

10.02.2022
Ct. 21
D/L 7
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C.O. 2025 of 2021
(Via Video Conference)

M/s. West Bengal Transport Corporation Limited
-Vs-
Shankar Chandra Mullick

Mr. Arijit Bardhan,
Ms. Deblina Chattaraj

... for the petitioner

The petitioner is represented by its lawyer.

Heard learned advocate for the petitioner.

The present application under Article 227 is at the instance of M/s. West Bengal Transport Corporation Limited being aggrieved by the order dated 3rd September, 2021 and order dated 8th October, 2021 passed by the learned Certificate Officer, South 24 Parganas, whereby the petitioner was directed to make payment sum of rupees 1,02,222/- in favour of certificate holder and for issuance of notice in Form No. 30 under Rule 77 of the Bengal Public Demand Recovery Act, 1913.

It has come on record that Sri Sankar Chandra Mallick, certificate holder/opposite party was an employee of petitioner and who had to approach the Controlling Authority, under the Payment of Gratuity

Act, 1972 for recovery of his gratuity after retirement when his employer failed to pay the same. The Controlling Authority, after hearing both the employer and retired employee held the employee is still entitled to receive Rs.1,43,541/- towards gratuity including interest from the employer on 15.02.2019. Then, referred the matter to the Certificate Officer, South 24 Parganas on 16.11.2019 for realization of such dues.

The present petitioner appears to have filed a petition before certificate officer not to proceed further as it had moved the Appellate Forum on 07.01.2020. Nothing is there on record to show what was the fate of the Appeal.

Rather, the order sheet dated 16.08.21 of Certificate Officer shows that certificate debtor has cleared only Principal Amount and interest is yet to be paid off and directed parties to submit interest calculation sheet by 03.09.2021 and final payment to be cleared by 10.09.21. The certificate holder appears to have submitted interest calculation sheet showing due of Rs.1,02,221.94 paisa on 16.08.2021.

Order sheet dated 03.09.21 shows the present petitioner was directed to clear due of Rs.1,02,222/- by September 2021 and on that day both side were present.

Now, it has been contended by learned advocate for the petitioner that petitioner has already cleared

such due of Rs 1,02,221 by issuing cheque no. 164669 dated 24.02.2020 to Sri Sankar Chandra Mallick/the certificate holder and which was withdrawn by the certificate holder on 04.03.2020. Learned advocate produced Xerox Copy of the account payee cheque no. 164669 dated 24.02.2020 for Rs. 1,02,221/- drawn in the name of Sri Sankar Chandra Mallick. The bank statement of petitioner shows such cheque was cleared on 04.03.2020.

The order of the controlling authority passed on 15.02.2019 shows that opposite party was entitled to gratuity to the tune of Rs. 1,98,995/- for rendering of 19 years of service to the petitioner corporation. He was paid only rupees 1,07,460/- out of Rs. 198,995/- to which he is entitled to on 11.08.2014. Therefore, the controlling authority held that opposite party is still entitled to balance gratuity amounting to Rs. 91,587/- along with interest of Rs. 51,944/- thereon.

The order sheets of the certificate officer dated 16.08.21 and 03.09.21 show that principal amount was already cleared and interest to the tune of Rs. 1,02,222/- was yet to be paid by the present petitioner. When such orders were passed both sides happened to be present before certificate official. Then it not known if the petitioner has already cleared the interest of Rs,1,02,222/-on 24.02.2020, more than a year ago then how its representative failed to bring to the notice

of the certificate officer by producing the bank statement and copy of cheque on 16.08.21 and on 03.09.21 showing clearance of entire dues. The order 16.08.21 shows that it was submitted before certificate officer that only principal amount was cleared and not the interest. Therefore, this court is unable to accept the submission of the petitioner's lawyer that all dues are cleared. The petitioner is directed to produce all the documents to prove payment as ordered by the Controlling Authority on 15.02.2019 before the certificate officer on the date so fixed by the certificate officer. Consequently, the impugned order dated 03.09.2021 passed by certificate officer is not interfered.

So far notice dated 08.10.2021 is concerned, this court holds that Rules 77 of Bengal Public Demand Recovery Act, 1913 being already omitted by section 4 of the Bengal Public demand Recovery (Amendment) Act of 1953 (West Ben. Act XIII of 1953) in that case the notice which has been issued by the Certificate Officer on 08.10.2021 against the Law and Claims Officer of the petitioner, appears to be without jurisdiction. Therefore, the notice dated 08.10.2021 under Rule 77 and in Form 30 is hereby set aside being illegal and void.

In view of such observation, this revisional application is disposed of and the matter is send back to the Certificate Officer to call for all payment related

documents along with bank statement from the present petitioner towards the payment, as ordered by Controlling Officer, under Payment of Gratuity Act, 1972 on 15.02.2019 and dispose of the certificate case.

Accordingly, **C.O. 2025 of 2021** is disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(**Kesang Doma Bhutia, J.**)