

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 267 of 2023

**Shalimar Paints Limited
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Sujit Sharma
Mr. Sunny Nandy
Mr. Subha Pathak
Mr. Tamal Singha Roy

For the State : Mr. Subir Pal

For the respondent no. 3 : Mr. A.K.Niyogi
Mr. Vaskar Pal

Heard on : 29.03.2023

Judgment on : 29.03.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the order dated 25th November 2022 passed in Gratuity case no. G-03 of 2017 pending before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

2. The petitioner says that the respondent no.3 having retired from service on 31st December, 2016 had applied for gratuity before the respondent no.2 in Form-“N” on 12th July, 2018. The claim of the respondent no.3 was contested by the petitioner. The factory of the petitioner had been closed and was under suspension of work since 16th July, 2014. The respondent no.3 was a temporary workman and had not worked for a period of 240 days in a stretch as such was not entitled to his claim for gratuity. The aforesaid application was being heard by the respondent no.2. According to the petitioner the respondent no.2 having been promoted as a Deputy Labour Commissioner, had assumed the jurisdiction of Appellate Authority and could no longer act as a Controlling Authority. It is in the factual backdrop as aforesaid that the petitioner had filed an application on 12th February, 2020, for releasing the case pending before the respondent no.2. The petitioner had thereafter adduced evidence. It is the petitioner’s case that since the respondent no.2 did not adhere to the petitioner’s request and continued hearing of the matter the present writ application has been filed.
3. It is submitted on behalf of the petitioner that the present incumbent to the post of the Controlling Authority under the said Act, has been promoted to the post of Deputy Labour Commissioner and as such she is no longer competent to assume the office of the Controlling Authority. According to the petitioner,

upon the respondent no.2 being promoted, she has become the Appellate Authority within the meaning of the said Act.

4. Mr. Sharma, learned advocate appearing for the petitioner, by placing reliance on Section 7(4) of the said Act, has inter alia, claimed that in case where there is a dispute as to the amount of gratuity payable to an employee under the said Act, or as to the admissibility of any claim of, or in relation to an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the same shall be decided by the Controlling Authority.
5. By referring to Section 3 of the said Act, it is submitted that the appropriate Government may, by notification, appoint any officer to be a Controlling Authority for the purpose of the said Act, who shall be responsible for the administration of the Act, and different Controlling Authority may be appointed for different areas.
6. By placing before this Court, a notification dated 7th October 1996, issued by the Government of West Bengal, Labour Department, in exercise of powers conferred by Section 3 of the said Act, he says that the appropriate Government has been pleased to appoint the officers mentioned in Column-I of the Schedule to the said notification, to be the Controlling Authority for the purpose of the said Act, for the area mentioned in the corresponding entry in Column-II of the said Schedule. By further referring to the aforesaid notification, he submits that all

Assistant Labour Commissioners, West Bengal posted in the Regional labour offices under the Labour Directorate have been appointed as Controlling Authority in respect of the respective area for which he/she holds charge as Assistant Labour Commissioner.

7. Since the incumbent to the post of the Controlling Authority, being the respondent no.2, has since been promoted to the post of Deputy Labour Commissioner, she can no longer assume the jurisdiction of a Controlling Authority within the meaning of the said Act and cannot continue with the proceedings.
8. Mr. Pal, learned advocate appearing for the State, on the other hand submits that the State Government had, in exercise of powers conferred under Section 3 of the said Act, duly appointed all Assistant Labour Commissioners, West Bengal posted in Regional labour offices, under the Labour Directorate, to act as Controlling Authorities in respect of the respective area for which each of such Assistant Labour Commissioner holds charge, and does not contradict the notification dated 7th October, 1996. He says although by notification dated 17th February, 1999, the aforesaid notification had been partially modified, the same did not alter the status of Assistant Labour Commissioner, West Bengal posted in the Regional Labour Offices. He, however, by placing reliance on an office order dated 6th September 2019, issued by the OSD and Labour Commissioner, Government of

West Bengal submits that Labour Commissioner by such notification, has granted scale linked designation to the officers belonging to the West Bengal Labour Service. According to such office order the officer belonging to West Bengal Labour Service having designation of functional posts as mentioned in Column-V are allowed respective scale linked designation as mentioned in Column-VI in the table annexed to such office order without prejudice to any rights with respect to the seniority of such officers; the duties and responsibilities of the scale linked designated officers will, however, remain unchanged with respect to the functional post.

9. By referring to the annexure of the said office order, especially to serial no.93 of the said office order, he says that the concerned Assistant Labour Commissioner being the respondent no.2 herein, who had been appointed as a Controlling Authority for the District of Howrah continues to discharge the same responsibilities and functions, only her scale linked designation is changed, though her designation of the functional post remains unchanged. He says that the respondent no.2 has been given scale linked designation of Deputy Labour Commissioner (P) and is in charge of Howrah District. The said scale linked designation does not alter her functional post that is of Assistant Labour Commissioner, and as such is competent to act as the Controlling Authority, within the meaning of the said Act.

10. Mr. Niyogi learned advocate appearing for the respondent no. 3 submits that the present application has been filed with the object of delaying the determination of the amount of gratuity payable to the respondent no.3. He says that since, the petitioner did not make payment of gratuity, an application in Form-'N' was filed before the Controlling Authority in the year 2016. Such application is pending till date and has not been disposed of. He says that since the application had remained pending, the respondent no. 3 was constrained to approach this Hon'ble Court. By an order dated 5th January 2022, this Court upon taking into consideration all aspects of the matter, was inter alia, pleased to direct the respondent no.2 to expeditiously hear out and dispose of the said application. It is only after such order had been passed, that the petitioner to circumvent the aforesaid order has applied before this Hon'ble Court by filing this application. He says that the petitioner had in the year 2020 applied before the respondent no.2, by a one-page application, *inter alia*, claiming that the respondent no.2 may be graciously pleased to release the matter since, the learned authority having been promoted as an Appellate Authority, has lost jurisdiction to function as a Controlling Authority within the meaning of the said Act. Subsequently, thereafter the petitioner had participated in the proceedings and has also lead evidence. Aforesaid application is only a ploy to delay the disposal of the pending

proceedings. According to him, the instant writ application deserves to be dismissed.

11. In reply, Mr. Sharma submits that the office order dated 6th September 2019, as relied on by Mr. Pal, learned advocate appearing for the State, is not a notification within the meaning of the said Act, and as such the same does not confer any jurisdiction or authority on the persons named therein, to act as a Controlling Authority within the meaning of the said Act. According to Mr. Sharma, the office order dated 6th September 2019, is an internal memo and the same cannot be relied on to demonstrate that the respondent no.2 has been appointed as the Controlling Authority within the meaning of the said Act. According to the petitioner, since the incumbent to the post of the respondent no.2 has been promoted, she can no longer function as a Controlling Authority, nor can she pass an order under Section 7(4) of the said Act.

12. Having heard the learned advocates appearing for the respective parties, I find that the petitioner has by a one-page application questioned the jurisdiction of the respondent no.2 to hear out the matter. No particulars in the two-paragraph-application have been provided. The said application also does not disclose the date on which the respondent no.2 had been allegedly promoted as an Appellate Authority. Such application was filed sometimes on 12th February, 2020. I find that thereafter

the petitioner had participated in the said proceedings and lead evidence, at present the proceedings are pending before the respondent no.2. No attempt was made by the petitioner to bring to the notice of this Hon'ble Court the aforesaid jurisdictional issue when the order dated 4th January 2022, was passed.

13. I have also perused the notification dated 7th October 1996, as relied on by the petitioner which notifies that all the Assistant Labour Commissioners, West Bengal posted in the Regional, labour offices under the Labour Directorate have been appointed as Controlling Authority for the purpose of the Act, for the area mentioned in the corresponding entry II of the Schedule to such notification.

14. I find that Mr. Pal has relied on an office order dated 6th September 2019, wherefrom it would appear that the Labour Department, Government of West Bengal has, inter alia, been pleased to grant scale linked designation to the officers belonging to the West Bengal Labour Service. In terms of the aforesaid office memo, the officers of the West Bengal Labour Service having designation of functional posts, as mentioned in Column-V were allowed respective scale linked designation as mentioned in Column-VI in the table annexure therewith. As per the aforesaid office memo the duties and responsibilities of the scale linked designated officers remain unchanged with respect to their functional posts.

15. I find that Mr. Pal, by relying on the aforesaid office memo/order has clarified that the parent designation/ functional post of the respondent no. 2 is that of the Assistant Labour Commissioner, as would appear from serial no. 93, only the scale linked designation of the said officer has been changed to Deputy Labour Commissioner (P). The aforesaid office order dated 6th September 2019 does not seek to alter the functional designation of the respective officers. The same only provides that the respective officers were allowed scale linked designation and that the duties and responsibilities of the scale linked designated officers remain unchanged with respect to their functional posts.

16. Since the functional post of the respondent no.2 remains unchanged, it cannot be contended that she has become incompetent to assume the office of a Controlling Authority within the meaning of the said Act.

17. In view thereof, I do not find any merit in the submission made by Mr. Sharma. I also do not find any jurisdictional error committed by the respondent no.2 in passing the order dated 25th November, 2022. The writ application fails and accordingly, the writ application being WPA 267 of 2023 is ***dismissed***.

18. There shall be no order as to costs.

19. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)