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20.05.2024.
pp.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

WPA 1010 of 2024

**West Bengal University of Animal & Fishery
Sciences**

-versus-

State of West Bengal & Anr.

Dr. Navin Barik,
Ms. Esha Acharya

....for the petitioner.

Mr. Hirak Barman,
Ms. Patralekha Choudhury

....for the State.

The petitioner is a University established by the Government of West Bengal under the West Bengal University of Animal & Fishery Sciences, Act 1995. The petitioner says that under a Memorandum of Understanding (in short MoU) dated 1st July, 2005 between the petitioner and the Indian Council of Agricultural Research (in short ICAR), the said ICAR has agreed to provide grant for the project of Krishi Vigyan Kendra (in short KVK). As per the scheme of KVK, the grant received from ICAR shall be spent by the petitioner for research and other project.

The petitioner says that any employee associated with the project is not an employee of the petitioner and as such, the petitioner does not owe any responsibility to pay gratuity to such an employee. An employee namely, Soumendra Das, on having not received his

gratuity amount, applied before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the 1972 Act). The Controlling Authority had awarded a sum of Rs.7,78,140/- by an order dated 9th October, 2023. The petitioner challenged the said order before the Appellate Authority by filing an appeal under the provisions of Section 7(7) of the 1972 Act. The said appeal has been dismissed for non-payment of this pre-deposit by an order dated 18th March, 2024.

The petitioner, in this writ petition without making the employee a party, has tried to assail the order of the Controlling Authority by alleging that under the 1972 Act the petitioner has no obligation to pay gratuity to the employee, who had applied for the gratuity. The petitioner has tried to make out several points to put forth the legal friction between the provisions of 1972 Act apropos the MoU dated 1st July, 2005 and the obligation of the petitioner, as an employer.

The fact remains that there is an order of the Controlling Authority under the 1972 Act, which is an appealable order. The Controlling Authority and the Appellate Authority are the fact finding Court. The Writ Court, while exercising jurisdiction under judicial review, cannot go into the factual aspects of the matter which are in dispute.

In the instant case, the employee, who will be effected most, is not a party. It is also not clear as to the documents which have been relied upon by the writ petitioner before the Controlling Authority.

In the aforesaid facts and circumstances, I find that justice will be sub-served if I direct the appeal to be heard on merits subject to the petitioner paying 50% of the principal sum awarded as gratuity by the competent authority.

The Appellate Authority, if approached with a deposit of 50% within three weeks from date, shall hear out the appeal on merits including the point as to the petitioner's obligation as an employer to pay the gratuity amount to Soumendra Das (employee).

The Appellate Authority shall decide all points raised before it independently and without being influenced in any manner by any observation made in this order.

I also make it clear that I have not gone into the merits of the case.

The Appellate Authority, if approached with the pre-deposit within the time provided, shall make an endeavour to dispose of the appeal at the earliest without granting any unnecessary adjournment, but the time to dispose of the appeal shall not be beyond three months from the date of the petitioner having put in the pre-deposit in terms of this order.

It is also made clear that in the event the petitioner does not make payment of the pre-deposit amount, the appeal shall not be heard and the order of the dismissal of the appeal dated 18th March, 2024 shall automatically stand revived.

The order dated 18th March, 2024 is accordingly set aside with the directions as aforesaid.

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

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

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

(Arindam Mukherjee, J.)