

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 12010 of 2021

**Santosh Pathak
Vs.
The State of West Bengal & Ors.**

For the Petitioner: Ms. Senjuti Sengupta, Adv.
Mr. R. Guha Thakurta, Adv.,

For the State: Mr. Manas Kundu, Adv.
Mr. Debabrata Mondal, Adv.,

For the Respondent No. 3: Mr. Susovan Sengupta, Adv.
Mr. Bipin Ghosh, Adv.,

Hearing concluded on: 24.09.2021

Date: 08-10-2021

SUVRA GHOSH, J. :-

1. The petitioner's grievance is that he has been deprived of payment of gratuity to which he is entitled on superannuation.
2. The petitioner who was an employee under respondent no. 5 superannuated on 28th November, 2013 and was entitled to receipt of the gratuity amount as per provision laid down under section 7(3) of the Payment of Gratuity Act, 1972. Despite such specific provision, no gratuity was paid to him for which he filed an application before the Controlling Authority (respondent no. 2) which was registered as case no.

86/15/G/HOW and was disposed of on November 19, 2018. Despite specific directions by the said order upon respondent no. 5 for payment of gratuity to the tune of Rs. 3,29,928/- to the petitioner along with admissible interest, the employer/respondent no. 5 failed and neglected to disburse such amount for which the Controlling Authority issued requisition for a certificate under section 8 of the Act of 1972 to the Collector and District Magistrate, Howrah (respondent no. 3) for recovery of the amount.

3. The petitioner submits that instead of taking steps for recovery of the amount under section 8 of the Act, the Certificate Officer (respondent no. 4) pointed out certain defects in the requisition and sent back the same to the Controlling Authority for rectification. The Certificate Officer observed in his order dated 21-08-2019 that all the documents showing service of notice upon the employer were photocopies of the original document and therefore could not be taken into consideration. The Controlling Authority furnished a reply to the said letter of the Certificate Officer on 16-09-2019 wherein he placed reliance on section 8 of the Act of 1972 and stated that the "the duty and power of the Hon'ble Collector are just restricted to recover and pay the amount mentioned in the certificate issued by the Controlling Authority along with compound interest, as arrears of land revenue, and not beyond that." In reply to the said letter, the Certificate Officer, vide order dated 21-10-2019, expressed his dissatisfaction with the requisition and rejected the same.

4. Being aggrieved by such rejection the petitioner has come up before this court praying for issuance of a writ in the nature of mandamus for recalling/setting aside the impugned order passed by the Certificate Officer and also writ in the nature of certiorari, calling upon respondent no. 4 to execute the certificate dated 2nd April, 2019.
5. It is submitted on behalf of the petitioner that in view of section 8 of the Act of 1972, the duty of the Certificate Officer is only to execute the Certificate issued by the Controlling Authority for recovery of the amount as arrears of land revenue, together with compound interest thereon. It is beyond the jurisdiction of the Certificate Officer to question the legality, validity or correctness of the certificate issued by the Controlling Authority. The Act of 1972 is a self contained Code and provides for determination of the amount of gratuity. Though section 8 of the Act provides for recovery of the gratuity “as arrears of land revenue” which is dealt with in paragraph 3 of Schedule- I of the Act of 1913, the provision of the entire Act is not applicable to the 1972 Act. Moreover, the reply sent to the Certificate Officer by the Controlling Authority which is annexure P-3 to the writ petition deals with proof of service of Form-R upon the employer. Referring to the reply sent to the Certificate Officer on 16-09-2019, learned advocate points out that nine or more employees listed in the said reply have been granted their dues either in compliance with court orders or otherwise. The other employees in the list stand on the same footing and deserve similar consideration. Learned advocate has placed reliance on a judgment of the Hon’ble Supreme Court of India in Jaswant Singh Gill v/s. Bharat Coking

Coal Limited and others reported in 2007 (11) LLJ 206 and judgments of coordinate benches of this court in Murlidhar Ratanlal Exports Limited v/s. State of West Bengal and others in 2014 (2) LLJ 74 and Raghunath Manjhi v/s. The State of West Bengal and Others in W.P.A. 4105 of 2021 in support of his contention.

6. Per contra, learned counsel for the respondents submits that after issuance of the certificate by the Competent Authority, the Bengal Public Demands Recovery Act, 1913 comes into play as there is no provision for execution of the certificate in the Act of 1972. The Certificate Officer who is deemed to be a Court under section 57 of the Act of 1913 is well within his jurisdiction to question the requisition issued by the Controlling Authority.
7. Learned counsel has drawn the attention of the court to the definition of “Certificate Officer” in section 2 (3) of the 1913 Act. He has referred to section 5 and section 6 of the Act and has submitted that on receipt of a requisition in respect of any public demand payable to any person other than the Collector, the Certificate Officer, upon satisfaction that the demand is recoverable, shall cause the Certificate to be filed in his office. In other words, the Certificate Officer does not act like a mere post office and has the discretion to satisfy himself regarding the recovery of the demand in question. Learned counsel further states that in view of the provision laid down under section 37 of the Act of 1913, a question arising between the certificate-holder and the certificate-debtor regarding making, execution, discharge or satisfaction of a certificate shall be determined not by suit but by order of the Certificate Officer before whom such question arises. He has

also taken the court to section 51 of the 1913 Act which provides for an appeal against an order made by a Certificate Officer. It is submitted that petitioner should approach the District Magistrate under section 51 of the Act for redressal of his grievance.

8. Respondent no. 5 who is the certificate-debtor has supported the submission made on behalf of the Certificate Officer.

9. Section 8 of the Payment of Gratuity Act, 1972 reads as follows:-

“If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereto;”.

10. True, there being no provision for execution of a certificate under the Act of 1972, such execution is governed by section 14 of the Act of 1913. Section 14 of the 1913 Act is reproduced:-

“14. Modes of execution. – Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of the certificate-

(a) by attachment and sale, or by sale (without previous attachment), of any property, or

(b) by attachment of any decree, or

(c) by arresting the certificate-debtor and detaining him in the civil prison, or

(d) by any two or all of the methods mentioned in clauses (a), (b) and (c).”

11. There is no quarrel with the proposition that when a written requisition is sent to the Certificate Officer for any public demand which is due under the 1913 Act, the Certificate Officer, upon satisfaction that the demand is recoverable, may sign the Certificate (sections 5 and 6 of the 1913 Act). Section 51 of the Act states that an appeal lies against an order passed by the Certificate Officer under the Act of 1913.

12. In the instant case, the petitioner filed an application before respondent no. 2 for payment of gratuity under section 7 (3) of the Payment of Gratuity Act, 1972 and the order of the Controlling Authority disposing of the prayer of the petitioner on 19-11-2018 recites in clear and unambiguous language that notice for appearance before the Controlling Authority in Form – ‘O’ was served upon respondent no. 5 and several opportunities were granted

to the said respondent to appear before the Controlling Authority and contest the application despite which respondent no. 5 failed and neglected to appear before the authority even on a single occasion for which the application was decided ex-parte by the Controlling Authority in favour of the petitioner on merits. The documents on record further reveal that notice for payment of gratuity in Form – 'R' was served upon the fifth respondent who did not care to comply with the same following which the Controlling Authority sent a requisition for a certificate to the Collector and District Magistrate, Howrah (respondent no. 3) for recovery of the gratuity amount under section 8 of the Act of 1972. Respondent no. 3 delegated the said power to respondent no. 4 as appears from the record. The entire exercise is governed by the Payment of Gratuity Act, 1972 and the Controlling Authority, in exercise of its jurisdiction under the said Act, dealt with the application filed by the petitioner on merit and disposed of the same by a speaking order which remains unchallenged till date.

13. Section 8 of the 1972 Act provides for recovery of the gratuity amount decided by the Controlling Authority under the 1972 Act, by the Certificate Officer. The authority of the Certificate Officer, in this case, is confined to recovery of gratuity in execution of the certificate and nothing more. Fresh adjudication by the Certificate Officer on merit of the application including satisfaction regarding service of notice upon the certificate-debtor would mean reopening the entire case and the Certificate Officer sitting in appeal over the order of the Controlling Authority passed under the 1972 Act. Revisiting the entire claim of the petitioner on any ground whatsoever by

the Certificate Officer at the stage of recovery of gratuity amount under section 8 of the Act of 1972 is not enjoined in law. Section 14 of the Bengal Public Demands Recovery Act, 1913 can be invoked only for the purpose of recovery of gratuity by executing the certificate under section 8 of the 1972 Act as there is no provision for such recovery under the said Act. Merely because the gratuity amount should be recovered as arrears of land revenue as defined under the Act of 1913, the provisions of the Act of 1913 except section 14 can under no stretch of imagination be said to be applicable in this case. No provision under the Act of 1972 empowers the Certificate Officer to express any reservation with regard to the contents of the certificate issued by the Controlling Authority and his authority is confined to execution of the same under section 14 of the 1913 Act. The Payment of Gratuity Act, 1972 is a self contained Code and special enactment subsequent to the Act of 2013. Section 14 of the Act is set out:

“14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

14. In view of the overriding provision of this Act, extension of the Act of 1913 to re-agitate the issue of payment of gratuity which is settled under section 7 of the 1972 Act is not enjoined in law and the same would amount to repetition of the entire process leading to further harassment and

deprivation of the employee whose case has already been decided under the 1972 Act. This proposition is declared in the judgments relied upon by the petitioner.

15. It is also not in dispute that nine or more employees listed in the reply sent to the Certificate Officer on 16-09-2019 have been granted their dues either in compliance with court orders or otherwise. The petitioner is similarly placed with the said employees and there is no reason why he shall be deprived of the same benefit.

16. In view of the above observations, the order passed by the Certificate Officer (respondent no. 4) on 21-08-2019 and 21-10-2019 are quashed/set aside.

17. Respondent no. 4 is directed to execute the certificate sent to him by a requisition dated 02-04-2019 and recover the gratuity decided by the Controlling Authority along with simple interest and compound interest thereon from respondent no. 5 within a period of four weeks from the date of communication of this judgment.

18. W.P.A. 12010 of 2021 is allowed accordingly.

19. There shall however be no order as to costs.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)