

S/L 1
02.09.2022
Court. No. 550
suwayan

WPA 2837 of 2022

Esa Begum
Vs.
The State of West Bengal & Ors.

Mr. Uddipan Banerjee

...for the Petitioner.

Ms. Amrita Pandey

...for the Respondent No.3.

Despite notice the State is not represented.

The present writ petition has been filed, *inter alia*, praying for a direction upon the respondent no. 2 being the Deputy Labour Commissioner, Howrah to complete the proceedings being G-29/21/DLC/HOW which is pending before the said respondent.

Mr. Banerjee, learned Counsel appearing for the petitioner in support of the aforesaid application submits that the petitioner is the widow of the Samsuddin Ansari who was gainfully employed with the respondent no.3.

According to the petitioner, her husband was an employee enrolled under the Employees State Insurance Act, 1948 having No.4917948. Her husband had died in course of employment on 9th September, 2006.

Mr. Banerjee submits that despite approaching the respondent no 3 the gratuity amount was not released in her favour. The writ petitioner had applied in Form J on August 10, 2022 by addressing the same to the respondent No. 3 and

requesting them to pay the gratuity amount of Rs.93244/-. Since despite receipt of the aforesaid application no steps were taken by the respondent No. 3 an application was filed before the appropriate authority being the respondent No.2 on 25th November, 2020 in Form 'N'. The petitioner seeks expeditious disposal of the aforesaid application.

Per contra, Ms. Pandey, learned Counsel representing the respondent No. 3 submits that this Hon'ble Court by an order dated 18th May, 2022 permitted the respondent No. 3 to file a report in the form of an affidavit. Pursuant to the aforesaid leave the respondent No. 3 has filed a report in the form of an affidavit. According to the Mr. Pandey, the writ petitioner and the wife of the deceased employee are not one and the same person. They are different identities. Drawing attention of this Court to page No. 7 of the report, she submits that the deceased employee while in employment had filled up a declaration and a nomination form under the Employees Provident Fund and Employees' Pension Scheme. In such *declaration* the name of the nominee is "*Aysa bibi*" who had also been shown as the wife of the employee.

Ms. Pandey referring to the death certificate which is at page No. 11 of the aforesaid report, further submits that it would be apparent from the same that the employee concerned had died at "*Gram Pasor, Post Office – Pasor, District – Bhojpur, Bihar*", while the document captioned "Death Certificate" issued by the insurance medical officer of the Employees' State Insurance

Corporation shows that the concerned employee had died at his residence at Howrah.

Ms. Pandey submits that there are other disputes in connections with the disclosure made by the writ petitioner. The date of joining of the husband of the writ petitioner as disclosed by the writ petitioner in the writ petition does not tally with the records of the management. That disputed questions of fact are involved and the present writ application should not be entertained by this Court. While referring to Rule 7 of the West Bengal Payment of Gratuity Rules, 1973, it is submitted, that the application filed by the petitioner for releasing the gratuity amount is barred by delay and no amount of gratuity is payable. The writ petitioner has not filed any application praying for condonation of delay. Unless sufficient cause is shown and the delay is condoned there is no question of payment of gratuity. Question of territorial jurisdiction of the respondent No. 2 to entertain the application has also been raised.

Heard the Advocate for the respective parties.
Considered the materials on record.

I am of view that all such issues as raised by Ms. Pandey, can be decided by the respondent No. 2. As such, it is not necessary for this Court to go into the issues raised by Ms. Pandey. The present writ application is thus disposed of with the direction upon respondent No. 2 to expeditiously considered and dispose of the petitioner's application being G-29/21/DLC/HOW within a period of two months from

date upon giving opportunity of hearing to both the parties, without being influenced by any of the observations made herein.

It is made clear that this Court has not gone into merits of the claim made by the petitioner or with regard to the objections raised by the respondent no.3.

In view of the above, the present writ petition being WPA 2837 of 2022 stands disposed of.

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

Urgent Photostat certified copy of this order, if applied for, be made over to the parties on urgent basis.

(Raja Basu Chowdhury, J.)