

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 15958(W) of 2021

M/s. Bally Jute Company Limited

Vs.

**The Appellate Authority under the Payment of Gratuity Act, 1972
Howrah, Government of West Bengal & Ors.**

For the Petitioner:

Mr. Ranjay De, Adv.,

For the Respondent No. 3:

Ms. Senjuti Sengupta, Adv.
Mr. R. Guha Thakurta, Adv.,

For the State:

Mr. Susanta Pal, Adv.
Mr. Ananda Dulal Sarkar, Adv.,

Hearing Concluded on:

12.07.2022

Date:

20.07.2022

SUVRA GHOSH, J. :-

1. The prayers of the writ petitioner are as hereunder:-

“(a) Issue of a Writ of Madamus and/or Writ in the nature thereof commanding the Respondent No. 1 and 2 or each one of them forthwith cancel, set aside, withdraw and/or rescind the impugned Orders being Annexure-P/7, Annexure-P/14 and Annexure- P/15 respectively.

(c) Issue of a Writ of Prohibition and/or Writ in the nature thereof commanding the Respondents not to take any steps or any further step

pursuant to the impugned Orders Annexure-P/7, Annexure-P/14 and Annexure- P/15 respectively till the disposal of the instant Application.”

2. By virtue of an agreement dated 5th April, 1997, the petitioner company acquired Bally Jute Mill from M/s. Birla Jute and Industries Limited and a registered indenture of conveyance was made on 28th February, 2003. The said document set out the responsibilities of the petitioner company in connection with the employees as on 9th April, 1997. Sri Siwpujan Roy, the third respondent herein, was an employee under M/s. Birla Jute and Industries Limited from 29th November, 1966 and superannuated on 16th January, 1996. The said employee applied for payment of gratuity in Form-I on 21st January, 2013 and submitted a further application in Form-N before the Controlling Authority on 22nd February, 2013. The petitioner contested the gratuity case before the Controlling Authority by filing a written statement. Upon hearing the parties, the Controlling Authority, by an order passed on 28th January, 2019, allowed the prayer of the third respondent and directed the petitioner company to pay Rs. 1, 45,637/- to the third respondent-employee towards gratuity due to him along with admissible interest within thirty days from the date of receipt of the notice in Form-R as provided under Rule 17 of the West Bengal Payment of Gratuity Rules, 1973. The said order was carried in appeal by this writ petitioner company before the Appellate Authority and by an order dated 20th April, 2021, the Appellate Authority dismissed the appeal and affirmed the order of the Controlling Authority.

3. At the outset, it is submitted on behalf of the petitioner that though there was inordinate delay on the part of the employee in applying for payment of gratuity in Form-I and Form-N, learned counsel does not wish to oppose the prayer of the employee on this ground as the Payment of Gratuity Act is a beneficial legislation and requires liberal consideration. Learned counsel submits that the company has no objection if the employee is granted the gratuity due to him. But at the same time the company denies responsibility of payment of the said amount to the employee for the reason that the company came into existence only on 25th September, 1998 whereas the third respondent retired from M/s. Birla Jute and Industries Limited on 16th January, 1996. There was no employer-employee relationship between the parties during the entire period of employment of the respondent till his superannuation and the petitioner company is not liable to pay the gratuity dues of respondent-employee. The attendance card of the respondent indicates that he was an employee under Birla Jute and Industries Limited at Bally Jute Mills Unit. Learned counsel has placed reliance on the following authorities in support of his contention: -

(i) Management of KSRTC TH. Chief Law Officer v/s. R. Krishna Reddy reported in LAWS(SC) 2006 11 54,

(ii) Sugandhi (Dead) By L. Rs. And Ors. v/s. P. Rajkumar reported in LAWS(SC) 2020 10 52,

(iii) Susovan Pand v/s. Chairman Uco Bank reported in LAWS(CAL) 2013 7 113,

(iv) Balwant Rai Saluja And Anr. v/s. Air India Ltd. And Ors. reported in LAWS(SC) 2014 8 51.

4. Per contra, learned counsel for the third respondent-employee has submitted that as the issue has been decided by the Controlling Authority as well as Appellate Authority on merits upon consideration of the evidence produced by both the parties and submission made on behalf of the parties, this Court, in exercising extraordinary jurisdiction under Article 226 of the Constitution of India, cannot adjudicate on the merits of the case and substitute its judgment for that of the administrative authority. The petitioner company has introduced a new fact in the writ petition by pleading that the company was not in existence when the respondent retired and that there is no employer-employee relationship between the parties. Such fact was not canvassed before the Controlling Authority or the Appellate Authority by the Company and the written statement filed by the company before the authority is also bereft of such pleadings. As the issue has been decided by the authorities on the basis of evidence available on record and after giving reasonable opportunity of hearing to both the parties, the company is debarred from placing reliance upon any new document before the Writ Court in support of its claim, moreso, as the said documents were not produced before the authorities for consideration despite being given sufficient opportunity. The employee having retired from service in 1996 and being deprived of the gratuity due to him for long years, the petitioner company is liable to clear the entire dues of the employee in compliance with the orders of the Controlling Authority and the Appellate

Authority. Referring to clause 20 of the memorandum of agreement for sale executed on 5th April, 1997 by and between the petitioner company and its vendor, learned counsel for the respondent has submitted that in view of the indemnity clause entitling the petitioner company to reimbursement/compensation from the vendor for any loss, damages, claims, cost and charges that the company may suffer or is required to pay on account of liabilities including gratuity, the company shall not suffer irreparably if the gratuity due is paid by the company to the respondent as the company can claim the said amount from its vendor in terms of clause 20 of the memorandum dated 5th April, 1997. Learned counsel has placed reliance on the following authorities in support of his contention: -

- (i) Syed Yakoob v/s. K.S. Radhakrishnan and Ors. reported in AIR 1964 SC 477,
- (ii) Bata Mazdoor Union & Ors. v/s. State of West Bengal & Ors. reported in 2006 (3) CHN 535,
- (iii) Mukand Ltd. And Mukand Staff and Officers' Association reported in 2004-II-LLJ 327,
- (iv) The K.C.P. Employees' Association, Madras and The Management of K.C.P. Ltd., Madras and others. reported in 1978(36) (SC) F.L.R. 217,
- (v) Harjinder Singh v/s. Punjab State Warehousing Corporation reported in (2010) 3 Supreme Court Cases 192.

5. It is not in dispute that the respondent-employee superannuated on 16th January, 1996.

6. Copy of the memorandum of agreement for sale of Bally Jute Mills executed on 5th April, 1997 between Birla Corp Limited and Bally Jute Company demonstrates that the purchaser agreed to purchase Bally Jute Mill from the vendor. The name of Birla Jute Industries Limited was changed to Birla Corp Limited and thereafter to Birla Corporation Limited and fresh certificates of incorporation were issued to that effect by the Registrar of Companies, Calcutta on 31st March, 1997 and 27th October, 1998 respectively. Bally Jute Mill was sold out to Bally Jute Company Limited, who is the petitioner herein, by an indenture of conveyance dated 20th February, 2003. The indenture further demonstrates that Bally Jute Company, a partnership firm was converted to a Limited Company on or about 25th September, 1998 and all the assets, rights and benefits of the partnership firm including all rights and obligations under the agreement for sale dated 5th April, 1997 in respect of Bally Jute Mill stood vested in Bally Jute Company Limited on and from 9th April, 1997. The relevant portion of the indenture of conveyance is set out:-

(b) "The purchaser doth hereby further covenant with the vendor that the purchaser will ensure that every staff, employees, labourers and workmen of the said Bally Jute Mill who were on the permanent pay roll of the said Bally Jute Mill on 9th day of April, 1997 either to continue their service on the same terms and conditions as were applicable to them before 9th day of April, 1997 or to pay such staff, employees, labourers or workmen, compensation on

discharge or retrenchment in accordance with the provisions of the Industrial Dispute Act 1947 but the purchaser shall in no event be liable for payment of any compensation due to lay off and or retrenchment, dismissal, strike, lock out or any such action effected before 9th day of April, 1997 and the purchaser shall not be liable for any award, decree or decision of any court, Industrial Tribunal, Labour Court or competent authority arising out of any actions or disputes relating to the management of the said Bally Jute Mill prior to 9th day of April, 1997 for any claim of the workmen, labourers or employees for salary, wages, bonus, ration or other compensation under various labour Acts or any other claims or dues arising in respect of the period prior to 9th day of April, 1997.”

7. Annexure R-5 to the supplementary affidavit filed by the petitioner company indicates that dues of the employees who resigned/retired on or before 9th April, 1997 were settled by the vendor and such liability was not thrust upon the petitioner company/purchaser. The petitioner submits that in terms of the indenture, the petitioner company is liable to pay the dues to the workmen who were on the permanent pay roll of Bally Jute Mill on 9th April, 1997 and not prior to the said date. The respondent-employee having superannuated much prior to the said date, the petitioner company is not liable to pay the gratuity due to the respondent.

8. The petitioner has referred to the authority in *Balwant Rai Saluja* and *Another* (supra) which deals with the relevant factors to be taken into consideration to establish employer-employee relationship. Paragraph 61 of the judgment is set out:-

61. *“Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision.”*

9. According to the petitioner, it is crystal clear from the observation made by the Hon’ble Supreme Court herein that there was no employer-employee relationship between the parties at any point of time.
10. Learned counsel has also taken this Court to the authority in Management of KSRTC TH. Chief Law Officer (supra) wherein the Hon’ble Supreme Court has held as follows:-

13. *“In Beed District Central Co-operative Bank Ltd. v. State of Maharashtra and Ors. (2007) ILLJ 1SC, it was laid down:*

....Undoubtedly, the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose, the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. However, it is also trite that only because a statute is beneficent in nature, the same would not mean that it should be construed in favour of the workmen only although they are not entitled to benefits thereof.”

11. Admittedly the documents produced before this Court by the writ petitioner by a supplementary affidavit were not produced before the Controlling Authority or the Appellate Authority and the plea taken by the petitioner herein was also not taken before the said authorities. Now the moot question for consideration is whether the Writ Court can consider the documents produced before this Court after the issue has been considered by the authorities on the basis of evidence placed before them.
12. The authority in Syed Yakoob (supra) demonstrates that a finding of fact recorded by the Tribunal cannot be challenged before a Writ Court on the ground that relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. Similarly the Hon'ble Court has held that if a finding of fact is based on no evidence, that shall be regarded as an error of law which can be corrected by the Writ Court.
13. The authority in Bata Mazdoor Union and Ors. (supra) holds that the High Court while exercising the power of judicial review must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the High Court cannot substitute its judgment for that of the administrative authority. The Hon'ble Court has added that in spite of the aforesaid restrictions, the power of the High Court to interfere with the order of the Tribunal in Article 226 of the Constitution of India, has been recognised by the Hon'ble Supreme Court in certain cases where the

findings arrived at by the inferior Tribunal are perverse and not based on any material evidence or it resulted in manifest of injustice. Besides the above authorities, learned counsel for the respondent has relied upon the authority in the K.C.P. Employees' Association, Madras (supra) which deals in Industrial Law in the perspective of Part-IV of the Constitution and states that the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, the labour. The ratio decidendi of the said judgment can be distinguished from the facts and circumstances of the present case. The authority in Mukand Limited (supra) stating that in absence of a plea no amount of evidence can be looked into, is not in dispute in the present case where it is admitted that the plea taken by the petitioner in the writ petition was not taken before the authorities.

14. In the authority in Sugandhi (Dead) by L. Rs. And Ors. (supra) the observation of the Hon'ble Supreme Court, which may be relevant, is reproduced below:-

9. *"It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every*

dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub rule (3)."

15. In the case in hand, it cannot be disputed that the documents filed by petitioner before this Court are necessary for arriving at a just and proper decision in the proceedings before the authorities. True, the said documents were not produced before the authorities by the company and no valid reason has been assigned by the company for non-production of the same. Nevertheless, this Court is of the view that the said documents need to be considered by the Appellate Authority in order to arrive at a just and fair decision. No prejudice shall be caused to the respondent if a fresh order is passed by the Appellate Authority after taking the documents into consideration. On the contrary, the order impugned passed without consideration of the documents may affect the interest of the petitioner company prejudicially as the company claims that it was not in existence when the respondent retired and has therefore no employer-employee relationship with the respondent.

16. It is a fact that the documents were not tendered in evidence before the Controlling Authority or the Appellate Authority by the petitioner company despite being given sufficient opportunity and reconsideration of the issue by the Appellate Authority after taking into account the documents to be produced before it shall cause some delay in granting relief to the respondent, if entitled. In view of the same, this Court is inclined to hold

that the respondent be compensated for the said delay with some monetary relief.

17. Upon consideration of the entire facts and circumstances of the matter, this Court is of the view that the writ petition should be allowed in the interest of justice subject to payment of cost of Rs. 25,000/- by the petitioner to the third respondent.
18. Accordingly, the order passed by the Appellate Authority on 20th April, 2021 is set aside/quashed.
19. The matter be sent back to the Appellate Authority on remand with a direction for reconsideration of the same in the light of the documents produced by the writ petitioner before this Court by way of supplementary affidavit, in accordance with law.
20. The petitioner shall be at liberty to produce the said documents before the Appellate Authority upon payment of the cost of Rs. 25,000/- to the third respondent, as directed.
21. The Appellate Authority shall dispose of the issue by a reasoned and speaking order after affording reasonable opportunity of hearing to all the stake holders including the petitioner and the third respondent within three months from the date of communication of this judgment, without being influenced by any observation made in the body of this judgment.
22. The writ petition being W.P.A. 15958 of 2021 is allowed with cost of Rs. 25,000/- payable by the petitioner to the third respondent.

23. Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted

24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)