

12.11.2024
Item No.28
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

WPA/2364/2024

WEST BENGAL UNIVERSITY OF ANIMAL & FISHERY SCIENCES
VS
STATE OF WEST BENGAL & ORS.

Mr. Navin Barik,
Ms. Esha Acharya,
Mr. Rimik Chakrabarty
 . . . for the petitioner.
Mr. Hirak Barman,
Mr. Bikash Singha,
 ..for the State.

The petitioner approached this Court assailing the order of the appellate authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the 1972 Act) by which the appeal was not admitted for non-payment of the pre-deposit stipulated under the 1972 Act for hearing the appeal on merit within a particular date i.e. 18th March, 2024.

After giving a sympathetic consideration to the petitioner's case, the order refusing to admit the appeal was set aside by this Court by an order dated 20th May, 2024 and the petitioner was directed to deposit 50% of the awarded amount by the competent authority for the appeal being heard on merits. The petitioner deposited the 50% but on two occasions failed to appear before the appellate

authority. On the first date i.e. 29th July, 2024 a belated adjournment was sought for on the health ground of the learned Advocate for the petitioner. The matter was adjourned. On 29th August, 2024 the petitioner in order to stall the certificate case initiated on the basis of the order of the competent authority made an application for staying the certificate case and for hearing the appeal on merits. The date was fixed by the appellate authority on 10th September, 2024 when the petitioner remained absent despite being served with the notice of hearing. However, the employee (opposite party) was present. The appellate authority, therefore, dismissed the appeal and confirmed the decision of the Controlling Authority issued on 9th October, 2023. The appellate authority has also recorded that reasonable opportunity of being heard had been given to the petitioner.

The petitioner has challenged the said order of the appellate authority in this writ petition. The petitioner says that the order of the appellate authority dismissing the appeal and confirming the order of the competent authority dated 9th October, 2023 should be recalled and the appeal should be heard afresh on merit or in the alternative the validity of the order of the appellate authority be considered in this writ petition.

The respondents oppose the prayer of the petitioner on the ground that this writ petition is nothing but a dilatory tactics to compel the employee to concede to the terms of the employer. The employer is a State Government controlled University and is acting as a private employer governed by its vested interest to deprive an employee of his statutory benefits instead of acting as a model employer. It is also submitted that from 9th October, 2023 the employee concerned (respondent no.4) has not been able to get his gratuity amount which is a statutory mandate and has been time and again held by the Hon'ble Supreme Court to be not a bounty.

After hearing the parties and considering the materials on record, I find that the conduct of the petitioner has been such that no further opportunity of the appeal being reheard before the appellate authority under the 1972 Act can be granted. The chain of events clearly shows that the gratuity amount was not paid to the respondent no.4 for which he had to approach the competent authority under the 1972 Act. After a steep objection from the side of the employer (petitioner), an order was passed on 9th October, 2023 in favour of the respondent no.4 by the Controlling Authority. The petitioner preferred an appeal but did not deposit the 50% of the awarded amount as required despite sufficient time

being granted to the petitioner. The appellate authority, therefore, was compelled to hold that the appeal is not admitted. Challenging that order the petitioner filed the previous writ petition being WPA 1009 of 2024 wherein the order dated 20th May, 2024 was passed permitting the petitioner to deposit 50% of the awarded sum so that the appeal preferred by the petitioner can be heard on merits. Despite due and proper opportunity being afforded the petitioner did not avail the same and as a result whereof the appeal was dismissed confirming the order dated 9th October, 2023 passed by the Controlling Authority.

I find no reason to interfere with such order because the petitioner did not avail the opportunity granted by the appellate authority even after the order dated 20th May, 2024. The lis has to come to an end. The employer (petitioner) cannot be allowed to drag the matter as per its will. On the alternative prayer of the petitioner, I have considered the order of the Controlling Authority dated 9th October, 2023 and the grounds of appeal challenging the said order which are annexed to the writ petition as also the order of the Appellate Authority. I do not find any of the grounds enumerated in the grounds of appeal are of substance which requires the appellate authority to interfere with the order dated 9th October, 2023. The Controlling Authority on the basis of the

evidence produced before it has arrived at the conclusion that the respondent no.4 is an employee and the petitioner an employer under the 1972 Act. There is also evidence of a similarly placed employee receiving the gratuity. It is well settled principle of law that when a particular set of employees is given a relief, all other identically situated persons need to be fitted alike by extending such benefit and in not doing so it would be violative of Article 14 of the Constitution of India as held in (2015) 1 SCC 347 (State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava And Others) and 2022 SCC OnLine SC 641 (Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation). Moreover, the scheme of 1972 Act is a beneficial legislation introduced for social security benefit of an employee. I am, therefore, not inclined to interfere with the order of the Controlling Authority as also the Appellate Authority.

The writ petition, therefore, is without any merit and is accordingly dismissed.

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

(ARINDAM MUKHERJEE, J.)