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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18179 of 2023

Eastern Coalfields Limited
Vs.
Aparna Ganguly & Ors.

Mr. Soumya Majumder
Mr. Syed Nurul Arefin
Ms. Rashmi Binayak
... For the petitioner.

Mr. Nirmalendu Ganguly
... For the respondent no.1.

Mr. Rajendra Banerjee
Mr. Rivu Dutta
Mr. Rhitam Chatterjee
Mr. Arun Kumar Jha
... For Union of India

1. The present writ application has been filed *inter alia* challenging the orders dated 14th November, 2022 and 26th May, 2023 passed by the Controlling Authority and the Appellate Authority respectively, under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”).

2. The petitioner contends that the respondent no.1 was employed as Typist/Clerk in the Kunustoria area hospital of the petitioner. In accordance with the conditions of service as applicable to the respondent no.1, she was allotted quarter no.16 at Bansra hospital colony. In usual course, since the respondent no.1 was to reach the age of superannuation, by a notice in writing dated 24th August, 2021, the petitioner while intimating the respondent no.1 that she shall reach the age of

superannuation on 31st January, 2022 also directed her to vacate the said quarter.

3. Consequent upon her superannuation, the respondent no.1 had applied before the petitioner for disbursal of gratuity. Since, the gratuity was held back by the petitioner she had applied before the Controlling Authority for determination of the amount of gratuity payable to her. The said proceeding was contested by the petitioner before the Controlling Authority.

4. The petitioner had attempted to make out a case that inasmuch as the respondent no.1 was withholding the quarter, the respondent no.1 was not entitled to payment of gratuity. The Controlling Authority, however, by an order dated 14th November, 2022 by determining the quantum of gratuity payable in favour of the respondent no.1, by a notice in Form 'R' of even date, had called upon the General Manager of the petitioner to make payment of gratuity to the petitioner.

5. Being aggrieved, the petitioner had filed a statutory appeal upon making pre-deposit of the amount of gratuity so determined, with the office of the Controlling Authority. By order dated 26th May, 2023, the Appellate Authority has been, inter alia, pleased to dismiss the said appeal.

6. Challenging the aforesaid orders, the present writ petition has been filed.

7. Mr. Arefin, learned advocate representing the petitioner, *inter alia*, contends that the respondent no.1 cannot be entitled to payment of gratuity, without the respondent no.1 vacating the quarter allotted to her. He submits that the respondent no.1 has also not paid the rent for occupation of the said quarter and, as such, unless the rent is paid by the respondent no.1 and the quarter is vacated, the respondent no.1 cannot be entitled disbursal of the amount of gratuity so determined. He submits that both the Controlling Authority as also the Appellate Authority did not appropriately consider the aforesaid aspect in its proper perspective. The aforesaid orders passed both by the Controlling Authority as also the Appellate Authority should be set aside and quashed.

8. *Per contra*, Mr. Ganguly, learned advocate representing the respondent no.1, on the other hand, submits that his client was all along ready and willing to vacate the quarter but for her daughter's education she has been compelled to withhold the said quarter. She has also undertaken to the petitioner to vacate the quarter prior to 31st March, 2023

9. Pursuant to the direction passed by this Court on 21st August, 2023, Mr. Ganguly has placed before this Court an undertaking affirmed by the respondent no.1, undertaking that she shall vacate the quarter on or before 31st March, 2024. Such undertaking is taken on record.

10. Heard learned advocates appearing for the respective parties and considered the materials on record. I find that the provisions of the said Act, provide for determination of gratuity payable to an employee. In the case at hand, it appears, that the entitlement of the respondent no.1 to receive gratuity has not been denied by the petitioner. The petitioner only intends to withhold the same inasmuch as the respondent no.1 is holding onto the quarter. I, however, find that the Controlling Authority is competent to determine the amount of gratuity payable in favour of the persons, who are otherwise entitled to receive the said gratuity. Thus, the determination made by the Controlling Authority under Section 7 of the said Act cannot be said to be irregular. Admittedly, the respondent no.1 continues to occupy the quarter what ever may be the reasons therefor. Such occupation may or may not be illegal, depending upon the rules applicable to the respondent no.1. In any event, the petitioner in ordinary course has both the right and the remedy available to recover the rentals for the occupation of the quarter.

11. The petitioner has, however, not been able to demonstrate before this Court any scheme or rules of the petitioner as regards the payment of gratuity, which authorizes the petitioner to deny disbursement of gratuity in favour of an employee, for withholding quarter. In the aforesaid backdrop and taking note of the protection

provided under Section 13 of the said Act and the overriding effect of the said Act on the other enactments as provided under Section 14 of the said Act, I am of the view that the petitioner cannot be permitted to withhold the gratuity payable to the respondent no.1. Having regard to the aforesaid the orders passed by the Controlling Authority as also the Appellate Authority cannot be said to be illegal or bad. The petitioner has also not been able to identify any jurisdictional error committed by the Controlling Authority or the Appellate Authority. The writ application fails and the same is accordingly dismissed.

12. In this Case the respondent no.1 has, however, undertaken to vacate the quarter on or before 31st March, 2024. In view thereof, the respondent no.1 would be obliged to make payment of rentals for occupation of the quarter.

13. The dismissal of the writ application shall, however, not stand in the way of either the petitioner seeking recovery of the rentals insofar as occupation of the quarter by the respondent no.1 is concerned nor the same stand in the way of the respondent no.1 to claim statutory interest, if the respondent no.1 is otherwise entitled to in law from the date of determination of gratuity by the Controlling Authority. Unless otherwise agreed between the parties recovery of rentals/occupation charges must

be in accordance with law, on the basis of adjudication by Competent Court/Authority.

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

(Raja Basu Chowdhury, J.)