

Item No.8.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 22.08.2022

DELIVERED ON:22.08.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

F.M.A. No.428 of 2021

**Auxilium Convent School.
Vs.
The State of West Bengal & Ors.**

Appearance:-

**Mr. Sandip Kumar Bhattacharya,
Ms. Debanwita Pramanik**

..... for the appellant.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal at the instance of the writ petitioner is directed against the order dated 2nd March, 2020 in

W.P. 18298 (W) 2019. In the said writ petition, the appellant / institution had challenged the order passed by the controlling authority under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act") dated 25th September, 2017 and also the certificate proceedings which were pending before the Learned District Magistrate and Collector, South 24 Parganas. The learned Single Bench had dismissed the writ petition primarily on two grounds, viz. that the order passed by the controlling authority dated 25th September, 2017 was appealed against before the appellate authority under the said Act in G.R.A. 8 of 2017 and the said appeal stood dismissed by order dated 10th May, 2018 on the ground that the appellant had not complied with the requirement of pre-deposit as provided under the Second proviso to Section 7(7) of the said Act. The second ground on which the learned Single Bench had dismissed the writ petition is on the ground that the appellant has not challenged the order passed by the appellate authority in the writ petition but attempted to canvass the case on merits.

2. In our considered view, the finding rendered by the learned Single Bench that the appellant having challenged the order passed by the controlling authority before the appellate

authority cannot canvass the merit of the matter in a writ petition is well founded. The second aspect which weighed in the mind of the learned Writ Court was that there was no challenge to the order passed by the appellate authority dated 10th May, 2018. Though such finding may be right, in our considered view, relief need not be denied to the appellant on such a technical ground more so, when the appellant had questioned the jurisdiction of the controlling authority to compute the gratuity and several grounds have been raised on the merits of the matter.

3. Learned Advocate appearing for the appellant submitted that the amount of gratuity as computed by the controlling authority has been paid to the deceased employee. However, copy of such receipt is not readily available with the learned Advocate appearing for the appellant. In any event, if such payment had been effect prior to 10th May, 2018, nothing prevented the appellant from producing the copy of the receipt before the appellate authority. If that had been done, there would have been no occasion for the appellate authority to record non-compliance of the statutory requirement under the Second proviso to Section 7(7) of the said Act.

4. In the light of the above, we are of the view that the appeal can be disposed of by issuing appropriate direction.

5. We are inclined to dispose of the appeal without giving notice to the respondents as the writ petition stood dismissed at the admission stage on the ground of non-compliance of a statutory condition. If the submission made by the learned Advocate for the appellant is factually correct, then we are of the view that one more opportunity can be granted to the appellant to go before the appellate authority and produce the receipt evidencing payment of the gratuity amount as computed by the controlling authority vide order dated 25th September, 2017 and if the same is done to the satisfaction of the appellate authority, the appellate authority can decide the appeal on merits and in accordance with law.

6. If such course is adopted, it would also be beneficial to the deceased employee as no useful purpose would be served by keeping this appeal pending on the file of this Court.

7. In the light of the above, this appeal is partly allowed and the ultimate conclusion arrived at by the learned Writ Court in dismissing the writ petition is set aside with a direction to the appellant to file a miscellaneous petition before the appellate authority under the said Act cum Deputy Labour Commissioner enclosing a copy of this judgment and order as well as receipt evidencing payment of the gratuity amount as computed by the controlling authority vide order dated 25th September, 2017.

8. If the appellate authority is satisfied with the condition stipulated in the Second proviso to Section 7(7) of the said Act stands fulfilled, the appeal shall be taken on file and after hearing the parties, an order be passed on merits and in accordance with law. In the event the appellate authority is of the opinion that the appellant has not fulfilled the statutory requirements, an order containing reasons be passed so as to enable the appellate to work out its remedies in accordance with law.

9. There shall be no order as to costs.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)