

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 4121 of 2021

Abdul Khalil Khan @ Ab Khalil Khan

-vs-

The State of West Bengal & Ors.

With

W.P.A. 5852 of 2022

Delta Limited

-vs-

Abdul Khalil Khan @ Ab Khalil Khan

<i>For the petitioner WPA 4121 of 2021 & for the respondent in WPA 5852 of 2022</i>	<i>: Mr. Ranjay De Mr. Basabjit Banerjee Mr. Bikram Sarkar Ms. Sayani Bose</i>
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<i>For the State in WPA 4121 of 2021</i>	<i>: Mr. Shamim ul Bari</i>
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<i>For the petitioner in WPA 5852 of 2022 & for the respondent no. 4 in WPA 4121 of 2021</i>	<i>: Mr. Soumya Majumder Ms. Amrita Pandey Ms. Anamika Pandey Ms. Sneha Singh</i>
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<i>For the respondent no.3</i>	<i>: Mr. Bipin Ghosh</i>
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<i>Heard on</i>	<i>: 21.06.2023</i>
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<i>Judgment on</i>	<i>: 21.06.2023</i>
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Raja Basu Chowdhury, J:

1. Two writ applications, one filed by the Delta Limited challenging an order dated 3rd September, 2021 whereby the appellate authority under the Payment of Gratuity Act 1972, was, *inter alia*, pleased to

dismiss the said appeal on the ground of limitation and the other writ application being WPA 4121 of 2021 filed by the workman concerned, inter alia, praying for execution of the certificate issued by the controlling authority under the Payment of Gratuity Act, 1972, through the certificate officer having jurisdiction are taken up for consideration together.

2. Records would reveal that the petitioner in WPA 4121 of 2021 (hereinafter referred to as the “workman”) was engaged by Delta Limited (hereinafter referred to as the “company”) on 10th January, 1966.
3. It is the contention of the workman that the workman was a permanent employee under the company and had attained the age of superannuation on 21st February 2005. Thereafter following his superannuation sometimes on or about 25th March 2005, provident fund accumulation was disbursed in favour of the workman. After a lapse of more than a decade from the date of superannuation, the workman had filed an application in Form “I” before the company in terms of provisions contained in the West Bengal Payment of Gratuity Rules, 1973 (hereinafter referred to as the said Rules).
4. It is the contention of the workman that since gratuity remained unpaid, despite receipt of Form “I” an application in form “N” was filed by the workman before the controlling authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the said

Act). Since then proceedings were held before the controlling authority.

5. It is the contention of the company that the company was completely unaware with regard to the factum of disposal of the application in Form "N" until the time mentioned hereinafter.
6. In the interregnum, a general lockdown all over the country was imposed on 23rd March, 2020. The lockdown was partially relaxed sometimes in June 2020. Incidentally however, a show cause notice dated 23rd September, 2020 was issued by the controlling authority calling upon the company to show cause on account of non-compliance of the direction dated 24th March, 2020, why the matter be not sent to the certificate officer in terms of Section 8 of the said Act and also directing the company to pay a sum of Rs.2,83,256/- to the workman.
7. It is contended by and on behalf of the company that prior to receipt of the show cause notice the company was not at all aware with regard to the aforesaid direction issued by the controlling authority and as such immediately upon receipt of the said show cause, the company had responded to the same by communication in writing dated 2nd November, 2020.
8. Records would also reveal that such reply to the show cause, given by the company, was not accepted by the controlling authority as the certified copy of the order passed by the controlling authority had not appended with Form "U" in prescribed manner as envisaged

under Rule 20 of the said Rules. It would also transpire from the record that on 4th November, 2020 the appellate authority had issued the certificate in terms of section 8 of the said Act, for recovery of the gratuity amount as determined by the controlling authority. Thereafter the company had filed a review application which was also dismissed by the controlling authority on the ground that the said matter had already been disposed of at the end of the controlling authority.

9. Subsequently the aforesaid writ application being WPA 4121 of 2021 was filed by the workman for execution of the aforesaid certificate. It would also appear from the records that a co-ordinate Bench of this Court by an order dated 24th February, 2021, had directed the company to deposit the entire amount of Rs. 2,83,256/- which had remained unpaid, with the learned Registrar General of this Court. Subsequently however, the co-ordinate Bench by an order dated 11th March, 2021, after perusing the original records of this case and the affidavit filed by the State respondents had directed that the direction for depositing the gratuity amount of Rs. 2,83,256/- with the learned Registrar General of this Court shall remain stayed and be kept in abeyance until further orders.

10. In the interregnum, however, the company had preferred an intra Court appeal from the order dated 24th February 2021 passed in connection with the aforesaid matter. The Division Bench of this Hon'ble Court by order dated 12th March 2021 had, however,

disposed of the aforesaid appeal by modifying the order dated 24th February, 2021 to the extent that the appellant will create a fixed deposit in its own name for Rs. 2,83,256/- in a Nationalized Bank bearing the highest rate of interest within a week from date of such order and shall deposit the original receipt immediately with the learned Registrar General of this Court. Upon deposit of the receipt, the learned Registrar General will issue a certificate to that effect which the appellant shall produce before the learned single judge.

11. The company contends that the company had created a fixed deposit in its name only on 24th March, 2021 on account of circumstances beyond its control. The company had also preferred an appeal in terms of section 7(7) of the said Act. The said appeal was, however, dismissed by an order dated 3rd September 2021 which is the subject matter of challenge in writ application no. WPA 5852 of 2022.
12. Mr. Majumder, learned advocate representing the company submits that the company had never been served with the notice in Form 'R'. By referring to the statutory Rules it is submitted that without service of notice in Form 'R', neither is the order passed by the controlling authority enforceable nor does the time for reckoning limitation, for filing an appeal which is the statutory right, start.
13. In any event it is contended that a general lockdown was declared all over the country from 23rd March, 2020. The notice in Form 'R' could not have been issued on 24th March, 2020. It is apparent that

the said Form 'R' had been ante-dated. Even the reply to the show cause notice was not dealt with by the controlling authority on merits. He says that the controlling authority had proceeded to somehow dispose of the proceedings behind the back of the company in order to deny the company its statutory right.

14. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the suo motu writ petition (Civil) no. 3 of 2020 dated 10th January, 2022, it is submitted that the Hon'ble Supreme Court by its order dated 23rd March, 2020 had directed extension of the period of limitation in all proceedings before the Courts/tribunals including the Hon'ble Supreme Court with effect from 15th March, 2020 till further orders. Although on 8th March, 2021 the order dated 23rd March, 2020 was brought to an end permitting the relaxation of period of limitation between 15th March, 2020 and 14th March, 2021, while doing so, it was made clear that the period of limitation would start from 15th March, 2021. The appellate authority had, however, proceeded to dismiss the appeal filed by the company, *inter alia*, on the ground of limitation though the Appeal was filed on 15th March, 2021.

15. It is still further submitted that the appellate authority had not taken into consideration the application for waiver filed by the company for waiving pre-deposit, as is required in terms of section 7(7) of the said Act. It is submitted that the said application for waiver had been made inasmuch as the applicant had secured the

entire amount in terms of direction passed by the Division Bench of this Hon'ble Court. A copy of the aforesaid waiver application filed by the company before the Appellate Authority as made over by Mr. Majumder, is taken on record. In the facts it is stated that the order dated 3rd September 2021 is bad in law and should be set aside.

16. It is still further submitted that during pendency of the challenge to the aforesaid order before the Hon'ble Court in WPA 5852 of 2022, the certificate officer had proceeded with the matter. Despite knowledge of the pendency of the aforesaid proceedings since the certificate officer by memo dated 2nd September 2022 had directed the company to make payment of Rs. 2,83,256/- and/or present the fixed deposit, the company had presented the fixed deposit to the certificate officer whereupon the company was asked to encash the fixed deposit as the amount was required to be paid directly to the workman, failing which warrant of arrest would be issued. The company contends that under threat of arrest the fixed deposit was encashed and the company had made payment of the aforesaid sum of Rs. 2,83,256/- to the workman, without prejudice to the rights and contention of the appellant in the present proceeding.
17. In support of the aforesaid contention Mr. Majumder has relied on copies of letters dated 6th September 2022 and 16th November 2022 which are also taken on record.

18. In the facts as stated above it is submitted that the Company's statutory right to appeal cannot be taken away and the same should be restored.
19. *Per contra*, Mr. Guha Thakurta, learned advocate representing the workman submits that the workman is entitled to compound interest and as such necessary order should be issued upon the certificate officer, directing him to execute the aforesaid certificate. He still further submits that the writ application filed by the company being WPA 5852 of 2022, had never been moved and this is for the first time the matter has been heard in last two years. He further submits that the appellate authority cannot be faulted for having rejected the appeal inasmuch as the appeal was not accompanied by a mandatory pre-deposit as is required to be made under the said Act. It is still further submitted that the appeal was hopelessly barred by limitation. Extension of limitation granted by the Hon'ble Supreme Court had come to an end on 8th March 2021. The appeal was filed beyond 60 days therefrom and as such there is no irregularity in the said order dated 3rd September, 2021 passed by the Appellate Authority.
20. Mr. Bari and Mr. Ghosh, learned advocates representing the State respondents submit that in the present case, authorities had proceeded in accordance with law. The learned advocates, however, could not provide any appropriate explanation as to how the controlling authority had purportedly signed the notice in Form 'R'

on 24th March, 2020. They also could not provide any appropriate explanation as to who had prepared the notings on the order sheet dated 16th June, 2020.

21. Heard learned advocates for the respective parties and considered the materials on record including the original records. Admittedly in this case I find that a determination has been made by the controlling authority. Interestingly, however, no notice in Form 'R' was ever served on the Company. The notice in Form 'R' which has been enclosed to the report filed by the State respondents demonstrates that the said notice was signed on 24th March 2020. There was a complete lockdown in the country as on the date when this notice appears to have been signed. This apart, there are several glaring inconsistencies in the order sheet. It would not appear from the order sheet that notice in Form 'R' had actually been served on the company. No attempt was made to even serve the notice in Form 'R' by registered post. The reasoning provided to serve the notice in Form 'R' by ordinary post is absurd. Since notice in Form 'R' was never served on the company, the right of the company to prefer an appeal was not lost and at the same time the right of the workman to receive the amount determined by the Controlling Authority from the company also did not mature. In this context it would be relevant to take note of the provision for direction for payment of gratuity as appearing in Rule 17 of the said Rules. The same is reproduced hereinbelow:

“17. Direction for payment of gratuity. – If a finding is recorded under sub-rule (4) of rule 11 that the applicant is entitled to payment of gratuity under the Act, the controlling authority shall issue a notice to the employer concerned in Form R specifying the amount payable and directing payment thereof to the applicant under intimation to the controlling authority within thirty days from the date of receipt of the notice and a copy of the notice shall be endorsed to the applicant employee, nominee or heir, as the case may be.”

22. From the aforesaid it is crystal clear that right to receive gratuity matures only when Form R is served.
23. I, however, find that a show cause notice was served on the company. The reply given by the company was, however, not considered by the Controlling Authority, *inter alia*, on the ground that the same was not accompanied by the certified copy and Form “U” in prescribed manner.
24. It appears that the Controlling Authority had insisted on ensuring strict compliance of procedure and had refused to consider the show-cause on hyper technical grounds.
25. Be that as it may, record would reveal that the amount determined by the Controlling Authority has already been disbursed in favour of the workman. However, disbursal of the aforesaid amount cannot take away the right of the company to prefer an appeal under section 7(7) of the said Act. It would further appear that admittedly, the appeal was filed on 15th March, 2021. I find that the Hon’ble Supreme Court in the case of suo motu writ petition (Civil) no. 3 of 2020, by order dated 23rd March, 2020 had categorically provided for extension of period of limitation in all

proceedings before the Courts/Tribunals including the Supreme Court with effect from 15th March, 2020 till further orders. It further appears that on 8th March, 2021, the order dated 23rd March, 2020 was brought to an end permitting the relaxation of period of limitation between 15th March, 2020 and 14th March, 2021. While doing so, it was made clear that the period of limitation would start from 15th March, 2021. The said period was subsequently further extended by the Hon'ble Supreme Court.

26. It would further appear from the records that the appellate authority had not only rejected the appeal on the ground of limitation but also since the same was not accompanied by the required pre-deposit. While doing so the appellate authority, however, did not take into consideration the application for exemption filed by the company. I am of the view, the appellate authority ought to have taken note of the facts of this case inter alia, including the inconsistencies in issuing notice in Form 'R'.

27. It would appear from the records that the Hon'ble Division Bench of this Court had directed the company to secure a sum of 2,83,256/- by order dated 12th March 2021 as noted above. Although belatedly, the company appears to have secured such amount by way of fixed deposit which fact was also brought to the notice of the appellate authority. In view thereof, the aforesaid order passed by the Appellate Authority cannot be sustained and the same

is set aside and quashed and the appeal is restored to its file and number.

28. Having regard to the fact that workman has admittedly been paid the entire amount as determined by the controlling authority, the appellate authority is directed to treat the appeal filed by the company and to hear out and dispose of the same on merits.
29. Since the appeal is restored, the certificate proceedings shall remain stayed till disposal of the appeal.
30. In view of above, both the writ applications stand disposed of.
31. Department is directed to return the original record relating to the proceeding before the Controlling Authority to the learned advocate representing the State respondent against a proper receipt.
32. There shall be no order as to cost.
33. Urgent Photostat certified copy of this order, if applied for, be made over to the parties on urgent basis.

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(Raja Basu Chowdhury, J.)