

Item No. 3
02.08.2023
Court. No. 19
GB

C.O. 317 of 2022

West Bengal Polytechnic Development Society & Anr.
Vs.
Sandipa Mitra

Mr. Partha Pratim Roy,
Mr. Lutful Haque,
Ms. T. Khatun

... for the Petitioners.

Mr. Om Narayan Rai,
Mr. Badal Singh

... for the Opposite Party.

The revisional application arises out of an order dated December 15, 2021 passed by the learned Chief Judge, Small Causes Court at Calcutta in West Bengal Shops and Establishments Appeal No.03 of 2019 (W.B.S.E. Appeal No.03 of 2019).

By the order dated December 15, 2021, the learned judge affirmed the award dated August 30, 2019 passed by the learned Referee as also the Assistant Labour Commissioner E.L. & M.W. Section, Kolkata. That awarded money of Rs.4,04000/- which was lying with the Canara Bank in the name of the Assistant Labour Commissioner, was directed to be handed over to the petitioner by an account payee cheque along with the accrued interests therein. Separate proceedings for calculation of the cost was directed to be drawn up. The appeal was filed under the provisions of Section 14(6) of the said Act. The case of the opposite party who approached the Assistant

Labour Commissioner under the Provisions of Section 14 of the said Act were as follows:-

- a) The opposite party joined the West Bengal Polytechnic Development Society (hereinafter referred to as the 'said society') pursuant to a letter of appointment dated October 28, 2013 issued by the president of the said society.
- b) The consolidated salary as per the appointment letter was fixed at Rs.12,000/- per month.
- c) The opposite party got her salary for the month of November 2013 and December 2013.
- d) Rs.10,000/- was remitted to the opposite party for two months and not the entire of Rs.12,000/-. Hence, there was an outstanding dues of Rs.4,000/-.
- e) The salary from January 2014 to October 2014, that is, for a period of ten months was not paid.
- f) Finding no other alternative, the opposite party approached the Assistant Labour Commissioner under the said Act for necessary payment of the outstanding dues.

The Assistant Labour Commissioner, West Bengal after hearing the matter at length, allowed the application filed by the opposite party and an amount

of Rs.4,04000/- was awarded in favour of the opposite party.

Dissatisfied with the said award, the appeal was preferred. The learned appellate court framed the following three issues:-

- i) Whether the Assistant Labour Commissioner and the learned Referee had the jurisdiction to entertain the application in view of the bars under Sections 2 and 2(5) of the said Act.
- ii) Whether the findings of the learned Referee were acceptable in law.
- iii) Whether the money sent to the opposite party was her salary or money paid by the society for purchase of equipments and setting up of the office.

Upon contested hearing, the learned appellate authority/court found that there was nothing on record to show that the money that was remitted to the opposite party in November and December at the rate of Rs.10,000/-, had been remitted for establishment of the office and not as salary. The appointment letter clearly indicated that the opposite party was appointed as an office assistant on a consolidated salary of Rs.12,000/- and in the absence of any other resolution of the governing body, the contention of the employer or the management that the opposite party had been

given some money to establish the office was not borne out by the records. Such contention of the management was not proved.

The learned court further found that it was a principle of service jurisprudence that any person who was appointed in a place of work and had rendered service, must be entitled to the salary and/or wages as per the appointment letter. Hence, the appointment of the opposite party was proved and the fact that she was entitled to salary at the rate of Rs.12,000/- per month upto October 2014 was also proved. These factual findings are not interfered with.

The learned Referee as also the learned court below came to a finding that the said society was a registered society. However, the fact that a registered trust deed had been relied upon by the management, was totally ignored by the learned Referee as also the learned court. The court found that the society was a registered society, but such finding is not based on any evidence except for a statement made in an affidavit-in-chief by a person authorized by the president of the said society. The trust deed clearly states as follows:-

“NOW THIS DEED WITNESSETH AS FOLLOWS:-

*1. THE SETTLOR does hereby transfer, assing and make over unto the TRUSTEES the sum of **Rs.10,000/- (Rupees Ten Thousand only)** TO HAVE AND TO HOLD upon the Trust the said sum and the investments for the time being which shall represent the same and all other sums as properties that may from time to time*

form part of the TRUST estate upon the TRUST subject to the powers, provisions, declarations etc hereinafter contained and concerning the same as stated hereunder:-

I. The TRUSTES shall by themselves jointly manage and administer the TRUST property in such manner as will be most beneficial to the interest of the TRUST in a manner as hereinafter provided.

2. The Name of the TRUST shall be: "WEST BENGAL POLYTECHNIC DEVELOPMENT SOCIETY" . AND IT SHALL BE A PUBLIC CHARITABLE TRUST.

3. ADDRESS : The Registered Office of the TRUST shall be at : 'VARNAPARICHAY', 4th Floor, Collage Street, Kolkata- 700083.

*a. The Registered Office may be shifted to any other place if the **BOARD OF TRUSTEES** may decide subsequently to suit the official business and purpose of the TRUST.*

4. AIMS AND OBJECTIVES OF THE TRUST

I. The object of the TRUST shall be to impart, promote and spread education in Engineering, Management, Technology, Medical, Bio-Technology, Vocational Training, Teachers training, Science, Arts, Commerce, Research, Surgical Operation, Computer Science, and to start establishing, managing and running different educational institutes for Boys and Girls and for the benefit of general public without any profit motive."

Although, it appears that the name of the trust was West Bengal Polytechnic Development Society, the trust was a public charitable trust for promotion of education. This deed has not been considered on evidence. It is submitted that the same was produced before the learned Referee as also the learned court. However, the records do not reveal that the said deed was ever marked as exhibit.

A coordinate Bench of this Court in the decision of **Om Dayal Educational & Research Society and**

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quashed a notification published by the State Government which aimed at including educational institutions within the purview of the Employees' State Insurance Act, 1948. The Court was of the view that educational institutions would not come within the purview of the Employees' State Insurance Act, 1948 as educational institutions, run by private, aided or partially aided, individuals or trusts, could not be treated as commercial establishments.

Mr. Roy, learned advocate appearing on behalf of the petitioners relies on the definition of commercial establishment, namely, Section 2(2) of the said Act and submits that unless there was a notification of the State Government bringing within the purview of the Act those societies or establishments, which were charitable trusts and engaged in the business of imparting education, Section 14 of the said Act would not apply. If such notification was not available, in that event, the society would not come within the purview of the West Bengal Shops and Establishments Act, 1963.

From the orders passed by the learned Referee and the learned court, it does not appear that this point was taken up for consideration. It is urged that even if, the organization was named as a society, that itself would not bring the society within the purview of

the said Act unless educational institutions were brought within the purview of the said Act. The jurisdiction of the learned Referee under the Act to decide the dispute between the opposite party and the petitioners ought to have been decided first.

However, this Court invokes the power under Article 227 of the Constitution of India and directs that the error as pointed out with regard to the non-consideration of this vital issue and non-marking of the said trust deed as evidence, is an error which must be rectified. Thus this Court interferes with the order impugned passed by the learned Chief Judge, Small Causes Court at Calcutta and directs as follows:-

- 1) The order impugned is set aside in part and the matter is remanded.
- 2) The petitioners will be entitled to adduce additional evidence by producing and proving the trust deed.
- 3) The trust deed shall be marked as an exhibit.
- 4) Both the parties shall be entitled to make their submissions and adduce further evidence in this regard.
- 5) The learned Chief Judge, Small Causes Court at Calcutta shall decide the issue as to whether the dispute ought to have been decided in terms of Section 14 of the said Act and thereafter pass necessary orders.

6) With regard to the other findings that the opposite party had rendered service and ought to be paid her salary, there is no interference.

Irrespective of whether the said Act applies or not, the salary of the opposite party should be paid. Thus, the outstanding salary component of the opposite party, that is, Rs.1,20,000/- and outstanding wages of Rs.4,000/-, amounting to Rs.1,24,000/- should be released in her favour. Moreover, delay has occurred on the part of the authorities in not paying the salary to the opposite party on time. Thus, the opposite party is also entitled to interest.

Under such circumstances, from the amount that has been deposited in Canara Bank in the name of the Assistant Labour Commissioner, Rs.2,00,000/- shall be paid to the opposite party by an account payee cheque. Such payment shall be made irrespective of the ultimate decision to be taken by the learned court below, on remand. The only issue to be decided on remand is whether the Polytechnic Society was a shop or an establishment under the 1963 Act and whether the opposite party was entitled to pray for recovery of wages under Section 14 of the said Act.

The amount of Rs.2,00,000/- is a full and final settlement of the salary component payable to the

opposite party along with consolidated interest for the delay in payment of salary. The opposite party had to move several authorities in order to get what was due to her. Whether the remaining Rs.2,04000/- along with accrued interest would be payable to the opposite party, will be decided after the issue of jurisdiction is once again decided by the learned court below on remand, upon considering the additional evidence, namely, the trust deed which will be produced and marked as an exhibit, and after hearing the parties.

Payment of Rs.2,00,000/- would not be an acceptance of jurisdiction of the learned Referee under the said Act, but a direction of this court to pay the amount that was due on account of salary. The fate of the remaining amount along with the accrued bank interest shall be subject to the final decision of the learned Court below.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)