

Board Of Councillors Of Nabadwip Municipality & Anr Vs Susan Mukhopadhyay & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 20, 2025

Acts Referred: General Clauses Act, 1897 " Section 23, 23(4), 23(5)

Hon'ble Judges: Debangsu Basak, J; Md. Shabbar Rashidi, J

Bench: Division Bench

Advocate: Swapan Kumar Mazumdar, Saptarshi Mazumdar, Tulsi Das Maity, Namita Basu, Pradip Kumar Ghosh, Bibek Jyoti Basu, Bikramjit Mandal

Final Decision: Disposed Of

Judgement

Debangsu Basak, J

1. Two appeals are at the behest of the Municipality and directed against the orders passed by the learned Single Judge disposing of two writ petitions.

2. It is the contention of the appellants that, the appellants paid retiral benefits of the superannuated employees/writ petitioners in consonance with the

ROPA, 2009. Thereafter, on the ROPA, 2019 coming into effect, Pension Payment Order was issued by the State without reference to the

appellant/Municipality.

3. Learned Advocate appearing for the appellants relies upon Section 23(4) and (5) of the General Clauses Act, 1897 to contend that, it is the liability

of the State Government to pay such employees.

4. State and the writ petitioners/private respondents are represented.

5. Liability of the Municipality to pay the retiral and service benefits of the writ petitioners/private respondents cannot be disputed. Writ

petitioners/private respondents superannuated as employees of the Municipality.

6. Enhancement of the receipt of pensionary benefits due to ROPA, 2019 or in other provision, by which, retired employee becomes entitled to higher

retiral benefits must be paid by the employer whose liability it is to pay.

7. In the present case, the liability is squarely of the Municipality. A Writ Court need not enter into the arrangement of funds or its absence, if there be

any, between the Municipality and the State Government with regard to payment of the enhanced portion of the retiral benefits. A Writ Court should

enter into either macro or micro managing the funds of a Municipality.

8. We find no relevance of Section 23 of the General Clauses Act, 1897 in the factual matrix of the present case.
Section 23 of the Act of 1897

makes provisions from of rules or bylaws after previous publication. Those provisions cannot be brought in to assist the appellant in avoiding its liability

to pay the service or retiral benefits of its employees.

9. Learned Single Judge directed payment of the enhanced portion of the retiral benefits along with the interest for the writ petitioners. In respect of

one of the writ petitioners, service benefits in addition to retiral benefits were directed to be paid.

10. We find no infirmity in such directions for the appeal Court to intervene.

11. We, however, clarify that payments, if any, already made may be adjusted against the receivable by the concerned employee.

12. FMA 737 of 2024 and FMA 1061 of 2024 along with all connected applications are disposed of.