

Item No.26
06.04.2026
Court. No. 12
GB

FMA 1012 of 2021

Sk. Golam Kibria
Vs.
The State of West Bengal & Ors.

*Mr. Nitai Chandra Saha,
Mrs. Nisha Agarwal,
Mr. Abhijit Majumdar*

...for the Appellant.

*Mr. Pijush Kumar Chaturvedi, Sr. Adv.,
Mr. Md. Hafiz Ali*

...for the Budge Budge Municipality.

1. The appeal arises out of a judgment and order dated July 20, 2018, passed by a learned Single Judge. The learned Single Judge rejected the writ petition bearing WP No. 22053(W) of 2014. An order dated September 10, 2013 and non-payment of pension were challenged in the writ petition. The order dated September 10, 2013 is quoted below:-

NOW, THEREFORE, in pursuance of the aforesaid Order of Hon'ble High Court, the Governor is pleased hereby in re-designated the post of 'Burial Ground Watchman' of the said Municipality, held by Sk. Golam Kibria as 'Burial Ground Recorder', with effect from 24.11.2000 and to direct that;

(a) the Financial Benefits for such redesignation shall be allowed notionally with effect from 24.11.2000, and actually with effect from the 1st January, 2013; and

(b) this redesignation, as per advise of Finance Department, shall be subject to condition that the Municipality will not require/ask for the posts of Watchman/Chowkidar after issuance of this Order and the Burial Ground Recorder so sanctioned will also perform the duties of the Watchman/Chowkidar;”

2. The second challenge was on the aspect of non-grant of pensionary benefits.
3. It was urged that the municipality should have given pensionary benefits to the appellant under the West Bengal Municipal (Employees' Death cum Retirement Benefits) Rules, 2003 (hereinafter referred to the Rules of 2003).
4. His Lordship considered the submission of the learned advocate for the municipality that the 2003 Rules had not been adopted by the municipality and instead the Model Pension Rules under Sub-Section (1) of Section 69 of the Bengal Municipal Act, 1932 was made applicable to the employees of the Budge Budge Municipality. Reliance was placed on the notification dated August 2, 1984, issued by the Government of West Bengal in this regard.
5. His Lordship considered such fact and came to the conclusion that the post of 'Watchman' was re-designated as 'Burial Ground Recorder' with effect from November, 2000. The appellant had been given benefit attached to the said position. All retirement benefits had been paid to the appellant. The claim for pension was inadmissible as the Budge Budge Municipality had adopted the Model Pension Rules. Budge Budge Municipality was established under the provisions of the Bengal Municipal Act, 1932. The Chairman of the municipality circulated a notice in

1985, calling upon the employees of the municipality to exercise option to come under the GPF, if the employees so wanted. The appellant did not exercise any option. In terms of the proviso to Rule 1(3) of the West Bengal Municipal (Employees' Death cum Retirement Benefits) Rules, 2003, as the municipality adopted the Rules framed under the Bengal Municipal Act, 1932, the 2003 Rules were not applicable. The proviso to the West Bengal Municipal (Employees' Death cum Retirement Benefits) Rules, 2003 is quoted below:-

“The West Bengal Municipal (Employees' Death cum Retirement Benefits) Rules, 2003.

1 (3) These rules shall apply to all the whole time permanent employees under the employment of the Municipalities and the Notified Area Authorities, but shall not cover an employee engaged for a limited time only under an agreement or engaged under subsection (4) of Section 54 of the West Bengal Municipal Act, 1993 on contract or commission basis or otherwise, by the Municipal Authority or Notified Area Authority which contains no stipulation regarding pension, or an employee on deputation on foreign service:

Provided that the employees, including the retired employees of the Municipalities or the Notified Area Authorities, constituted after commencement of the West Bengal Municipal Act, 1993, or the Municipalities or the Notified Area Authorities which have not adopted the Death-cum-Retiring Benefit Rules under the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), shall be covered by these rules, and in all such cases the admissible amounts, as specified in these rules, for the period prior to the date of commencement of these rules, shall be determined as per the Government Orders issued from time to time.”

6. Learned advocate for the appellant submits that the municipality had not adopted the model rules and had recklessly annexed the model rules followed by the Chandannager Municipal Corporation. It is next submitted that upon his re-designation, the 2003 Rules would be applicable. Reliance has been placed on a decision of the Chairman of the Budge Budge Municipality in support of the contention that the appellant would be entitled to pension. It is further submitted that in the affidavit-in-opposition, the municipality had not said that the model rules had been adopted but, only mentioned that the rules were followed. The information received under the Right to Information Act, also stated that no rules had been framed by the Municipality. Under such circumstances, prayer has been made for setting aside of the order of His Lordship.
7. First and foremost, the appellant has not advanced any argument with regard to the correctness of the order dated September 10, 2013. Argument was advanced only on the issue of non-grant of pension. The writ court recorded that all retirement benefits available under the notification dated August 2, 1984, Memo No.296 had been paid to the appellant. Secondly, the municipality specifically averred in the affidavit-in-opposition filed to the writ petition that admissible retirement benefits, i.e., provident fund, gratuity, etc.,

had been paid to the appellant which was duly received. The additional amount of gratuity which was payable upon re-designation of the appellant was also offered. The relevant paragraphs of the affidavit-in-opposition are quoted below for clarity:-

“With reference to the statements/ allegations made in paragraphs 12, 13 and 14 of the writ petition I state that those are matters of records and save and except what appear from the admitted records I deny the same. I deny the allegations that the petitioner is entitled to get pensionary benefit. I state in this connection that the Budge Budge Municipality adopted the Model pension Rules as framed by the Government in the year 1982 where there is a specific provision for exercising option for pension by the employees of the Municipality and accordingly by notice dated 18.4.1985 issued by the then Chairman of the Budge Budge Municipality, the Chairman invited the option form in connection with the payment of pension and gratuity from its employee which was to be deposited within three months from the date to get pensionary benefit. But the petitioner never opted for pension by filing option form as prescribed and as such he is not entitled to get pension. In this context, I crave leave to refer and rely upon the letters of the Chairperson dated 27.1.2012 as well as 13.12.2012 annexure "P-12" and "P-17" of the instant writ petition at the time of hearing. It is pertinent to state that the effect of West Bengal Municipal (Employees Death Cum Retirement Benefit) Rules, 2003 which came into effect on 20th August, 2003 is prospective and the petitioner was not covered under the said Rule. Petitioner was covered under Model Pension Rule 1982. Petitioner only submitted option forms on different times for fixation of revised scale of pay under ROPA Rules. Copy of the model pension rules for the employees of the Local Bodies in the State of West Bengal as well as the notice dated 18.4.1985 are annexed herewith and marked as annexure "R-1" collectively.

In this context I state that the petitioner joined the Municipality in the year

1971 and retired from service on 29.2.2012 and during his service period in the Municipality he never filed the prescribed option form for pension. It may be stated here that all the admissible retirement benefits i.e. provident fund, gratuity etc. has been paid to the petitioner which he duly received. I state that vide Memo No.1813 dated 11.11.2013 the Municipality requested the petitioner to collect the cheque amounting to Rs.35640/- in respect of the gratuity admissible to him due to redesignation of post for Burial Ground Watchman to burial ground recorder.

A copy of the said memo is annexed hereto and marked with annexure "R-2". I state that on previous occasion the Govt. rejected the claim of the employees similarly circumstances of the Municipality for pension due to non filing of option in time.

A copy of the said rejection order is annexed hereto and marked with the letter "R-3".

8. Thus, it was the specific case of the municipality that the Model Pension Rules which was followed by the Chandannagar Municipal Corporation were adopted by the municipality and the appropriate department of the Government of West Bengal also approved the same and issued the notification dated August 2, 1984, bearing No. 296/C-9. The relevant portions are quoted below:-

“NOTIFICATION

WHEREAS the Commissioners of the Budge Budge Municipality in the district of 24 Parganas have made the following rules under -section (1) of section 69 of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), and have applied to the State Government for confirmation of the said rules under section 506 of the said Act;

AND WHEREAS

(a) notice of the intention to apply for such confirmation of the said rules has been duly given one month before the making of the

application for confirmation as required under clause (i) of sub-section (2) of section 506 of the said Act, and

(b) for one month before the making of the application a copy of the said rules has been kept at the office of the Commissioners of the said Municipality and has been open during office hours thereat to the inspection of the inhabitants of the said Municipality without fee, as required by clause (ii) of sub-section (2) of section 506 of the said Act;

NOW, THEREFORE, the Governor is pleased, in exercise of the power conferred by sub-section (1) of section 69 of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), to approve and, in exercise of the power conferred by section 506 of the said Act, to confirm after modification the following rules:-

Death-Cum-Retirement Benefit Rules for the employees of the Budge Budge Municipality in the district of 24 – Parganas in West Bengal.

CHAPTER I.

These Rules may be called the Death-cum-Retirement Benefit Rules for the employees of Budge Budge Municipality in the district of 24 Parganas

2. These rules shall apply to a whole-time employee, both permanent and temporary, under the employment of Budge-Budge Municipality on or after 1st April, 1981 but does not include an employee appointed for a limited time only and/or for a specified duty of when one holds some other responsible office, or service under an agreement, with the Municipal Authority which contains no stipulation regarding pension, or an employee on deputation/foreign service, or who subscribes to the Contributory Provident Fund Scheme of the Municipality, but has not opted for those Rules and also to an employee who will not agree to surrender the share of Provident Fund Contribution of the Municipality together with interest accrued thereon to the fund of the Municipality.”

9. Rule 8 provides that option is mandatory. The same is quoted below:-

“Exercise of Option :-

A. (i) *Every employee willing to come under these rules shall have to exercise option in the form shown in Appendix – ‘B’ within 90 days from the date of issue of notice by the Municipal Authority immediately after publication of the rules in the official Gazette :*

Provided that in the case of an employee, who is on leave or on deputation or on foreign service or under suspension on the date of issue of the notice, in this regard, the said option shall be exercised not later than 90 days of the date of his return from such leave, deputation, foreign service, or on resumption of duty after suspension as the case may be.

(ii) If the option is not exercised by any individual employee within the time-limit referred to above, it will be deemed that he has not opted for coming under the Pension Rules.

(iii) Those who were in service on the 31st March, 1981 but retired prior to the promulgation of those rules and could not exercise option shall be allowed to exercise option for the new benefits under these rules if they so desire. IN case of an employee who was in service on the 31st March, 1981 and died afterwards, after receiving the contributory Provident Fund accumulations, such employee should be deemed to have opted out of the new pension scheme. In case of an employee who was in service on the 31st March, 1981 and died afterwards without receiving the benefit of Contributory Provident Fund accumulations, the beneficiaries, who are entitled to receive the life-time arrears of pension, may be allowed to opt for the new rules if they so desire in lieu of the benefit, of the Contributory Provident Fund.”

10. The specific contention of the municipality was that option was not exercised by the appellant.
11. The appellant submits that such option was not necessary at all, as the 2003 Rules would be governing his service.

12. However, we find from page 99 of the paper book that a contrary stand was taken by the appellant. The appellant stated that he had exercised the option to come under the GPF as per Rule 8 of the notification of 1984 but, the said option form was lost.
13. By a letter dated December 13, 2012, the municipality had clarified the position that the appellant retired from the Budge Budge Municipality on February 29, 2012 after enjoying usual pay and allowances for the post of 'Watchman'. He never joined as 'Burial Ground Recorder' as there was no such post in the municipality. The municipality calculated all the retirement benefits on the basis of the post at the time of retirement.
14. The appellant was informed was also informed that the appellant had not submitted any option at appropriate time and was not entitled to any pensionary benefit, but the appellant was entitled to get the full amount of CPF and as per the ledger. The balance amount was also mentioned in the communication. Subsequently, after several rounds of litigation, the Government was asked to revisit the issue with regard to the re-designation. The re-designation was made effective from November 24, 2000 notionally and actually from January 1, 2013, i.e., after the retirement.

15. Accordingly, the municipality had also offered the excess amount of retirement benefit upon recalculating the gratuity for the re-designated post.
16. Under such circumstances, His Lordship has rightly held that in order to avail of pension under the 1984 notification, the appellant had to exercise option and the specific case of the municipality was that no such option was exercised. The Chairman of the municipality way back in 2012, had informed the appellant that the appellant would only get the entire CPF amount and gratuity, on account of non-exercise of option. The specific averment in the affidavit-in-opposition was that the Chairman of the municipality had issued a notice inviting option in 1985, thereby asking the employees to opt to come under the 1984 Rules. It is also a fact that an employee who opted to come under the 1984 Rules would have to surrender the share of the employer's contribution to the CPF. This exercise was not undertaken by the appellant.
17. The brief facts need to be discussed, which gave rise to the filing of the writ petition. The municipality had decided by a resolution dated February 9, 1989, that four posts of watchman (burial ground) be re-designated as burial ground recorders in the erstwhile scale of pay of Rs. 280-617 with effect from April 1, 1981. It was resolved that the State Government would be

moved for necessary approval for the creation of the four posts of burial ground recorder in the erstwhile scale of pay of Rs.280-617 with effect from April 1, 1981. The matter was sent to the finance department for consent. The finance department furnished a view on the matter and stated that the Municipal Affairs Department may obtain an undertaking/assurance from the municipality to the effect that the municipality would not require or ask for the post of watchman/chowkidar after his proposal was accepted by the government and the post of burial ground recorder was formally sanctioned which was to perform the duties of the watchman/chowkidar.

18. As the municipality did not take any steps with regard to such communication but requested the government to create two supernumerary post of burial ground watchman for the period between April 11, 1984 to June 30, 1990 and April 11, 1984 to November 7, 1996, a writ petition was filed. The writ was disposed of with the direction upon the authority to consider and dispose of the representation of the writ petitioner claiming salary and all benefits attached to the post of burial ground recorder with effect from April 1, 1981. Further request was made to the authority

to give the necessary undertaking as required by the finance department. Thereafter the Budge Budge municipality adopted a resolution on November 24, 2000 and gave the undertaking as was required by the government, i.e., no further post of watchman would be requested if the four posts of burial ground recorders were created. The government kept quiet. The appellant along with two others, moved another writ petition and a learned single judge directed the Director of Local Bodies to take an appropriate decision in the matter of granting approval for re-designation of the four posts as burial ground recorder at Budge Budge municipality after taking into consideration the written request of the said municipality.

19. The Director of Local Bodies rejected the claim of the appellant. Another writ petition was filed. The writ petition was disposed of and the Municipal authority was directed to release all retirement benefits in favour of the appellant within a period of four weeks from the date of communication of the order. The appellant made an application before the Chairperson Budge Budge municipality on November 28, 2011 prior to his retirement, and requested the authority to

release all benefits as well as pensionary benefits.

20. The chairperson issued a letter on January 27, 2012 inter alia stating that the appellant had not exercised option for pension under rule 8 of the pension rules within time and also that by an order dated September 5, 2012 passed in WP 11895 (W) of 2004, a single Judge of the High Court had passed the following order:-

“Accordingly, the Municipal authorities took a resolution on 24th November, 2000 but unfortunately, the resolution was not sent for approval before the Municipal Affairs Department which is the appropriate authority to consider and decide over the issue. The Municipal authorities sent the resolution before the Director of local bodies but he has nothing to do in this regard.

Therefore, I direct the Municipal authorities to send the resolution before the Deputy Secretary to the Government of West Bengal, Municipal Affairs Department and the concerned Deputy Secretary is directed to decide the matter specially when the Municipal body has taken a resolution and agreeable to give the undertaking as was mentioned in the Finance Department’s decision.

The concerned Deputy Secretary is directed to decide the matter within a period of ten weeks from the date of resolution and as well as undertaking by the Municipal authorities.

The Municipal authority is directed to release all retiral benefits in favour of the writ petitioner no.1 within a period of four weeks from the date of communication of this order.

The writ petition is, thus, disposed of. There would be no order as to costs.”

21. On the allegation of non-compliance, contempt application was filed and the learned single Judge disposed of the contempt application directing the municipality to pay the retirement benefits. Neither the order in the writ petition nor the order in the contempt application indicates that the retirement benefit was directed to be paid as per the 2003 rules.
22. All along the appellant was urging before the court that his pay should be fixed as per his re-designation in the post of burial ground recorder and the retirement benefit should be paid accordingly. The order dated September 17, 2013 disposing of the contempt application is quoted below:-

“Mr. Mukherjee, learned Counsel appearing for the alleged contemnor No.1/State submits that the order passed by this Court has already been complied with.

Accordingly, rule issued by this Court is discharged and it is recorded that the order is complied with.

So far the retirement dues are concerned, it should be paid by the concerned Municipal authority and the Municipal authority is to take appropriate step in this regard.

Contempt application is disposed of.”

23. The order dated September 10, 2013 is quoted below:-

“WHEREAS a proposal of Budge Budge Municipality, in the district of South 24 Parganas (hereinafter referred to as the said Municipality), for re-designation of

the post of 'Burial Ground Watchman' as 'Burial Ground Recorder' in the said Municipality was examined by this Department in consultation with the Finance Department of this Government, and Finance Department in this case observed the following:

"As such Municipal Affairs Department may obtain an undertaking/assurance from the municipality to the effect that the municipality will not require/ask for the posts of Watchman/Chowkidar after its proposal is accepted by Govt. and formally sanctioned and that the Burial Ground Recorder so sanctioned will also perform the duties of the Watchman/Chowkidar"

AND WHEREAS this Department, as per observation of Finance Department as mentioned above, requested the Director of Local Bodies to obtain an undertaking/assurance from the said Municipality to the effect that the Municipality will not require/ask for the post of Burial Ground Watchman/Chowkidar after its proposal is accepted by the Government and formally sanctioned, and that the 'Burial Ground Recorder' so sanctioned will also perform the duties of Watchman/Chowkidar;

AND WHEREAS the Board of Councillors of the said Municipality adopted a resolution on 24.11.2000, in this behalf, which was not sent to the State Government,

AND WHEREAS Sk. Golam Kibria, Burial Ground Watchman of the said Municipality preferred a writ petition before the Hon'ble High Court at Calcutta, vide W.P.No.11895 (W) of 2004 and Hon'ble High Court passed an order in W.P.No.11895 (W) of 2004 with CAN 1740 of 2007 on 05.09.2012, directing the Municipal authority to send the resolution before the Deputy Secretary, Municipal Affairs Department, and to release all retiral benefits to the petitioner, and the concerned Deputy Secretary was directed to decide the matter specifically when the Municipal body has taken a resolution and agreeable to give the undertaking as was

mentioned in the Finance Department's decision;

AND WHEREAS the Board of Councillors of the said Municipality adopted a Resolution on 24.11 2000 which has since been received by this Department vide their letter No 1465 dated 03.10.2012 and the undersigned has agreed to accept the relevant portion of the said resolution wherein it is resolved that the said municipality would not request the Government to create any post of Watchman in the Burial Ground, if the post of Burial Ground Recorder is created:

NOW, THEREFORE, in pursuance of the aforesaid Order of Hon'ble High Court, the Governor is pleased hereby in re-designated the post of 'Burial Ground Watchman' of the said Municipality, held by Sk. Golam Kibria as 'Burial Ground Recorder', with effect from 24.11.2000 and to direct that:

(a) the Financial Benefits for such redesignation shall be allowed notionally with effect from 24.11.2000, and actually with effect from the 1st January, 2013; and

(b) this redesignation, as per advise of Finance Department, shall be subject to condition that the Municipality will not require/ask for the posts of Watchman/Chowkidar after issuance of this Order and the Burial Ground Recorder so sanctioned will also perform the duties of the Watchman/Chowkidar;"

24. Under such circumstances, pursuant to the above order in the writ petition, the decision was taken on September 10, 2013. His Lordship had recorded compliance of the order dated September 5, 2012 by accepting the order dated September 10, 2013. No right was reserved to the appellant to challenge the order dated September 10, 2013. The notional benefit for the re-designation was granted from date when the Municipality had taken a decision not to ask for the post of Watchman, upon re-designation of

the same to Burial Ground Recorder. The actual benefit was given from the first month of the year when the decision was taken. Admittedly, the appellant did not discharge any duty as Burial Ground Operator, but was paid the retirement benefit as attached to the post.

25. Under such circumstances, the order impugned does not suffer from any irregularity. It is not that the appellant was deprived of the retirement benefits. The appellant was given the retirement benefits under the Notification of 1984 which were the applicable Death-cum-Retirement Benefit Rules 1984. Consequent upon the appellant not exercising option till the date of retirement.
26. Under such circumstances, the appeal stand dismissed.
27. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)