Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 12483 of 2023

Ashima Roy
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Rananeesh Guha Thakurta Ms. Senjuti Sengupta Ms. Dipa Roy
For the respondent No.3.	:	Mr. Narayan Rakshit
Heard on	:	13th July, 2023.
Judgment on	:	**13th July, 2023**.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the order dated 28th March, 2023, passed by the Controlling Authority, in Case No. G-22 of 2017.

2. The petitioner was an employee of the respondent no. 3 and claims to have been in continuous employment from 1st February, 1982. It is the petitioner's case that on 12th November, 2003, she was dismissed from service. However, since she was entitled to

gratuity, she had made an application in Form 'I' for disbursal of gratuity. Such application appears to have been made on 20th February, 2017 after almost 14 years from the date when the petitioner was dismissed.

3. Since, according to the petitioner, the respondent no.3 did not make payment of the gratuity due to her, the petitioner filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act") in Form 'N' for determination of gratuity due and payable to her.

4. On the basis of the application filed by the petitioner, a notice in Form 'O' dated 7th April, 2017 was served on the Rector of the respondent no.3. It appears that in response to the aforesaid communication, the respondent no.3 by a letter dated 18th April, 2017, had put forward its stand before the Controlling Authority. In the said communication it was pointed out on behalf of the respondent no.3, that there had been inordinate delay on the part of the petitioner in claiming gratuity. The application for determination of gratuity was filed by suppression of material fact and that the petitioner had entered into the service, by producing a forged document and had taken monthly salary causing financial loss to the institution.

5. Records would further reveal that the petitioner upon receipt of the copy of the written statement had also filed a rejoinder before the

Controlling Authority in connection with the aforesaid gratuity case. It also transpires from the records that the respondent no.3 had filed a written objection in connection with the application for condonation of delay filed by the petitioner. According to the petitioner, the Controlling Authority by allowing the said application for condonation of delay, had assumed jurisdiction in the matter and had proceeded with the hearing.

6. Unfortunately, there are no records to demonstrate that the Controlling Authority had condoned the delay. It, however, appears that by an order dated 16th August, 2017, the Controlling Authority had closed the cross-examination of the petitioner by the respondent no.3, inasmuch as, the respondent no.3 had remained absent, despite notice.

7. It would, however, appear from the records that during the pendency of the proceedings before the Controlling Authority, the respondent no.3, by a communication in writing dated 20th June, 2017, had forwarded a sum of Rs.42,587/- towards gratuity payable to the petitioner, on the basis of the computations made by them. It is, however, the petitioner's contention that since the records of the proceedings remained untraceable no further proceedings took place until the time hereinafter mentioned.

8. All on a sudden, sometimes in the year 2022, an application was filed by the respondent no.3, inter alia, praying for recalling of

the order dated 16th August, 2017, so as to enable the respondent no.3 to participate in the said proceedings by cross-examining the petitioner, by filing objections and by adducing evidence. On the basis of such application, by an order dated 28th March, 2023, the Controlling Authority was, inter alia, pleased to permit the respondent no.3 to file written statement and/or objection to the application for condonation of delay. The said order would further demonstrate that the respondent no.3 was permitted to cross-examine the petitioner and the petitioner was also permitted to adduce further evidence and to file rejoinder/objection to the written statement to be filed by the respondent no.3, if it so desired.

9. Challenging the aforesaid order, the present writ application has been filed.

10. Mr. Guha Thakurta, learned advocate representing the petitioner, submits that the respondent no.3 was all along aware with regard to the proceedings pending before the Controlling Authority. Although the Controlling Authority by an order dated 16th August, 2017, had directed the cross-examination of the petitioner to be closed, no steps were taken by the respondent no.3 to have the said order recalled. Belatedly, after several years an application had been filed for reopening the case and based on such application, the Controlling Authority despite noticing that the respondent no.3 was aware with regard to the factum of the order of closure of cross-

examination had permitted the respondent no.3 to not only cross-examine the petitioner but also to file additional documents and additional written statement. Such procedure adopted by the Controlling Authority, according to Mr. Guha Thakurta, is contrary to the statutory provision and the same should be set aside and the proceedings should be directed to continue from the stage of closure of the cross-examination of the petitioner. Mr. Guha Thakurta, by placing reliance on Section 7(4)(c) of the said Act, submits that the Controlling Authority on the basis of the enquiry to be made is required to determine the amount of gratuity payable to the petitioner. Since all the documents are on record, the Controlling Authority should decide the issue without any further delay.

11. *Per contra*, Mr. Rakshit, learned advocate representing the respondent no.3, submits that the petitioner had been dismissed from service. On account of the petitioner, the school had suffered financial loss. The petitioner had committed forgery. The aforesaid facts are already on record before the Controlling Authority. The respondent no.3 has, in fact, volunteered and had deposited with the Controlling Authority the amount of gratuity payable to the petitioner on the basis of the calculations made by them. The circumstances under which the application for recall of the order dated 16th August, 2017, had been made would transpire from the copy of the application filed by the respondent no.3 before the Controlling Authority. The factum of challenge of the dismissal order before the

Labour Commissioner has been conveniently suppressed by the petitioner. There is no irregularity in the procedure adopted by the Controlling Authority in passing the order. The discretion exercised by the Controlling Authority should not be interfered with. The present application should be dismissed.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, I find that the petitioner was dismissed from service on 12th November, 2003. The petitioner did not make any claim for gratuity immediately after his dismissal but waited for about 14 years. Subsequently, the petitioner had filed an application for determination of gratuity before the Controlling Authority after having failed to secure gratuity from her employer. Such application was filed in the year 2017.

13. Records would reveal that the respondent no.3 had not only objected to the application filed by the petitioner for determination of gratuity but also objected to the belated acceptance of the application for determination of gratuity. Records do not reveal that the delay had been condoned by the Controlling Authority. As such, I do not find any irregularity in procedure adopted by the Controlling Authority in deciding such issue.

14. I, however, find that the Controlling Authority has permitted the parties to rely on additional documents. Ordinarily, if in the process of enquiry the Controlling Authority requires additional

documents, it is always open to the Controlling Authority to seek such additional documents from the parties or to permit the parties to file additional documents. However, in this case, the Controlling Authority has permitted the respondent no.3 to file a fresh written statement. Such a procedure, in my view, is not permissible. At the same time, the right of the respondent no.3 to participate in the proceedings cannot be questioned. If the Controlling Authority has thought it fit to permit the respondent no.3 to cross-examine the petitioner and if such cross-examination is necessary for the purpose of ascertaining the truth, it cannot be said that the Controlling Authority had committed illegality or there was any irregularity in procedure adopted by the Controlling Authority in permitting such cross-examination.

15. Having regard to the aforesaid, I am of the view that the petitioner may be cross-examined by the respondent no.3 and the respondent no.3 may also be permitted to file affidavit-in-chief for the purpose of proving its case. However, the direction to permit the respondent no.3 to file written statement cannot be sustained. The order dated 28th March, 2023 is modified by permitting the respondent no.3 to cross-examine the petitioner and to file affidavit-in-chief.

16. This order shall, however, not prevent the Controlling Authority from examining all questions and from permitting the

parties to rely on any document if the Controlling Authority is of the view that the same is necessary for the purpose of adjudicating the issue involved.

17. Since the matter pertains to the year 2017, the Controlling Authority should decide the matter and come to a logical conclusion at the earliest.

18. Having regard to the aforesaid, the Controlling Authority is directed to dispose of the aforesaid proceedings preferably within a period of six months from the date of communication of this order.

19. With the aforesaid observations and/or directions the writ application stands disposed of.

20. Since no affidavit-in-opposition is called for, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

21. 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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