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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.654 OF 2020

Central Bank of India

...Petitioner

vs

Shyam Koli

...Respondent

.....

Mr. Lancy D'Souza, a/w. Ms. Deepika Agarwal, i/b. Mr. V.M. Parkar, for the Petitioner.

Mr. Bhavesh Parmar, a/w. Ms. Sonal Dayama, i/b. Mr. Devmani Shukla, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 26 FEBRUARY, 2020

P.C.:

. Heard learned Counsel for the parties.

2. This writ petition challenges an order passed by the Controlling Authority under Payment of Gratuity Act, 1972. The impugned order grants gratuity to the Respondent, who was an employee of the Petitioner bank. Gratuity was denied to the Respondent by the Petitioner on the ground that his employment ought to be treated as *non- est* or *void ab initio* from the very inception, since his caste certificate, on the basis of which he obtained the job, in the first place, was invalidated and the Respondent failed to get his caste status verified by the caste scrutiny committee as per the law laid down by the Supreme Court in **Food Corporation of India vs. Jagdish Balaram**

Bahira¹. The Controlling Authority has considered all the submissions and has passed an order accepting the Respondent's claim for gratuity. The main ground of challenge in the present petition is that the Controlling Authority had already made up its mind, since the same officer had referred the industrial dispute raised by the Respondent in respect of his termination on the same ground of invalidation of his caste certificate as a Conciliation Officer. It is pertinent to note that, firstly, the impugned order passed by the Controlling Authority is amenable to a challenge by way of an appeal and there is no reason why such appeal should not be termed as an efficacious alternative remedy. Secondly, and, at any rate, the ground of challenge that the authority had made up its mind, does not appear to have been raised before the Authority itself. On these facts, the petition does not merit countenance. The Petitioner may very well file an appeal and raise all grounds in challenge, which are spelt out in the present petition before the appellate authority. The writ petition, accordingly, is dismissed. It is, however, clarified that the period, during which the present petition was pending before this Court, should be treated as supporting a just and reasonable excuse not to approach the appellate authority and the appellate authority must condone the delay accordingly. It is also clarified that the above observations in respect of non-raising of challenge before the Controlling Authority on the ground that it had already made up its mind, are made with a view to decide this present petition. The appellate authority shall apply its mind to this submission as also other submissions made by the parties on their own merits and without being influenced by this order.

¹ (2017) 8 SCC 670

3. It is also clarified that in case the Petitioner herein deposits the amount of gratuity before the appellate authority, the recovery proceedings initiated against it presently, shall not be proceeded with, subject to the Petitioner filing an appropriate application in that behalf before the appellate authority.

(S.C. GUPTE, J.)

Smita
Gonsalves

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