

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 3439 of 2020

Jadunath Dhali
Versus
The State of West Bengal & Ors.

For the petitioner : Ms. Senjuti Sengupta
Mr. Rananeesh Guha Thakurta
Ms. Dipa Roy

For the respondent : Mr. Bipin Ghosh
no.3.

For the respondent no. : Ms. Anamika Pandey
4 Ms. Amrita Pandey
Mr. Ghanshyam Pandey
Ms. Sneha Singh

Heard on : 4th December, 2023

Judgment on : **4th December, 2023.**

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, inter alia, challenging the order dated 21st October, 2019, passed by the respondent no.3, whereby he had rejected the requisition for certificate issued under Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

2. The petitioner claims to be an ex-employee of the respondent no.4. According to the petitioner, after serving the respondent no.4 for 38 years, the petitioner was superannuated from service. At the time of his superannuation his last drawn wages was Rs.206.81 per day.
3. Since, the gratuity was not disbursed in his favour he had filed an application in Form "N" before the Controlling Authority for determination of amount of gratuity payable to him. The aforesaid proceeding was not contested by the respondent no.4 and the same ultimately culminated in the order dated 16th November, 2018, thereby determining a sum of Rs.2,52,317/- as due and payable by the respondent no.4 on account of the gratuity payable to the petitioner.
4. The aforesaid order records that despite service of notice in Form 'O', the respondent no.4 did not contest the said proceeding. Consequent upon passing of the aforesaid order a notice in Form 'R' was issued on 20th November, 2018 calling upon the respondent no.4 to make payment of gratuity. According to the petitioner, since the respondent no.4 did not act on the basis of the said notice, the petitioner was compelled to file an application in Form 'T' before the Controlling Authority for issuance of a certificate under Section 8 of the said Act. The Controlling Authority upon issuance of the Certificate had forwarded the same along with a requisition for certificate to the Certificate Officer, being the respondent no.3, for execution thereof.

5. The records reveal that the Certificate Officer had proceeded to adjudicate on the validity of the said certificate and had ultimately by the order dated 21st October, 2019, which is impugned in the present writ petition, rejected the requisition for the said certificate.
6. Ms. Sengupta, learned advocate representing the petitioner submits that the petitioner despite having its claim determined by the Controlling Authority has till date not been able to reap the fruits of such determination. The respondent no.4 had avoided the Controlling Authority, which compelled the petitioner to seek enforcement of such determination, by causing a certificate under Section 8 of the said Act to be issued. When such certificate was forwarded to the Certificate Officer, the same had been purportedly rejected by the Certificate Officer. She submits that the Certificate Officer had exceeded his jurisdiction in going into the question whether the proceeding before the Controlling Authority had been appropriately conducted or not. She submits that it is not within the realm of the authority of the Certificate Officer to question the determination made under Section 7 of the said Act.
7. By placing reliance on a judgment delivered by a Coordinate Bench of this Court in the case of ***Murlidhar Ratanlal Exports Ltd. v. State of West Bengal and Others***, reported in **2014-II-LLJ-74 (Cal)**, she submits that it is well-settled that the said Act, is a self-contained Code which provides for remedy by way of execution in the mode and manner prescribed in Section 8 of the said Act and

the Certificate Officer is incompetent to question the determination already made.

8. On the same proposition, she has also placed reliance in an unreported judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Delta Limited v. Rampada Sardar & Ors.***, in **MAT 1242 of 2021 with CAN 1 of 2021**.
9. In the given facts it is submitted that the order passed by the Certificate Officer cannot be sustained and the same should be set aside and quashed with a further direction upon the Certificate Officer to forthwith take steps for execution of the certificate issued under Section 8 of the said Act.
10. Mr. Ghosh, learned advocate representing respondent no.3 submits that there is no *mala fide* intention on the part of the respondent no. 3 in rejecting the requisition for certificate. He submits that the Certificate Officer in exercise of powers conferred under Section 6 of Bengal Public Demands Recovery Act, 1913 had rejected the requisition. In any event, it is submitted that the Certificate Officer has since, proceeded with the execution of the said certificate. By drawing attention of this Court to the warrant of arrest dated 20th January, 2023, which is annexed at page 14 of the report filed by the respondent no.3, he submits that since, the respondent no.4 was not complying with the directions of the Certificate Officer, the Certificate Officer has issued a warrant of

arrest for ensuring compliance of his directions and for execution of the Certificate.

11. Ms. Pandey, learned advocate representing the respondent no.4 on the other hand submits that in the instant case, the respondent no.4 had never been served with a notice in Form 'R'. As such, the entire proceeding before the Certificate Officer including issuance of certificate under Section 8 of the said Act is bad in law. Although, a review application had been filed before the Controlling Authority, the same has been illegally rejected. Challenging the aforesaid a writ petition has since been filed which is pending consideration.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that the claim of the petitioner arise out and in connection with the employment of the petitioner with the respondent no.4. The petitioner having superannuated from service of the respondent no.4 on 12th July, 2006 and having not been disbursed his claim on account of gratuity, an application in Form 'N' as per the provisions of the said Act and Rules framed thereunder had been filed before the Controlling Authority. The respondent no.4 did not contest such proceeding. The order passed by the Controlling Authority, inter alia, records as follows:

“The matter was taken up for hearing and notice in form 'O' with a copy of form 'N' was served to the O.P. Co. for inviting written statement, if any,

in deuplicat. Form 'O' was issued to applicant also. Three dates on 01.02.2016, 16.03.2016 and 13.06.2016 were fixed for submission of written statement, but O.P. Co. did not avail that and finally the O.P. Co. did not submit any written statement".

13. The documents on record demonstrate that a notice in Form 'R' was issued on 20th November, 2018 calling upon the respondent no.4 to make payment of a sum of Rs.2,52,317/- towards gratuity payable to the petitioner.
14. Since, the respondent no.4 did not comply with the aforesaid direction, the petitioner had filed an application in Form 'T' for issuance of a certificate under Section 8 of the said Act. A show-cause notice calling upon the respondent no.4 to show-cause as to why a certificate shall not be issued is also on record. Ultimately, the certificate under Section 8 of the said Act was issued and the same was forwarded along with the requisition to the Certificate Officer for execution. Incidentally, the Certificate Officer instead of calling upon the respondent no.4, being the certificate debtor to comply with the certificate had initially embarked upon an enquiry to ascertain whether the proceeding under Section 7 of the said Act had been completed in compliance with due formalities, and whether notice in Form 'R' had been issued calling upon the respondent no.4 to make payment of the gratuity.

15. It is in consideration of the same that the Certificate Officer by an order dated 21st October, 2019 expressing his dissatisfaction with the requisition had rejected the requisition for the said certificate.
16. The question that falls for consideration in the present petition is whether the Certificate Officer was at all competent to ascertain the correctness or otherwise of proceeding held before the Controlling Authority, while executing the certificate under Section 8 of the said Act. As rightly pointed out by Ms. Sengupta the said Act is self-contained Code which, *inter alia*, provides for the mode and manner in which the gratuity shall be recovered. While, Section 7 of the said Act provides for determination, Section 8 of the said Act provides for recovery of gratuity. To morefully appreciate the aforesaid provisions, Section 8 of the said Act is reproduced hereinbelow:-

“8. If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause

against the issue of such certificate; Provided further that the amount of interest payable under this section shall , in no case, exceed the amount of gratuity payable under this Act”.

17. From the aforesaid, it will be crystal clear that the mode and manner and execution of certificate has also been provided in the said Act itself. In this context, it will be relevant to notice the observations made by a Coordinate Bench of this Court in paragraph 13 in the case of **Murlidhar Ratanlal Exports Ltd.** (supra).

“13. Mr. Bhanja Chowdhury submits that even in such execution proceeding the executing authority had the power to set aside the order by which the liability was determined. Mr. Chowdhury even had gone to the extent in contending that in such proceeding the executing authority could go to the merit of the claim which had attained finality. If such interpretation is accepted, then the provision of appeal would be rendered otiose and executing authority would be bestowed with a power which the statute does not confer or contemplate. The statutory time to prefer an appeal had expired. It was only thereafter such applications were filed before the respondent Nos. 3 and 4 with such untenable pleas in an attempt to reopen the issue and to deny a just claim. The Bengal Public Demands Recovery Act, 1913 was enacted to consolidate and amend the law relating to recovery of public demands in Bengal. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity but

employees engaged in factories, mines, oil fields, plantations, space, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The said Act is a self-contained Code. The said Act is a special Act an a subsequent Act. The said Act provides for determination of the amount of gratuity and also there is a provision for appeal. The mode of execution is also prescribed in Section 8 of the said Act which prescribes that if the amount of gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall, on an application be made to it in this behalf by the aggrieved person would issue a certificate for that amount to the collector who shall recover the same together with compound interest as arrears of land revenue and pay the same to the person entitled thereto. It is because of this provision that the collector as an executing authority recovers and realizes the amount under the Public Demands Recovery Act. The provisions of the Public Demands Recovery Act cannot be extended to an aggrieved person to re-agitate the issue which is the subject matter of determination under Section 7 of the Gratuity Act, 1972 either before the Certificate Officer or the appellate authority under the Public Demand Recovery Act. The appellate authority under the Public Demand Recovery Act does not exercise any appellate power over and in respect of the order passed by the Controlling Authority. If such an interpretation is given and power is extended to the

collector and the appellate authority under the Public Demands Recovery Act then the entire procedure prescribed under the Payment of Gratuity Act would become otiose and nugatory. It would not only lead to absurdity and militate against the provisions of the Gratuity Act but also it would be open for an aggrieved employer to question the determination of liability before the collector by passing the provision of appeal under Section 7(7) of the said Act and disregarding the special period of limitation”.

18. I also notice that the Division Bench of this Court in the case of ***Delta Limited*** (supra) has held that once, a certificate is issued under Section 8 of the said Act, the District Collector or delegated authority has to recover the amount as though the same is due as land revenue. Since, there is no specific provisions or procedure under the said Act for execution and recovery of the amount of gratuity determined by the Controlling Authority, section 14 of the Public Demands Recovery Act, 1913 (in short “1913 Act”) comes into play and the Certificate Officer has to execute the certificate in the mode and manner provided for therein. Apart from Section 14 of 1913 Act, no other provision of the 1913 Act is applicable for execution of the certificate issued by the authority under the Payment of Gratuity Act. Such findings have been returned by the Division Bench by placing reliance on Section 14 of the said Act. It would appear that Section 14 of the said Act provides that the provisions of the said Act or any rule made thereunder shall have

effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument or contract having effect by virtue of any enactment other than the said Act. Having regard to the aforesaid once a certificate is issued under Section 8 of the said Act and forwarded to the Certificate Officer for execution, he is bound to execute the same.

19. It is true, that non-service of a notice in Form 'R' may vitiate a certificate but not the determination already made. In any event, the Certificate Officer is not competent to adjudicate the same.
20. It would, however, appear from the affidavit filed by the respondent no.4 that the factum of issuance of notice in Form 'O' and the notice of show-cause prior to issuance of the certificate under Section 8 of the said Act remains un-controverted. The defence set up by the respondent no.4 is the failure on the part of its advocate to take proper steps for defending the case before the Controlling Authority which had resulted the matter to be disposed of on 20th November, 2018. The same would appear from paragraph 3 of the review application which is annexed to the affidavit in opposition, filed on behalf of the respondent no.4.
21. Admittedly, there is also no appeal filed on behalf of the respondent no.4 challenging the determination made under Section 7 of the said Act. I find that the matter is pending for several years. The order determining gratuity was passed on 28th November, 2018. No serious attempt at any stage was made by the respondent no.4

to contest the order of the Controlling Authority, even after coming to learn of the said order, by filing an appeal under Section 7 of the said Act. Although, a belated review application was filed by the respondent no.4 after more than a year from the date of the order, the same was ultimately dismissed on 20th January, 2023. Admittedly, even thereafter, no statutory appeal has been filed. A writ petition questioning the aforesaid rejection, as submitted by Mr. Pandey has only been filed in the year 2023 that too after filing of the affidavit in opposition. No order restraining the Certificate Officer from proceeding with the execution of the certificate has been disclosed. Notwithstanding the aforesaid the respondent no.4 and its Directors are avoiding execution, not only of the certificate but also of the warrant of arrest.

22. In the facts noted above, the order dated 21st October, 2019 cannot be sustained, the same is set aside and quashed. Further taking into consideration the factum of issuance of warrant of arrest and non-execution thereof, I am of the view that the respondent no. 4 and its Directors cannot be permitted to evade due process of law. In view thereof, I was prompted to direct the Officer-in-Charge, Hare Street Police Station to forthwith execute the aforesaid warrant of arrest, if the same had not already been executed. However, at this stage Ms. Pandey learned advocate submits that his clients do not intend to overreach the order passed by any Court of law or any quasi judicial authority and the Directors of the respondent no.4

are all law abiding citizens and by reasons of pendency of the aforesaid writ petition that the Directors of the respondent no.4 had not surrendered. She prays for 2 weeks time for the Directors of the respondent no.4 to surrender. Considering her prayer, I permit the Directors of respondent no.4 to surrender before the Certificate Officer on or before 22nd December, 2023.

23. Let the Directors of the respondent no.4 be added as parties to the present proceedings. The petitioner's advocate-on-record is granted leave to add the Directors of the respondent no.4 whose names featured in the warrant of arrest dated 20th January, 2023, as party respondents to the present proceedings.

24. Ms. Pandey, learned advocate through her junior Ms. Sneha Singh, learned advocate who is present in Court accepts service on behalf of the added respondents, save and except Sri Dipak Kejriwal, who she claims is no longer the Director of the respondent no.4.

25. Taking into consideration the fact that the proceedings are pending for several years and since, the aforesaid matter pertains to payment of gratuity, it is only expected that the Certificate Officer shall expeditiously dispose of the aforesaid proceeding preferably, within a period of six months from the date of communication of this order.

26. It is made clear that the aforesaid added respondents/Directors of the respondent no.4 be not taken into custody till 22nd December, 2023, however, if they do not surrender within the time specified, the Officer in Charge, Hare Street Police Station, shall promptly execute the said warrant.
27. With the aforesaid observations/directions the writ application stands disposed of.
28. There shall, however, be no order as to costs.
29. The Registry is directed to return the original records to the learned advocate representing the State upon obtaining proper receipt.
30. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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