

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 23651 of 2019

**Deonath Prasad
Vs.
The State of West Bengal & Ors.**

For the petitioner	:	Mr. R. Guha Thakurta Ms. Senjuti Sengupta Ms. Dipa Ray Ms. Dona Ghosh
For the respondent no. 2	:	Mr. Narayan Chandra hattacharya Ms. Sujata Ghosh
Heard on	:	16.03.2023.
Judgment on	:	16.03.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the order dated 4th December 2019 passed by the respondent no. 2 with a further direction upon the said respondent to dispose of the petitioner's application for disbursal of gratuity amount.
2. The petitioner claims to be a workman, who was employed with the respondent no. 3. It is the petitioner's case that the respondent no. 3 runs a jute mill, where the petitioner was

employed at the factory premises of the said respondent. According to the petitioner, since the respondent no. 3 did not disburse the gratuity in favour of the petitioner, the petitioner had filed an application in Form-‘N’ before the respondent no. 2, who according to the petitioner was an authority appointed by the appropriate Government under Section 3 of the Payment of Gratuity Act, 1972 (hereinafter the “said Act”) for deciding the petitioner’s case.

3. Incidentally, upon receipt of the petitioner’s application in Form-‘N’, by two communications in writing dated 10th May 2018 and 13th June 2018, the office of the respondent no. 2 requested the petitioner to submit his application in Form-‘N’, before the Central Labour Commissioner, Kolkata. Since no reasons were disclosed as to why the petitioner was directed to submit his application in Form-‘N’ before the Central Labour Commissioner, Kolkata, the petitioner had filed a writ application before this Court which was registered as WP 21561 (W) of 2018.
4. By order dated 4th September 2019, this Hon’ble Court taking into consideration the communications issued by the respondent no. 2 and the non-disclosure of reasons therein, was inter alia, pleased to quash and/or set aside the same, with a further direction upon the said respondent to grant an opportunity of hearing to the petitioner and the respondent no. 3 and to pass a reasoned order.

5. Pursuant to the aforesaid direction issued by this Hon'ble Court, the respondent no. 3 had afforded opportunity of hearing to the petitioner as well as to the respondent no. 3 and had, thereafter, inter alia, concluded that since the respondent no. 3 had their establishments in more than one State, in terms of Section 2(a)(i)(b) of the said Act, the appropriate Government in respect of the respondent no. 3 would be the Central Government and not the State Government.
6. Being aggrieved with such finding arrived at by the respondent no. 2 and the failure on the part of the respondent no. 2 to exercise jurisdiction, the present writ application has been filed.
7. Mr. Guha Thakurta, learned advocate appearing for the petitioner by referring to Section 2 sub-Section (a) of the said Act, submits that the appropriate Government means in relation to an establishment belonging to, or under the control of, the Central Government; having branches in more than one State; of a factory belonging to, or under the control of, the Central Government; in case of a major port, mine, oil field or railway company, it is the Central Government who shall be the appropriate Government and in relation to all other cases, it would be State Government. He says that the petitioner was working in a jute mill of the respondent no. 3 which carries out manufacturing process and as such, is a factory within the meaning of Factories Act, 1948. By referring to Section 2(m) of

the Factories Act, 1948, he says that a factory means any premises including the precincts thereof whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on. By referring to the aforesaid provision, he says that within the jute mill of the respondent no.3, manufacturing process is carried on and as such, the respondent no. 3 is a factory within the meaning of the Factories Act, 1948.

8. It is submitted that since the petitioner is employed in a factory and since the factory does not belong to or is not under the control of the Central Government, it is the State Government which is the appropriate Government. He says that the legislature had consciously made a distinction between the establishment having branches in one or more State and establishment of a factory belonging to, or under the control of the Central Government. In support of his contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Jeewanlal (1929) Ltd. etc. etc. v. The Appellate Authority under the Payment of Gratuity Act and others etc.***

etc.¹ He has also placed reliance on an unreported judgment delivered by this Hon'ble Court in the case of **M/s. Bells Controls Ltd. v. Shri Tapan Kumar Ghosh & Ors.** on 7th April, 2005 in MAT No. 616 of 2005. It is submitted that the impugned order cannot be sustained and the same should be set aside with further direction upon the respondent no. 2 to adjudicate upon the petitioner's claim.

9. *Per contra*, Mr. Bhattacharya, learned advocate appearing for the respondent no. 2 submits that it is the respondent no. 3 who had, inter alia, contended before the respondent no. 2 that the respondent no. 3 is an establishment having branches in more than one State and as such, it is the Central Government which shall be the appropriate Government. He says that a factual finding has already been returned by the controlling authority that the respondent no. 3, has establishments in more than one State and on the basis of such factual finding, returned by the respondent no. 2 and on perusal of the provisions of the said Act, it will become abundantly clear that the appropriate Government in relation to the establishment, would be the Central Government. He further submits that this Court cannot sit in appeal over the factual finding returned by the respondent no. 2. If this Court is of the view that the order needs to be reviewed,

¹ 1984(49) FLR 313

this Court ought to remand the matter back to the respondent no. 2.

10. By referring to the judgment delivered by the Division Bench of this Court in the case of ***M/s. Bells Controls Ltd (supra)***, he says that his Hon'ble Court had also not determined the appropriate Government in the given facts and had sent the matter to the appropriate authority for appropriate decision.

11. Despite service, none appears on behalf of the respondent no. 3. Fresh affidavit of service filed in Court today is taken on record.

12. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find that the short point which falls for consideration in the present writ application is whether the State Government is the appropriate Government in relation to the establishment where the petitioner was employed. I find that Section 2 of the said Act appropriately defines who shall be the appropriate Government. In this context, Section 2 of the said Act is extracted hereinbelow:-

"Section: 2

In this Act, unless the context otherwise requires, -

(a) "appropriate Government" means, -

(i) in relation to an establishment

- (a) *belonging to, or under the control of, the Central Government,*
- (b) *having branches in more than one State,*
- (c) *of a factory belonging to, or under the control of, the Central Government,*
- (d) *of a major port, mine, oilfield or railway company, the Central Government,*
- (ii) *in any other case, the State Government;”*

13. From the aforesaid, it will be crystal clear that a distinction has been made between the establishment and the factories. I find from the order impugned in the present writ application that the respondent no. 3 has not questioned whether the establishment is a factory or not. I find that it has been, *inter alia*, contended by the respondent no. 3 that since the establishment is having branches in more than one State, it is the Central Government, which shall be the appropriate Government.

14. The issue whether the State Government would be the appropriate Government in relation to an establishment having a factory which is not under the control of the Central Government, is no longer *res integra*. The Hon'ble Supreme Court in the case of ***Jeewanlal (1929) Ltd. etc. etc. (supra)*** as relied on by Mr. Guha Thakurta, learned advocate appearing for the petitioner, in paragraph 15 thereof, has been, *inter alia*, pleased to observe that it would appear that the definition of appropriate Government in

Section 2(a)(i) of the said Act, in relation to an establishment makes distinction between the establishment and factories. In relation to establishment belonging to, or under the control of the Central Government and of a factory belonging to, or under the control of the Central Government, the appropriate Government is the Central Government. But the Central Government is the appropriate Government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such establishment for having factories in different States.

15. Form the aforesaid, it would be apparent and clear that for the respondent no. 3 which is an establishment having a factory within the State, and may or may not be having factories in different States, the appropriate Government shall not be the Central Government unless the factories belong to, or is under the control of the Central Government. Admittedly, it is not the case of the parties that the factory of the respondent no. 3 belongs to, or is under the control of the Central Government.
16. In view thereof, the finding reached by the respondent no. 2 cannot be sustained. Although it has been argued by Mr. Bhattacharya, learned advocate appearing for the respondent no. 2 that this Court ought not to interfere with the finding returned by controlling authority, I am of the view that since the order passed by the controlling authority suffers from jurisdictional

error, this Court has the jurisdiction to correct the same by issuing a writ of certiorari. A jurisdictional error may be from the failure to observe the limits of his jurisdiction or may arise from procedural irregularity adopted by a quasi-judicial body or Tribunal after validly assuming jurisdiction. It may also be on account of violation of the principles of natural justice.

17. There may be other instances where the writ of certiorari can be issued. In the instant case, it is apparent from the record that the controlling authority by failing to exercise jurisdiction vested in him has occasioned the failure of justice. Such a decision in my view is an error in exercise of jurisdiction. The aforesaid order passed by the respondent no. 2 cannot be sustained and the same is accordingly set aside and quashed.

18. As the matter is pending since 2018, it is only expected that the respondent no. 2 shall hear out and dispose of the petitioner's claim, in Form-'N' as expeditiously as possible, after giving opportunity of hearing to the parties, preferably within 6 months from the date of communication of this judgment.

19. The writ petition being WPA 23651 of 2019 is accordingly ***disposed of.***

20. There shall, however, be no order as to costs.

21. Urgent photostat certified copy of this judgment if applied for be given to the parties upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)