

Item No.2 & 3.

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

HEARD ON: 01.07.2022

DELIVERED ON:01.07.2022

CORAM:

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

**M.A.T. No.1134 of 2021
With
I.A. No.CAN 1 of 2021**

**Jigira Sk.
Vs.
The State of West Bengal & Ors.**

**With
C.O. No.743 of 2021**

**M/s. Delta Limited
Vs.
Jigira Sk. & anr.**

Appearance:-

**Mr. Rananeesh Guha Thakurta,
Ms. Sejuti Sengupta**

..... for the appellant.

**Mr. Susovan Sengupta,
Mr. Bipin Ghosh**

... for the respondents/State.

Mr. Soumya Majumdar,

**Ms. Amrita Pandey,
Ms. Anamika Pandey**

... for the respondent no.5

JUDGMENT

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

1. Since the matters are inter-connected, both the appeal as well as civil revisional application are taken up together for disposal. MAT 1134 of 2021 has been filed by the workman challenging an order passed in W.P.A. No.12069 of 2021 dated 27th September, 2021. By the said writ petition, the appellant / workman sought to give effect to the order passed by the Certificate Officer, Howrah dated 3rd March, 2021 determining the compound interest payable to the appellant workman under the Payment of Gratuity Act, 1972 to Rs.1,13,227/-. Soon after the writ petition was filed and notice was served on the appellant / workman, the management had served copies of the civil revision petition filed by them challenging the order of the Certificate Officer dated 3rd March, 2021. The learned Single Bench while hearing the writ petition opined that since the order of the Certificate Officer has been challenged independently in C.O. No.743 of 2021, it would not be appropriate to issue any writ of

mandamus to implement the said order. Accordingly, the relief sought for in the writ petition was declined. Aggrieved by the same, the workman is on appeal before us.

2. The management had filed the civil revision petition by contending that the workman had consciously entered into a Memorandum of Settlement with the management and accepted a sum of Rs.3,51,090/- as full and final settlement towards all claims under the Payment of Gratuity Act and that application for grant of compound interest was not maintainable and the Controlling Authority herein computed and directed payment of compound interest. It is contended that the management placed reliance on a decision of the High Court of Madras in **M/s. Andhra Laundry Vs. Presiding Officer** reported at **1976 SCC OnLine Mad 286** for the proposition that once a workman signs a receipt in full and final settlement, he waives his right to claim any of the benefits under the statute.

3. Further, for proposition that the workman cannot approbate and reprobate, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Ramesh Chandra Sankla & Ors. Vs. Vikram Cement & Ors.** reported at **(2008) 1 SCC 58**.

Furthermore, it is submitted that the workman cannot resile from the terms of settlement, which was a compromise settlement and to support such contention, reliance has been placed on the decision of the High Court of Madras in the case of ***M. Devadasan Vs. The Management, M/s. Southern Roadways Ltd.*** reported at **1964 SCR (4) 680**. Further, it is contended that the terms of settlement is valid and it cannot be held to be hit by Section 14 of the Payment of Gratuity Act, 1972 and for such proposition, reliance has been placed on the decision in the case of ***V. Vaithyanathan & Ors. Vs. Deputy Commissioner of Labour, Thiruchirapally & Anr.*** reported at **2002 (3) LLN 539**.

4. The learned Advocate appearing for the workman contended that the civil revision petition itself is not maintainable and if revision petition is entertained, it will frustrate the very recovery process by creating multiple tiers of interference, which is against the interest of the workman and not provided for under the law.

5. Further, it is submitted that there can be no estoppel against the workman from claiming a statutory interest and

therefore, the authority was justified in computing the compound interest payable to the workman.

6. After we have elaborately heard the learned counsels on either side, we are of the view that it may not be necessary to decide on the issue regarding the maintainability of the civil revision petition, which is being very hotly contested by the learned Advocate appearing for the workman. We say so for the reason that in the earlier round of litigation, the Hon'ble Division Bench by judgment and order dated 21st January, 2021 in MAT 95 of 2021 had issued a specific direction to the Certificate Officer. We quote such direction for better appreciation:-

"We are of the opinion that these questions regarding payment, settlement of gratuity dues under the terms of settlement, claim for compound interest etc. should be decided by the certificate officer and not by this Court."

7. In terms of the above direction, the Certificate Officer was required to decide as to the effect of the settlement entered into between the management and the workman on the claim

for compound interest. On going through the order passed by the Certificate Officer, we find that such issue has not at all been dealt with. Though the Certificate Officer states that he passes a reasoned order, we find that there are no reasons forthcoming. Thus, the order passed by the Certificate Officer impugned in the civil revision petition being in violation of the judgment and order of the Hon'ble Division Bench, it would suffice for us to interfere with the said order. We make it clear that we are not expressing any opinion with regard to the maintainability of the civil revision petition against the said order under Article 227 of the Constitution of India.

8. In the light of the above, no separate order is required to be passed in MAT 1134 of 2021.

9. Since the Certificate Officer has committed a gross error in not complying with the specific direction issued by the Hon'ble Division Bench, we deem it appropriate to remand the matter to the Certificate Officer, Howrah for a fresh decision in the matter. Accordingly, the civil revision petition is allowed for reasons set out above and the order passed by the Certificate Officer is set aside and the matter is remanded to

the Certificate Officer to take a fresh decision in the matter within a period of 15 days from the date of receipt of the server copy of this judgment and order.

10. The Certificate Officer shall note that he shall decide the issue raised before him in terms of the judgment of the Hon'ble Division Bench as pointed out by us above.

11. The learned counsel appearing for the workman submitted that Section 14 of the Payment of Gratuity Act is very crucial as it overrides any order or settlement and in support of such contention, reliance has been placed on various decisions. We give liberty to the workman to raise such contention before the Certificate Officer.

12. The management as well as the workman shall be entitled to an opportunity of personal hearing and both parties shall not seek any adjournment on the date fixed by the Certificate Officer.

13. Accordingly, C.O. 743 of 2021 is allowed and MAT 1134 of 2021 and the connected application are disposed of as no further orders are required in the matter.

14. It is made clear that all contentions available on facts and in law are kept open to be canvassed by the workman as well as by the management before the Certificate Officer.

15. No costs.

16. 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.)