

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 7319 of 2023

**Ramdeo Yadav @ Ramdeb Yadav
-vs-
The State of West Bengal & Ors.**

For the petitioner	:	Ms. Dipa Roy Ms. S. Sengupta Mr. Rananeesh Guha Thakurta
For the State	:	Mr. Nilotpal Chatterjee Ms. Amrita Lal Chatterjee
Heard on	:	08.05.2023
Judgment on	:	08.05.2023

Raja Basu Chowdhury, J:

1. Despite service none appears on behalf of the respondent no.4.
2. The present writ application has been filed, *inter alia*, praying for a direction upon the respondent no.3, to execute the certificate dated 19th of October, 2022.
3. The petitioner claims to have joined the service of the respondent no.4 on 24th February, 1971. After serving the respondent no.4 for more than 40 years, the petitioner was superannuated on 31st July, 2010. Consequent upon his superannuation, the petitioner had applied for disbursal of his gratuity in terms of the provisions of the

Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act) and had applied in Form-I, on 31st January, 2013. Record reveals that the respondent no.4 upon receipt of application in Form-I, had paid Rs.1,12,245/- to the petitioner by an account payee cheque dated 15th September, 2013. Since according to the petitioner, the aforesaid amount did not constitute the entirety of his gratuity, the petitioner had made an application in Form-N before the Controlling Authority under the said Act, for determination of his gratuity.

4. Following the aforesaid the Controlling Authority after inviting both the parties to file written statement, determined a sum of Rs.92,480.62/- towards unpaid gratuity along with Rs.81,290.46/- towards interest, aggregating to Rs.1,73,771/- (Rupees one lakh seventy-three thousand seven hundred and seventy-one only).

5. Consequent upon such determination, a notice in form-R was issued on 4th July, 2022, calling upon the respondent no.4 to make payment of the aforesaid sum of Rs.1,73,771/- together with simple interest at the rate of 10 percent per annum from 31st August, 2010 to 4th July, 2022 to the petitioner.

6. The respondent No.4 having not complied with the aforesaid requisition, the petitioner had applied in Form-T before the Controlling Authority for issuance of a certificate under Section 8 of the said Act, for recovery of the said sum of Rs.1,73,771/- towards gratuity and interest due to the petitioner.

7. Record reveals that following receipt of such application the Controlling Authority under the said Act, by a communication in writing dated 21st September, 2022 had once again called upon the respondent no.4 to show cause as to why a certificate for recovery of the said gratuity amount as ordered for, shall not be issued. A copy of the aforesaid communication was also marked to the petitioner. Subsequently, on 19th October, 2022 the Controlling Authority was, *inter alia*, pleased to issue a certificate for realisation of the gratuity in terms of Section 8 of the said Act, and had forwarded the same to the Certificate Officer, South 24 Parganas for execution.

8. Ms. Roy, learned advocate representing the petitioner submits that the Certificate Officer despite receipt of the aforesaid certificate has failed to take steps for execution of the certificate. By drawing the attention of this court to a communication dated 3rd February, 2023, issued by the Certificate Officer which is at page 23 of the writ application, she submits that the Certificate Officer instead of executing the certificate has sought for an explanation from the Controlling Authority, in relation to execution of the certificate on the basis of the written statement filed by the respondent no.4 before him. This, according to Ms. Roy, is not permissible. She says, once the Controlling Authority had issued the certificate, the Controlling Authority becomes a *functus officio* and is no longer competent to be a part of the adjudicatory process, and it is for the Certificate Officer to execute the certificate. The Certificate Officer by proceeding to seek

clarification from the Controlling Authority had exceeded his jurisdiction and this Hon'ble Court in exercise of its extraordinary writ jurisdiction is competent to issue appropriate directions, for the Certificate Officer to execute the certificate.

9. Mr. Chatterjee, learned advocate representing the respondents nos. 1 to 3 submits that an objection has been raised by the respondent no.4 before the Certificate Officer and following receipt of such objection, the Certificate Officer had sought for clarification from the respondent no 2. Mr. Chatterjee has also placed before this Court, a copy of the application filed by respondent no.4 before the respondent no.3.

10. Heard the learned advocates appearing for the respective parties and considering the materials on record I find from the objection filed before the Certificate Officer, by the respondent no.4 that it has been contended that no requisition for issuance of the Certificate had been issued; that the gratuity amounting to Rs.112245/- had been disbursed in favour of the petitioner on 15th September, 2013.

11. It was further, *inter alia*, contended before the Certificate Officer that since the petitioner was in *Badli* employment, and had never worked for more than 240 days continuously, the petitioner is not entitled to gratuity. I, however, find that the objections raised by the respondent no.4 as regards payment of gratuity amounting to Rs.1,12,245/- has duly been dealt with by the Controlling Authority in his order dated 4th July, 2022. The issue as to whether the petitioner

was entitled to gratuity or not has also been considered by the Controlling Authority. At this stage, it is no longer open to the respondent no.4 to, *inter alia*, contend, before the Certificate Officer that the petitioner was a *badli* worker or was not entitled to gratuity. In my view, the respondent no.4 cannot be permitted to take a self-contradictory stand. The respondent no.4 having paid gratuity to the petitioner and having not preferred any appeal from the order passed by the Controlling Authority, cannot be permitted to raise the aforesaid issue before the Certificate Officer. Records also reveal that the respondent no. 4 was put on notice prior to issuance of the certificate. In my view, the Certificate Officer ought to have adjudicated upon the aforesaid issues, without seeking for clarification from the Controlling Authority, especially when the Controlling Authority while forwarding the certificate by cover of letter dated 19th October, 2022, had also forwarded the Certificate Officer, with not only the order dated 4th July, 2022, in Form R but also the copy of the show cause dated 21st September, 2022. It is not a case, where the certificate debtor has not been served with the order in form R. I find that the Certificate Officer has, therefore, exceeded his jurisdiction vested in him in purporting to seek clarification from the Controlling Authority under the said Act. In view thereof, the Certificate Officer is directed to take steps for executing the certificate forwarded to him by the Controlling Authority by cover of letter dated 19th October, 2022, in accordance with law

preferably within a period of six months from the date of communication of this order.

12. With the above observations and directions, this writ application is disposed of.

13. There shall be no order as to costs.

14. Urgent photostat certified copy of this order if applied for be made available to the parties upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

S.A.

Assistant Registrar (Court)