councillors. His service was confirmed with effect from 01.09.1994 and superannuated from service on 31.07.2016. The Petitioner has thus rendered more than 20 years of continuous service and, throughout his tenure, was extended all service benefits in accordance with the applicable Government norms.
 - 20.** The Petitioner's claim for pensionary benefits was, however, rejected on the ground that his appointment was not against a sanctioned post. The Respondent Municipality contends that in the year 1994, four Resident Medical Officers were appointed against only two sanctioned posts and that only two of them could be treated as having been appointed against substantive posts. According to the Respondent Municipality, one of the

newly created posts was filled by appointing Dr. Sukhendu Bhaumik, while the Petitioner and one Mr. Nitya Gopal Biswas were appointed on the same date against the remaining post. The State Respondents have adopted the said stand and contend that, in the absence of appointment against a substantive post, no post facto approval could be granted.

- 21.** This being the position, this Court cannot be unmindful of the fact that the Petitioner has rendered more than two decades of uninterrupted service under the Respondent Municipality. Throughout his service career, the Petitioner was treated as a regular employee, paid salary from public funds, and extended all service benefits in accordance with the applicable Government norms. At no point during his service tenure was the legality or validity of his appointment questioned. To deny pensionary benefits to the Petitioner after extracting more than twenty ears of service would be wholly unjust, unfair and arbitrary, offending the principles of equity, good conscience and fair play. Pension is not a bounty or a gratuitous payment, but a deferred component of compensation for long and continuous service, and constitutes a valuable statutory and constitutional right. The consistent conduct of the Respondents in continuing the Petitioner in service created a legitimate expectation that he would be extended the same retiral benefits as his similarly situated counterparts, which expectation cannot now be defeated on a technical plea. The doctrine of promissory estoppel squarely applies, as the State and its instrumentalities, having held out the Petitioner as a regular employee and having derived benefit from his services, cannot resile at the stage of retirement. Denial of pension in such circumstances is manifestly arbitrary, violates Article

14 of the Constitution of India, and offends Article 21, inasmuch as pension is an integral facet of the right to livelihood with dignity. State action producing such grave civil consequences must satisfy the tests of fairness, reasonableness and non arbitrariness, which the impugned action clearly fails.

- 22.** The objection raised by the Respondents is confined solely to the year 1994. It is not in dispute that all other similarly situated Resident Medical Officers appointed during the relevant period have been granted pensionary benefits pursuant to the judgments of this Court in *MAT 890 of 2022* and *MAT 704 of 2007*. The Petitioner cannot be singled out for hostile discrimination merely on account of an alleged excess appointment in a particular year, especially when such appointment was made by the Respondent Municipality itself pursuant to a conscious decision of its Board and the Petitioner was continuously accommodated in service for more than three decades. Having derived benefit from his services, the Respondents cannot now deny him pension on a hyper technical plea.
- 23.** Even assuming, arguendo, that there was any procedural irregularity or numerical excess in appointments in the year 1994, the same stood cured by long continuance in service, confirmation, and extension of all service benefits. In such circumstances, the Respondents were duty bound to regularise and accommodate the Petitioner against the available strength, particularly when vacancies admittedly existed in subsequent years. The burden of any administrative lapse cannot be shifted onto the Petitioner at the stage of retirement.

- 24.** Even otherwise also the Respondents were always empowered to create a supernumerary post, if so required, to protect the service and retiral benefits of the Petitioner. Creation of a supernumerary post is a well-recognised administrative mechanism to safeguard employees in cases of excess appointment or cadre mismatch. Denial of pension without exploring such a lawful and equitable alternative reflects an arbitrary exercise of power.
- 25.** Furthermore, as is evident from the affidavit filed by the Respondent Municipality, during the period from 1993 to 1998, the Respondent Municipality, in exercise of the power vested in it under Section 53(4) of the 1993 Act, was entitled to create one per cent of the sanctioned strength per year, which translated to two posts annually up to the year 1997 and three posts in the year 1998. Accordingly, during the said period, a total of thirteen posts could lawfully be created. Against such statutory entitlement, only eleven Resident Medical Officers were appointed. Even on a strict numerical computation, the Petitioner's appointment squarely fell within the permissible statutory limit.
- 26.** Applying the ratio of the judgment dated 13.10.2023 passed in *MAT 890 of 2022*, as also the judgment in *MAT 704 of 2007 (Chairman, Dum Dum Municipality & Ors. vs. Dr. Debranjana Biswas & Anr.)*, this Court holds that the Petitioner was appointed against a validly created substantive post. Once a post is created in exercise of statutory power under Section 53(4) of the 1993 Act, it assumes the character of a sanctioned post for all legal purposes. The plea of the State Respondents that prior approval was mandatory or that the Petitioner was not appointed against a sanctioned post is, therefore, untenable and liable to be rejected.

- 27.** Consequently, the impugned order dated 09.04.2024 cannot be sustained and is set aside. The Respondent No. 2 is directed to extend to the Petitioner the same pensionary and other retiral benefits as were granted to Dr. Shakti Lal Chowdhary, the writ petitioner in *WPA 4259 of 2016*, as expeditiously as possible.
- 28.** With the aforesaid directions, the present writ petition stands allowed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

