

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 14822 of 2023

Noor Islam Sk. & Anr.

Vs.

The State of West Bengal & Ors.

For the Petitioners	:	Mr. Subhadip Bhattacharya, Mr. Tauhid Khan
For the State	:	Mr. Jayanta Samanta, Mr. Sekhar Mustaphi
For the Respondent no.3	:	Ms. Amrita Pandey, Mr. Ghanshyam Pandey, Ms. Sneha Singh
Heard on	:	06.09.2023
Judgment on	:	06.09.2023

Raja Basu Chowdhury, J:

1. At the very outset Mr. Bhattacharya, learned Advocate representing the writ petitioners, submits that he wants to maintain the present writ application in so far as the petitioner no.1 is concerned. He submits that the cause of action in so far as the petitioner no.2 is concerned is different. Having regard to the aforesaid, he seeks leave to withdraw the application in so far as the petitioner no.2 is

concerned with liberty to apply afresh on the self same cause of action.

2. Having heard the learned Advocates appearing for the respective parties, I am of the view that the petitioner no.1 should be permitted to maintain the present writ application in so far as the petitioner no.1 is concerned. In so far as the petitioner no.2 is concerned, the petitioner shall be at liberty to apply afresh on the selfsame cause of action.
3. In the circumstances noted above, the present writ application is, thus, confined to the challenge, to the order dated 17th May, 2023 passed by the Controlling Authority under Payment of Gratuity Act, 1972 (hereinafter referred to “the said Act”).
4. The petitioner no.1 claims to be an ex-employee of the respondent no.3 who had joined the service on 22nd May, 1976. The petitioner no.1 claims that the petitioner no.1 had since been superannuated. Even after serving the respondent no.3 for about 37 years, gratuity having not been disbursed in his favour, he had filed an application in Form-I before the respondent no.3 for disbursal of his gratuity. Since such application was not responded to, the petitioner no.1 was compelled to file an application in Form-N before the Controlling Authority under the said Act for determination of the gratuity payable to him. On contest, the petitioner no.1’s claim was found inadmissible on the ground of limitation and by order dated

17th May, 2023 the application in Form-N was rejected. Being aggrieved, the instant writ application has been filed.

5. Mr. Bhattacharya, learned Advocate representing the petitioner no.1 by placing reliance on the provisions of Section 7(2) of the said Act, submits that a duty is cast upon the respondent no.3 to make payment of gratuity. The respondent no.3 cannot choose to ignore its obligation with regard to the payment of gratuity even if the petitioner no.1 does not apply before the said respondent.
6. It is submitted that the obligation to make payment of gratuity is embodied in Section 7(2) of the said Act and gives an independent right to the petitioner no.1 to seek enforcement thereof.
7. Mr. Bhattacharya submits that the petitioner no.1 was disbursed his provident fund dues and as such the petitioner no.1 was under an impression that the respondent no.3 would disburse gratuity in his favour. Unfortunately, gratuity having not been disbursed in favour of the petitioner no.1, the petitioner was compelled to file an application in Form-I before the respondent no.3.
8. By drawing attention of this Court to the application in Form-I dated 31st December, 2021 he submits that all particulars with regard to his claim had been incorporated in such application. Notwithstanding receipt of such application, the respondent no.3 chose to maintain silence, which ultimately prompted the petitioner no.1 to apply before the Controlling Authority under the provisions of Payment of Gratuity Act, for determination of his gratuity. The

said application was accompanied by an application praying for condonation of delay in filing the same.

9. By referring to the application for condonation of delay it is submitted that the petitioner no.1 had sufficiently explained the delay, notwithstanding the aforesaid the Controlling Authority by overlooking such explanation and by placing reliance on technicalities was, inter alia, pleased to dismiss the petitioner's application in Form-N of the said Act.
10. By placing reliance on a judgment delivered by the Bombay High Court in the case of ***Transport Manager, Kolhapur Municipal Transport Undertaking, Kolhapur v. Pravin Bhabhutlal Shah*** reported in **2005(1) Mh.L.J. 497**, he says that obligation to make payment of gratuity has long been recognized as an enforceable right and the delay in filing the application cannot defeat such a substantive right.
11. In support of the aforesaid contention, he has also placed reliance on the judgment delivered in the case of ***RKV Govindaraj v. V. Chellaiah*** reported in **2011 SCC OnLine Madras 1988**.
12. In the facts as noted hereinabove, he submits that the order passed by the Controlling Authority which interferes with his substantive right cannot be sustained and the same should be set aside.
13. *Per contra*, Ms. Pandey, learned Advocate representing the respondent no.3 by placing reliance on the provisions of Section

7(1) of the said Act submits that it was the primary obligation of the petitioner no.1 to apply before the respondent no.3, within the time as specified in the West Bengal Payment of Gratuity Rules, 1973 (hereinafter referred to as the “said Rule”). The petitioner no.1 having not applied within the time specified in the said Rules no gratuity is payable in favour of the petitioner, at least the petitioner no.1 could not have maintained the application before the Controlling Authority. She has thereafter by placing reliance on the provisions of Section 7(7) of the said Act submits that an Appellate Authority has been provided in the scheme of the said Act. The Appellate Authority is competent to hear out all issues arising out and in connection with, not only with regard to the determination of the amount of gratuity, but also admissibility of a claim.

14. Having regard to the aforesaid, she submits that since, there is an alternative efficacious remedy available, this Hon’ble Court in exercise of its extraordinary writ jurisdiction ought not to entertain the writ application.
15. In support of her aforesaid contention, she has placed reliance on a judgment delivered by the Hon’ble Supreme Court in the case of ***State of Punjab v. Labour Court, Jullunder and Others*** reported in **(1980) 1 SCC 4**. She has also placed reliance on a judgment delivered by a coordinate Bench of this Hon’ble Court in the case of ***Arabinda Sardar v. State of West Bengal and Others*** in WPA 17711 of 2021 delivered on 21st December, 2021 and a judgment

delivered by the Division Bench of this Hon'ble Court in the case of ***Ali Hossain v. M/s. Budge Budge Co. Ltd. & Ors.*** in FMA 3595 of 2015 delivered on 13th July, 2018.

16. Mr. Samanta, learned Advocate enters appearance on behalf of the respondent nos.1 and 2. He submits that there is no irregularity on part of the Controlling Authority in passing the aforesaid order. Admittedly, the application was filed belatedly. He submits that the issue of admissibility of a claim can also be questioned, by filing an application under Section 7(7) of the said Act. Having regard to the same, he submits no interference is called for.
17. Heard the learned Advocates appearing for the respective parties and considered the materials on record. I find that the petitioner no.1 claims to be an ex-employee of the respondent no.3. The said fact has, however, not been questioned by the learned Advocate representing the respondent no.3. It has, however, been the contention of the respondent no.3 that primarily it was the obligation of the petitioner no.1 to apply before them, having failed to apply in time, no belated application could have been entertained and the Controlling Authority has rightly rejected the said application. In this context, I must note that although, the provisions of Section 7(1) of the said Act read with the said Rules cast an obligation on the employee to apply before the employer seeking disbursal of the gratuity within the time specified, however,

sub-section (2) of Section 7 of the said Act makes it abundantly clear that the employer is obliged to make payment of the gratuity irrespective whether any application has been filed by the employee under sub-section (1) of Section 7 of the said Act. Section 7(3) of the said Act mandates that the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. A combined reading of Section 7(1), Section 7(2) and Section 7(3) of the said Act, makes it abundantly clear that it is the primary obligation of the employer to make payment of gratuity immediately upon the gratuity becoming payable. If an employee fails to apply within the time prescribed in the said Rules before the employer, in my view the same is not so fatal so as to defeat the substantive right of an employee.

18. In this case, although, it has been strenuously argued by Ms. Pandey, learned Advocate representing the respondent no.3 that by passage of time records have been lost and it is for such reason she is unable to demonstrate whether gratuity had been paid or had been denied to the petitioner no.1, I am unable to accept the same. Simply because the provisions of Payment of Wages Act, 1936 require the employer to maintain the register of records, wages and receipts for a period of three years, the same does not absolve the responsibility of the respondent no.3 to demonstrate factum of payment or denial of gratuity in favour of the petitioner no.1.

19. In this case the petitioner no.1 had filed the application in Form-I before the respondent no.3 after a considerable delay. The respondent no.3 did not respond to the same. Thereafter, the petitioner no.1 applied in form-N before the Controlling Authority. The said application was accompanied by an application for condonation of delay. It is not the case of the respondent no.3 that the application in form-N was filed beyond a period of 3 years from the date of rejection of the claim for gratuity. The records reveal that the Controlling Authority did not find the explanation to be sufficient or satisfactory. By an order dated 17th May, 2023 the Controlling Authority, by, *inter alia*, recording that the applicant having failed to submit application in Form-N within the stipulated period and having failed to provide any appropriate explanation for such delay of about 8-9 years, had found the application to be not maintainable.
20. In this case I find that there has been no determination on the amount of gratuity payable to the petitioner. The application filed by the petitioner no.1 had been found to be stale on the ground of limitation. It is true that an order passed by a quasi-judicial authority also must be supported by reasons, unless reasons are given it is very difficult to probe into the mind of the authority and ascertain what prompted the said authority to reject the claim. In this case since, the Controlling Authority had found that the explanation was not sufficient, in my view, the Controlling Authority

ought to have afforded the petitioner no.1 with a further opportunity to provide the explanation for the delay, especially when the same concerns enforcement of a substantive right.

21. Be that as it may, since, some reasons have been provided as noted above and since, an efficacious alternative remedy in the form of an appeal is available, I am of the view that the petitioner no.1 should approach the Appellate Authority at the first instance who is also competent to accept the explanation for the delay.
22. Having regard to the aforesaid, the present writ application fails and the same is, accordingly, dismissed.
23. Since, no affidavit has been called for, the allegations made in the writ petition are treated not to be admitted by the respondents.
24. There shall be no order as to costs.
25. Urgent certified photocopy of this order, if applied for, be given to the parties upon compliance of usual formalities.

(Raja Basu Chowdhury, J.)