

29.08.2023
sayandeep
Sl. No. 04
Ct. No. 12

MAT 1242 of 2021
with
CAN 01 of 2021

Delta Limited
-Versus-
Rampada Sardar & Ors.

Mr. Soumya Majumder
Ms. Amrita Pandey
Ms. Anamika Pandey
Mr. Ghanashyam Pandey
Ms. Sneha Singh

.....for the appellant

Mr. R. Guha Thakurata
Ms. Senjuti Sungupt
Ms. Dipa Roy

....for the respondent No. 1

Mr. Bipin Ghosh

.....for the State

The respondent No. 1 was an employee of the appellant. On attaining age of superannuation, he retired from service on January 1, 2012. The appellant did not pay the eligible gratuity amount to the respondent No. 1. The respondent No. 1 filed application under Section 7(4) of Payment of Gratuity Act, 1972 for computation of gratuity payable to him by the appellant. The notice in the application was sent to the appellant. In spite of receiving the notice, the appellant did not appear before the respondent No. 3 (Controlling Authority). The respondent No. 3 after giving the ample opportunity passed an *ex parte* order by the order dated 19.11.2018 on merits computing the amount of gratuity payable by the appellant to the respondent No. 1. The appellant did not pay the said

amount. On the application filed by the respondent No. 1 under Section 8 of the Payment of Gratuity Act, 1972, the respondent No. 3 issued a requisition to the respondent No. 4 for recovery of the amount as though the same is due as land revenue. The respondent No. 4 delegated the power to the respondent No. 5. The respondent No. 5 instead of issuing a certificate to execute and recover the amount as per request made by the respondent No. 3, raised various queries. The respondent No. 3 furnished details as required by the respondent No. 5. The respondent No. 5 rejected the request of the respondent No. 3. The respondent No. 1 challenging the said rejection filed writ petition being WPA 12012 of 2021. Before the learned Single Judge in the writ petition, the learned advocate for the State contended that there is no provision under Payment of Gratuity Act, 1972 to execute the certificate issued by the Controlling Authority for recovery of the amounts. Only as per provision of Bengal Public Demands Recovery Act, 1913, the execution can be taken for recovery of gratuity amount. As per Sections 5 and 6 of Bengal Public Demands Recovery Act, 1913, the Certificate Officer can issue certificate only after being satisfied that amount is recoverable. As per Section 51 of the Act of 1913, an appeal is provided against the order of Certificate Officer. The Certificate Officer not being satisfied with the request made by the respondent No. 3, rejected the same. The respondent No.1 instead of

filing appeal under Section 51 of the Act of 1913, filed writ petition which is not maintainable and prayed for dismissal of the writ petition.

The learned counsel appearing for the appellant has adopted the arguments of the Counsel for the State.

The learned Single Judge considering the Section 8 of the Payment of Gratuity Act, 1972, Section 14 of the Act of 1913, held that except Section 14 of the Act of 1913, no other provisions is applicable in respect of request made by the gratuity authority and allowed the writ petition.

Against the said order, the present appeal is filed.

The appellant has raised various grounds on merits in the appeal. The learned counsel appearing for the appellant contended that the learned Single Judge failed to consider that Certificate Officer has to issue notice under Section 7 and comply with the provisions of Sections 8 to 10A of the Act of 1913 and then only can issue orders for recovery of the amount. The appellant has right to challenge the order of the respondent No. 3.

The learned counsel appearing for the State submitted that the appeal has become infructuous. The Certificate Officer has issued warrant of arrest to the Directors of the appellant and appellant paid the amount and nothing survives in the appeal. The appeal has become infructuous and prayed for dismissal of the appeal.

Heard learned counsel for the parties and perused the entire materials on record.

From the materials on record, it is seen that on the application filed by the respondent no. 1, the respondent No. 3 quantified the gratuity payable by the appellant as per Section 7(3) of the Payment of Gratuity Act, 1972. The said order is an appealable order and appeal lies to the appellate authority constituted under Payment of Gratuity Act, 1972. The appellant did not challenge the order of the respondent No. 3 the Controlling Authority and the said order has become final. The Payment of Gratuity Act, 1972 is a self contained code. Provisions are made to consider the claim of employees and objections of the employer to determine whether any gratuity is payable or not and if payable determine the quantum of amount payable to the employee. If the amount is quantified and not paid by the employer within the prescribed time as per Section 8 of the Payment of Gratuity Act, 1972, on application filed by the employee, the Controlling Authority has power to initiate proceedings to recover the said amount by issuing certificate to the District Collector. Once such a certificate is issued, the District Collector or delegated authority has to recover the amount as though, the same is due as land revenue. There is no specific provisions or procedure under Payment of Gratuity Act, 1972 for execution and recovery of the amount of gratuity determined by the

Controlling Authority. In such circumstances, Section 14 of Bengal Public Demands Recovery Act, 1913 comes into play and the Certificate Officer has to execute the certificate by anyone or more modes mentioned therein. Apart from Section 14 of 1913 Act, no other provision is applicable to execute the certificate issued by the authority under the Payment of Gratuity Act, 1972. This is clear from Section 14 of Payment of Gratuity Act, 1972. The contention of the counsel appearing for the State before the learned Single Judge that upon satisfaction of Certificate Officer as per Sections 5 and 6, only execution can be initiated was rightly negated by the learned Single Judge taking into consideration of Section 14 of the Payment of Gratuity Act, 1972. The learned Single Judge has rightly held that Certificate Officer is not an appellate authority over the authority under Payment of Gratuity Act, 1972 and he cannot revisit the order passed by the Controlling Authority. In the present case, the appellant did not challenge the order of Controlling Authority and the said order has become final. In such circumstances, the Certificate Officer has no power to reconsider the claim of the respondent No. 1. The learned Single Judge has considered all the above materials and allowed the writ petition. It is brought to the notice of this Court that out of 9 or more employees, the appellant paid gratuity amount and for the respondent No. 1 and some other employees only the amount were not paid. Further, the

pending appeal, the appellant paid the amount to the respondent No. 1 as determined by the Controlling Authority.

There is no error in the order of the learned single Judge warranting interference by this Court.

For the above reasons, the appeal fails and dismissed.

There shall be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)