

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 8101 of 2020

Kashinath Das
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Rananeesh Guha Thakurta
Ms. Senjuti Sengupta

For the respondent : Mr. Bipin Ghosh
no.3.

For the respondent no. : Ms. Anamika Pandey
4 Ms. Amrita Pandey
Mr. Ghanshyam Pandey
Ms. Sneha Singh

Heard on : 22nd November, 2023

Judgment on : **22nd November, 2023.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the order dated 21st October, 2019, passed by the respondent no.3, whereby he had rejected the requisition for certificate issued under Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

2. The petitioner claims to be an ex-employee of the respondent no.4. According to the petitioner, after serving the respondent no.4 for 39 years, the petitioner was superannuated from service on 21st March, 2013. At the time of his superannuation his last drawn wages was Rs.9,495.68p.
3. Since, the gratuity was not disbursed in his favour he had filed an application in Form “N” before the Controlling Authority for determination of amount of gratuity payable to him. The aforesaid proceeding was not contested by the respondent no.4 and the same ultimately culminated in the order dated 26th November, 2018, thereby determining a sum of Rs.3,74,720/- due and payable by the respondent no.4 on account of the gratuity payable to the petitioner.
4. The aforesaid order records that despite service of notice in Form ‘O’, the respondent no.4 did not contest the said proceeding. Consequent upon passing of the aforesaid order, a notice in Form ‘R’ was issued on 26th November, 2018 calling upon the respondent no.4 to make payment of gratuity. According to the petitioner, since the respondent no.4 did not act on the basis of the said notice, the petitioner was compelled to file an application in Form ‘T’ before the Controlling Authority for issuance of a certificate under Section 8 of the said Act. The Controlling Authority subsequently upon issuing a certificate under Section 8 of the said Act had forwarded such

certificate along with a requisition for certificate to the Certificate Officer, being the respondent no.3, for execution thereof.

5. The records reveal that the Certificate Officer without causing service of notice on the certificate debtor had proceeded to adjudicate on the validity of the said certificate and had ultimately by the order impugned had rejected the requisition for the said certificate.
6. The aforesaid procedure adopted by the Certificate Officer was irregular to say the least. It appears that a Coordinate Bench of this Hon'ble Court by an order dated 24th December, 2020 had directed the petitioner to add the Certificate Officer, who had passed the order dated 9th August, 2019, as party to the writ petition. Pursuant to the aforesaid direction, the concerned officer had been added as party in the present proceeding.
7. Ms. Sengupta, learned advocate representing the petitioner submits that the petitioner despite having its claim determined by the Controlling Authority has still not been able to reap the fruits of such determination. The respondent no.4 had initially avoided the Controlling Authority, which compelled the petitioner to seek enforcement of such determination by causing a certificate under Section 8 of the said Act to be issued. Even after such certificate had been issued the same had been returned by the Certificate Officer.

8. By drawing attention of this Court to the Affidavit-in-opposition filed by the added respondent, she submits that the Certificate Officer had exceeded his jurisdiction in going into the question whether the proceeding before the Controlling Authority had been appropriately conducted or not. She submits that it is not within the realm of the authority of the Certificate Officer to question the determination made under Section 7 of the said Act.
9. By placing reliance on a judgment delivered by a Coordinate Bench of this Court in the case of ***Murlidhar Ratanlal Exports Ltd. vs. State of West Bengal and Others***, reported in **2014-II-LLJ-74 (Cal)**, she submits that it is well-settled that the said Act is a self-contained Code which provides for remedy by way of execution, in the manner prescribed in Section 8 of the said Act and the Certificate Officer is incompetent to question the determination already made.
10. On the same proposition, she has also placed reliance on an unreported judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Delta Limited vs. Rampada Sardar & Ors.***, in **MAT 1242 of 2021 with CAN 1 of 2021**.
11. In the given facts it is submitted that the order passed by the Certificate Officer cannot be sustained and the same should be set aside and quashed with a further direction upon the Certificate Officer to forthwith take steps for execution of the certificate issued under Section 8 of the said Act.

12. Mr. Ghosh, learned advocate representing the added respondent submits that there is no *mala fide* intention on the part of the added respondent in rejecting the requisition for certificate. He submits that the Certificate Officer in exercise of powers under Section 6 of Bengal Public Demands Recovery Act, 1913 had rejected the requisition. In any event, it is submitted that if this Court directs the Certificate Officer to execute the certificate the Certificate Officer shall be bound to execute the same.

13. Ms. Pandey, learned advocate representing the respondent no.4 on the other hand submits that the respondent no.4 is passing through financial difficulties. However, in the instant case, the respondent no.4 had never been served with a notice in Form 'R'. As such, the proceeding before the Certificate Officer regarding issuance of certificate under Section 8 of the said Act is bad in law. She, however, submits that this Court may grant instalments for the respondent no.4 to liquidate the petitioner's claim.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record.

15. In this case it is noticed that the claim of the petitioner arise out and in connection with the employment of the petitioner with that of the respondent no.4. The petitioner having superannuated from service of the respondent no.4 on 21st March, 2013 and having not been disbursed his claim on account of gratuity, an application in

Form 'N' as per the provisions of the said Act and Rules framed thereunder, had been filed before the Controlling Authority. The respondent no.4 did not contest such proceeding. The documents on record demonstrate that a notice in Form 'R' was issued on 26th November, 2018 calling upon the respondent no.4 to make payment of a sum of Rs.3,74,720/- towards gratuity payable to the petitioner. The aforesaid order passed by the Controlling Authority, *inter alia*, records as follows:

“The matter was taken upon for hearing and notice in Form 'O' with a copy of Form 'N' was served on the O.P. Company for inviting written statement, if any, in duplicate. Form 'O' was issued to the applicant also. Two dates on 28.12.2016 and 10.02.2017 were fixed for submission of written statement, but O.P. Company did not avail that and finally the O.P. Company did not submit any written statement.”

16. Since, the petitioner did not receive the gratuity, the petitioner had filed an application in Form 'T' for issuance of a certificate under Section 8 of the said Act.
17. A show-cause notice calling upon the respondent no.4 to show-cause as to why a certificate shall not be issued is also on record. Ultimately, the Certificate under Section 8 of the said Act was issued and the same was forwarded along with requisition, to the Certificate Officer for execution. Incidentally, the Certificate Officer at that stage had embarked upon an enquiry to ascertain whether the proceeding under Section 7 of the said Act, had been completed

upon compliance with due formalities and whether notice in Form 'R' had been issued calling upon the respondent no.4 to make payment of the gratuity.

18. It is in consideration of the same that the Certificate Officer ultimately by an order dated 21st October, 2019 expressing his dissatisfaction with the requisition for the said Certificate, had rejected the same.

19. The question that falls for consideration in the present petition is whether the Certificate Officer was at all competent to ascertain the correctness or otherwise of the proceeding held before the Controlling Authority, while executing the certificate under Section 8 of the said Act. As rightly pointed out by Ms. Sengupta the said Act, is self-contained Code which, *inter alia*, provides for mode and manner in which the gratuity shall be recovered. While Section 7 of the said Act provides for determination, Section 8 of the said Act provides for recovery of gratuity. To morefully appreciate the aforesaid provisions, Section 8 of the said Act is reproduced herein below:-

“8. If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify from the date of

expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate; Provided further that the amount of interest payable under this section shall , in no case, exceed the amount of gratuity payable under this Act”.

20. From the aforesaid, it will be crystal clear that the mode and manner of execution of a determination made under Section 7 of the said Act has also been provided in the said Act itself. In this context, it will be relevant to notice the observations made by a Coordinate Bench of this Court in paragraph 13 in the case of ***Murlidhar Ratanlal Exports Ltd.*** (supra).

“13. Mr. Bhanja Chowdhury submits that even in such execution proceeding the executing authority had the power to set aside the order by which the liability was determined. Mr. Chowdhury even had gone to the extent in contending that in such proceeding the executing authority could go to the merit of the claim which had attained finality. If such interpretation is accepted, then the provision of appeal would be rendered otiose and executing authority would be bestowed with a power which the statute does not confer or contemplate. The statutory time to prefer an appeal had expired. It was only thereafter such applications were filed before the respondent Nos. 3 and 4 with such untenable pleas in an attempt to reopen the issue and to deny a just claim. The Bengal Public Demands Recovery Act, 1913 was enacted to

consolidate and amend the law relating to recovery of public demands in Bengal. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity but employees engaged in factories, mines, oil fields, plantations, space, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The said Act is a self-contained Code. The said Act is a special Act and a subsequent Act. The said Act provides for determination of the amount of gratuity and also there is a provision for appeal. The mode of execution is also prescribed in Section 8 of the said Act which prescribes that if the amount of gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall, on an application be made to it in this behalf by the aggrieved person would issue a certificate for that amount to the collector who shall recover the same together with compound interest as arrears of land revenue and pay the same to the person entitled thereto. It is because of this provision that the collector as an executing authority recovers and realizes the amount under the Public Demands Recovery Act. The provisions of the Public Demands Recovery Act cannot be extended to an aggrieved person to re-agitate the issue which is the subject matter of determination under Section 7 of the Gratuity Act, 1972 either before the Certificate Officer or the appellate authority under the Public Demand Recovery Act. The appellate authority under the Public Demand Recovery Act does not exercise any appellate power over and in respect of the order passed by the Controlling Authority. If such

an interpretation is given and power is extended to the collector and the appellate authority under the Public Demands Recovery Act then the entire procedure prescribed under the Payment of Gratuity Act would become otiose and nugatory. It would not only lead to absurdity and militate against the provisions of the Gratuity Act but also it would be open for an aggrieved employer to question the determination of liability before the collector by passing the provision of appeal under Section 7(7) of the said Act and disregarding the special period of limitation”.

21. I also notice that the Division Bench of this Court in the case of ***Delta Limited*** (supra) has held that once such a certificate is issued under Section 8 of the said Act, the District Collector or delegated authority has to recover the amount as though the same is due as land revenue. Since, there is no specific procedure under the said Act, for execution of the certificate, Section 14 of the Bengal Public Demands Recovery Act, 1913 (in short the “1913 Act”) comes into play. The Certificate Officer has to execute the certificate in the mode and manner provided for therein. Apart from Section 14 of 1913 Act, no other provision of the 1913 Act, is applicable for execution of the certificate, issued by the authority under the said Act. Such findings have been returned by the Hon’ble Division Bench by placing reliance on Section 14 of the 1913 Act. It would also appear that Section 14 of the said Act provides that the provisions of the said Act or any rule made thereunder shall have effect notwithstanding anything inconsistent

therewith, contained in any enactment other than the said Act or in any instrument or contract having effect by virtue of any enactment other than the said Act. Having regard to the aforesaid once a certificate is issued under Section 8 of the said Act, the certificate officer is obliged to execute the same and cannot go into the question of determination of the claim.

22. It is true, that non-service of a notice in Form 'R' may vitiate the certificate, however, the Certificate Officer is not competent to adjudicate the same as the certificate is issued on the basis of a proceeding under Section 8 of the said Act. Although, it has been contended on behalf of the respondent no.4 that no notice in Form 'R' has been served on the said respondent, no attempt has been made by the said respondent at any stage to challenge the determination so made by filing a statutory appeal provided for under Section 7(7) of the said Act even after having come to learn the factum of issuance of the certificate in Form 'R'. No affidavit-in-opposition to the present writ petition has also been filed by the respondent no.4. In absence of any affidavit the defence set up by the respondent no.4 appears to be illusory.

23. The factum of issuance of notice of show-cause prior to issuance of the certificate under Section 8 of the said Act also remains uncontroverted. I must, however, note that a prayer has been made on behalf of the respondent no.4 to disburse the amount of gratuity already determined through instalments. Ms Pandey, at this stage

submits that such prayer has been made with an object to conclude a pending litigation and the same is without prejudice to its rights. I find this matter has been pending for several years. The original application in Form 'N' was filed on 28th September, 2015, which was ultimately disposed of on 26th November, 2018. No attempt at any stage was made by the respondent no.4 to contest the said proceeding or to challenge the same, even after having come to learn of the aforesaid. In the given facts, I do not consider it fit and proper to grant instalments in favour of the respondent no.4.

24. The order dated 21st October, 2019 is set aside and quashed. The certificate already issued shall forthwith be remitted to the Certificate Officer along with the original requisition to the Controlling Authority, if the same has been returned by the Certificate Officer in the meantime, for the Certificate Officer to execute the same in accordance with the provisions of Section 8 of the said Act and on the basis of the observations made herein. Since, the matter is hanging in fire for several years it is only expected that present incumbent to the post of the Certificate Officer shall carry out the aforesaid direction and shall execute the aforesaid certificate within a period of six months from the date of communication of this order.
25. With the aforesaid observations/directions the writ application stands disposed of.
26. There shall, however, be no order as to costs.

27. Since, the State respondents are not represented, the Office is directed to return the original file to the learned advocate representing the State upon obtaining proper receipt for the same to be retained in the file.
28. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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