

27.06.2023
Item No.37
Court No.550
Saswata

W.P.A. 10963 of 2023
Dhiren Roy
-vs-
Food Corporation of India & Ors.

Mr. Pinaki Ranjan Chakraborty

...For the petitioner

Mr. Devajyoti Barman

Ms. Sanjukta Basu Mallick

...For the respondent nos. 1 to 3

Mr. Kaustav Chandra Das

...For the respondent no. 4

1. Affidavit of service filed in Court today is retained with the record.
2. The present writ application has been filed, inter alia, praying for a direction upon the respondent no. 4 to accept and adjudicate the application in Form-N. It is the petitioner's case that the petitioner was engaged by the Food Corporation of India (FCI) as a casual worker on no-work-no-pay basis. It is also the contention of the petitioner that the petitioner is otherwise eligible to claim gratuity and for reasons as aforesaid, the petitioner had made a representation to the Divisional Manager, FCI for disbursal of his retiral benefits, inter alia, including the gratuity amount.
3. Mr. Chakraborty, learned advocate appearing for the petitioner submits that the petitioner was employed in the FCI for the period between 8th

January, 1988 till the date of his superanuation, i.e., 31st December 2022.

4. By referring to the Employees' Provident Fund Organization passbook which he claims to have been annexed to his application in Form-N, would go to show that contributions have been credited on the petitioner's account, each month. He has also relied on Form-16 issued by the TDS Centralized Processing Cell and the Income Tax returns filed by the petitioner so as to establish the factum of his employment with Food Corporation of India.
5. He, however, contends that he is unable to produce the pay slips as the FCI had withheld the same..
6. It is submitted that the FCI was under a statutory obligation to make payment of the gratuity. The FCI having failed to make payment, the petitioner had made the aforesaid representation. Since, the FCI did not take any steps, the petitioner had proceeded before the controlling authority under the Payment of Gratuity Act, 1972 with the object of filing an application in Form-N. A copy of the aforesaid application has been annexed at page 14 of the instant writ application. It is submitted that the controlling authority, however, did not accept

such application in absence of the pay slips being annexed to such application. Although, the petitioner had tried to explain that pay slips had not been issued by his employer, the respondent no. 4 did not accept the application in Form-N.

7. Being aggrieved, the present writ application has been filed.
8. Mr. Barman, learned advocate enters appearance for the respondent nos. 1 to 3. He submits that the petitioner was a casual worker and is not entitled to his claim for gratuity. He, however, acknowledges the fact that the petitioner was engaged by the FCI.
9. Mr. Das, learned advocate enters appearance on behalf of the respondent no. 4. and submits that there is no procedure for acceptance of any application in Form-N in physical form. It is further submitted that the application in Form-N, if forwarded through the postal authorities can be accepted by the authorities. Similarly, an application in Form-N can also be accepted if the same is filed online.
10. In the instant case, according to the learned advocate for the respondent no. 4 since, the aforesaid application in Form-N was not accompanied with the requisite application in

Form-I, the same was not accepted by the authorities.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record.
12. Prima facie, it appears that the petitioner was in employment with the FCI. The exact status of the petitioner is, however, required to be enquired into. I am of the view that the FCI was ordinarily required to dispose of the petitioner's representation for payment of gratuity. In this case, it appears that the petitioner's representation was not considered by the FCI. It is in back drop of the aforesaid circumstances, that the petitioner had approached the controlling authority under the Payment of Gratuity Act, 1972. It is rather unfortunate that such application has not even been accepted.
13. I am unable to accede to the reasons given by the learned advocate appearing for the respondent no. 4 that only online applications and the application which is forwarded to the respondent no. 4 via registered post can be accepted. In this case, it is apparent that the petitioner had approached the controlling authority. Although, it has been submitted on behalf of respondent no. 4 that in absence of a

duly filled in application in Form-I, an application in Form-N cannot be accepted, I am also unable to accede to such reasoning.

14. I find that a representation was made by the petitioner which was addressed to the Divisional Manager of FCI. The FCI has failed to consider such application and as such it was for the controlling authority to consider the same in accordance with law. The controlling authority ought not to have refused the application filed by the petitioner. In any event, there is nothing on record to demonstrate that the aforesaid application was not accepted by reasons of the same, not being accompanied by a requisite application in Form-I despite the petitioner making a claim for disbursal of his gratuity. The representation filed by the petitioner before the Divisional Manager of FCI does not require detailed analysis for treating the same as an application in Form-I. In any event technicalities should not stand in way for treating the petitioner's representation as an application in form-I.
15. I am of the view that no fruitful purpose would be served by keeping this writ application pending. In such view of the matter, I direct the respondent no. 4 being the Assistant Labour

Commissioner (Central), Raniganj at Durgapur to accept the application to be filed by the petitioner in Form-N and to register a case by treating the representation made by the petitioner addressed to the Divisional Manager of the FCI as an application in Form-I and to hear out and dispose of the same in accordance with law, after giving an opportunity of hearing to the parties without insisting for the pay slips, provided the petitioner files the application in Form-N within a period of 8 weeks from date.

16. The controlling authority is directed to decide the matter on merit.
17. With the above directions and observations, the writ petition being WPA 10963 of 2023 is accordingly ***disposed of*** without any order as to costs.
18. Urgent photostat certified copy of this order, if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)