

September 27, 2021

ARDR

(89)

WPA 11999 of 2021

Kamal Krishna Bose

Vs.

The State of West Bengal & Ors.

Mr. Rananeesh Guha Thakurata,

...for the petitioner.

Ms. Amrita Pandey,

Mr. Anamika Pandey,

...for the private respondent.

Mr. Susovan Sengupta,

Mr. Bipin Ghosh,

...for the respondent nos. 3 and 4.

The petitioner's grievance is that he superannuated under service from the 5th respondent on March, 21, 2013 and was entitled to gratuity for the period of his continuous service. Due to non-payment of such gratuity by the private respondent, an application for recovery of gratuity was filed before the 2nd respondent which was disposed of by issuance of a certificate under Section 8 of the Act of 1972 on 23rd March, 2020 and sent to the 3rd respondent for recovery. No effective steps being taken by the certificate officer for execution of the certificate, a writ petition under Article 226 of the Constitution of India being WPA 11758 of 2020 was filed by the petitioner wherein an interlocutory order was passed on 18th January, 2021. Being aggrieved by the said order, the respondent no.4 in the said writ petition preferred an intra-court appeal which was disposed of by an order

dated 21st January, 2021 whereby the appeal as well as the writ petition was disposed of with a direction upon the certificate officer to deal with the questions regarding payment, settlement of gratuity dues under the terms of settlement, claim for compound interest etc. and pass a reasoned order within a stipulated period of time. In compliance with the said direction, the certificate officer disposed of the application by an order dated 3rd March, 2021 with a direction upon the respondent no. 5 to pay the amount of Rs.1,27,756/- as compound interest to Sri Kamal Krishna Bose within two weeks from the date of communication of this order.

The petitioner, in the present writ petition, has prayed for a direction upon the respondent no.4 for execution of the said order within a specified period.

Learned counsel for the State respondents concede to the submissions of the petitioner and submits that such direction be given to the certificate officer for execution of the order dated 3rd March, 2021.

At this juncture, learned counsel for the respondent no.5 submits that being aggrieved by the order of the certificate officer dated 3rd March, 2021 this respondent preferred a civil revision before a coordinate Bench of this Court, being C.O. 741 of 2021 in March, 2021. Learned counsel submits that as the

said civil revision challenging the order impugned, is subjudice, this Court, in exercise of its writ jurisdiction, cannot direct execution of the said order.

In reply, learned counsel for the petitioner submits that no order of stay has been granted by the learned revisional court and this Court, in its constitutional jurisdiction under Article 226 of the Constitution, is not debarred from dealing with the writ petition merely on the ground of pendency of the civil revision. He further submits that the civil revision is not maintainable.

It is also submitted by the State respondents that as the impugned order has not been stayed by the revisional Court, there is no bar in proceeding with the present writ petition.

Admittedly, a civil revision is pending before a coordinate Bench of this Court challenging the order of the certificate officer dated 3rd March, 2021. It also appears that copy of the revisional application was served upon the petitioner and the certificate officer on 29th July, 2021.

As the order impugned has been challenged before a regular statutory forum, this Court, in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution, cannot and shall not enter into the merits of the case or direct execution of the order which is under challenge before the coordinate

Bench. The petitioner shall be at liberty to challenge the maintainability of the revisional application before the appropriate Bench and also place his case before the said forum.

In view of the same, WPA 11999 is disposed of. However, there shall be no order as to costs.

Since no affidavit in opposition is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties on usual undertakings.

(Suvra Ghosh, J.)