

(2010) 03 CAL CK 0061

Calcutta High Court

Case No: Writ Petition No. 11417 (W) of 2005

Kamala Metharani

APPELLANT

Vs

Board of Councillors, Nabadwip
Municipality

RESPONDENT

Date of Decision: March 8, 2010

Acts Referred:

- Bengal General Clauses Act, 1899 - Section 25
- Bengal Municipal Act, 1932 - Section 69
- West Bengal Municipal Act, 1993 - Section 442, 58(1)

Citation: (2011) 2 CHN 486

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Tulsi Das Maity and Pradip K. Ghosh, for the Appellant; Swapan K. Mazumdar, for the Municipality and Fazlul Haque and Supriyo Roy Chowdhury, for the Respondent

Judgement

Jayanta Kumar Biswas, J.

The Petitioner in this Article 226 petition dated June 7, 2005 is aggrieved by the fact that her employer has not paid her family pension, service pension arrears, house rent allowance, and full gratuity.

2. Both the Petitioner and her husband were working in Nabadwip Municipality in the District Nadia. Her husband died on July 3, 1992. Accordingly, she became entitled to benefits including family pension. On reaching the age of superannuation she retired on May 31, 2002, Consequently, she became entitled to retirement benefits including pension and gratuity. The Director of Pension, Provident Fund and Group Insurance, West Bengal issued orders dated April 24, 1994, Annexure-P-1 at p. 19, for family pension, and March 19, 2003, Annexure P-3 at p. 22, for service pension and Rs. 89,331 gratuity.

3. There is No. dispute that the Municipality paid her family pension upto January, 2004. Relying on a Government Order dated November 20, 2000, Annexure P-10 at p. 35, the Municipality disputed her entitlement to family pension and stopped the benefit from February, 2004. Relying on a subsequent Government Order dated February 21, 2005. Annexure P-11 at p. 41, the Petitioner requested the Municipality to pay her consolidated family pension at the rate of Rs. 1,300 per month from February, 2004 to February, 2005, and for the purpose she made a representation dated March 21, 2005, Annexure P-12 at p. 43. But the Municipality refused to pay her family pension.

4. Once the pension payment order dated March 19, 2003 was issued, the Municipality started paying her pension from April, 2003 and she has been receiving pension according to rules. But pension arrears for the period from June, 2002 to March, 2003 were not paid by the Municipality. In para 9 the Petitioner has claimed that in view of the recommendation of the Fourth Pay Commission, accepted by the Government and the Municipality, she became entitled to house rent allowance at the increased rate from April 1, 1997 to January 31, 1999, but that the difference between the amount actually paid and the one that was payable was not paid by the Municipality.

5. Once the pension payment order dated March 19, 2003 was issued, according to the Municipality, as will appear from Annexure R-5 at p. 40, it paid the Petitioner Rs. 73,252 in installments during period from September 5, 2003 to August 16, 2007 and thereafter Rs. 4,824 leaving Rs. 11,255 due to her. The Municipality made the payments accepting the payable sum determined by the Director of Pension, Provident Fund and Group Insurance at Rs. 89,331 (mentioned in the pension payment order dated March 1, 2003). In terms of an order of the Division Bench, it is submitted, the Municipality has deposited a sum of Rs. 40,000 in this Court and the Registrar General invested the amount in a nationalized bank.

6. Counsel for the Municipality has argued as follows. In view of the Government Order dated November 20, 2000 the Petitioner, receiving service pension, was not entitled to family pension. Pension arrears and whole of the gratuity amount could not be paid for acute financial crisis. In any case, the pension payment order and the orders issued and rules made by the Government did not create any obligation of the Municipality to pay the Petitioner pension and gratuity; for, with respect to all these, the Government possessed No. power to make any rule or issue any order.

7. In support of his contentions Counsel has relied on the decisions [Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another](#), ; [State of Bihar and Others Vs. Bihar Pensioners Samaj](#), ; and a Division Bench decision of this Court dated June 23, 2009 in-F.M.A. No. 216 of 2009, (Board of Councillors, Nabadwip Municipality and Ors. v. Anil Kumar Saha and Ors.)

8. From the superannuation notice dated October 3, 2001, Annexure P-2 at p. 21, issued by the Municipality to the Petitioner, it is evident that it was issued u/s 58(1) of the West Bengal Municipal Act, 1993, Section 58 of the Act provides that a municipal officer or other employee shall retire from service compulsorily with effect from the afternoon of the last day of month in which he attains the age of sixty years. Referring to Rule 30 of the Death-cum-Retirement Benefits Rules for the employees of the Municipality, the Petitioner was advised to apply for pension in prescribed form.

9. The arguments made before me were made before Their Lordships of the Division Bench that gave the decision dated June 23, 2009, relied on by Counsel for the Municipality; and it is evident from the decision that Their Lordships rejected the arguments. I am thus unable to see how this decision supports the argument that since the Government was not competent to issue order and make rules with respect to affairs of the Municipality, nothing stated in the Government Orders and the Rules created the Petitioner's right to get retirement benefits according to the provisions contained therein.

10. I am unable to see how the Supreme Court decisions relied on are at all relevant. Here it is not the case that the Petitioner was entitled to gratuity according to the provisions of the Payment of Gratuity Act, 1972, not according to the Death-cum-Retirement Benefits Rules under which the superannuation notice was issued by the Municipality itself.

11. It is to be noted that both the Petitioner and her husband were working in the Municipality as "latrine cleaners." It is unfortunate that with poor and absolutely helpless people like the Petitioner the Municipality, besides taking the unsustainable plea of financial crisis, started a virtual legal war. In all fairness she deserved a far better treatment from the Municipality that received service from her and her husband for a long period. As will appear from the respective pension payment orders both she and her husband earned equal length (33 years) of qualifying service in the Municipality for pension.

12. I do not find any merit at all in the argument that in view of the Government Order dated November 20, 2000 the Petitioner was not entitled to family pension. It was given a distorted interpretation by the Municipality and the position will be clear from the subsequent Government Order dated February 21, 2005. I, therefore, have No. doubt that the Petitioner was entitled to consolidated family pension at the rate of Rs, 1,300 per month from February, 2004.

13. As to the Petitioner's claim for pension arrears for the period from June, 2002 to March, 2003, I am unable to see how after superannuating her according to the provisions of the Death-cum-Retirement Benefits Rules, accepting the pension payment order dated March 19, 2003 and paying her pension month by month from April, 2003, today the Municipality can take the plea that the Petitioner has No. right

to claim pension or pension arrears, because the Government possessed No. power to issue the orders and make the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 creating the Municipality's obligations.

14. Even before the 2003 Rules made under the West Bengal Municipal Act, 1993, the Municipalities in the State were obliged to give their employees benefits under the Death-cum-Retirement Benefits Rules made u/s 69 of the Bengal Municipal Act, 1932. Even otherwise, I find No. merit in the argument that the Municipality was not bound by the Government Order dated November 20, 2000 issued u/s 25 of the Bengal General Clauses Act, 1899 read with Section 442 of the West Bengal Municipal Act, 1993.

15. The order is still in force and its validity not questioned cannot be decided in this case. Simply because questioning the Government's power to issue the order the Municipality filed an Article 226 petition, it is not entitled to invite this Court not to hold that under provisions of the order the Petitioner is entitled to retirement benefits. This, in effect, will amount to making a restraining order in aid of the final relief the Municipality sought in its pending Article 226 petition in which No. such restraining order was made. I find No. reason to say that the Petitioner is not entitled to pension arrears for the period in question.

16. With respect to gratuity, Counsel has strenuously argued that in view of the provisions of the Payment of Gratuity Act, 1972, the Petitioner is not entitled to gratuity under the Death-cum-Retirement Benefits Rules. The Petitioner's entitlement was accepted by the Municipality that paid part of the gratuity, determined by the Director of Pension, Provident Fund and Group Insurance, in installments during the period from September 5, 2003 to August 16, 2007. The way the Municipality made part-payment of the determined amount is sufficient to hold that the plea taken today is utterly frivolous. In my opinion, the Petitioner is entitled to the balance and interest for belated payment of the whole amount.

17. The Petitioner's claim for difference of house rent allowance has not yet been determined by any authority. On the basis materials produced, I am unable to adjudicate the questions involved. I think it will be appropriate to relegate her to the authority and to direct the authority to determine her entitlement, if any.

18. For these reasons, I dispose of the petition ordering as follows.

19. The Municipality shall pay the Petitioner consolidated family pension according to the two Government Orders from February 2004; and arrears from February 2004 to February 2010 shall be paid with interest at the rate of 6% per annum. Pension arrears from June, 2002 to March, 2003 shall be paid with interest at the same rate. Balance gratuity shall be paid with interest at the same rate from March 19, 2003 till the respective dates of payment.

20. Payments in terms of these directions shall be made within four weeks from the date of communication of this order to the Municipality. The Petitioner's claim for difference of house rent allowance stated in para 9 shall be examined and decided by the Municipality within six weeks from the date of communication of this order after giving the Petitioner reasonable opportunity of making a representation and hearing. The decision shall be communicated at once.

Within three weeks from the date of receipt of the Municipality's application accompanied by the payment receipt signed by the Petitioner the Registrar General shall withdraw the invested amount and pay it with accrued interest to the Municipality. No. costs. Certified xerox.