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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18147 of 2022

Farid Hussain Mia
Vs.
The State of West Bengal & Ors.

Mr. Uddipan Banerjee
.... For the petitioner.

Ms. Amrita Pandey,
Mr. Ghanshyam Pandey,
Ms. Sneha Singh
... For the respondent no.3.

The present writ application has been filed *inter alia* praying for a direction upon the respondent no.2 to register a case and dispose of the petitioner's application dated 25 November, 2021 which has been submitted by the petitioner before the respondent no.2 on 17th December, 2021.

Mr. Banerjee, learned advocate, appearing in support of the instant application submits that the petitioner was gainfully employed with the respondent no.3, he retired from the serviced on 1st July, 2006. Subsequent to his retirement he had applied before the respondent no.3 in Form I, *inter alia* praying for disbursement of his gratuity payable to him. Since the respondent no.3 did not pay any heed to his application, the petitioner had applied in Form 'N' before the respondent no.2. The said application, is dated 25th November, 2021 and had been submitted on 17th

December, 2021 with the respondent no.2. The said application has till date not been disposed of and has been kept pending. Drawing attention of this Court to Section 7 of the Payment of Gratuity Act, 1972, Mr. Banerjee submits that the respondent no.2 is obliged to dispose of his application. The respondent no.2, however, neither registered a case nor has the said respondent disposed of the petitioner's application. In such circumstances, the present writ application has been filed.

Per contra, Mr. Pandey, learned advocate, appearing on behalf of respondent no.3, submits that the respondent no.2, does not have the competence to adjudicate upon the application filed by the petitioner. Mr. Pandey also submits that the petitioner did not make the application in Form I within the time specified under the statute. The application in Form 'N' is also barred by limitation. The respondent no.2 does not have the territorial jurisdiction to try and/or entertain the said application. In support of his aforesaid contention Mr. Pandey relies on an unreported judgement of this Court delivered in **W.P. No. 9532 (W) of 2010 (Bhanu Prakash vs. Assistant Labour Commissioner & Ors.)**

In reply, Mr. Banerjee submits that the judgment is an authority for what it decides. The present judgment has no manner of application in the facts of the present case. According to him, the issues that fell for

consideration in the aforesaid case as referred by Mr. Pandey is whether the Controlling Authority had the power and competence to transfer a case. The said judgment does not and cannot come in aid of the petitioner.

I have heard the submissions made by the advocates appearing for the respective parties, I am of the view that the issues raised by Mr. Pandey in the present application can well be decided by the respondent no.2.

Since no useful purpose will be served in keeping the application pending, I dispose of the writ application by directing the respondent no.2, to take a decision on the application made by the petitioner forming Annexure P-2 to the present writ application within four months from date, having due regard to the objections raised by the respondent no.3, provided an application is filed by the respondent no.3, before the respondent no.2.

The respondent no.2 shall, however, hear out and dispose of the petitioner's application being uninfluenced by any of the observations made herein.

The writ application, being WPA 18147 of 2022 stands disposed of accordingly.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)