

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 6662 of 2023

**Gopal Krishna Mukerjea
Vs.
Union of India & Ors.**

For the petitioner	:	Mr. Aryak Dutta Mr. Dipankar Das
For the UOI	:	Mr. Nilanjan Bhattacharya
Heard on	:	26.04.2023
Judgment on	:	26.04.2023

Raja Basu Chowdhury, J:

1. The present application has been filed, inter alia, praying for a direction upon the respondent no. 2 to release the gratuity deposited by the respondent no.5 with the respondent no.2 in connection with the Gratuity case file no. 48(48)/2010-ALC-I/E-2.
2. It is the petitioner's case that the petitioner was appointed as a Managing Director and Chief Executive Officer of the respondent no. 5 with effect from 16th April 2007. On 10th November 2009, the petitioner submitted his resignation from the respondent no. 5. It is also the petitioner's case that the petitioner had completed 13 years of

continued service and was thus entitled to gratuity. Since, the respondent no. 5 did not make payment of gratuity to the petitioner, the petitioner applied in Form 'N' before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act"). After determination of gratuity payable to the petitioner, a notice in Form-'R' dated 3rd March 2014 was issued.

3. Being aggrieved, an appeal was preferred by the respondent no. 5 before the Appellate Authority constituted under the said Act. By an order dated 7th April 2015, the Appellate Authority did not interfere with the order passed by the Controlling Authority and while directing the Controlling Authority to release the pre-deposit amount of Rs. 3,50,000/- in favour of the petitioner, disposed of the appeal.
4. Challenging the same, a writ application was filed before this Hon'ble Court which was registered as W.P. no. 11041 (W) of 2015. By judgment and order dated 27th July, 2016, a Co-ordinate Bench of this Court was, inter alia, pleased to dismiss the said writ application by holding that there was no reason to interfere with the orders passed either the Controlling Authority or by the Appellate Authority. By relying on the aforesaid order passed by the Co-ordinate Bench of this Court, Mr. Dutta, learned advocate appearing for the petitioner prays for a direction upon the respondent no. 2 to release the gratuity, which has already been deposited by the respondent no. 5.
5. Mr. Bhattacharya, learned advocate enters appearance on behalf of the Union of India. He submits that the petitioner had never bothered to apply before the authorities for disbursal of the pre-deposit made by the respondent no. 5 in connection with the appeal. He says that in the

event the petitioner makes an application, the same shall be considered in accordance with law. He, however, candidly submits that the entitlement of the petitioner towards payment of gratuity cannot be denied and that there is no inaction on the part of the authorities.

6. Heard learned advocates appearing for the respective parties and considered the materials on record. Although, Mr. Bhattacharya, learned advocate appearing for the Union of India has submitted that the petitioner has never applied before the authorities for release of the deposit made by the respondent no. 5 in connection with the appeal and in the event, the petitioner makes an application, the same shall be considered in accordance with law, the right of the petitioner to be entitled to gratuity has not been denied.
7. Records reveal that on the basis of the application in Form – 'N' filed by the petitioner, the Controlling Authority, under the said Act had determined the gratuity payable to the petitioner and had also issued notice in Form-'R' on 3rd March 2014 calling upon the respondent no.5 to make payment. Despite challenge to such order by the respondent no. 5, the Appellate Authority by its order dated 7th April 2015 did not interfere with the same and since the petitioners' entitlement to gratuity had already been determined, the Appellate Authority had in fact directed release of the pre-deposit of Rs. 3,50,000/- in favour of the petitioner. Such direction has, however, not been complied with by the Controlling Authority. Without going into such technicality, I am of the view that the writ petition can be disposed of by passing the following order.

8. I, thus, direct the respondent no. 2/respondent no. 3 to release the gratuity deposited by the respondent no. 5 in gratuity case File no. 48/2/2014.EI arising out of Gratuity case file no. 48(48)/2010-ALC-I/E-2 to the petitioner.
9. Let the gratuity amount retained by the respondent no. 2/ respondent no. 3 be released in favour of the petitioner within a period of 4 weeks from the date of communication of this order.
10. The petitioner shall, however, be at liberty to take appropriate steps for realising interest on delayed payment of gratuity in accordance with law.
11. With the above observations, the writ petition being WPA 6662 of 2023 is accordingly ***disposed of***.
12. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)