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In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 19020 of 2023

M/s. Budge Budge Company Limited
Vs
The State of W. B. & Ors.

Mr. Balai Ch. Paul
Ms. Sumouli Dey
.........For the Petitioner
Ms. Ashmita Chakraborty
.....For the State
Mr. Rananeesh Guhathakurta
Ms. Dona Ghosh
......For the Respondent No. 4

The petitioner being the employer has challenged in this writ petition an order of the appellate authority dated 9th June, 2023 appearing at pages 92 to 95 of the writ petition. This order was passed in an appeal filed by the employer being the writ petitioner herein. In the appeal the order of the controlling authority was challenged. The appellate authority after eliminating the period between 18th October, 1968 and 24th June, 1978, since the petitioner was made permanent on 25th June, 1978, granted gratuity to the petitioner upto the date of his superannuation being 7th July, 2006 and remanded the matter back to the competent authority for computation for the amount. The competent authority has computed the principal amount on account of gratuity being Rs.44,123/-. The witness of the writ petitioner being the appellant before the appellate authority in answer to question 22 asked in cross-examination on 22nd February, 2019 has admitted that the applicant is entitled to get a gratuity only to the extent of Rs.44, 077/-. There is hardly any difference between the computation made by the competent authority as appears in page 97 and the amount admitted by the witness of the appellant. The competent authority in the computation has also recorded the receipt of Rs.44,077/- and thereafter has computed interest @10% per annum for the delay in making payment of the gratuity amount in terms of the provisions of 7 (3A) of the Payment of Gratuity Act, 1972. The competent authority thereafter has arrived at a sum of Rs. 26,446/- and Rs.75,009/- as interest payable to the workman (Respondent no.4) from 07.08.2006 to 04.07.2023. After adding the principal sum of Rs.44,123/- and the interest the competent authority has arrived at a figure of Rs. 1,45,578/-. This computation has also been challenged in this writ petition.

The main ground of challenge is that the employer was not liable to pay any gratuity for the period when work remained suspended between 18th March, 1989 to 30th November, 1994. This point has been specifically dealt with by the appellate authority by holding that lock out was beyond the control of the workman and as such workman is entitled to gratuity amount by treating him as in continuous service under the provision of Section 2A(1) of the Payment of Gratuity Act, 1972. The petitioner wants to reopen this issue. The scope of judicial review is limited. The writ court is not a fact finding court. The competent authority and the appellate authority have arrived at the factual appreciation of the matter after considering the evidence laid.

So far as the issue of suspension of work between 18th March, 1989 and 30th November, 1994 is concerned, I am in agreement with the finding of the appellate authority. Simply declaring lock out a permanent workman cannot be deprived of the gratuity as he continues to remain in service during the lock out period which is declared by the employer and is beyond the control of the employee. The other issues raised as to the maintainability of the claim before the Controlling Authority are not of any substance and are rejected.

In the aforesaid facts, I do not find any merit in the writ petition. The same is, accordingly, dismissed.

(Arindam Mukherjee, J.)