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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 521 of 2020

Bhuneshwar Munda
Vs.
Union of India & Ors.

Mr. Shaunak Ghosh,
Mr. Rajib Mullick,
Mr. Rakesh Sarkar
... For the petitioner.

Mr. S. M. Obaidullah,
Mr. Pradipta Bose
Mr. N. Banerjee
... For BCCL.

Mr. Kallol Guha Thakurta
... For the respondent no.5

The present writ application has been filed *inter alia* praying for disbursal of the retiral dues of the petitioner. The petitioner claims to have been engaged as an underground loader with Bharat Coking Coal Limited (in short, BCCL), being the respondent no.10. On 12th of December, 2011, a notice of retirement was issued by BCCL. The petitioner retired from services with effect from 30th April, 2012. Despite his retirement, since the respondents did not make payment of the retiral dues, *inter alia*, including the gratuity amount due and payable to the petitioner, the petitioner had filed an application in Form 'N' before the Controlling Authority under The Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act).

By an order dated 28th December, 2016, the

Controlling Authority directed BCCL to make payment of the gratuity payable to the petitioner together with simple interest at the rate of 10 per cent per annum. Consequent upon passing of the aforesaid order and having unsuccessfully challenged the same in appeal, BCCL has since settled the gratuity amount payable in favour of the petitioner. Although gratuity amount was disbursed in favour of the petitioner, the provident fund dues, the pensionary benefits and other retiral dues were not released. This prompted the petitioner to make repeated representations. Representations having not yielded any result, the present writ application has been filed.

Mr. Ghosh, learned advocate representing the petitioner submits that the respondents are obliged to disburse the provident fund dues, the pensionary benefits and other retiral dues in favour of the petitioner. Unfortunately, the respondents by, *inter alia*, contending that there is an adverse report against the petitioner, has not disbursed the same. Drawing attention of this Court to a report dated 26th September, 2014, issued by the District Magistrate, being the respondent no.9, it is submitted that the respondents by relying on the aforesaid report, denied the legitimate dues payable to the petitioner. Mr. Ghosh submits that there is no basis for the aforesaid report. The petitioner was never given any opportunity of hearing by the respondent no.9 prior to

preparing the aforesaid report. The report is perverse, does not disclose cogent reasons for arriving at the findings. Mr. Ghosh, by drawing attention of this Court to a letter dated 30th August, 2017 issued by BCCL, annexed to the affidavit of the respondent no.5, submits that BCCL had duly forwarded all documents as are required for disbursal of the provident fund dues and the pensionary benefits, to the Regional Provident Fund Commissioner, Coal Mines Provident Fund (in short, CMPF) Dhanbad. In such letter it was also *inter alia* clarified that the appeal challenging the direction issued by the Competent Authority under the said Act, directing payment of gratuity had been rejected. It is submitted that one of the members of the union, for the purpose of prejudicing the petitioner, by a communication in writing dated 27th April, 2012 had alleged the petitioner to be an imposter. Pursuant to the aforesaid complaint made by and on behalf of the union, the matter was enquired into by his employer. Such enquiry revealed that there was nothing adverse against the petitioner and that in course of police verification the petitioner had been able to establish his identity (hereinafter after referred to as the police verification report). Mr. Ghosh, once again by referring to the letter dated 30th August, 2017 issued by BCCL addressed to the Regional Provident Fund Commissioner, CMPF, submits that aforesaid police verification report was also forwarded to the CMPF Authorities.

Unfortunately, the respondent no.5, despite receipt of such letter, is sitting tight over the matter. It is submitted that the contrary report of the respondent no.9 dated 26th September, 2014 cannot stand in the way of the writ petitioner getting his retiral dues. The same is perverse, had been prepared without giving an opportunity of hearing to the petitioner and prejudicially affects the petitioner, should be set aside and quashed and the respondents should be directed to disburse the pensionary benefits, the provident fund dues and other retiral dues, as are payable to the petitioner forthwith.

Per contra, Mr. Obaidullah, learned advocate representing BCCL, the employer, submits that although initially a complaint was lodged against the petitioner, on the basis whereof an enquiry was initiated, however, subsequently such complaint was withdrawn. He, however, submits that since the writ petitioner was illegally holding onto the quarters of BCCL, an amount of Rs.84,900/- is due and payable on account of unauthorized occupation charges for the period from 1st May, 2012 to 28th November, 2017. He further submits that nothing further remains to be done on the part of BCCL, insofar as payment of pensionary benefits and provident fund dues are concerned, as by letter dated 30th August, 2017 all documents have been forwarded to the CMPF Authorities for disbursement of provident fund

accumulations and pensionary benefits to the petitioner.

Mr. Guha Thakurata, learned advocate representing the respondent no.5, submits that the respondent no.5 is not interested to deny legal entitlement of any person towards payment of provident fund or pensionary benefits. He says that in the writ petitioner's case, BCCL had forwarded a report dated 26th September, 2014 issued by the respondent no.9, which has given rise to the delay in disbursement of benefits. He says that the writ petitioner had never approached the CMPF Authorities. If the writ petitioner approaches CMPF Authorities with all documents and establishes his identity, there cannot be any dispute with regard to the disbursement of the benefits in his favour.

I have heard the submissions made by the learned advocates appearing for the respective parties and considered the materials on record. I find, in the instant case, BCCL had issued the notice of retirement. Such notice of retirement also bears a photograph of Bhuneshwar Munda, the petitioner. I find that BCCL has never questioned such documents. Mr. Obaidullah, learned advocate also could not dispute such document as the same has been issued by BCCL. Admittedly by an order dated 28th December, 2016 the Controlling Authority under the said Act had directed disbursement of gratuity amount in favour of the petitioner. The challenge

to the aforesaid order having not succeeded, such amount has already been disbursed in favour of the petitioner. There lies, little room for doubt, as regards the identity of the petitioner. It would also appear from the letter dated 30th August, 2017 issued by BCCL that on the basis of the enquiry and police verification conducted by them, nothing adverse was found against the petitioner and it is recorded therein that the identity of the person had been established during police investigation. The said letter, however, also encloses another report issued by the respondent no.9 dated 26th September, 2014 which creates the confusion. As would appear from such report the same had been prepared on the basis of confidential information obtained from villagers. Report does not show that any attempt was made to examine the petitioner during such investigation. Notwithstanding the aforesaid report, BCCL has already disbursed the gratuity payable to the petitioner on the basis of the directions issued by the Controlling Authority under the said Act. I am of the view that the aforesaid report dated 26th September, 2014 issued by the respondent no.9 cannot stand in the way of the writ petitioner's entitlements. From the submissions made by the learned advocate representing the respondent no.5, it would appear that the respondent no.5 is not interested to withhold the lawful dues of the writ petitioner. It is only for the report dated 26th September, 2014 that the respondent no.5 had held back the payment

of provident fund accumulations and the pensionary benefits. Admittedly the petitioner's employer has accepted the petitioner to be Bhuneshwar Munda and has disbursed the gratuity in his favour.

In such circumstances, I direct the respondent no.5 to release the provident fund accumulations and the pensionary benefits as are payable to the petitioner forthwith, within a period of six weeks from the date of communication of the order, subject to the petitioner producing his undisputed photo identity card/notice of retirement bearing his photograph, issued by BCCL, without insisting for any other document/no claim certificate from BCCL.

The petitioner is personally present in Court and undertakes to pay a sum of Rs.84900/- on account of unauthorized occupation charges for the period 1st of May 2012 to 28th November, 2017 to BCCL.

Subject to payment of the aforesaid amount by the petitioner, the respondent no.4, shall make payment of all admitted dues of the petitioner, including the leave encashment, if any, in accordance with law.

With the aforesaid observations and directions the writ petition, being WPA 521 of 2020 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)