

**26.04.2024**  
**Sl. No.6**  
(PP)

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**WPA 8636 of 2024**

**Kanknarrah Jute Private Limited & Anr.**  
**Vs.**  
**State of West Bengal & Ors.**

Mr. Nilay Sengupta,  
Mr. Sujit Banerjee  
.....for the petitioners.  
Mr. Uddipan Banerjee,  
Mr. Subhrakanti Samanta  
.....for the respondent no.4.

The writ petitioners have brought a demand draft for Rs.1,22,360/- in the name of the employee (respondent no.4).

The petitioners say that at the time of hearing before the Controlling Authority, the petitioners had been diligently representing the petitioner no.1. On 14<sup>th</sup> March, 2022 when the matter was fixed for hearing, the learned advocate engaged by the petitioners could not attend the proceedings before the Controlling Authority as his mother passed away on that day. It is also the case of the petitioners that this fact was communicated to the Controlling Authority (respondent no.2), but the said respondent instead of giving more time fixed the matter on 26<sup>th</sup> April, 2022. Records show that on 26<sup>th</sup> April, 2022 the writ petitioners remain unrepresented and as such, an order was passed by the Controlling

Authority directing payment of a sum of Rs.3,35,688/- by the petitioner no.1 to the respondent no.4 within 30 days from the receipt of the said order. The petitioners further state that an application for recalling of the order dated 26<sup>th</sup> April, 2022 was filed on behalf of the petitioners, but the same has not yet been disposed of.

On 26<sup>th</sup> April, 2022 the respondent no.4 had filed his argument, but the petitioner no.1 remained unrepresented. The matter was, therefor, fixed for argument on 18<sup>th</sup> May, 2022. In the meantime, on 11<sup>th</sup> May, 2022, the petitioners made an application for recalling of the order dated 26<sup>th</sup> April, 2022. The final order was passed by the Controlling Authority on 7<sup>th</sup> September, 2022, but there is no reflection as to whether the application for recalling the order was disposed of prior to passing of the final order.

On behalf of the respondent no.4 (employee), it is submitted that the matter was adjourned on 14<sup>th</sup> March, 2022 and was fixed for argument after about one and a half months. Neither the petitioners nor did the advocate for the petitioners take any step for representing petitioners. The petitioners got ample opportunity to represent themselves subsequent to 14<sup>th</sup> March, 2022. Despite of the fact that the petitioners remained unrepresented even after 5

months, the Controlling Authority was, therefor, justified in passing the final order on 7<sup>th</sup> September, 2022. That apart and in any event, the Controlling Authority after looking into the evidence laid by the respondent no.4 (workman) and the petitioners had passed the order dated 7<sup>th</sup> September, 2022. There is as such, no scope for reopening the order dated 26<sup>th</sup> April, 2022 after lapse of about 2 years. The writ petition, therefor, should be dismissed by directing the petitioner no.1 to pay the balance sum to the respondent no.4. The order dated 26<sup>th</sup> April, 2022 is an interim order and as such, does not have any independent existence after passing of the final order dated 7<sup>th</sup> September, 2022. The application for recalling of the order dated 26<sup>th</sup> April, 2022, therefor, has become infructuous according to the petitioners.

It is further submitted by the respondent no.4 that the petitioners have admitted the amount computed by the Controlling Authority in terms whereof a certificate had been issued. The petitioners wrote to the Certificate Officer that they intended to clear the dues of the respondent no.4 by 3 instalments.

After hearing the parties and considering the materials produced before the Court, I find that out of the sum of Rs.3,35,688/-, a sum of Rs.1,11,896/-

was paid by the petitioner no.1 to the respondent no.4 on 22<sup>nd</sup> August, 2023. A further sum of Rs.1,35,000/- was paid on 15<sup>th</sup> February, 2024. This leaves a balance of Rs.1,22,360/-, for which the demand draft has been brought to the Court by the petitioners. The originally demand draft is made over to the respondent no.4 through his advocate after retaining a photocopy thereof.

The respondent no.4 is permitted to encash the demand draft and appropriate the money realised therefrom with the caveat that if any challenge to the order of the Controlling Authority foisted by the petitioners is found to be successful then the respondent no.4 shall be liable to refund any excess payment that may have been received by him.

The petitioners are granted liberty to challenge the order of the Controlling Authority before the appellate forum by filing an appeal therefrom by only challenging the tenure of service said to have been rendered by the respondent no.4, as the moot dispute between the employer and the employee, is that the employer claims that the employee had worked for 25 years while the employee claims to have worked for 33 years. The Controlling Authority has accepted the service tenure of 33 years and have passed the order

dated 7<sup>th</sup> September, 2022. The appeal has to be filed by 10<sup>th</sup> May, 2024.

In the event an appeal is filed challenging the part of the order dated 7<sup>th</sup> September, 2022 for the tenure of service of the respondent no.4 to be beyond 25 years, the Appellate Authority shall decide the appeal on merits without being influenced in any manner by any observation made herein.

It is made clear that in the event the Appellate Authority holds that the respondent no.4 had rendered service for 25 years instead of 33 years, the respondent no.4 shall be liable to refund any excess payment that may have been received by him. The computation in such case has to be made by the Appellate Authority by taking into account the delay in paying and the interest receivable by the respondent no.4. It is also made clear that since the entire amount as directed by the Controlling Authority has been paid to the respondent no.4, the petitioners shall not be liable to put any pre-deposit for filing the appeal. It is also made clear that I have not gone into the merits of the matter.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

All parties including the Controlling Authority shall act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Since I have not called for any affidavits, allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

**(Arindam Mukherjee, J.)**