

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 8639 of 2023

M/s Anglo India Jute & textile Industries Pvt. Ltd. & Anr.
Vs.
The State of West Bengal & Ors.

For the petitioners : Mr. Balai Paul
Mr. Debanshu Ghorai

For the respondents : Ms. Tapati Samanta

Heard on : 5th July, 2023.

Judgment on : **5th July, 2023.**

Raja Basu Chowdhury, J:

1. The present writ application has been filed by M/s. Anglo India Jute & Textile Industries Pvt. Ltd., inter alia, contending that all on a sudden, the petitioner no. 1 was served with a notice dated 17th January, 2022, issued by the Controlling Authority wherefrom it would transpire that one gratuity matter, being Case No.G-12 of 2018 (Arjoon Singh vs. A.I. Champdany Industries Ltd. (Anglo India Unit) is pending by and between the respondent nos.4 and 5.

2. It is the petitioners' case that subsequently a notice in Form 'R' was issued on 7th July, 2022 by the respondent no.3, calling upon the petitioner no.1, to make payment of a sum of Rs.3,59,998/-. The petitioner no.1 after receipt of the Form 'R' had issued a reply dated 20th April, 2022.

3. The records would reveal that on 25th August, 2022, the Controlling Authority, at the instance of the respondent no.5, had issued a notice calling upon the petitioner no.1 to appear and show-cause on 15th September, 2022 at 3.00 p.m., why a certificate under Section 8 of the Payment of Gratuity Act 1972 (herinafter referred to as the "said Act") shall be issued. Along with the aforesaid notice, an application in Form 'T' was also served on the petitioners.

4. It is the petitioners' case that the petitioners subsequently had filed an application on 15th September, 2022, inter alia, calling upon the Controlling Authority to withdraw the Form 'R' dated 7th April, 2022 and the show-cause dated 25th August, 2022 on the ground that the petitioner no.1 was not a party to the said proceedings.

5. Records would further reveal that the controlling authority had since, issued a certificate under Section 8 of the said Act and had forwarded the same by a covering letter dated 13th March, 2023 to the Certificate Officer. The Certificate Officer in-turn had issued a notice on the petitioner no.1 on 15th March, 2023.

6. Challenging the notice in Form 'R' and the communication dated 15th March, 2023, as aforesaid, the present writ application has been filed.

7. Mr. Paul, learned advocate representing the petitioners submits that without any notice to the petitioners, the Controlling Authority had determined the liability and had issued a notice in Form 'R'. He says that the petitioner no.1 was not given any opportunity to defend. The entire proceeding stands vitiated on such ground and should be set aside and quashed.

8. *Per contra*, Ms. Samanta, learned advocate representing the State respondents today has produced before this Court a copy of the Affidavit-in-Chief along with enclosures, filed by the General Manager of Anglo India Jute & Textile Industries Pvt. Ltd., wherefrom it would appear that the factum of employment of the respondent no.5 has been admitted. It would still further appear from the aforesaid affidavit that the deponent has claimed that the respondent no.5 had accepted the gratuity in full and final settlement and as such, there was no question of referring the matter to the Controlling Authority. She says that the petitioner has filed this application by suppression of material facts. The petition should be dismissed with costs.

9. Copy of the aforesaid affidavit along with its enclosures which were served on Mr. Paul, learned advocate representing the petitioner is taken on record.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that along with the said Affidavit-in-Chief a certificate duly counter-signed by Arjoon Singh has also been disclosed. The particulars of cheques through which payments were made in favour of the respondent no.5 are also indicated.

11. A perusal of the provisions of the said Act would indicate that it is for the employer at the first instance to determine the gratuity under Section 7(2) of the said Act. In the event, any dispute with regard to the determination of gratuity, an employee is entitled to claim the same from the employer and if the same is not disbursed then to approach the Controlling Authority by filing an appropriate application in Form 'N'. The jurisdiction of the controlling authority to decide the amount of gratuity is provided for under the said Act.

12. In this case, it appears that the petitioners were aware with regard to the proceedings pending before the controlling authority. A defence was also set up on behalf of the petitioners in the said proceedings. The controlling authority had, however, by overruling the same had determined the gratuity payable to the respondent

no.5, and had issued a notice in Form R. Suppressing all such facts, the present writ application has been filed.

13. Having regard to the aforesaid, I am not inclined to entertain the present writ application, the same is accordingly dismissed without any order as to costs.

14. Dismissal of this writ application, however, shall not prevent the petitioners from availing its statutory remedy, if so advised.

(Raja Basu Chowdhury, J.)

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