

27.06.2022
Item No.25
Court No.6.
AB

**M.A.T. 1700 of 2019
With
I A CAN 1 of 2021
I A CAN 2 of 2021**

**The Administrator,
Berhampore Municipality & Anr.
Vs
Biva Hazra @ Bibha Hazra & Ors.**

Mr. Arindam Das,
Ms. Rumeli Sarkar ...for the Appellants.

Mr. Probal Sarkar,
Ms. Sk. Kiranfor the Respondents.

Mr. Jahar Dutta,
Mr. Bipin Ghoshfor the State.

The issue involved in this case is of some importance. It pertains to payment of gratuity of employees of Municipalities who have retired.

The Municipality concerned says that it does not have sufficient funds to pay the gratuity amount. The State Government should pay.

The State Government, by referring to various provisions in the Constitution of India, the West Bengal Municipal Act, 1993, the Payment of Gratuity Act and the West Bengal Municipal (Employee's Death cum Retirement Benefits) Rules, 2003, says that the obligation to pay gratuity is that of the Municipality as the employer. By way of an internal arrangement, the

State is helping out the Municipality by paying 40% of the pensionary benefits payable to retired employees. However, what the State is doing is not because of any legal compulsion but only to help the Municipality. Beyond 40%, the State is not in a position to pay.

Here, we have a tricky situation. Prima facie, it appears that the obligation to pay gratuity is that of the Municipality. The Municipality says, it has no funds and it is absolutely impossible for it to pay the gratuity to the superannuating employees. The State says, it will not pay beyond 40%. The question is, who will pay? or, is it that the retired employees will have to go without receiving the gratuity amount.

Since this is a question of public importance, we request the learned Advocate General to assist us on the next date.

List the matter on 5.7.2022 at 2 p.m.

We record our deep appreciation of the assistance rendered to us by Mr. Sarwar Jahan whom we had appointed as amicus curiae.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)

