

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 19874 of 2022

Kuseswar Yadav @ Kusheswar Yadav
Vs.
The State of West Bengal & Ors.

For the petitioner : Mr. R. Guha Thakurta
Ms. Senjuti Sengupta

Heard on : 08.02.2023

Judgment on : 08.02.2023

Raja Basu Chowdhury, J:

1. The supplementary affidavit filed in Court today on behalf of the petitioner is taken on record.
2. Despite service, none appears on behalf of the respondents.
3. The present writ application has been filed, *inter alia*, praying for a direction upon the respondent no.3, being the Certificate Officer, to execute the certificate dated 16th December, 2021.
4. The petitioner says that the petitioner had joined services of the respondent no.4, sometime in the year 1970 and was superannuated on 31st July, 2010. The petitioner says that the

respondent no.4 had only disbursed a portion of the gratuity payable to the petitioner. In such circumstances, the petitioner was compelled to apply in Form 'I' praying for release of the balance amount of gratuity. Despite such application, since the respondent no.4 did not disburse the balance gratuity amount, the petitioner was constrained to file an application in Form 'N' before the Controlling Authority, constituted under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

5. On contested hearing, the Controlling Authority was, *inter alia*, pleased to adjudicate the quantum of gratuity payable to the petitioner and by a notice in Form 'R' dated 3rd March, 2021 called upon the respondent no.4, to make payment of the differential amount of gratuity payable to the petitioner. Since despite receipt of the aforesaid notice, the respondent no.4 did not make payment, the petitioner was compelled to apply before the Controlling Authority under Section 8 of the said Act, for issuance of a certificate. At the instance of the petitioner, the Controlling Authority was, *inter alia*, pleased to issue the certificate dated 16th December, 2021 and the same was remitted to the office of the respondent no.3 for execution where the same has been filed. The petitioner says that the respondent no.3 despite taking steps for execution of the said certificate did not ultimately execute the same. By drawing attention of this Court to a memo dated 18th November, 2022 issued by the respondent no.3, which is at page

8 of the supplementary affidavit, it is submitted that the respondent no.3 has, in fact, called upon the Controlling Authority to modify the certificate issued under Section 8 of the said Act and provide appropriate clarification. The petitioner says that the Certificate Officer is not competent to question the said certificate, especially, when the same has been issued by the Controlling Authority under Section 8 of the said Act. It is still further submitted that the order passed by the Controlling Authority has attained finality and the same cannot be questioned by the Certificate Officer. He prays for a direction upon the respondent no.3 to forth with execute the certificate.

6. I have heard Mr. Guha Thakurta, learned advocate representing the petitioner and considered the materials on record. I find that the certificate under Section 8 of the said Act has been issued and the same has already been remitted to the respondent no.3.
7. I am of the view since the aforesaid certificate has been filed in the Office of the respondent no.3, that the respondent no.3, is required to dispose of the certificate case, by considering the objection, if any, raised by Certificate debtor in accordance with law. The respondent no.3 ought not to have sought for further clarification from the Controlling Authority, for the purpose of executing the certificate. To the aforesaid extent, the steps taken by the Certificate Officer are without jurisdiction.

8. In my view, the aforesaid writ application can be disposed of by directing the Certificate Officer to take steps for disposing of the certificate case in accordance with law after hearing the objection, if any, raised by the certificate debtor.
9. Since the petitioner has been superannuated in the year 2010, it is only expected that the Certificate Officer shall proceed and dispose of the aforesaid certificate case within a period of six months from the date of communication of this order, without granting any unnecessary adjournments to either of the parties.
10. With the above observations, the writ application, being WPA 19874 of 2022 is disposed of.
11. There shall, however, be no order as to costs.
12. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)