

189
20.12.2021
Ct. No.10
b.das

W.P.A. 18878 of 2021

(Via Video Conference)

M/s. Southern Cooling Towers Pvt. Ltd.
Vs.
State of W.B. & Ors.

Mr. Victor Chatterjee
Mr. B. Basak

...for the petitioner.

Mr. T. M. Siddiqui

...for the State.

Mr. Salil Mukherjee

...for the private respondent.

Heard learned counsels for the parties.

It is submitted on behalf of the petitioner that the 3rd respondent was an employee under the petitioner and resigned from the company on 22nd November, 2016. The said respondent/employee withdrew an amount of Rs.2,33,654/- on account of gratuity on 14th December, 2016.

The employee applied for payment of wages in Form-N before the company on 16th December, 2019. Such application was taken up for consideration by the Referee under the West Bengal Shops and Establishments Act, 1963, who issued notice of hearing to both the parties.

Learned counsel for the petitioner submits that the annexures to Form-N were not supplied to him despite several requests and the said annexures were handed up to him only on 28th September, 2021. On the same date, the petitioner's prayer for filing written statement in the proceeding was rejected by the Referee who fixed a further date for evidence of the parties.

The petitioner has prayed for a direction upon the Referee to allow him to file written statement in the proceeding so that the matter can be disposed of on merits after an opportunity of hearing is granted to both the parties.

Learned counsel further submits that it was subsequently learnt that the petitioner was guilty of defalcation of huge amount of money from the company and a criminal proceeding in this regard is pending. The petitioner prays for stay of further proceedings before the Referee till the criminal proceeding is disposed of.

Learned counsel for the 3rd respondent takes this Court to several orders of the Referee which demonstrate that the petitioner failed to file written statement despite being given several opportunities. Moreover, the petitioner submitted before the Referee that he did not raise any dispute regarding claim of the applicant and only wanted sometime to calculate the exact amount of the claim and also that he was not unwilling to pay any legitimate claim of the appellant.

Learned counsel has candidly submitted that he has no objection if the petitioner is allowed to file written statement in the proceeding and the proceeding may be disposed of on merits.

Upon consideration of the submissions made on behalf of the parties as well as the material on record, this Court is of the view that the petitioner may be allowed to submit written statement before the authority in order to set out his case before the authority so that the authority is in a position to adjudicate the matter after taking into consideration the case of the respective parties.

Accordingly, the order dated 28th September, 2021 is set aside. The petitioner is at liberty to file written statement before the Referee within a period of two weeks from date. The Referee shall consider the case made out by the parties and pass a reasoned order on merits.

As the records reveal that the petitioner failed to submit written statement despite being given several opportunities, the directions stated above is peremptory and in the event of the failure of the petitioner to submit the written statement within the stipulated time, the matter shall be heard and disposed of without granting any further opportunity to the petitioner.

It is made clear that this Court has not gone into the merits of the case and the authority shall be at liberty to consider and dispose of the proceeding on merits in accordance with law.

With the above observations and directions this writ petition WPA 18878 of 2021 is disposed of.

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.)