

**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 16841 OF 2024

**DR. AMITESH SARKAR
VERSUS
THE STATE OF WEST BENGAL & ORS.**

Appearance:-

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

..... for the Petitioner

**Mr. Rajarshi Basu, Adv.
Mr. S.T. Mina, Adv.**

..... for the State

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

..... for the Municipality

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. 1147/G-HOS dated 17.06.1991 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 01.01.1992.
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 the post of Residential Medical Officer on 31.07.2022.
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 passed 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.
- 11.** Mr. Saptarshi Roy, learned Counsel appearing for the Petitioner submits that the Petitioner was appointed against a substantive post in accordance with the provisions of the Bengal Municipal Act, 1932. It is contended that under Section 66 of the said Act, the concerned Municipality is empowered to create posts without prior approval of the State Government, provided such creation does not exceed 1% of the total sanctioned strength. It is further submitted that the Petitioner is similarly situated to Dr. Debranjana Biswas and, therefore, his case is squarely covered by 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.*, as well as the order dated 03.02.2017 passed in WP No. 790(W) of 2015 titled *Barnali Malakar vs. The State of West Bengal & Ors.*

12. The Respondent Municipality has filed two affidavits in the present proceeding. In its first affidavit, it has been stated that in the year 1990, there were 200 sanctioned posts, and therefore, while exercising powers under Section 53(4) of the West Bengal Municipal Corporation Act, 1993, the Respondent Municipality was entitled to create two posts without obtaining prior permission from the State Government. It is further stated that the Petitioner, Dr. Amitesh Sarkar, was appointed against such newly created substantive post. The Respondent Municipality has also asserted that the present case is governed by the judgment dated 13.10.2023 passed by this Court in MAT 890 of 2022. In the supplementary affidavit filed subsequently, it was clarified that the Petitioner's appointment is governed by the Bengal Municipal Act, 1932, as the appointment was made prior to the promulgation of the West Bengal Municipal Corporation Act, 1993. It was further clarified that Section 66 of the 1932 Act is *pari materia* with Section 53 of the 1993 Act.
13. However, Respondent No. 2 (the State Respondent) has taken the stand that the Petitioner was appointed against a non-substantive post and that no prior permission was obtained for the creation of the said post.
14. This Court has heard the arguments advanced by the learned Counsel appearing for the respective parties.

15. Upon perusal of the records, this Court finds that the Petitioner's case is squarely covered by 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.* This position has also been admitted by the Respondent Municipality. The said judgment has attained finality and the Respondents have already extended the benefit thereof to the Petitioner in the said case. The relevant portion of the said Judgment dated 30.01.2008 in MAT 704 of 2007 reads as follows:

"Upon a perusal of the aforementioned facts, what stares us on the face, is that when the petitioner was appointed on 29-04-1983 and when his services were confirmed on 14-08-1984, the West Bengal Municipal Act, 1993 was not even in existence. On the contrary the law that was in existence was the Bengal Municipal Act, 1932.

Learned Counsel for the Writ Petitioner/Respondent No.1 has drawn our attention to the provisions of Section 66 of the said Municipal Act, 1932. It would therefore be apposite to take note of the said provision, here at this stage itself, because the same clearly gave a right upon the Commissioners of the Municipality, not only to determine what Officers and employees were necessary for the Municipality but also gave them the right to create posts of such Officers/employees and to fix their salaries and allowances. The posts of Officers to be created by the Commissioners under sub-Section (1) of Section 66 included the post of a Medical Officer, Section 66(1) read with Section 66(3) of the Bengal Municipal Act, 1932 read as under :-

"Section 66. Appointment of officers and employees.

(1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder from time to time, determine what officers and what employees of the Commissioners are necessary for the Municipality, create posts of such officers and employees and fix the salaries and allowances to be paid and granted such officers and employees.

Provided that no post of no officer of employee shall be created without the prior sanction of the Hon'ble Government if the number of points to be no created in a year for a Municipality in more than one percent of the total number of posts of officers and employees as existed in the year immediately proceeding.

Provided further that no post carrying a monthly salary of more than one thousand rupees or a salary rising by periodical particulars to more than one thousand rupees shall be created without the sanction of the State Government.

(3) The post of officers to be created by the Commissioners under sub-section (1) may include all or any of the following :-

- (a) a Secretary.*
- (b) a Medical Officer.*
- (c) One or more Sanitary Inspectors.*
- (d) a Superintendent of Waterworks.*
- (e) an-Assessor.*
- (f) an Office Superintendent.*
- (g) an Accountant.*

Provided that every officer referred to in this sub-section shall possess such qualifications as may be prescribed".

Upon a perusal of the aforementioned provisions as contained in Section 66 of the Bengal Municipal Act, 1932, we are of the view that at the relevant point of time when the Respondent No.1 was appointed, the Commissioners of the Municipality could have appointed the Writ Petitioner/Respondent No.1 it is nobody's case that the post on which he was appointed was more than one percent of the total number of posts on contemplated in the 1 provision of Section 66 above.

In these circumstances, the attempt on the part of the Municipality to take recourse to the 1993 Act is an attempt, which appears to have been made in desperation.

We are also of the view that having allowed the Respondent no.1 in continue in service uninterruptedly for 16/ 17th years, it was absolutely arbitrary on the part of the Application to make submissions leasing their logic on a provision of which was not even in existence at the time when the Respondent No.1 had been appointed."

- 16.** The present Petitioner was appointed on 17.06.1991 and his services was confirmed on 01.01.1992, he was governed by Section 66 of the Bengal Municipal Act, 1932. It is the case of the Respondent Municipality that the petitioner was appointed against substantive post. After rendering service to the Respondent Municipality for 30

years the petitioner retired from service on 31.07.2022. Being similarly situated, the petitioner is, therefore, entitled to the same relief as was granted to Dr. Debranjana Biswas in MAT 704 of 2007, titled *Chairman, Dum Dum Municipality & Ors. vs. Dr. Debranjana Biswas & Anr.*

- 17.** In view of the above, nothing further survives for adjudication. Accordingly, the impugned order dated 09.04.2024 is set aside. The Respondent No. 2 is directed to extend to the Petitioner the same benefits as were granted to Dr. Debranjana Biswas in MAT 704 of 2007, as expeditiously as possible.
- 18.** With the aforesaid directions, the writ petition is allowed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)