

23.02.2021
Court No. 19
Item No.22
CP

C.O. 360 of 2021

National Jute Manufactures Corporation Ltd.
vs.
Kundal Mohan Goswami

Mr. Soumik Ghosh
Mr. Karuna Bose

.....for the petitioner.

Mr. Devajyoti Barman
Ms. Sanjukta Basu Mallick

....for the opposite party.

This revisional application has been filed challenging an order dated October 17, 2019, passed by the learned Assistant Labour Commissioner (Central) Kolkata and the Controlling Authority under the Payment of Gratuity Act, 1972.

The petitioner is aggrieved because the learned authority failed to take into consideration the fact that gratuity during the period the opposite party was not working having suffered a retrenchment, could not be taken into consideration for payment of gratuity, as the question of payment of gratuity during the said period when the opposite party was out of service did not arise. According to the petitioner, the learned authority failed to take into consideration the facts which were submitted by the management of the company with regard to entitlement of the opposite party to get gratuity for

the period after January 18, 2010 upto the date of superannuation.

Mr. Barman, learned advocate appearing on behalf of the opposite party, submits that the order impugned is an appealable order. He further submits that the retrenchment was set aside by an award of the Central Government Industrial Tribunal dated December 2, 2020. It appears that the learned Industrial Tribunal directed payment of Rs.400,000/- as lumpsum compensation instead of ordering reinstatement with backwages. It is submitted by Mr. Barman that once the retrenchment has been set aside by an appropriate court the question of non-payment of gratuity during the period when the opposite party would have been in service but for the illegal retrenchment was contrary to law and also contrary to the award.

Interference of this court in exercise of power under Article 227 of the Constitution of India is called for in view of the fact that the authority while deciding the issue ought to have taken into account the relevant documents related to the case pending before the learned Industrial Tribunal while deciding the issue and also the rival contentions of the parties. The order suffers from non-application of mind.

However, the learned authority failed to take into consideration certain factual aspects and also failed to take into consideration the contentions of the management of the company with regard to the pending proceeding in the learned Industrial Tribunal. Now that the award of the learned Industrial Tribunal has been passed, the same will be a relevant consideration.

The order impugned is quashed.

The parties are at liberty to approach the learned Assistant Labour Commissioner (Central) Kolkata with additional documents and pleadings in their respective favour which are necessary for adjudication of the matter. The learned Assistant Labour Commissioner will consider the matter afresh on the basis of the documents as also the award. The order impugned is set aside only because it lacks appreciation of facts and evidence and the reasons assigned are not clear and unequivocal. The Assistant Labour Commissioner shall hear out and dispose of the matter in accordance with law within a period of two months from the date of communication of this order.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as

possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)