10-14 07.01.2022
RP Ct. No. 16
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MAT 247 of 2021
FIS Payment Solutions and Services Private Limited
Vs.
Parwez Alam & Ors.
With
MAT 245 of 2021
FIS Payment Solutions and Services Private Limited
Vs.
Jeteendra Prasad Rajak & Ors.
With
MAT 246 of 2021
FIS Payment Solutions and Services Private Limited
Vs.
Bishnu Charan Chowdhury & Ors.
With
MAT 248 of 2021
FIS Payment Solutions and Services Private Limited
Vs.
Md. Imteyaz & Ors.
With
MAT 249 of 2021
FIS Payment Solutions and Services Private Limited
Vs.
Tapas Chakraborty & Ors.

Mr. Soumya Majumder
Mr. Soumabhu Ghose
Mr. Jeevan Ballav Panda
Mr. Rishav Dutt
Mr. Soumalya Ganguli
Mr. Sourav Ray
… for the appellants

Mr. Abhishek Banerjee
… for respondent no.5

Ms. Mary Datta
Ms. Sarda Sha
… for UOI

This intra-Court mandamus appeal is directed against a common order dated 25th January, 2021 passed in the writ petitions filed by the appellant challenging the order passed by the Assistant Labour Commissioner, Central Kolkata cum Controlling Authority under Payment of

Gratuity Act, 1972. The writ petitions were initially filed by the appellant praying for a writ of certiorari challenging the order passed by the Controlling Authority dated 7.1.2020. The appellant did not challenge the corrigendum issued by the Controlling Authority dated 21.09.2020 at the time of filing the writ petitions. Therefore, a supplementary affidavit dated 11th January, 2021 was filed challenging the original order dated 7.1.2020 and the corrigendum dated 21.9.2020. The present controversy is with regard to the claim for gratuity made by the first respondent before us, who was employed as a security guard to secure the ATMs, which were established and maintained by the appellant for and on behalf of United Bank of India. To put it broadly, the controversy is as to whether the appellant can be fastened with the liability to settle the gratuity claim. By order dated 7.1.2020 the Controlling Authority held the fourth respondent M/s. Visual Securas Limited to be liable by corrigendum dated 21.09.2020. Thus the liability was fastened on the appellant. The appellant is not only aggrieved by the order dated 7.1.2020 but as well as the corrigendum dated 21.9.2020. The writ petition was filed challenged both the orders and the same has been dismissed on the ground of availability of alternative remedy. Challenging the correctness of the order passed in the writ petitions, the appellant is before us.

Mr. Rananeesh Guha Thakurata, learned counsel initially appeared for the fourth respondent but he has no instruction today. We have heard the learned counsels for the parties elaborately and perused the materials on record. We are of the considered view that certain portions of the order passed in the writ petitions call for interference. The learned Single Judge while directing the appellant to avail alternative remedy could not have foreclosed the right of the appellant by rendering certain findings touching upon the merits of the matter especially when the appellant had questioned the jurisdiction of the authority to fasten the liability on the appellant. Further, the appellant has been foreclosed from raising the jurisdiction point on the ground that they had appeared before the Controlling Authority. This finding is incorrect because the contention of the appellant is that there can be only one employer for an employee in a claim under the Payment of Gratuity Act, 1972 and the concept of importing the principle employer/contractor in a claim under the said Act does not arise. If such was the contention raised by the appellant they could not have been foreclosed from raising the point of jurisdiction. The other observations made by the learned writ Court stating that the appellant has to mediate with the company/employee etc. are all incorrect observations which have to be eschewed and accordingly set aside. Having made such observations we are to decide the correctness of the order passed by the Controlling Authority dated 7.1.2020 and 21.9.2020. Essentially the corrigendum would suffer from the vice of lack of jurisdiction because no power of review has been granted to the Controlling Authority to review its earlier decision dated 7.1.2020. However, in any event a corrigendum is to be read along with the main order and precisely for such reason the appellant was advised to challenge both main order dated 7.1.2020 and the corrigendum dated 21.9.2020. On going through the orders passed by the Controlling Authority we find that the subject has been summarily dealt with by the Controlling Authority without appreciating the documents, which were produced and relied upon before it. The stand taken by the fourth respondent is that as per the agreement it is the appellant who has to pay all statutory dues including gratuity claim. If that is so, can the appellant escape from that liability? The reasoning given by the Controlling Authority in the order dated 7.1.2020 leads to a conclusion that the fourth respondent herein is liable but the corrigendum make the appellant liable. In any event, we find that the manner in which the claim petitions were adjudicated by the Controlling Authority is incorrect. Therefore, a fresh exercise is required to be done. We note that at the time when these appeals were entertained pursuant to orders passed in these appeals, the entire gratuity claim as computed has been deposited to the file of this Court with a direction to deposit the same in an interest bearing account. We are convinced that the Controlling Authority has to conduct a fresh enquiry. We find that the amount can be permitted to be withdrawn by the appellant subject to the condition that the same shall be deposited before the Controlling Authority within a time frame and thereafter the mater to be taken up for fresh adjudication.

In the light of the above, the appeals are **allowed**. The orders passed in the writ petitions are set aside. Consequently, the orders dated 7.1.2020 and 21.9.2020 passed by the Controlling Authority are quashed and the matters are remanded to the Controlling Authority for fresh consideration to decide all legal and factual issues upon permitting the parties to place documents before it and after considering the effect of those documents and legal submissions a reasoned decision be taken by the Controlling Authority. Since the gratuity claim was made in the year 2020, the Controlling Authority is requested to dispose of all the applications as expeditiously as possible within a period of eight weeks from the date on which the amount is deposited by the appellant, which shall be within one week from the date on which the Registry of this Court refunds the money to the appellant. The Registry is directed to refund the money with accrued interest to the appellant within 10 days from the date of receipt of the server copy of this order.

(T. S. Sivagnanam, J.)

(Ananda Kumar Mukherjee, J.)