

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 19179 of 2022

Portland Stores (Wine) Pvt. Ltd.
Vs.
The State of West Bengal & Ors.

For the petitioner : Mr. Soumya Majumder
Mr. Rananeesh Guha Thakurta
Ms. Senjuti Sengupta
Ms. Dipa Roy

For the State : Mr. Pantu Deb Roy
Mr. Pannalal Bandopadhyay

For the respondent : Mr. Kali Kinkar Dey
No.4.

Heard on : 6th July, 2023.

Judgment on : **6th July, 2023.**

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the order dated 1st August, 2022, passed by the Appellate Authority in Case No. GRA 10 of 2019.
2. The petitioner is a Private Limited Company and operates a foreign liquor "off shop". The petitioner claims to be licensee in respect of a licence, issued by the Excise Department, Government of West

Bengal for running such foreign liquor “off shop”. The petitioner was a proprietorship concern under the name and style of M/s. Portland Stores and was started sometimes in the year 1980. Subsequently, in the year 1997, a Private Limited Company was formed under the name and style of Portland (Wine) Pvt. Ltd., being the petitioner herein and the said company had taken over all the assets, business and liabilities of the aforesaid proprietorship concern. It is the contention of the petitioner that the said proprietorship concern or the company at all material point of time never employed 10 or more workmen, for the provisions of the Payment Of Gratuity Act, 1972 (hereinafter referred to the “said Act”) to apply.

3. It is the petitioner’s case that the private respondent, being the respondent no.4, was appointed as a consultant by the proprietorship concern for maintaining accounts of the concern. The petitioner also employed the private respondent for selfsame purpose. It is contended that there was no employee-employer relationship subsisting between the private respondent and the petitioner or the said proprietorship concern. Notwithstanding the aforesaid, the private respondent had applied before the Controlling Authority under the said Act for determination of gratuity payable to him. The petitioner participated in such proceedings, filed documents and led evidence. The Controlling Authority had, however, by an order dated 1st August, 2019,

overruling the objections raised by the petitioner determined the gratuity payable to the private respondent and by a notice in Form R dated 1st August, 2019 called upon the petitioner to make payment of a sum of Rs.2,15,443/- being the gratuity amount determined by the Controlling Authority.

4. Although a statutory appeal was filed by an order dated 1st August, 2022, the Appellate Authority had dismissed the said appeal. Challenging the said order passed by the Appellate Authority, the present writ application has been filed.
5. At the interim stage, by an order dated 9th September, 2022, this Court taking into consideration the submissions made by the petitioner was of the view that since, the petitioner has been able to make out a *prima facie* case and since, the entire amount of gratuity (principal amount) as determined by the Controlling Authority has been secured by the petitioner, directions for exchange of affidavits were issued and an interim order was passed restraining the Appellate Authority from disbursing the amount of pre-deposit in favour of the private respondent.
6. Mr. Majumder, learned advocate representing the petitioner submits that the Appellate Authority did not disclose any reasons despite being obliged to do so. He reiterates that there was no employee-employer relationship as the private respondent was only a consultant. The Controlling Authority had while determining the gratuity placed reliance on extraneous documents

which were not exhibited in the proceedings to arrive at a finding that the private respondent was an employee and that the provisions of the said Act applied to the petitioner.

7. In fact, it has been argued that the Controlling Authority while passing the order determining the gratuity has taken into consideration the insurance policies issued by Aviva Life Insurance, which according to him, ought not to have been considered. Similarly, other documents as referred to in the aforesaid order, which were also not exhibited should not have been considered by the Controlling Authority. This aspect was not considered by the Appellate Authority. The order passed by the Appellate Authority does not disclose reasons. In support of his contention that the Appellate Authority is bound to give reasons, he has relied on a judgment delivered by the Hon'ble High Court of Himachal Pradesh in the case of **Jawala Stone Crusher v. Swaran Singh and Others** reported in **2008-II LLJ 783 (HP)**. He has also relied on a judgment delivered by the Hon'ble Supreme Court in the case of **Vishnu Dev Sharma v. State of Uttar Pradesh and Others** reported in **(2008) 3 SCC 172**, in support of his contention that reasons introduce clarity in an order and even an order passed by a High Court exercising writ jurisdiction without reasons cannot be sustained. In the facts, as stated above, he says that the order passed by the Appellate Authority cannot be sustained and the same should be set aside and quashed.

8. *Per contra*, Mr. De, learned advocate representing the private respondent has placed before this Court the appointment letter by which the private respondent had been appointed in the service of the petitioner. He says that the said letter has been issued by Mr. Madan Shaw in his capacity as director of the Company. The same not only confirms that the private respondent had been working as an accountant with the Portland Stores, being the erstwhile proprietorship concern of Mr. Madan Shaw from May 1980, but also the fact that since, the newly formed company namely Portland Stores (Wine) Pvt. Ltd., had taken over all the assets and liabilities along with all staff of Portland Stores and the remaining business, the private respondent as an old staff was directed to continue the job in the company. By relying on the aforesaid document he says that the private respondent is in continuous service of the petitioner. He then takes this Court to various documents, inter alia, including salary register disclosed in the proceedings wherefrom it would appear that 9 (nine) persons have been employed by the petitioner apart from the private respondent.
9. He also takes this Court through the deposition of one Mr. Abhishek Shamo, who has deposed in the said proceedings and claimed himself not only as manager but also a staff of the erstwhile proprietorship concern and manager of the petitioner. He has also drawn attention of this Court to other documents including one, captioned "power of attorney" dated 9th January,

2013 issued by Mr. Madan Shaw in his capacity as director of the petitioner, authorizing the private respondent to appear and sign papers and documents. There are other documents including security area entry permit issued by the Reserve Bank of India in connection with destruction of currency notes which have been disclosed and/or exhibited before the Controller. He says it would apparent from the aforesaid documents that the petitioner has withheld the information that the private respondent was an employee of the petitioner. Apart from the private respondent, Mr. Samui was also an employee which information has also been withheld.

10. The Controlling Authority by a detailed judgment and order after considering all aspects of the matter has returned the finding that the private respondent was in continuous employment and that the petitioner is covered by the provisions of the said Act. Following such finding being returned by the Controlling Authority, the Controlling Authority had determined the amount of gratuity payable to the private respondent. He says that the Appellate Authority had considered the aforesaid, since, there was no scope for interference, the Appellate Authority had refused to interfere and dismissed the appeal. He says that this Court in its extraordinary writ jurisdiction should be slow to interfere. This Court ought not to re-appreciate the evidence at this stage and the parties should not be permitted to reopen the case. In support of

his contention he has placed reliance on an unreported judgment delivered by the Hon'ble High Court of Chhattishgarh, Bilaspur, in the case of ***Chhattisgarh Rajya Gramin Bank v. Meghraj Pathak and Others*** in **WP (L) No. 55 of 2020**. He says that the interim order should be vacated and the writ application should be dismissed with costs.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioner has only challenged the order dated 1st August, 2022 passed by the Appellate Authority. When the aforesaid application was moved, since it appeared that the petitioner had been able to make out a *prima facie* case, this Court was, *inter alia*, pleased to entertain the writ application. Since then affidavits have been filed. I find that the petitioner primarily is aggrieved by the failure on the part of the Appellate Authority to give reasons. It has, however, been contended by the petitioner that the provisions of the said Act do not apply since, the petitioner had never employed 10 or more persons. It has been argued on behalf of the petitioner that the private respondent was not employed by the petitioner and had not put in more than 240 days of work in a year. This apart, the petitioner has also questioned the approach of the Controlling Authority in determining the gratuity payable to the private respondent. Upon scrutinizing the documents on record it would appear that the petitioner after being formed, had taken over the

business and/or interest of Portland Stores, a proprietorship concern. By issuing the letter dated 9th March, 2004 which the private respondent claims to have been issued by Mr. Madan Shaw, which has also not been disputed by the petitioner, the factum of employee-employer relationship between the petitioner/erstwhile proprietorship concern and the private respondent is established. The same leaves no room for doubt that the private respondent was an employee of the proprietorship concern and subsequently continued to be an employee of the petitioner.

12. Having regard to the aforesaid, I am of the view as to whether or not the private respondent has put in 240 days of work in a year pales into insignificance since, the petitioner has failed to establish by documentary evidence or otherwise that absence of break in service of the private respondent was due to fault of the private respondent.
13. In terms of the provisions of Section 2A of the said Act, it would appear that the private respondent was in continuous service for more than 5 years. The Controlling Authority had specifically while taking note of the objection raised by the petitioner had overruled the same. I find that lot of stress has been placed on the question whether the petitioner had employed less than 10 persons or not, I find that the Controlling Authority upon examining all materials has arrived at a conclusion that the

petitioner is covered by the provisions of the Act. That apart, on the basis of the petitioner's own showing apart from the private respondent Abhisek Shamo and 9 other persons have been employed. Having regard to the aforesaid, I find the objection raised by the petitioner to be unsustainable. In any event, the aforesaid issue has been carefully considered by the Controlling Authority. Although it has been contended by the learned advocate representing the petitioner that the Controlling Authority had misdirected himself while placing reliance on the Aviva Life Insurance policy since, the same was never exhibited, such argument appears to be made in desperation as in the affidavit-in-reply filed on behalf of the petitioner in paragraph 12 thereof, it has been categorically admitted that the petitioner had purchased such policy for the welfare of the private respondent.

14. It appears that desperate attempt has been made to reopen the proceedings in an obvious attempt to delay payment of legitimate dues of the private respondent, inter alia, by contending that the Appellate Authority did not give reasons. Since the appellate order did not provide detailed reasons, this Court had admitted the writ application and examined the objections raised by the petitioner as regards not only applicability of the said Act, but also whether the private respondent was entitled to gratuity.
15. Having considered such objections, this Court is of the view that the objections raised by the petitioner cannot be sustained.

The objections raised by the petitioner were all considered by the Controlling Authority. The findings returned by the Controlling Authority cannot be said to be perverse or without jurisdiction. The Controlling Authority has appropriately dealt with the matter and gave elaborate reasons. In the facts of this case non-disclosure of detailed reasons by the Appellate Authority cannot be so fatal so as to vitiate the outcome of the decision.

16. The judgment delivered in the case of ***Jawala Stone Crusher (supra)*** is distinguishable on facts, in the said case the calculations made by the Controlling Authority were assailed in the appeal. The Appellate Authority did not address the said issue. Observations made by the Court are in relation to the peculiar facts of the said case. The same cannot assist the school in the facts of this case. The case of ***Vishnu Dev Sharma (supra)*** emphasized that reasons introduce clarity in an order. It is well settled that a judgment is an authority for what it decides. A slight variation in facts can alter the final outcome. This Court has already considered the objections raised by the school and found the such objections cannot be sustained.

17. This Court also does not find any illegality or irregularity in the order, especially when the employee-employer relationship between the petitioner and the private respondent stands established. As noted above, the factum of coverage of the Act also

stands established. As such no case for interference has been made out.

18. The writ application fails and the same is accordingly dismissed without any order as to costs.

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

(Raja Basu Chowdhury, J.)

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