

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 26505 of 2022

Gadadhar Paul
Vs.
The State of West Bengal & Ors.

For the petitioner : Mr. Sudipta Dasgupta
Mr. Arka Nandi
Ms. Dipa Acharyya
Mr. Sutirtha Nayek
Ms. Shalini Ghosh

For the State : Mr. Arun Kumar Roy
Mr. Arun Kumar Saha.

Heard on : 08.02.2023

Judgment on : 08.02.2023

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is taken on record.
2. Despite service, none appears on behalf of the respondent nos. 4, 5, 6 and 7.
3. The present writ application has been filed, *inter alia*, praying for a direction upon the respondent no.8, being the Certificate Officer, to, in effect, dispose of the certificate case pending before him.

4. The petitioner says that the petitioner was appointed as Assistant Teacher in Rishra Vani Bharati School, presently renamed as Aditya Birla Vani Bharati (Higher Secondary English Medium School) (hereinafter referred to as the “said school”), sometime in the year 1968 and was superannuated on/or about 7th November, 2006. The petitioner says that despite putting 38 years of service, since the school authority did not make payment of the gratuity to the petitioner, the petitioner along with two other assistant teachers of the aforesaid school, had approached this Hon’ble Court by filing a writ application which was registered as W.P. No. 30808 (W) of 2014. It is at the intervention of this Court, that the school authority had disbursed a sum of Rs.1,09,113/- in favour of the petitioner. The petitioner says that since the school authorities had disbursed the gratuity which was admitted by them, the petitioner had thereafter approached the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”) for determination and realisation the balance amount.
5. On contested hearing, the Controlling Authority was *inter alia* pleased to determine after giving credit to the amount already disbursed in favour of the petitioner that the petitioner is entitled to a gratuity amounting to Rs.7,33,243/- from the school authorities. Such fact would corroborate from the notice for payment of gratuity in Form ‘R’ dated 25th February, 2022 issued

by the Controlling Authority under the said Act, whereby the school authorities were called upon to make payment of sum of Rs.3,05,518/- to the petitioner along with admissible interest thereon. Since the school authorities, despite notice, did not disburse the gratuity, at the instance of the petitioner, the Controlling Authority was *inter alia* pleased to issue a certificate under Section 8 of the said Act and the same was remitted to the office of the respondent no.8 for execution. By drawing attention of this Court to a notice dated 29th July, 2022, which is at page 33 to the writ application, it is submitted that the respondent no.8 instead of executing the certificate by a four-page letter had called upon the Certificate Officer to appropriately clarify under what circumstances the certificate had been issued, as according to the certificate officer the petitioner had already received the gratuity amount.

6. Mr. Nandi, learned advocate representing the petitioner submits that the said letter was issued in response to an objection filed by the school authorities. It is submitted on behalf of the petitioner that the Controlling Authority has since by a communication in writing dated 16th August, 2022 has already clarified the position that the determination had been made under Section 7 of the said Act and the certificate having been issued under Section 8 thereof, the Controlling Authority has no further jurisdiction to entertain any further objection in that regard. Mr. Nandi, by

referring to another letter dated 6th September, 2022 which is at page 38 of the writ application submits that the Certificate Officer instead of executing the certificate has once again purported to call upon the Deputy Director of Secondary Education (GA) to look into the matter and has sought for his instructions. The petitioner says that the Certificate Officer has no jurisdiction to question the certificate issued under Section 8 of the said Act. The Certificate Officer is only required to execute the said certificate. He says that the petitioner is 77 years old person and unless the certificate proceeding is disposed of expeditiously, the petitioner shall suffer irreparable loss and injury.

7. Mr. Roy, learned advocate enters appearance on behalf of the respondent nos. 1, 2, 3, 8 and 9. Mr. Roy submits that the Certificate Officer is bound to execute the certificate in accordance with law.
8. Heard the submissions of the learned advocates appearing for the respective parties and considered the materials on record. I find that at present the determination has already been made under the provisions of the said Act. Admittedly, no appeal has been preferred by the school authorities. I also find that the certificate under Section 8 the said Act has already been issued and the same has been remitted to the office of the respondent no.8 for execution. It would, however, appear from the record that the Certificate Officer instead of disposing of the said certificate

proceedings has proceeded to seek clarification from the Controlling Authority as also from the Deputy Director of Secondary Education (GA). In my view, the Certificate Officer has exceeded his jurisdiction in not only seeking clarification from the Controlling Authority but also from the Deputy Director of Secondary Education (GA), for disposal of the certificate case. It would appear that the said Act does not independently provide for a mode of recovery. However, the same provides that in the event the certificate is issued by the Controlling Authority under Section 8 of the said Act, it is for the collector to recover the amount indicated in the certificate from the certificate debtor. The provisions of the said Act do not empower the Certificate Officer, who is a collector, to seek for further clarification either from the Controlling Authority or from the Deputy Director of Secondary Education (GA) for the purpose of disposing of the certificate case on the basis of objections raised by the certificate debtor. I am of the opinion that if the certificate debtors being the school authorities, were so aggrieved they could have filed an appeal before the Appellate Authority constituted under the said Act. No appeal appears to have been filed by certificate debtors till date. As such, without challenging the aforesaid determination made by the Controlling Authority, the certificate debtors cannot frustrate the certificate issued under Section 8 of the said Act.

9. In the facts stated above, I am of the view that the present writ application can be disposed of by directing the respondent no.8, to forthwith dispose of the certificate case pending before him without calling for further clarification either from the Controlling Authority or from the Deputy Director of Secondary Education (GA). The Certificate Officer shall consider the objection, if any, raised by the certificate debtors, being the school authorities, that is the respondent nos. 4 to 6 herein and shall dispose of the same in accordance with law. I, however, make it clear that I have not gone into the question of validity or invalidity of the determination made by the Controlling Authority.
10. Since the petitioner is 77 years old person, it is expected that the Certificate Officer shall dispose of the certificate proceeding as expeditiously as possible, preferably within a period of three months from the date of communication of this order without granting any unnecessary adjournments to either of the parties.
11. With the above observations, the writ application, being WPA 26505 of 2022 is disposed of.
12. There shall, however, be no order as to costs.
13. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)