

28.11.2022.
Item No.16
Court No.550
Saswata

W.P.A. 9625 of 2022

**Calcutta Jute Manufacturing Company Limited
Versus
State of West Bengal & Ors.**

Mr. Ravi Kumar Dubey

...For the petitioner

Ms. Senjuti Sengupta

Mr. R.T.Guha Thakurta

Ms. Dipa Roy

...For the respondent no. 3

Affidavit-in-reply filed by the petitioner in Court today is kept with the record.

The petitioner, by filing the present writ application has, inter alia, challenged the order of substitution dated 12th April, 2022 passed by the respondent no.2. Mr. Dubey, learned advocate representing the petitioner submits that the respondent no.2, while adjudicating on an application in form 'N' under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act"), had illegally permitted the respondent no.3 to be substituted in place and stead of Jasoda Rajbhar, since deceased (hereinafter referred to as the deceased ex-employee). He says that no formal application was filed by the respondent no.3 before the respondent no.2 – only an affidavit affirmed by the respondent no.3 on 26th July 2021 had been filed. The respondent no.3 had also not disclosed any legal heir certificate/succession certificate issued by any competent authority. Relying on the Aadhaar card of the respondent no.3, it is submitted that the petitioner has reasons to believe that the respondent no.3 is not the son of the deceased ex-employee. Since the Aadhaar card would show

very little age difference between the respondent no.3 and the deceased ex-employee, under no stretch of imagination can the respondent no. 3 be considered as the son of the deceased ex-employee. By placing reliance on Sections 4 and 6 of the said Act and the rule 6 of the West Bengal Payment of Gratuity Rules, 1973, it is submitted that the respondent no.2 ought to have been taken into consideration the aforesaid provisions, prior to substituting the respondent no.3. The respondent no.3 had never been nominated by the deceased ex-employee as her nominee. He submits that the Controlling authority has proceeded mechanically and on the basis of non-application of mind, had allowed the substitution of the respondent no.3 in place and stead of the deceased ex-employee. The order impugned cannot be sustained and should set aside.

Per contra, Mr. Guha Thakurta, representing the respondent no. 3 submits that he is the son of the deceased ex-employee and is aged about 54 years. It is submitted that the deceased ex-employee was born in the year 1950 and had joined the services of the petitioner on or about 26th February 1971. The said deceased ex-employee was superannuated with effect from 31st December 2008 and as such, became entitled to gratuity. The writ petitioner, despite entitlement of the deceased ex-employee, did not release the gratuity amount. Faced with the aforesaid situation, an application in Form 'N' was filed by the deceased ex-employee on 22nd May, 2012 and the same was registered as Case no. G-54/12. He says that during pendency of the proceedings, his mother died. According to

the respondent no.3, no other person apart from the respondent no.3 has come forward to claim legal representation. He says that there is no prescribed format for filing an application for substitution before the Controlling authority. The respondent no. 3 had, in fact, affirmed an affidavit declaring himself, to be the son of the deceased ex-employee. The death certificate of the deceased ex-employee as issued by the Government of Uttar Pradesh and the Aadhaar card of both the deceased ex-employee and the respondent no.2 were also enclosed to such affidavit. It is submitted that the petitioner had not only been served with a copy of the application for substitution which was in the form of an affidavit but also got all reasonable opportunity to object to the same. Mr. Guha Thakurta, by placing reliance on a copy of the employment book, issued by the petitioner, which is annexed at page 13 of the affidavit-in-opposition, submits that the year of birth of the deceased ex-employee is 1950. Such fact is well within the knowledge of the petitioner. The Aadhaar card erroneously records the same as 1960. He submits that dilatory tactics is being adopted by the petitioner to deny the legitimate claim of the respondent no.3. This Hon'ble Court should not interfere with the order passed by the Controlling Authority. The writ application should be dismissed.

I have heard the learned advocates appearing for the respective parties and have considered the materials on record. I find that the factum of death of the deceased ex-employee is undisputed. The dispute is with regard to the

procedure in which the application for substitution has been allowed. I further find that the affidavit has been duly affirmed by the respondent no.3, who claims to be the son of the deceased ex-employee. All particulars have been provided in the said application. Responding to a query from the Court, Mr. Dubey, learned advocate representing the petitioner candidly submits that apart from the respondent no.3, no other person has come forward to be substituted in place and stead of the deceased ex-employee. I find that the petitioner is attempting to take aid of the technicalities to challenge the order passed by the respondent no.2. I find that the said Act does not provide for any specific procedure for filing a substitution application. Irrespective of whether, the deceased ex-employee had nominated the respondent no.3 as a nominee, right to be substituted in place and stead of the deceased ex-employee cannot be questioned by the petitioner, especially when the petitioner has not made any positive assertion as regards the names of legal representatives of the deceased ex-employee. Admittedly the respondent no.3 has come forward to represent the deceased ex-employee, who in absence of any claim to contrary is sufficiently entitled to be substituted. The provisions of Section 4 and 6 of the said Act and Rule 6 of the West Bengal Payment of Gratuity Rules, 1973 do not create any embargo to substitute a legal representative of a deceased, notwithstanding the deceased not nominating such person as his nominee. In the present case there is no nomination. As such, reference to such provision, for the

purpose of objecting a substitution application is entirely misconceived. Bare perusal of the provisions of the said act would demonstrate that the Controlling Authority, is vested with the same powers as are vested in a Court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of matters which, *inter alia*, includes receiving evidence on affidavits. As such there cannot any irregularity on the part of the respondent no.2 in accepting the affidavit filed by the respondent no.3. In my view, the order passed by the respondent no.2 does not suffer from any illegality or any jurisdictional error. It also cannot be said that the respondent no.2 had allowed substitution of the respondent no.3 without any application. As such no interference is called for.

In view thereof, the writ petition fails and the same is accordingly dismissed.

There shall be no order as to costs.

All parties shall act on the basis of the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.)