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W.P.A. 26238 of 2022

**M/s Dependable Industries Private Limited & Anr.
Versus
The State of West Bengal & Ors**

Mr. Dhananjay Nayak.

... For the petitioners
Mr. N Rakhit, ... for the respondent no.3

Ms. Sanghamitra Nandi,
Mr. Rajaram Banerjee. .. for the State.

Affidavit-of-service service filed by the petitioner be
taken on record.

The present writ application has been filed, inter
alia, challenging the order dated 29th September, 2022
passed by the Controlling Authority under payment of
Gratuity Act, 1972 (hereinafter referred to as the said
Act).

The petitioners say that the Controlling Authority
erred in permitting the respondent no.3 to file a fresh
application, praying for condonation of delay, when the
final hearing of such application was going on.

Mr. Dhananjay Nayak, learned advocate appearing
for the petitioners, submit that the Controlling Authority
committed jurisdictional error in permitting the
respondent no.3 to file fresh application praying for
condonation of delay at the stage of final hearing. He says
that such direction had been passed after the petitioners
had pointed out that the respondent no.3 in his

application for condonation of delay had failed to give sufficient explanation for explaining the delay.

Mr. N. Rakhit, learned advocate appearing for the respondent no.3 submits that the respondent no.3 was an employee under the writ petitioner no.1 and had been forced to resign sometime in March/April, 2017. He says that ordinarily gratuity is payable within 30 days from the date of retirement. Since the same was not paid within the time specified, an application in Form-I was filed by the respondent No.3 with his employer, the petitioner no.1 herein. Since the petitioner no.1 did not disburse the gratuity amount, an application for direction in Form-N was filed before the Controlling Authority. It is, in connection with the said application that an application praying for condonation of delay had also been filed. It is submitted that in course of hearing of the said application, since it transpired that due to inadvertence, delay was not explained appropriately, the respondent no.3 sought for leave to file a fresh application, which was been permitted by Controlling Authority, by an order dated 29th September, 2022. He says that there is no irregularity on the part of the Controlling Authority, in permitting the respondent no.3 to file the said application. He says the writ application has no merit, the same should be dismissed.

Ms. Sanghamitra Nandi, learned advocate for the State enters appearance in the matter.

Heard the learned advocates representing the respective parties and considered the materials on record. I find that short point involved in this application is whether the Controlling Authority had committed jurisdictional error, in permitting the respondent no.3 to file a fresh application for condonation of delay, while hearing the application for condonation of delay.

I find from the order impugned in this application and from the submission made by the respective advocates that since the delay was not appropriately explained, by stating reasons, in the application praying for condonation of delay, an application was filed by the respondent no.3 for filing a fresh application praying for condonation of delay.

The Controlling Authority appears to have allowed the said application. Ordinarily when an application is made for condonation of delay, the applicant is required to explain the delay in filing the application.

I find that Controlling Authority in the instant case has, in fact, by permitting the respondent no.3 to file a fresh application, granted liberty to the respondent no.3 to appropriately explain the delay. The Controlling Authority cannot be faulted for permitting the respondent no.3 to explain the delay. I, however, find that the objection raised by the petitioners to be a technical one.

To avoid all controversies, I propose to dispose off this application by passing the following order.

In my view, justice would be sub-served if the respondent no. 3 is permitted to file an additional affidavit, to explain the delay in filing the application in Form-N, instead of a filing a fresh application praying for condonation of delay, since the previous application praying for condonation of delay is on record and is still pending.

Let such additional affidavit be filed by the respondent no.3 before the Controlling Authority on or before next date with advance copy thereof to the petitioners.

The petitioners shall be at liberty to file an objection to such said additional affidavit on or before the next date of hearing, fixed before the Controlling Authority.

In the event the aforesaid additional affidavit is filed by the respondent no.3, the same shall be heard and disposed of by the Controlling Authority by treating the same to be part of the application for condonation of delay, without giving any unnecessary adjournment to the parties.

The writ petition being WPA No. 26238 of 2022 is disposed of.

There shall be no order as to costs.

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

(Raja Basu Chowdhury,

J)