Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 15108 of 2023

K.B. Motors Private Limited
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Supriya Chattapadhyay Mr. Sudip Kumar Maiti
For the private respondent	:	Mr. Md. Zohaib Rauf Mr. Ajitesh Pandey
For the State	:	Mr. Vimal Kumar Shahi Mr. Vijay Agarwal
Heard on	:	16.08.2023
Judgment on	:	16.08.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the order dated 13th April, 2022, passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act"), as also the order dated 15th April, 2023, passed by the Appellate Authority as provided for under the said Act.
2. The petitioner claims that the husband of the respondent no. 4 was an employee of the petitioner. Unfortunately, by reasons of financial

irregularities, the respondent no. 4 was terminated from service on 31st July, 2012. Subsequently, on 23rd August, 2012, a complaint was lodged with the local police station which was treated as FIR dated 23rd August, 2012. In the said FIR, along with the respondent no.4's husband, four other persons had been named. The complaint based on which the aforesaid FIR was lodged has, however, not been made part of the writ application. The same has also not been disclosed during the hearing.

3. The husband of the respondent no. 4 (hereinafter referred to as the "deceased employee") died on 14th March, 2014. Subsequent to his death, the respondent no. 4, in her capacity as the nominee of the deceased employee, had filed an application in Form-'I', requesting the petitioner to make payment of the gratuity payable to her on account of her deceased husband. The said application in Form-'I' was not responded to by the petitioner. This prompted the respondent no. 4 to file an application in Form-'J' before the Controlling Authority, *inter alia*, claiming that the deceased was an employee of the petitioner until his death, i.e., 14th March, 2014, and that the deceased employee had already completed 10 years of the service with the petitioner.

4. It appears that the petitioner had responded to the said notice in Form-'J', by a communication dated 19th December, 2017, addressed to the Controlling Authority, *inter alia*, claiming therein that notwithstanding the deceased being an employee of the

petitioner, the deceased employee was terminated on 31st July, 2012 due to fraudulent activity. It was further, *inter alia*, notified that an FIR had been lodged against the deceased employee on 23rd August, 2012, and the matter was pending with the Court. A Further communication dated 9th August, 2018, appears to have been issued by the petitioner, wherein, it had been alleged that since, the deceased employee was terminated due to fraudulent activity and cheating, he is not eligible for gratuity. The respondent no. 4 had, however, disputed the said contention and had filed an objection, *inter alia*, contending that her husband had died in harness on 14th March, 2014.

5. Before the Controlling Authority, the petitioner was represented by its authorised representative who had also deposed on its behalf. On contested hearing, the Controlling Authority, by an order dated 13th April, 2022 was, *inter alia*, pleased to, by rejecting the objection raised by the petitioner, determine and direct disbursal of gratuity payable to the deceased employee, in favour of the respondent no. 4 as the nominee of the deceased. Following the aforesaid, a notice in Form-'R' was issued on the said date and the same was communicated to the petitioner. Despite receipt of Form-'R', the petitioner did not take any steps.

6. An application was later filed by the respondent no. 4 before the Controlling Authority for issuance of a certificate in terms of Section 8 of the said Act. After receipt of such application, the Controlling

Authority by a communication in writing dated 5th September, 2022, had called upon the petitioner to show-cause as to why a certificate for recovery of the amount of gratuity together with compound interest at the rate of 15 per cent per month, from the expiry of the date mentioned in the aforesaid memo, shall not be issued against them in terms of Section 8 of the said Act.

7. The petitioner having not responded to the show cause notice within the time provided, a certificate dated 29th September, 2022 was issued under Section 8 of the said Act. It was only after the issuance of the aforesaid certificate that the petitioner had preferred an appeal before the Appellate Authority on 9th January, 2023. Admittedly, the appeal was barred by limitation. Despite the aforesaid, no application praying for condonation of delay was filed. The Appellate Authority upon hearing the parties on the delay on 23rd February, 2023 and 14th March, 2023, *inter alia*, was pleased to dismiss the said appeal on 15th March, 2023, as being barred by limitation.

8. Challenging the aforesaid order, including the order passed by the Controlling Authority, the present writ application has been filed.

9. Mr. Chattapadhyay, learned advocate appearing for the petitioner, submits that the deceased, although, was an employee of the petitioner, however, since, he was involved in fraudulent activity, *inter alia*, including financial irregularities, no gratuity is payable to him. It is submitted that the Appellate Authority did not take into

consideration the aforesaid aspect of the matter and has accordingly dismissed the appeal since the same is barred by limitation.

10. By drawing attention of this Court to the letter dated 31st July, 2012, it is submitted that the petitioner had been terminated from service due to fraudulent activities and cheating. He says that the statute recognises the right of an employer to forfeit the gratuity and as such, there is no irregularity on the part of the employer in refusing to pay gratuity. He, however, submits that the entire gratuity subsequent to dismissal of the appeal, has already been disbursed in favour of the respondent no. 4 and as such the respondent no. 4 is unlikely to suffer any prejudice in the event the petitioner is permitted to appear before the Appellate Authority and place its case.

11. *Per contra,* Mr. Rauf, learned advocate appearing for the respondent no. 4, on the other hand, submits that the letter dated 31st July, 2012, is not a valid document. By drawing attention of this Court to the notice in Form-'I', he submits that the respondent no. 4 had categorically stated that the deceased employee had died on 14th March, 2014, and till such time he was in the employment of the petitioner. The petitioner never chose to respond to the aforesaid application. Since, the gratuity was also not disbursed in favour of the respondent no. 4, an application in Form-'J' was filed before the Controlling Authority. Before the Controlling Authority, the petitioner chose not to file any formal written objection. It had only,

inter alia, claimed that the deceased employee was involved in fraudulent activity and cheating, for which an FIR had been lodged against him on 23rd August, 2012, and the matter was pending before the Court. It is submitted that the petitioner did not identify the quantum of loss allegedly suffered by them. At least there is no such reflection in the communications dated 19th December, 2017 or 9th August, 2018.

12. Since, the deceased employee died on 14th March, 2014, no criminal proceedings could have continued against the deceased employee at least in the year 2018. It is still further submitted that no proceeding has been initiated for recovery of any amount from the deceased employee. Allegation of financial irregularity/cheating, dismissal from service are false, the same had been made with the sole object of denying gratuity. In the facts as stated above, it is submitted that there is no irregularity on the part of the Controlling Authority in determining the gratuity payable to the respondent no. 4. The petitioner never intended to contest the aforesaid findings. It is for such reasons, despite receipt of notice in Form-'R', the petitioner did not take any steps to challenge the said order.

13. It was only after the certificate was issued under Section 8 of the said Act, that an appeal was filed, belatedly, after expiry of the period of limitation without any application for condonation of delay. The Appellate Authority had duly considered the same and had, thereafter, by an order dated 15th March, 2023, rejected the said

appeal. The present writ application had been filed more than 3 months after the aforesaid order of rejection. There is no explanation for the delay. In such circumstances, no relief should be afforded in favour of the petitioner and the instant writ application deserves to be dismissed with costs.

14. Mr. Shahi, learned advocate enters appearance on behalf of the State and submits that there is no irregularity on the part of the Controlling Authority in determining the gratuity payable in favour of the respondent no. 4 as a nominee of the deceased or the Appellate Authority, in dismissing the appeal.

15. Heard the learned advocates appearing for the respective parties and considered the materials on record.

16. Admittedly, the deceased was in employment of the petitioner and on the own showing of the petitioner, had worked at least up to 31st July, 2012. Although, the petitioner has contended that the deceased employee was terminated from service with effect from 31st July, 2012, yet from the order passed by the Controlling Authority, it would appear that the provident fund records of the deceased employee mentions that the deceased employee died in service where the date of death and reason for exit are recorded as "*14th March, 2014*" and "*death in service*" respectively. The aforesaid document based on which the above finding was reached was exhibited. The aforesaid is enough to impeach the letter dated 31st July, 2012.

17. It would further appear from the order passed by the Controlling Authority on 13th April, 2022, that the petitioner's authorised representative, Mr. Punit Pandey had accepted the respondent no.4 to be the nominee of the deceased and that the petitioner was agreeable to pay the said nominee 50 per cent of the gratuity claim without any interest. The aforesaid also demolishes the case made out by the petitioner that no gratuity was payable.

18. I find that the Controlling Authority, on the basis of the materials on record, had arrived at a finding that the deceased employee was in service at the time of death. Such finding in fact had been reached by placing reliance on provident fund records, which has been exhibited in the said proceedings. It also appears that the petitioner had not quantified the loss suffered on account of alleged fraudulent activity committed by the deceased employee. In this context, it would be relevant to note that the provision of Sub-section (6) of Section 4 of the said Act, sets out exceptions which authorises the employer to withhold/forfeit gratuity. The relevant provision is extracted hereinbelow:-

> *"(6) Notwithstanding anything contained in sub-section (1), -*
>
> *(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.*
>
> (b) *the gratuity payable to an employee may be wholly or partially forfeited]*

> *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
>
> *(ii) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."*

19. From the stand taken by the petitioner, it would appear that the petitioner till date had not been able to identify the quantum of damage or loss suffered by the petitioner. It would further appear from the record that the husband of the respondent no. 4 died on 14th March, 2014. As such, post the aforesaid date no criminal proceedings could have continued against him. It is also not the case of the petitioner that any proceedings had been initiated for recovery of any amount, either from the deceased employee or from the respondent no. 4, claiming her to be the legal representative of the deceased employee.

20. Admittedly, in this case, when the notice in Form-'I' was served on the petitioner, the petitioner did not respond to the same. In my view, although, the provisions of the said Act provides for an exception for forfeiture of the gratuity, such forfeiture must have some co-relation with the extent of loss or damage suffered by the petitioner. The petitioner in the present writ application also has not been able to identify the extent or quantum of loss or damage

suffered by it. On the contrary, I find that that the petitioner's representatives had volunteered to make payment of the gratuity to the extent of 50 per cent, which had been taken note of by the Controlling Authority. Even when the notice in Form-'R' was issued, no steps were taken by the petitioner to challenge the order passed by the Controlling Authority. The petitioner has also not been able to establish the factum of termination of service of the deceased employee.

21. It is only after the issuance of the certificate that an appeal had been filed without the same being accompanied by an application for condonation of delay. The Appeal was out of time, the Appellate Authority, taking into consideration the conduct of the petitioner had dismissed the appeal by order dated 15th March, 2023, by exercising its discretion. The case made out by the petitioner that appeal could not be filed in time by reasons of illness of one of its directors, not appear to be plausible. No disclosure has been made as regards the number of directors of the petitioner. The writ application has also not been affirmed by the director of the petitioner but by a person claiming to be its manager. In the facts stated above, the exercise of discretion by the Appellate Authority does not appear to be irregular for this Court to interfere. The instant writ application has been filed on 27th June, 2023, and was proposed to be listed on 12th July, 2023, after 15 days from the date

of filing. There is no explanation for the delay. It appears that there was no urgency in moving the application.

22. The petitioner has also not been able to identify any irregularity in procedure adopted either by the Controlling Authority or by the Appellate Authority or any jurisdictional error, which may require interference by this Court.

23. Accordingly, the writ application fails and WPA 15108 of 2023 is accordingly ***dismissed.***

24. There shall be no order as to costs.

25. All parties shall act on the basis of the server copies of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)