

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16755 of 2023

Daya Shankar Shaw
Versus
The State of West Bengal & Ors.

Mr. Bikash Shaw
.... For the petitioner

Mr. Vimal Kumar Shahi
Ms. Anima Chakraborty
... For the State

1. Affidavit of service filed in Court today is taken on record.
2. Despite service, none appears on behalf of the respondent no.5.
3. The present writ application has been filed, *inter alia*, praying for a direction upon the respondent no.3 to dispose of the certificate proceedings pending before him.
4. The petitioner claims to have been appointed by the respondent no.5 sometime in/or about 23rd February, 1985, in the winding department of the said respondent. After serving the respondent no.5 for about 33 years, the petitioner was superannuated with effect from 1st April, 2018.
5. Since, according to the petitioner, the respondent no.5 did not disburse the gratuity, the petitioner had applied before the respondent no.5 by filing an application in Form 'I' under the provisions of Payment of Gratuity

Act, 1972 and Rules framed thereunder (hereinafter referred to as the “said Act”). Since, the grievance of the petitioner was not met, the petitioner had filed an application in Form ‘N’ before the Controlling Authority under the said Act, *inter alia*, praying for determination of gratuity.

6. By an order dated 10th August, 2022, the Controlling Authority under the said Act was, *inter alia*, pleased to determine the gratuity payable to the petitioner on contest and by issuing a notice in Form ‘R’ dated 12th August, 2022 had called upon the respondent no.5 to make payment of the gratuity.

7. Despite issuing the aforesaid notice, since, the respondent no.5 did not disburse the gratuity in favour of the petitioner, the petitioner was compelled to initiate proceedings under Section 8 of the said Act, whereupon the Controlling Authority after issuing a show-cause and having not received any favourable response, had issued the said certificate and had transmitted the same to the office of the Certificate Officer, Barrackpore, for execution thereof. Such fact would corroborate from the certificate dated 23rd November, 2022.

8. Since then, although, from time to time the Certificate Officer had issued notices calling upon the certificate debtor, being the respondent no.5 herein, to make payment of the certificate amount, no payment has

been made and the said proceeding is yet to be disposed of. In the interregnum, the respondent no.5 has filed a petition under Section 9 of the Bengal Public Demands Recovery Act, 1913, denying liability. It is submitted that although, the petitioner had duly filed objection to such petition on 23rd May, 2023, the aforesaid petition is yet to be disposed of.

9. In the facts as stated above, the petitioner prays for early disposal of the aforesaid application.

10. Mr. Shahi, learned advocate enters appearance on behalf of the respondent nos. 1 to 4.

11. Having heard the learned advocates appearing for the respective parties, I find that in the instant case, on contest, the Controlling Authority had determined the gratuity payable to the petitioner. Subsequently, since the respondent no.5, despite demand, did not make payment of gratuity, the petitioner was compelled to file an application under Section 8 of the said Act. It is in connection with the said application that the aforesaid certificate had been issued. No appeal has been filed by the respondent no.5, challenging the aforesaid order.

12. Be that as it may, since, a petition has been filed by the respondent no.5 under Section 9 of the Bengal Public Demands Recovery Act, 1913, I am of the view that the respondent no.3 should hear out and dispose of the

petition filed by the respondent no.5 under Section 9 of the Bengal Public Demands Recovery Act, 1913 and the certificate proceedings, preferably within a period of three months from the date of communication of this order.

13. With the aforesaid observations/directions, the writ petition stands disposed of.

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

15. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)