

08.04.2024  
Sl. No. 07.  
D/L.  
**Mithun**  
Ct.No.23.

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA 28436 of 2023**

**Food Corporation of India  
Vs.  
Union of India & Ors.**

Mr. Devajyoti Barman,  
Ms. Sanjukta Basu Mallick

..for the petitioner.

Mr. Indrajeet Dasgupta,  
Mr. Pralay Bhattacharyya

...for the Union of India.

Mr. Pinaki Ranjan Chakraborti

...for private respondent.

The petitioner, Food Corporation of India ( in short 'FCI') has challenged an order dated 31<sup>st</sup> January, 2023 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act) upholding the order of the Controlling Authority dated 23<sup>rd</sup> September, 2021. The petitioner challenges the order contending the same is perverse as the Appellate Authority did not consider the evidence before it in true and proper perspective. The respondents have objected to such contention and submit that the Controlling Authority as also the Appellate Authority on being satisfied with the

case of the respondent No.4 has directed Payment of Gratuity to the said respondent. The learned Advocate appearing for the petitioner candidly admits that the main issue as to whether the respondent/employee had fulfill the criteria of 240 days in a year for 5 years was not raised and properly canvassed before the Controlling Authority or the Appellate Authority. The petitioner says that the respondent no.4 did not fulfill the requirement of the 240 days and, as such, is not entitled to any gratuity. The writ Court is not the fact finding Court and the scope of judicial review is also limited. If a point has not been raised before the Appellate Authority which is an issue of fact cannot be raised before the writ Court while challenging the order passed by the Appellate Authority.

In the aforesaid facts and circumstances, the writ petition is disposed of by permitting the writ petitioner to approach the Appellate Authority with a prayer for additional evidence. The Appellate Authority if so approached shall deal with the application for additional evidence in accordance with law without being influenced in any manner by any observation made in this order.

It is made clear that I have not gone into the merits of the matter and, as such, the Appellate

Authority shall proceed to decide on all issues regarding maintainability, delay and other contentions that may be raised by the respondents with regard to the additional evidence, if any that may be attempted to be relied upon.

The writ petition is accordingly disposed of.

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

**(Arindam Mukherjee, J.)**