

5
16.11.2022
sb
Ct 550

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 21529 of 2022

Delta Limited
Vs.
Amiya Kumar Naskar & Ors.

Mr. Soumya Majumder,
Ms. Amrita Pandey,
Ms. Anamika Pandey,
Ms. Ghanshyam Pandey,
Ms. Skhikha Kashyap
.... For the petitioner.

Ms. Senjuti Sengupta,
Mr. Rananeesh Guha Thakurta
.... For the respondent no.1

Mr. Bipin Ghosh, led by
Mr. Susovan Sengupta,
... For the State

The present writ application has been filed *inter alia* challenging the orders dated 5th October, 2021 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”) and the notice dated 2nd February, 2022 passed by the Certificate Officer in a certificate proceedings.

Mr. Majumder, learned advocate representing the petitioner submits that petitioner could not challenge the aforesaid order dated 5th October, 2021 by filing an appeal since the petitioner has not been supplied with the certified copy of the aforesaid order despite having putting in requisite on 30th November, 2021 along with Court fees stamp of Rs.10/- filed in Form ‘U’ with the office of the

Controlling Authority. He submits that unless the petitioner's grievance as regards non-supply of certified copy of the order, is redressed, the certificate proceedings cannot be permitted to continue. Mr. Majumder submits that the petitioner has been prevented from filing the appeal on account of non-supply of the certified copy of aforesaid order. Having thus rendered remediless the petitioner has filed this application before this Hon'ble Court. He further submits that admittedly a sum of Rs.1,17,661/- is due and payable by the petitioner to the respondent no.1. The petitioner is ready and willing to make payment of the aforesaid sum and had already offered to pay the same to the respondent no.1 before the Certificate Officer. The respondent no.1 has, however, refused to accept the same. Mr. Majumder further submits that there has been an error in computation and that the computation of interest has been made in a manner which is not permissible as per the said Act. He prays that this Hon'ble Court may be pleased to entertain the aforesaid application and stay the enforcement of the order dated 5th October, 2021 *inter alia* including the certificate proceedings.

Ms. Sengupta, learned advocate representing the respondent no.1 submits that at the instance of the respondent no.1, by an order dated 17th August, 2022 this Hon'ble Court had directed the Certificate Officer to

dispose of the proceedings pending before him within a period of two months from the date of communication of such order. It is further submitted that the Senior Manager of the writ petitioner herein had appeared before Certificate Officer and had submitted an undertaking to pay the gratuity amount by 17/18 August, 2022 which has also not been complied with. The issues raised in the present application were not raised by the petitioner before this Hon'ble Court in the previous writ application, being WPA 4852 of 2022 and as such the present writ application should be dismissed with costs. It is also submitted on behalf of the respondent no.1 that there is an Appellate Authority and as such the present writ application should not be entertained without the petitioner availing the efficacious alternative remedy in the form of an appeal.

Mr. Ghosh, learned advocate representing the respondent nos. 2 to 4 submits that the Certificate Officer, consequent upon passing of the order dated 17th August, 2022 had taken steps for compliance of the aforesaid order. Pursuant to the direction issued by the Certificate Officer, the Senior Manager of the writ petitioner had appeared and tendered seven (7) postdated cheques amounting to Rs.2, 35,022/-. Mr. Ghosh submits that the respondent no.1 had refused to accept such cheques and it is for such reason the same has been returned to the

petitioner. He says that there are no latches on the part of the respondents in complying with terms of the order passed by this Hon'ble Court.

I have considered the submissions made by the advocates representing the respective parties and the materials on record. I find that the order dated 5th October, 2021 passed by the Controlling Authority is an appealable order and as such the writ application on such ground ought not to be entertained. However, taking into consideration the submissions, that the petitioner had been prevented from filing the appeal on the ground of non-supply of certified copy of the order dated 5th October, 2021, I direct the respondent no.3 to make available the certified copy of the order dated 5th October, 2021 as applied for by the petitioner vide its requisition dated 30th November, 2021, within a period of four weeks from date.

Since I do not propose to entertain this application and hear out the same on merits in view of the alternative remedy, this writ application is dismissed.

Dismissal of the aforesaid writ application shall, however, not prevent the petitioner from availing any remedy, if otherwise available in law.

Since I have dismissed the writ application, other issues raised by Ms. Sengupta are not considered.

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

Urgent certified website copy of this order, if applied for, be made over to the parties upon compliance of all formalities.

(Raja Basu Chowdhury, J.)