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WPA 3 of 2021

FIS Payment Solutions and Services India Pvt. Ltd.
Vs.
The Assistant Labour Commissioner (Central)-II & Ors.

Mr. Soumya Majumdar
Mr. Jeevan Ballav Panda
Mr. Rishav Dutt
Mr. Soumalya Ganguli
Mr. Sourav Roy.
… for the petitioner.

Mr. R. Guha Thakurta.
… for the respondent no. 4.

Mr. Abhishek Banerjee
Mr. Joydip Banerjee
Ms. Parna Roy Chowdhury.
… for the respondent no. 5.

This matter relates to non-payment of gratuity to a workman/employee who worked under one agency which was a sub-contractor under the petitioner. For non-payment of gratuity the respondent no.3 i.e. the employee raised a dispute before the controlling authority under the Payment of Gratuity Act 1972 and after hearing all parties who are the opposite parties in the said application being the petitioner herein, the respondent nos. 4 and 5 herein, the Assistant Labour Commissioner (Central) and Controlling Authority under the Payment of Gratuity Act, 1972 passed an order on 6th January, 2020 (rectified on 21.09.2020) for payment of gratuity to the applicant. The amount along with simple interest @ Rs. 10% p.a. is Rs. 92,830/-. The petitioner herein, who was the opposite party no.1 in the said application before the controlling authority has filed this writ application instead of filing appeal against the order, as has been provided under Section 7 (7) of Payment of Gratuity Act, 1972.

The writ application has been affirmed on 30th December, 2020.

However, the learned advocate for the petitioner has placed two Supreme Court judgements, one reported in 2020 SCC on line SC 21 which discusses the alternative remedy and the power and jurisdiction of the High Court when there is an alternative remedy. The other judgement is 1980 (1) SCC 4 which speaks about the Gratuity Act. Referring paragraph 6 of this second judgement, the petitioner submits that it has been laid down by the Supreme Court that the provisions of Payment of Gratuity Act impliedly exclude recourse to any other statute for the purpose of recovery of gratuity. Submission is that the concept of the principal employer as has been defined in Contract Labour (Regulation and Abolition) Act, 1970 cannot be brought here which has been done by the Controlling Authority.

Considering the above two judgements, I do not find that any new law has been declared by the Supreme Court on the writ jurisdiction of a High Court saying that the writ court cannot deny exercising its writ jurisdiction even if there is an alternative remedy. In respect of the other question decided by the Supreme Court as to the importing of the concept of 'principal employer' in the Gratuity Act, I am of the view that this question also could have been referred in the appeal had an appeal been preferred by the writ petitioner under Section 7 (7) of Payment of Gratuity Act, 1972 which has not been done. I also do not extend the time to prefer such appeal, as the writ Court cannot do that.

The petitioner cannot raise the question of jurisdiction of the controlling authority as it has althroughout participated in the proceeding before the controlling authority. As the petitioner got ample opportunity of hearing before the said authority it cannot allege violation of principles of natural justice also. The petitioner has not challenged the order of the said authority on merit by preferring appeal.

I find no illegality in the decision making process.

The writ court is not an alternative forum of the appellate authority as has been provided in the statute aforesaid. Therefore, I decline to exercise my jurisdiction and dismiss the writ application.

However, I observe that if the petitioner thinks that it is not liable to pay the amount of gratuity to be paid to the employee as directed by the Controlling Authority it shall have the liberty to recover the said amount from the respondent no.4 either by way of mediation or by proceeding against respondent no.4 in accordance with law.

For the legal battle between the contractor and the sub-contractor as to who is really liable to pay the money the employee cannot be kept deprived of his right to get the gratuity when there is no dispute that the employee is entitled to get it under the law.

Here the petitioner has taken a further point that the Controlling Authority has issued one corrigendum dated 21.09.2020 to its order, which was originally passed on 6th January, 2020. By this corrigendum, instead of M/s. Visual Securas Limited the name of FIS Payment Solutions and Services India

Pvt. Ltd. is put in the corrigendum making FIS liable to pay the amount towards gratuity. The objection is whether by way of corrigendum the liability of one as was mentioned in the order dated 6th January, 2020 can be fastened on another entity being FIS.

After considering the submissions and the order passed by the Controlling Authority, which is from pages 79 to 82 of the writ application I find that this is only correction of typographical error when the tenor of the order dated 06.01.2020 is kept it in mind and by this change of name, no illegality or irregularity has been caused by the Controlling Authority for which Writ Court can interfere. Apart from this the petitioner has also understood that the liability to pay the gratuity has fastened to it by the order dated 06.01.2020 and the whole writ application is based on such understanding of the petitioner. However, it is noted that the petitioner has not preferred any appeal in this matter including the change of name in the corrigendum dated 21st day of September, 2020.

With the above observation, the writ application is dismissed without any order as to costs.

(Abhijit Gangopadhyay, J.)