

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19123 of 2019

Genins India Insurance TPA Ltd.
Versus
Assistant Labour Commissioner (Central)
& Controlling Authority & Ors.

Mr. Asok Kumar Bhattacharya
Ms. Aparupa Bhattacharya
... For the petitioner.

Ms. Debjani Ghosal
.... For Union of India.

1. The instant writ petition has been filed, inter alia, challenging the order dated 23rd August, 2019 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”).
2. Shorn of unnecessary details the facts are, the respondent no.3, was an employee in the Executive Post in CRM Department of the petitioner. After completion of 6 years and 9 months of service, the said respondent had tendered her resignation. Since, the said resignation was contrary to the company’s policy and did not provide for the one-month’s notice, the same was not accepted by the petitioner.
3. Subsequently, on 12th September, 2017, the respondent no.3 had filed an application in ‘Form N’ before the Controlling Authority for determination of

gratuity under the provisions of the said Act.

4. The said application was contested by the petitioner, *inter alia*, contending that since, the said respondent did not submit her resignation with one-month's notice and had misused the company's data based information, the respondent no.3 was not entitled to gratuity.
5. The Controlling Authority on the basis of the materials on record concluded that the respondent no.3 is entitled to gratuity for a sum of Rs.20,000/- along with interest @ 10% per annum, for the period from 6th March, 2016 till the actual date of payment thereof. The same would corroborate from the order dated 17th September, 2018.
6. Since then, by a notice in 'Form R' dated 17/18th September, 2018, the petitioner was called upon to make payment of the aforesaid sum of Rs.20,000/- towards gratuity payable to the respondent no.3 along with 10% interest per annum with effect from 6th March, 2016.
7. Challenging the aforesaid determination made by the Controlling Authority, an appeal was filed by the petitioner on 20th January, 2019. Simultaneously, with the filing of the appeal the petitioner had deposited with the Deputy Chief Commissioner

(Central) and the Appellate Authority under the said Act the sum of Rs.20,000/- by way of a Demand Draft, as is statutorily required to be deposited for maintaining an appeal under Section 7(7) of the said Act.

8. In the appeal it was claimed that the respondent no.3 had committed certain misconduct and her notice of resignation was not in consonance with the company's policy.
9. On contest, the aforesaid appeal which was registered as Appeal No. 48(12)/2019, was disposed of by the Appellate Authority by an order dated 31st July, 2019, *inter alia*, by observing that although, the petitioner had alleged misconduct, the petitioner as appellant had not been able to establish the charges against the respondent no.3 and accordingly directed the petitioner/appellant to make payment of a sum of Rs.27,344/- along with 8 per cent interest from the date of completion of one-month of resignation by the said respondent i.e. from 5th April, 2016 till the date when the gratuity is actually disbursed by the petitioner in favour of the respondent no.3.
10. Challenging the aforesaid order, the instant writ petition has been filed.

11. Mr. Bhattacharya, learned advocate representing the petitioner submits that the Appellate Authority did not take into consideration the fact that the respondent no.3 did not give one-month's notice and as such, the salary for the said month was not to be computed while determining the gratuity payable in favour of the respondent no.3. This according to Mr. Bhattacharya, constitutes an irregularity in procedure adopted by the Appellate Authority and as such the order passed by the Appellate Authority should be set aside. It is submitted that there are other grounds, which make the aforesaid order illegal. This Court should entertain the writ petition and should call upon the respondents to file their affidavit-in-opposition.
12. Since, none was present on behalf of the respondent/Union of India, Ms. Ghosal, learned advocate, who, usually appears on behalf of Union of India and is present in Court, is appointed to represent the respondent nos. 1 and 2. Let her appointment be regularized.
13. Ms. Ghosal submits that from the materials on record it would clearly appear that the respondent no.3 was an employee of the petitioner, until such time she had tendered her resignation. The factum of not granting one-month's notice had been taken

into consideration by the Appellate Authority. Admittedly, the respondent no.3 had worked continuously for more than 5 years and as such, gratuity cannot be denied to her.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. On the basis of the materials available it is noticed that the respondent no.3 was an employee of the petitioner until such time she had tendered her resignation. According to the petitioner, the resignation was not in order and as such, the respondent no.3 was not entitled to gratuity. I have perused the order passed by the Controlling Authority as also by the Appellate Authority. The Appellate Authority has duly taken into consideration the aforesaid lacunae in the issuance of the resignation letter. Having regard to the aforesaid, the Appellate Authority had directed the petitioner to make payment of gratuity after expiry of one-month period. The petitioner, however, in the writ petition claimed that the Appellate Authority had erroneously computed the last month's pay while determining gratuity, since, the last month's pay was not payable by the petitioner to the respondent no.3 as the petitioner was entitled to deduct one month's salary in lieu of notice period. I

have, however, noticed that the Appellate Authority had duly taken into consideration the aforesaid notice period and had accordingly directed disbursal of gratuity after expiry of the period of one month from the date of resignation of the respondent no.3 i.e. from 5th April, 2016. Failure to give notice may invite forfeiture of one-month salary but the same shall not forfeit the period of service of an employee.

15. Having regard to the aforesaid, I do not find any reason to interfere with the order passed by the Appellate Authority. The petitioner has failed to identify any illegality far less any jurisdictional error committed by the Appellate Authority in deciding the appeal.

16. The writ petition fails and is accordingly dismissed.

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

(Raja Basu Chowdhury, J.)