

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Rajarshi Bharadwaj

And

The Hon'ble Justice Shampa Dutt (Paul)

RVW 139 of 2022

In

FMA 432 of 2021

Asis Chaudhuri

Versus

The Union of India & Ors.

For the Applicant	:	Mr. Avijit Ghoshal.
For the Respondent no.3	:	Mr. D. K. Kundu, Mr. A. Basu.
For the Respondent no.4	:	Mr. Victor Chatterjee, Mr. Hare Krishna Haldar, Mr. Koushik Bhattacharyya.
Hearing concluded on	:	21.09.2023
Judgment on	:	05.10.2023

Shampa Dutt (Paul), J.:

1. The petitioner/appellant/employee has preferred this review application.
2. **The case history in short is:-**

i) **The employer/respondent no.4, M/s. Duckback Information System Private Limited filed WPA No.9553 of 2020 before the Single Bench** of this court praying for a direction upon the respondent No.3 (Life Insurance Corporation) to deposit an amount of Rs.3,63,462/- in favour of the Assistant Labour Commissioner (Central), Kolkata (Controlling Authority), as the said petitioner therein/respondent no.4/Employer, wants to prefer an appeal against the order of the Assistant Labour Commissioner, who had directed payment of gratuity to the extent of the said amount, in favour of the employee/applicant.

ii) The Single Judge vide order dated 22.12.2020 **disposed** of the writ petition by directing as follows:-

“In the facts and circumstances as aforesaid, I direct LIC to pay an amount of Rs.3,63,462/- to the petitioner by way of cheque drawn in the name of Assistant Labour Commissioner (Central) within a period of two weeks from the date of communication of this order.”

iii) Being aggrieved by the said order, the employee/appellant preferred an appeal being FMA No.432 of 2021 before a Division Bench of this Court.

iv) Vide an order dated 7th July, 2022 the appeal was **dismissed** with the following observations:-

“Before the learned Single Judge, the respondent no.3 (LIC) had taken a fair stand to

avoid a future dispute and therefore, the learned Single Judge found that an order was required for transferring the money by LIC. Learned Single Judge also found that the money deposited by the respondent no.4 with the LIC is the money of the respondent no.4. Accordingly, learned Single Judge had directed the LIC to pay the aforesaid amount to the respondent no.4 by way of cheque drawn in the name of Assistant Labour Commissioner (Central).

The submission of learned counsel for the appellant is that the money belonging to the appellant cannot be used by the respondent no.4 for the purpose of filing the appeal. As against this, learned counsel for the respondent has supported the impugned order.

Having examined the record, we find that learned Single Judge has not committed any error in passing the impugned order. Even if the two views are possible in the matter than the one which is taken by the learned Single Judge need not be interfered with. Learned counsel for the appellant has failed to point out if any prejudice is caused to the appellant on account of the impugned direction of the learned Single Judge because in any case, if the respondent no.4 loses the appeal, the amount will become payable to the appellant. In these circumstances, we find no ground to interfere in the order of the learned Single Judge.”

3. **The Review Application has been preferred by the Applicant/Appellant/Employee** on the ground that the Hon'ble Division Bench ought to have considered that the learned Single Judge did not consider at the time of passing order, the prejudice caused to the applicant/employee, if the

claim amount is to be given to the respondent no. 4/employer, as the fund is lying with the respondent no.3 in a **special category scheme under LIC Cash Accumulation Scheme namely Group Gratuity Cash Accumulation Scheme having a Master Policy being No. GG(CA)-212435 which is only to be used for the welfare of the employee of the respondent no.4** and the fund is not be diverted from such Master Policy which is specially to be used only for the purpose of **welfare of the employee** of the respondent no.4.

4. It is further stated that the Hon'ble Division Bench ought to have considered that the above fund is only to be used for the purpose of the welfare of the employee and it is no prerogative of the respondent no.4/employer, being a corporate house to use it for its own gain and purpose, as the fund is with the respondent no.3 only for the **purpose of welfare of the employee** of the respondent no.4 and as such there being some technical error apparent on the face of the record, the same is to be reviewed by the Bench in the interest of justice.
5. All the parties were heard at length.
6. The applicant/employee/appellant, the respondent no.3/LICI, and the respondent no. 4/employer have filed their written notes of argument.
7. **The respondent no.3/LICI has submitted that as directed by the Hon'ble Single Bench, they have deposited the total**

amount by way of cheque drawn in the name of the Assistant Labour Commissioner (Central).

- 8. The respondent no. 4/employer** has submitted that the memorandum of review is defective and the same is liable to be dismissed.

It is further submitted that the review petitioner has not made out any of the grounds for preferring review of an order and/or judgment, as enumerated under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. That the grounds as made out in the memorandum of review does not show any error apparent on the face of the impugned order dated 7th July, 2022. And as the said memorandum is devoid of any material, it is liable to be dismissed.

It is also stated that from the grounds incorporated in the memorandum of review it appears that the review petitioner has actually tried to prefer an appeal before the Hon'ble Bench in form of a review, as such the instant memorandum of review is liable to be dismissed.

- 9. It is the case of the respondent no. 4 that the respondent no.4, being the employer of the review petitioner, maintained a fund with the Life Insurance Corporation of India, for the purpose of payment of gratuity to the various employees as and when they become legally entitled. The review petitioner is one of them. The contribution towards such fund maintained with the LIC is fully borne by the**

answering respondent and no part of such fund is contributed by any of the employees. Such fund represents the employer's money being invested with the LIC.

10. It is further stated that the review petitioner filed his claim for gratuity before the Controlling Authority under the Payment of Gratuity Act, 1972, which was allowed by an order dated 3rd March, 2020, and **the respondent no. 4**, being the employer, has a right to prefer an appeal from the said order dated 3rd March, 2020 before the Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972. **It is thus stated that, as a precondition of filing such appeal, the entire amount as awarded by the Learned Controlling Authority has to be pre deposited. The respondent no. 4 in order to prefer such appeal is required to deposit such amount before the Appellate Authority, which the said respondent has already invested with LIC (respondent no. 3).**
11. It is further stated that during the pendency of the review proceeding, LIC has filed an affidavit, affirmed on 06.06.2023, stating that, in terms of the Hon'ble High Court's order dated 22nd December, 2020, LIC has issued and handed over a pay order of Rs.3,63,462/- in favour of the Assistant Labour Commissioner (Central) the controlling authority. However, no intimation of such remittance was ever made to the Respondent No. 4. It is stated that such act on the part of the LIC is actually in wilful violation of the order passed by the Hon'ble

Court on 22nd December, 2020. That the Respondent No. 4, for the first time came to know about such fact on August 07, 2023, at the time of receiving the Affidavit-in-Opposition, on behalf of the Respondent No. 3 (LICI).

12. It is further stated that in terms of the order dated 22nd December, 2020, LICI was supposed to hand over a cheque of Rs. 3,63,462/- issued in favour of the Assistant Labour Commissioner to the respondent no. 4, to enable it to file the statutory appeal, rather than remitting the amount to the Assistant Labour Commissioner directly that too without any intimation to the respondent no. 4, which is a clear case of wilful disobedience of the order passed by the Hon'ble Court on December 22, 2020.

13. From the materials on record, it appears that the grievance of the applicant/employee is that the amount deposited by the LICI (respondent no. 3) is the amount of gratuity sanctioned in favour of the employee, being a beneficiary to the GGCA Scheme, which is maintained only to be used for the welfare of the employees of a company and the said fund cannot be used by the company to prefer an appeal under Section 7(7) of the Payment of Gratuity Act.

14. The present status of the case is that LICI (respondent no. 3) has deposited the amount as directed by way of cheque with

the controlling authority (Assistant Labour Commissioner (Central)).

15. Section 7(7) of the Payment of Gratuity Act, lays down:-

“(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]”

- 16.** Thus, from **the 2nd proviso to Section 7(7) of the said Act**, it is clear that if the employer **(as in this case)** intends to prefer an appeal, he **has to only produce a certificate** of the controlling authority (herein the Assistant Labour Commissioner, (Central) with whom the amount has already been deposited) and **the amount so deposited by LICI (respondent no. 3) as required/directed, need not be deposited with the appellate authority. A certificate to that effect issued by the Controlling Authority shall enable the respondent no. 4/employer to file an appeal.**

- 17. Finally it is admitted** by the respondent no. 4/employer, that the required amount has already been transferred by LIC in favour of the Assistant Labour Commissioner, (Central) and **a certificate of pre-deposition of the entire amount has been issued to the respondent no. 4 on September 12, 2023.**

Hence, the said certificate enables the respondent no.4 to file the statutory appeal with the appellate authority, as per Section 7(7), 2nd proviso of the payment of gratuity Act.

- 18. Thus the amount deposited by LIC (respondent no. 3) with the controlling authority is not required to be handed over to the respondent no.4/employer.**

- 19. Review application is accordingly disposed of.**

- 20.** All connected applications, if any, stands disposed of.

- 21.** Copy of this judgment be sent to the Assistant Labour Commissioner (Central), Kolkata for necessary compliance.

- 22.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

I agree,

(Rajarshi Bharadwaj, J.)

(Shampa Dutt (Paul), J.)