

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 12566 of 2023

M/s. Alliance Mills (Lessees) Ltd.
Versus
The State of West Bengal & Ors.

Mr. Uddipan Banerjee
.... For the petitioner.

Mrs. Jhuma Chakraborty (Chattaraj)
Mr. Abhishek Banerjee
... For the State.

1. Affidavit of service filed in Court today is taken on record. Despite service none appears on behalf of the respondent no.3.
2. The present writ application has been filed, *inter alia*, challenging the order dated 10th August, 2022 passed in Gratuity Case No.G-42/2019/JLC/BKP as also the order dated 20th October, 2022, passed in connection with the aforesaid case.
3. The petitioner claims that the respondent no.3 was a budli worker and worked as a replacement for any permanent employee who was on leave and/or absent from duties. According to the petitioner, the respondent no.3 was enrolled as budli worker sometimes on 1st June, 1984 and was superannuated on 1st April, 2018.
4. Mr. Banerjee, learned advocate representing the petitioner submits that on the basis of an application in

Form 'N' filed by the respondent no.3, the aforesaid gratuity case was initiated. The petitioner had duly contested the said gratuity case by filing a written statement, wherein it was specifically stated that the respondent no.3, did not render more than 240 days of work during a calendar year and as such, the respondent no.3, is not entitled to payment of gratuity under the provisions of Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

5. By an order dated 10th August, 2022, the Controlling Authority under the said Act was, inter alia, pleased to determine gratuity payable to the respondent no.3 and by a notice in Form 'R', had called upon the petitioner to make payment of the amount determined by the Controlling Authority.

6. By drawing attention of this Court to a review application, forming annexure to the writ application, Mr. Banerjee submits that since, the relevant document could not be placed before the Controlling Authority, an application for review and/or recall of the order dated 10th August, 2022 was filed.

7. By an order dated 20th October, 2022, the Controlling Authority, after carefully examining the case and after recording that from time to time reasonable opportunity was given to the petitioner, was of the view that no case for review of the order dated 10th August,

2022 had been made out and was pleased to dismiss such application.

8. Challenging the determination made by the Controlling Authority as also the order passed by the Controlling Authority while disposing of the review application, the present writ application has been filed.

9. Mr. Banerjee submits that the petitioner could not place the document, which is at page 12 of the writ application, before the Controlling Authority and it is for such reason to bring the aforesaid document on record that the review application had been filed. He submits that the Controlling Authority did not appropriately decide the application for review. In the facts as stated above, he prays for setting aside of the orders dated 20th October, 2022 and 10th August, 2022.

10. Mr. Abhishek Banerjee, learned advocate representing the respondent nos. 1 and 2 on the other hand submits that the petitioner was given due opportunity to present its case. The petitioner did not use the opportunity appropriately. By referring to the order-sheet it is submitted that the petitioner was permitted to not only cross-examine the respondent no.3, but also permitted to submit documents. The petitioner had also duly cross-examined the respondent no.3 on more than one occasion. The aforesaid application filed by the petitioner for review is not maintainable and the same was

filed with the sole object of denying the respondent no.3 the gratuity.

11. It is still further submitted that the petitioner has an alternative remedy available in the form of a statutory appeal but the petitioner by filing the writ petition has chosen to avoid such statutory remedy.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that in this case, the respondent no.3 had worked with the petitioner for more than 30 years. The Controlling Authority on contest and after giving opportunity of hearing to both the parties had come to a conclusion that the petitioner could not produce any document to substantiate its claim as regards the status of the respondent no.3. Despite the petitioner being the custodian of all statutory records did not produce any record to substantiate its contention.

13. Having regard to the aforesaid, the Controlling Authority had arrived at a conclusion that the respondent no.3 is entitled to gratuity and accordingly had determined the quantum of gratuity payable to the respondent no.3.

14. I find from the review application filed by the petitioner, it has been, *inter alia*, contended in paragraph (v) thereof that the petitioner did not receive all the notices

of hearing and the determination was made *ex parte*. Contrary to what has been submitted by Mr. Banerjee, there is no ground in the application that the petitioner wanted to produce the document at page 12 of the writ application to prove that the respondent no.3 was a budli worker. I find from the order passed by the Controlling Authority that the Controlling Authority had duly considered all aspects of the matter and had arrived at a conclusion that the petitioner was given due opportunity of hearing and the petitioner, having failed to produce any document, was not entitled to pray for review of the order passed by the Controlling Authority.

15. I do not find any irregularity in the order passed by the Controlling Authority in determining the gratuity payable to the respondent no.3. The petitioner has also not been able to identify any jurisdictional error committed by the Controlling Authority under the said Act.

16. Admittedly the petitioner having not preferred any appeal cannot be permitted to reopen the case by calling upon of this Court to re-appreciate evidence.

17. Having regard to the aforesaid, I am of the view that no interference is called for. The writ petition is dismissed.

18. There shall, however, be no order as to costs.

19. Urgent photostat certified copy of this order, if

applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)