

25.5.2023

ct. no. 5

sl. No. 4

sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 483 of 2023

**Budge Budge Institute of Technology
versus
Tuhina Halder**

Mr. D.N. Maiti

Mr. Aviroop Mondal

Mr. Sanjoy Sarkar

... for the petitioner

Ms. Dona Ghosh

..for the opposite party

Heard Mr. Aviroop Mondal, learned counsel for the petitioner and Ms. Dona Ghosh, learned counsel representing the opposite party.

This revisional application impeaches the order dated 23rd September, 2022 passed by the competent authority. By the order impugned, the competent authority allowed the applicant- Ms. Tuhina Halder to produce certain documents by way of supplementary affidavit in chief. According to Mr. Mondal, the competent authority failed to exercise jurisdiction vested in it by allowing the applicant to produce certain documents which was in her possession and which could have been produced well before hand while she submitted her affidavit-in-chief. There was lack of due diligence on the part of the applicant. The competent authority failed to appreciate the fact that law does not

permit such exercise which virtually for all practical purposes amounts to amendment of the pleading.

Ms. Ghosh, learned counsel for the opposite party refutes such contention and submits that as an employer-Budge Budge Institute of Technology had the obligation to issue pay slip to the applicant for the month of June, 2020. Though the salary was credited to the bank account of the applicant on 16th July, 2020 but no pay slip was issued and as a result the applicant could not file pay slip for the month of June, 2020.

Upon perusal of the materials on record, I find that in a proceeding under Payment of Gratuity Act, 1972, the last pay certificate is relevant document to arrive at a just decision. From the attending factors of the case, it stands admitted that due to Pandemic caused by Covid-19, the employer did not issue pay slip to any of the employees. The salary was credited to the account of each of the employees and which according to Mr. Mondal, is a proof of last pay drawn by the applicant.

The principle of law as laid down under Order 6 Rule 17 of the Code of Civil Procedure is not at all applicable in this case as adverted by Mr. Mondal for the simple reasons that no attempt was ever made by the applicant to amend the pleading. By writing a letter dated 22nd July, 2022, the applicant brought the fact that she could not submit her last pay slip for the month of June, 2020. The bank statement indicates that on July 16, 2020 the

salary for the month of June, 2020 was credited. The applicant before the competent authority only wanted to tender the pay-slip for consideration of competent authority. She never prayed for amendment of pleading. The provision of Order 6 Rule 17 of the Code of Civil Procedure therefore, can not be pressed into service, in this proceeding before the competent authority as no such attempt was made. As I have already pointed out the pay slip for the last salary drawn is relevant document, the competent authority was justified to allow the applicant to produce the same by way of supplementary affidavit-in-chief. However, it will not cause to prejudice to the employer, the petitioner before this Court in as much as the right of cross-examination on this document will be available to the employer.

With this observation, this revisional application is disposed of.

A copy of the order be sent down before the competent authority for information, with a further direction to dispose of the matter within three months, without granting adjournment on mere asking of the parties.

All parties are directed to act upon server copy of this order.

(Siddhartha Roy Chowdhury, J.)

