Court No. - 6

Case :- WRIT - C No. - 42764 of 2023

Petitioner :- Sahkari Ganna Vikas Samiti Ltd.
Respondent :- Sri Dilshad And 4 Others
Counsel for Petitioner :- Ravindra Singh
Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard Mr. Ravindra Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

The petition has been filed by the petitioner with the following prayer :-

"(I) Issue a writ order in the nature of certiorari quashing the ex-party order dated 05.03.2020, Recovery Certificate dated 30.07.2022, and the order dated 03.11.2023, passed by the Controlling Authority, under the provisions of Payment of Gratuity Act, 1972 and Assistant Labour Commissioner, Moradabad/Respondent No.2, in P.G.A. No.57/2019, and further citation dated 23.08.2023, issued by the Tahsildar Amroha/Respondent No.5 ***(Annexure No.1, 2, 3 and 4 respective to this petition)*** *and all the consequential proceedings taken in pursuance thereof.*

(II) Issue an order in the nature of mandamus commanding the respondent directing the respondents No.2 for deciding the Restoration Application filed by the petitioner on 26.09.2022, for recall of the ex-party order dated 05.03.2020, P.G.A. No.57/2019, within a time frame a specified by this Hon'ble Court.

(III) Issue an order in the nature of mandamus commanding the respondent to refund the amount of Rs.4,26,374/-, illegally recovered/realized from the petitioner alongwith interest to the petitioner.

....."

Learned counsel for the petitioner submits that against the ex-parte order dated 05.03.2020, the petitioner filed a restoration application dated 26.09.2022. The petitioner has already deposited the awarded amount which is evident from page no.43 to the writ petition. Without deciding the restoration application the authorities concerned have proceeded to pass

releasing order in favour of the claimants. He further submits that as the petitioner has already deposited the awarded amount and the restoration application is pending, there was no occasion for passing the releasing order as the same would amount to violation of principles of natural justice when once against the ex-parte order, the petitioner has already placed his contention for challenging the ex-parte order, therefore, opportunity should have been provided to him prior to releasing the amount in favour of the claimants.

Learned Standing Counsel could not dispute the aforesaid fact.

Considering the facts and circumstance of the case, without expressing any opinion on the merits of the case and in the interest of justice, this writ petition is finally **disposed off** with a direction to the respondent no.2-Controlling Authority to decide the restoration **application** of the petitioner, pending before him, in accordance with law, after giving opportunity of hearing to the parties concerned, by means of a reasoned and speaking order, preferably within a period of **one month,** from the date of production of certified copy of this order, if there is no legal impediment.

Till a period of two months the amount shall not be released pursuant to the order dated 03.11.2023.

Order Date :- 12.12.2023
Kalp Nath Singh

Digitally signed by :-
KALP NATH SINGH
High Court of Judicature at Allahabad