

Form No.J(2)

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

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 11794 of 2020

Sk. Asraf Ali Ansari

Vs.

The State of West Bengal & Ors.

For the petitioner	:	Mr. Rananeesh Guha Thakurta Ms. Senjuti Sengupta Ms. Dipa Roy
For the respondent no.3	:	Mr. Sushovan Sengupta Mr. Bipin Ghosh
For the respondent no.4	:	Mr. Soumya Majumder Ms. Amrita Pandey Mr. Ghanshyam Pandey
Heard on	:	01.08.2023
Judgment on	:	01.08.2023

Raja Basu Chowdhury, J:

1. The present application has been filed, inter alia, challenging the order dated 21st October, 2019 passed by the respondent no. 3. The petitioner claims that he was employed with the respondent no. 4 since, 1971 and was superannuated on 31st December, 2007 after rendering 37 years of service. According to the petitioner, since, gratuity was not disbursed in his favour, he had applied before the

Controlling Authority by filing an application in Form-‘N’ under the provision of Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”).

2. The Controlling Authority had determined the gratuity payable to the petitioner and, thereafter, issued a notice in Form-‘R’ dated 8th October, 2018 calling upon the respondent no. 4 to make payment of the aforesaid gratuity amount. Since, according to the petitioner the respondent no. 4 did not comply with the aforesaid requisition, the petitioner was compelled to apply before the Controlling Authority for issuance of a certificate under Section 8 of the said Act. Following the aforesaid, by a notice dated 18th March, 2019, the Controlling Authority had called upon the respondent no. 4 to show cause as to why the certificate under Section 8 of the said Act shall not be issued. Since, despite receipt of such show-cause notice, the respondent no. 4 having not taken any steps, the certificate was issued by the office of the Controlling Authority and the same was forwarded to the Office of the respondent no. 3 for execution in terms of the provisions of Bengal Public Demands Recovery Act, 1913.
3. It is in connection with the execution of the said certificate that by an order dated 21st October, 2019, the respondent no. 3 by recording dissatisfaction of the certificate officer with regard to the requisition, had purported to reject the requisition for certificate.

4. Challenging the aforesaid order of rejection, the present writ application was filed.
5. Mr. Guha Thakurta, learned advocate appearing in support of the aforesaid writ application, submits that when the aforesaid writ application was filed, the learned advocate representing the respondent no. 4 had submitted before a Coordinate Bench of this Court that they wanted to pay the gratuity amount in three installments. Taking into consideration the aforesaid submission, the Coordinate Bench of this Hon'ble Court by an order 18th February, 2021 was, *inter alia*, pleased to permit the respondent no. 4 to make payment of the amount of gratuity in three installments. According to the learned advocate representing the petitioner, the respondent no. 4 had since, made payment of a sum of Rs.2,40,964/- and had also filed an undertaking before this Court, as directed by order dated 18th February, 2021.
6. It is further submitted that the Co-ordinate Bench of this Court had since, by an order dated 23rd February, 2021 directed the Certificate Officer to decide the question of compound interest payable on the gratuity amount, in accordance with law after giving all interested parties an opportunity of hearing. Since, the aforesaid direction could not be complied with within the time specified, in the order dated 23rd February, 2021, at the instance of the learned advocate appearing on behalf of the respondent no. 3, the Coordinate Bench of this Court by an order dated 5th August, 2022, had in effect, by

extending the time directed the respondent no. 3 to comply with the same and to submit a report in the form of an affidavit on the adjourned date. Since then, the respondent no. 3 had filed a report in the form of an affidavit affirmed on 25th August, 2022.

7. Mr. Guha Thakurta, learned advocate appearing for the petitioner, by drawing attention of this Court to page 9 of the aforesaid report filed by the respondent no. 3, affirmed on 25th August, 2022, submits that the Certificate Officer has already, after computing compound interest directed the respondent no. 4, by a letter in writing dated 10th August, 2022, to make payment of a sum of Rs.1,28,998/-. According to the petitioner, the respondent no. 4 in compliance of the aforesaid direction had tendered 7 several post dated cheques by a cover of letter dated 17th August, 2022. Since, the petitioner was not ready and willing to accept the post dated cheques, the same had to be returned. According to the petitioner, the respondent no. 4 thereafter, did not make any payment and the matter is pending before the Certificate Officer without any progress.
8. Mr. Sushovan Sengupta, learned advocate appearing for the respondent no. 3 submits that the respondent no. 3, in compliance of the direction passed by the Coordinate Bench of this Court, has already determined the compound interest payable by the respondent no. 4 and a warrant of arrest has also been issued on 17th July, 2023, for the failure on the part of the respondent no. 4 to make payment of the aforesaid amount of Rs.1,28,998/-. He says

that the respondent no. 3 cannot be faulted as he has taken steps to comply with the order passed by the Coordinate Bench of this Court.

9. *Per contra*, Mr. Majumder, learned advocate appearing for the respondent no. 4 submits that the respondent no. 4, at no point of time, had been served with any notice in Form-‘R’ and as such, liability cannot be trusted upon the respondent no. 4 to make payment of the gratuity determined by the Controlling Authority. He says unless the notice in Form-‘R’ is issued, the petitioner could not have taken steps for issuance of certificate under Section 8 of the said Act. Since, there has been non-compliance of the provisions of the said Act and the rules framed thereunder, all actions on the part of the respondent no. 2 and 3 are bad and cannot be sustained and the writ application deserves to be dismissed with costs.

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

11. Admittedly, in this case after the notice in Form-‘R’ was issued, a notice had been issued calling upon the respondent no. 4 to show-cause as to why the certificate under Section 8 of the said Act shall not be issued. From the aforesaid show cause notice, it would be apparent that the same was received by the respondent no. 4. The factum of receipt of such notice would corroborate from the seal and signature of the respondent no. 4 appearing thereon. Notwithstanding receipt of such show-cause notice, no attempt was made by the respondent no. 4 to respond to the same or to intimate

the Controlling Authority that it had not received the notice in Form-‘R’ as claimed. As such, there is no contemporaneous document to support the stand of the respondent no. 4.

12. Having regard to the aforesaid, it cannot be said that there had been non-compliance of the provisions of the said Act or rules framed thereunder or that no notice in Form-‘R’ had been issued or that the respondent no. 4 had suffered any prejudice. In the instant case, it is noticed that when the writ application was filed, the learned advocate representing the respondent no. 4 had volunteered to make payment of the amount determined by the Controlling Authority under the said Act. Having regard to the same, a Coordinate Bench of this Hon’ble Court, by an order dated 18th February, 2021, was *inter alia*, pleased to permit the respondent no. 4 to make payment of the determination, already made by the Controlling Authority, in installments. The respondent no. 4 has complied with such direction. Since, then, by an order dated 23rd February, 2021, the Coordinate Bench of this Hon’ble Court was, *inter alia*, pleased to direct the Certificate Officer to decide the question of compound interest on the gratuity amount in accordance with law after giving all the interested parties opportunity of hearing. It was further directed that such decision should be taken by the Controlling Authority within 60 days from 12th May, 2021.

13. Since, the aforesaid process could not be completed within the stipulated time frame, when the matter came up for consideration, the learned advocate appearing for the respondent no. 3 had sought for extension of time to comply with such direction. On the basis of the submission made in Court, on 5th August, 2022 a Coordinate Bench of this Hon'ble Court had directed the respondent no. 3 to decide the question of compound interest and to file a report in the form of an affidavit on the adjourned date. Pursuant to the aforesaid, the respondent no. 3 appears to have affirmed an affidavit on 25th August, 2022 and in such affidavit, the factum of the computation of the compound interest and the intimation thereof, to the respondent no. 4, by communication in writing dated 10th August 2022, has been disclosed.
14. It would also appear from the said report that the respondent no. 4 had accepted such computation and had also tendered 7 several post dated cheques drawn in the name of the petitioner to the respondent no. 3, however, the same had to be returned since, the petitioner was not interested to receive such amount in installments. The respondent no. 4 having, thereafter, not made payment, the respondent no. 3 appears to have issued a warrant of arrest.
15. Having regard to the fact that there has been no challenge either to the orders passed by the Coordinate Bench of this Hon'ble Court on 23rd February 2021 or on 5th August 2022, or to the decision of computation of compound interest by the respondent no. 3, I am of

the view that the respondent no. 4, at this stage, cannot question the authority of the respondent no. 3 to compute and/or realise the amount so determined.

16. The writ application being WPA 11794 of 2020 is thus **disposed of** with a further direction upon the Certificate Officer to act in compliance with the direction issued by this Court on 23rd February 2021, thereby bringing the proceedings to a logical conclusion, by ensuring realisation of the amount so determined and disbursal thereof to the petitioner, at the earliest, preferably within a period of 3 months from the date of communication of this order.
17. The office is directed to return the original records of the proceedings including the original order sheet to the learned advocate for the respondent no. 3 against a proper receipt and by retaining a photocopy of the records so returned. Let photocopy of the original documents including the original receipt be retained in the file. There shall be no order as to costs.
18. All parties to act on the basis of the server copy of this judgment duly downloaded from this Hon'ble Court's official website.

(Raja Basu Chowdhury, J.)