

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26627 of 2022

Sujit Kumar Ghosh & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Pinaki Ranjan Chakraborty

... For the petitioners.

Mr. Ananda Dulal Sarkar

... For the State.

Mr. Sankha Ghosh

Mr. Biswaroop Nandy

... For the respondent nos. 4 to 6

Mr. Chakraborty, learned advocate representing the petitioners submits that the petitioners have already encashed the cheques made over by the respondent nos. 4 to 6 in the November, 2022, which constituted the first installment in terms of the order passed by the Certificate Officer. He says that apart from the aforesaid the seven cheques which were made over by Mr. Nandi in Court on 11th January, 2023 drawn in favour of the petitioners have all been encashed. According to him the principal amount due and payable, in so far as petitioner nos. 1 to 5 and 7, on account of gratuity have been cleared. He says that the petitioners have also returned the balance, post dated cheques, which the petitioners had received pursuant to the order of the Certificate Officer, to Mr. Nandy.

Mr. Nandi, learned advocate representing the respondent nos. 4 to 6 wishes to file affidavit-in-opposition

to the present writ application insofar as petitioner no.6 is concerned. According to him, the determination made under Section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act") by the Controlling Authority is erroneous and that the petitioner no.6 is only entitled to a further sum of Rs.15,022/- for which Mr. Nandi places a cheque for Rs.15,022/- drawn in the name of the petitioner no.6.

Let such cheque be made over to Mr. Chakraborty, learned advocate representing the petitioner no.6, who accepts the same on behalf of the petitioner no.6, without prejudice to his clients rights.

Let a photocopy of the cheque made over by Mr. Nandi to Mr. Chakraborty be kept with the record.

Mr. Nandi, further submits that between 5th May, 2021 to 1st February, 2022, the respondent nos. 4 to 6 had made part payments of the gratuity, due and payable to the petitioner no.6 aggregating to Rs.1,00,000/-.

It is still further submitted that the petitioner no.6 did not serve the entire term with the respondent no.4 to 6, ignoring the aforesaid, determination had been made by the Controlling Authority. As such, the said determination is erroneous. According to Mr. Nandi, the admitted claim of the petitioner no.6 is Rs.2,20,177/- only.

Mr. Chakraborty denied the aforesaid contention of Mr. Nandy and submits, the Controlling Authority has already made the determination.

Heard the submissions of the learned advocates appearing for the respective parties and considered the materials on record I am of the view, if the Controlling Authority did not take into consideration the question of short-service of the petitioner no.6, it was for the respondent nos. 4 to 6 to raise such question before the appropriate forum. Having not preferred an appeal from the aforesaid order, the respondent nos. 4 to 6 cannot question the legality and validity of the order passed under Section 7 of the said Act.

In view thereof, the respondent nos. 4 to 6 are directed to forthwith make payment of the balance principal amount as determined by the Controlling Authority, insofar as the petitioner no.6 is concerned, less the amount already disbursed in favour of the petitioner no.6.

In the event of short payment, insofar as the petitioner no.6 is concerned, the same shall be decided by respondent no.3, who shall by taking into account payments made by respondent no.4 to 6 in favour of the petitioner no.6, subsequent to the order of determination made under Section 7 of the said Act, and shall cause the certificate to be executed by giving credit to such payment..

Insofar as, payment of interest including compound interest, is concerned, it would be open to all the petitioners to approach the respondent no.3 in the

certificate proceedings pending, before the respondent no.3, who shall dispose of the same in accordance with law.

In view of the above, no useful purpose would be served in keeping the writ application pending or in permitting the respondent nos. 4 to 6 to file affidavit-in-opposition as against the claim of the petitioner no.6, the present writ application stands disposed of.

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

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

(Raja Basu Chowdhury, J.)