

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19832 of 2023

Joydeb Das

Vs.

The State of West Bengal & Ors.

Ms. Senjuti Sengupta

Mr. Rananeesh Guha Thakurta

Ms. Dipa Roy

... For the petitioner.

Mr. Wasim Ahmed

Mr. M. Shehaboddin

... For the State.

Ms. Amrita Pandey

Mr. Ghanshyam Pandey

... For the respondent no.5.

1. The present writ application has been filed, inter alia, complaining inaction on the part of the Certificate Officer to execute the certificate issued under Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”).

2. It is the petitioner’s case that the petitioner was an ex-employee of the respondent no.5. Despite the petitioner having rendered uninterrupted service for a period of 37 years since, gratuity was not disbursed in his favour, he had filed an application before the Controlling Authority for determination of gratuity under the provisions of the said Act.

3. On contest, by an order dated 22nd August, 2022, the Controlling Authority was inter alia, pleased to

determine the gratuity, for a sum of Rs.4,07,858/-payable in favour of the petitioner and by a notice in Form 'R' of even date had called upon the respondent no.5 to make payment of the gratuity so determined, in favour of the petitioner.

4. Despite receipt of such notice since, the respondent no.5 did not make payment of gratuity, the petitioner was compelled to initiate a proceeding under Section 8 of the said Act. The Controlling Authority after considering the petitioner's application and upon given an opportunity to the respondent no.5, to show cause, had issued a certificate under Section 8 of the said Act on 22nd November, 2022. Although, the said certificate had been forwarded to the concerned Certificate Officer for execution, the same has not been executed and is kept pending.

5. Ms. Sengupta, learned advocate representing the petitioner submits that unless specific direction is issued by this Court calling upon the Certificate Officer to execute the certificate, the same shall not be executed and the petitioner shall not be in a position to recover his legal entitlement as regards his entitlement on account of gratuity.

6. Mr. Shehaboddin, learned advocate representing the State respondents by relying on two several notices dated 17th January, 2023 and 5th September, 2023, submits

that the Certificate Officer has already taken steps for execution of the certificate. Notwithstanding receipt of the above notices, the respondent no.5 has not even entered appearance. It is, however, submitted that steps are being taken to execute the said certificate expeditiously.

7. Mr. Pandey, learned advocate representing the respondent no.5 on the other hand submits that his client has already entered appearance by filing an application under Section 9 of the Bengal Public Demands Recovery Act, 1913, thereby denying the liability. Such application, according to Mr. Pandey, is pending before the Certificate Officer.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case a certificate has already been issued by the Controlling Authority under Section 8 of the said Act and the same has been forwarded to the Certificate Officer for execution. *Prima facie*, the liability of the respondent no.5 has already been determined under the said Act. However, taking into consideration the submissions made by the learned advocate representing the respondent no.5, I am of the view that the Certificate Officer should expeditiously dispose of the application filed by the respondent no.5, including any application under Section 9 of the Bengal Public Demands Recovery Act, 1913, preferably within a period of one month from

the date of communication of this order.

9. Having regard to the aforesaid, I direct the respondent no.5 to appear before the Certificate Officer on 11th October, 2023 at 11.00 a.m.

10. In the event, the respondent no.5 appears before the Certificate Officer, the contention of the respondent no.5 shall be considered in accordance with law. In the alternative, steps should be taken to dispose of the certificate case.

11. Taking into consideration the fact that the matter pertains to payment of gratuity, I am of the view that the Certificate Officer should expeditiously dispose of the certificate proceedings, preferably within a period of six months from the date of communication of this order.

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

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

(Raja Basu Chowdhury, J.)