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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19840 of 2023

Uttam Naskar
Vs.
The State of West Bengal & Ors.

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

Mr. Jayanta Samanta
... For the State.

Ms. Anamika Pandey
Mr. Ghanashyam Pandey
Ms. Sneha Singh
... For the respondent no.5.

1. The present writ application has been filed, inter alia, complaining inaction on the part of the Certificate Officer, being the respondent no.4 herein in executing the certificate issued under Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”)

2. After the matter was taken up for hearing since the respondent no.5 on instruction had submitted that the respondent no.5 has already filed an appeal under Section 7(7) of the said Act from the order dated 3rd June, 2022 passed by the Controlling Authority under the said Act, this Court had adjourned the matter so as to enable the learned advocate representing the State respondents to take appropriate instruction.

3. Mr. Samanta, learned advocate representing the State respondent confirms the factum of filing of appeal by the respondent no.5.

4. Ms. Sengupta, learned advocate representing the petitioner, however, submits that since the certificate has already been issued and the appeal has been filed subsequently, there can be no impediment in executing the said certificate. She, however, submits that the appeal has been filed only after filing of the writ application.

5. Ms. Pandey, learned advocate representing the respondent no.5 on the other hand by placing before this Court the application in Form U dated 9th September, 2022, filed by the respondent no.5 before the Controlling Authority under the said Act, claims that despite the respondent no.5 applying within the statutory period of 60 days, the certified copy has till date not been made available to the respondent no.5. For the aforesaid reason there has been delay in filing the appeal.

6. In the interregnum, however, since the writ petitioner was attempting to frustrate the statutory right of the respondent no.5, the respondent no.5 had filed the appeal on 12th September, 2023, without the certified copy of the order. She submits that the respondent no.5 has a statutory right to challenge the determination made under Section 7 of the said Act. Since, an appeal has already

been filed, the Appellate Authority should be directed to hear out the said appeal and the certificate issued by the Controlling Authority should remain permanently stayed. By drawing attention of this Court to Rule 18(1) of the West Bengal Payment of Gratuity Rules 1973 (hereinafter referred to as the said rules), she submits that in absence of the certified copy, the appeal cannot be heard. It is for such reason the respondent no.5 on one hand has been prevented from challenging the determination made under Section 7 of the said Act and on the other faces enforcement of the determination so made by issuance of the certificate under Section 8 of the said Act.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case I find that a determination has already been made by the Controlling Authority under Section 7 of the said Act. It is, however, also a fact that an appeal has been filed by the respondent no.5 though, the same has not been accompanied by the certified copy. It would appear from Rule 18(6) of said rules, that upon disposal of the appeal, the Controlling Authority upon receipt of the decision of the Appellate Authority shall, if required under that decision modify the amount payable and direct payment thereof to the applicant.

8. Having regard to the aforesaid and taking note of the statutory right to prefer an appeal and the factum of

filing of the appeal by the respondent no.5, the present writ application at this stage for enforcement of the certificate issued under Section 8 of the said Act, cannot be maintained as the petitioner can no longer at this stage execute the certificate already issued by the Controlling Authority.

9. Taking note of the submissions made by the learned advocate representing the respondent no.5, I direct the Controlling Authority to make available the certified copy of the order dated 3rd June, 2022 within a week from the date of communication of this order, for the respondent no.5 to present the same before the Appellate Authority. Upon receipt of the certified copy, the Appellate Authority shall hear out and dispose of the said appeal within two months therefrom on merit and in accordance with law and shall communicate its decision to the Controlling Authority forthwith for the Controlling Authority to take appropriate steps.

10. The aforesaid order is passed by taking note of the submissions made by the learned advocate representing the respondent no.5 that the admitted amount of gratuity has been secured by deposit with the Controlling Authority.

11. With the aforesaid observations and/or directions the writ application stand 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.)