

02.01.2024
Item No.17
As/TR

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

WPA/2511/2023
DEW TEA PLANTATION PVT. LTD.
VS
STATE OF WEST BENTAL AND ORS.

Mr. Bapi Sarkar,
Mr. somraj Paul,
...for the petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose,
...for the State.

Learned counsel for the petitioner has represented that the petitioner has challenged the order dated 26.02.2021 passed by the respondent no.2 which was communicated to the petitioner on 08.03.2022.

Learned counsel for the petitioner further states that he has filed the present writ petition by raising various grounds to challenge the impugned order dated 26.02.2021 under Article 226 of the Constitution of India and, therefore, he sought for quashing the impugned order passed by the authority concerned.

Learned counsel appearing for the respondent has represented that since the order dated 26.02.2021 was passed under Section 4 of the

Payment of Gratuity Act, 1972, the petitioner having right to file an appeal under Section 7 of the said Act and without exhausting the said remedy, he has approached this Court under Article 226 of the Constitution of India, which is not maintainable. Therefore, he sought for dismissal of the writ petition.

Learned counsel for the petitioner has represented that since the impugned order dated 26.02.2021 has been passed without jurisdiction and also with a delay, he is having every right to challenge the same before this Court without exhausting the remedy under the act.

Therefore, he prayed this Court to quash the impugned order dated 26.02.2021.

Considering the nature of arguments advanced by both the parties, it is made clear that since the order has been passed under Section 4 of the Act, the petitioner has to exhaust his remedy only by way of an appeal under Section 7 of the said Act, before the Appellate Authority.

Whatever the grounds raised by the petitioner in this writ petition, he is having every right to raise the same by way of an appeal. Without exhausting the appellate remedy he cannot invoke the remedy under Article 226 of India before this Court in this writ petition. Since there are several orders passed

by the Hon'ble Supreme Court in various cases that once aggrieved by the order by any person without exhausting the appellate remedy, the person concern should not approach the writ Court under Article 226 of the Constitution of India. Therefore, it is made clear that once the appellate remedy under Section 7 of the Act is available to the petitioner, he has to approach the appellate authority by challenging the said order dated 26.02.2021.

Learned counsel for the petitioner has represented that since if this Court is inclined to direct the petitioner to file appeal under Section 7 of the said Act, it is to be noted that the order dated 26.02.2021 passed by the authority, was communicated to the petitioner only on 08.03.2022 and the writ petition was filed in the year 2023, therefore, there is a delay since the appeal should be filed within a period of 60 days from the date of the order. Therefore, the time limit had already lapsed and he prayed this Court to condone the delay and permit him to file an appeal.

Since the order passed on 26.02.2021 under Section 4 of the said Act, was communicated to the petitioner only on 08.03.2022 and the writ petition was filed in the year 2023, it is made clear that there is a huge delay for filing the appeal before the appellate authority under Section 7 of the said Act.

Because of the pendency of this writ petition, I am inclined to condone the delay by permitting the petitioner to approach the appellate authority to file the appeal within a period of two weeks from the date of receipt of this order.

Therefore, I am inclined to pass the following order :

- a) The writ petition is disposed of;
- b) The petitioner is directed to file an appeal under Section 7 of the Act within two weeks from the date of receipt of this order;
- c) The appellate authority is directed to take up the appeal on file without raising the delay and dispose of the appeal on merits within a period of twelve weeks thereafter.

(M. V. MURALIDARAN, J.)