

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 30325 of 2015

**Midnapur Dist. Service cum Marketing and Industrial
Co-operative Union Ltd.**

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. D.K.Sengupta
Ms. Sweta Saha

Heard on : 09.01.2024

Judgment on : **9th January 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the order passed by the Controlling Authority as also by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").
2. Shorn of unnecessary details, the facts are that the petitioner is a cooperative society and claims that it had never employed more than 7 employees at a particular point of time and is otherwise not covered under the provisions of the said Act. It is also the case of the petitioner that the respondent no. 7, despite being aware that

he is not entitled to gratuity, had made an application before the Controlling Authority under the provisions of the said Act. Although, the petitioner had contested such proceeding and had raised objections, the Controlling Authority by overruling the objections raised by the petitioner was, inter alia, pleased to determine the quantum of gratuity payable by the petitioner to the respondent no. 7 vide her order dated 10th March, 2015 and by a notice in Form- 'R' of even date had called upon the petitioner to make payment of the determination so made by the Controlling Authority.

3. Being aggrieved, the petitioner had preferred a statutory appeal before the Appellate Authority. Simultaneously, with the filing of the said appeal the petitioner had also, as required, deposited the amount determined by the Controlling Authority being the pre-deposit for maintaining such appeal with the Appellate Authority. It is also the petitioner's case that the Appellate Authority without considering the petitioner's contention, by a cryptic order dated 23rd September, 2015 had dismissed the said appeal.
4. Mr. Sengupta, learned advocate appearing for the petitioner submits that the order passed by the Appellate Authority is unsustainable in law. No reasons had been assigned in the aforesaid order as to why the Appellate Authority agrees with the findings returned by the Controlling Authority. By placing reliance on annexures P6 and P7, it is submitted that most of the

employees who were attached to the petitioner have since retired and the same would further demonstrate that at no point of time the employees strength of the petitioner had exceeded 7 in number.

5. Although, it has been the contention of the petitioner in the writ petition that the said Act do not apply to the cooperative societies at all, yet Mr. Sengupta in his usual fairness submits that if the cooperative society otherwise comes within the purview of the said Act, the provisions of the said Act, in terms of Rule 106 (19) of the West Bengal Cooperative Societies Rules, 2011, can be made applicable insofar as the cooperative societies are concerned.
6. Although, this matter has come up for consideration, the respondents are not represented. No accommodation has also been sought for on behalf of the respondents.
7. Heard the learned advocate appearing for the petitioner and considered the materials on record.
8. In this case, it is noted that the respondent no. 7 was admittedly an employee of the petitioner. He had retired on 31st January, 2009. The said respondent had, however, applied before the Controlling Authority by filing an application in Form-‘N’ for determination of the amount of gratuity payable to him. The petitioner had duly contested such proceeding by filing written statement. In course of hearing before the Controlling Authority, the petitioner raised objections, *inter alia*, contending that the

provisions of the said Act cannot be made applicable to the petitioner, since at no point of time the petitioner engaged more than 10 or more employees on a particular date of the preceding 12 months.

9. In course of examination-in-chief, it had been the contention of the respondent no.7 that since, 17th October, 1974 the petitioner had 8 branches, centers and trade points, which are as follows:-

“1) Blacksmithy and carpentry Centre (Fully Govt. Aided) situated at Vill-Dakshin chara Sankararah, P.O. Tamluk, Dist. Midnapore (Now Purba Medinipur)

2) Bat Making Centre (i.e. manufacturing of wooden boats) situated at Vill-Amalhandra, P.O. –Denan, P.S. Kolaghat, Dist. Midnapore (Now Purba Medinipur)

3) Tiles Production Centre situated at Vill-Amalhandra, P.O.-Denan, P.s. Kolaghat, Dist. Midnapore (Now Purba Mednipur)

4) Pilot Mat Scheme situated at Dasagram, P.O.-Dasagram, P.S. Sabang Dist. Minapore (Now Paschim Medinipur)

5) Pilot Mat Scheme situated at Bural, P.O.-Sabang, P.S.-Sabang, Dist. Minapore (Now Paschim Medinipur)

6) Pilot Mat Scheme situated at Sabang, P.O & P.S.-Sabang, Dist. Midnapore (Now Paschim Medinipur).

7) Pilot Mat Scheme situated at Temathani, P.O.-Lutunia, P.S.-Sabang, Dist. Minapore (Now Paschim Medinipur)

8) Retail Sales Counter at Tamluk Town under the name and style of “SAMABAY BIPANI”

10. All the aforesaid branches were running between 1977 to 2000 and some of them still exist. It was further submitted that 25 men were working in the centers. In the examination-in-chief of the

petitioner it was, however, stated that out of 25 persons only 9 were employees of the society and that all of them were not in service at any particular point of time. Records, however, reveal that from the report of the Chief Executive Officer, Midnapur Dist. Service-Cum-Marketing and Industrial Co-operative Union Ltd. which was filed by the respondent no. 7, it would appear that in addition to six employees, ten daily workers were engaged in the tile center of the said establishment. Such fact is also supported by a joint application dated 20th September, 1991 presented by the aforesaid 10 employees.

11. On the basis of the aforesaid particulars, the Controlling Authority had arrived at a finding that the respondent no.7 had been able to prove that more than 10 employees were engaged at different centers of the said establishment. Based on the aforesaid finding, the Controlling Authority had decided that the respondent no. 7 is entitled to gratuity. Although an appeal was preferred, the Appellate Authority while concurring with the decision given by the Controlling Authority dismissed the appeal. No independent reasons for dismissal were provided in the order. It may be noted that the order passed by the Controlling Authority did not record that the employees engaged in different centers of the establishment were employed at a time on any date of the preceding 12 months.

12. The petitioner, however, by relying on the audit report for the years 1988-89, 1989-90, 1990-91 and 1991-92 as also for the year 2011-12, has claimed that the number of employee in the establishment, at no point of time exceeded 7. Let such copies of the audit reports be retained with the record.

13. Having regard to the aforesaid and taking into consideration the fact that the Controlling Authority having not returned a finding that the employees engaged by the petitioner at its establishment being 10 or more in number were employed at a time on any date of the preceding 12 months and the Appellate Authority having not considered the petitioner's appeal at all and by a cryptic order while concurring with the finding returned by the Controlling Authority having dismissed the same without any independent reasons, I am of the view that the Appellate Authority should be directed to re-hear the aforesaid appeal and dispose of the same by passing a reasoned order.

14. In view thereof, the order dated 23rd September, 2015 passed by the Appellate Authority is set aside and the matter is remanded back to the Appellate Authority for taking a fresh decision in the matter. Such decision be taken by the Appellate Authority within a period of 8 weeks from the date of communication of this order by giving an opportunity of hearing to the parties, however, without granting any unnecessary adjournments to either of the parties.

15. With the above observations and the direction, the writ petition being WPA 30325 of 2015 is ***disposed of***.
16. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)