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21.12.2021
Ct. No.10
b.das

W.P.A. 17711 of 2021

(Via Video Conference)

Arabinda Sardar
Vs.
State of W.B. & Ors.

Mr. R. Guha Thakurta
...for the petitioner.

Mr. S. Sengupta
Mr. B. Ghosh ...for the State.

Mr. Soumya Majumdar
Ms. Amrita Pandey
Ms. A. Pandey ...for the respondent No.3.

Heard learned counsels for the parties.

Under challenge in this writ petition is an order dated 5th October, 2021 passed by the Controlling Authority in disposing of an application filed by the petitioner for payment of gratuity. The petitioner was an employee under the 3rd respondent and superannuated from service on 31st March, 2013. No gratuity was paid to him in terms of Section 7(2) and 7 (3) of the Payment of Gratuity Act, 1972. The petitioner filed an application claiming gratuity before the 3rd respondent on 30th December, 2019, following which he filed the application before the Controlling Authority in Form-N on 7th April,

2021 praying for condonation of delay in filing the application and payment of gratuity.

By the impugned order, the Controlling Authority rejected the prayer of the petitioner with an observation that reasonable explanation for delay in filing the application within the stipulated period of time was not given by the petitioner and as such the application in Form- N as well as petition for condonation of delay was rejected as not maintainable.

The petitioner has taken the Court to Rule 7(5) of the West Bengal Payment of Gratuity Rules, 1973 and has submitted that in view of such Rules, the application for payment of gratuity can be entertained by the employer even when filed beyond the stipulated period of time.

The petitioner has prayed for setting aside the order impugned and a direction upon the Controlling Authority to consider his application on merits.

Referring to Section 7(7) of the Payment of Gratuity Act, 1972, it is submitted on behalf of the respondents that in view of the said provision of law, the petitioner has his alternative efficacious remedy before the appellate forum and the writ court cannot entertain such prayer.

Section 7(4)(a) of the Act of 1972 envisages that in case of any dispute as to the admissibility of any claim of gratuity, if the petitioner is aggrieved by an order under sub-section (4), he has the liberty to prefer an appeal before the appellate forum against the said order. In other

words, the petitioner has his remedy before the appellate forum.

In view of the above, the writ petition being WPA 17711 of 2021 is disposed of with liberty to the petitioner to prefer statutory appeal before the appropriate forum against the order impugned within a fortnight from date. The appellate forum shall consider the case of the petitioner on merits after giving reasonable opportunity of hearing to the concerned parties and dispose of the appeal by a speaking order within three months from the date of filing of the appeal.

However, there shall be no order as to costs.

Since no affidavit 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 supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)