

OD-2

ORDER SHEET
APOT/339/2023
IA NO:GA/1/2023, GA/2/2023
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BRIDGE AND ROOF COMPANY INDIA LIMITED
Versus
PALAS MANDAL AND ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA
AND

The Hon'ble JUSTICE AJAY KUMAR GUPTA

Date : 5th September, 2024.

Appearance:

Mr. S. Banerjee, Adv.; Mr. S. Dey Paul, Adv., appear.

Mr. A. Pandey, Adv.; Mr. M.Z. Rauf, Adv., appear.

1. The Court: Sufficient grounds are available in the application for condonation of delay in filing the instant appeal.
2. However, the learned counsel for the respondents vehemently opposes the prayer for condonation.
3. Having regard to the facts and circumstances of the case and the nature of the order appealed from, this Court is of the view that the delay may be condoned upon payment of costs assessed at Rs.3500/-, to be payable by the appellant to the respondent within a period of three days from date.
4. The application for condonation of delay accordingly stands allowed.

5. The instant appeal is directed against the judgment and order dated June 26, 2023, passed by a Single Judge in WPO/603/2023 (Palas Mandal –vs- Bridge and Roof Company (India) Ltd. & Ors.)
6. The writ petition was filed by the respondent seeking gratuity from the appellant. The appellant contended that the writ petitioner was not in continuous service. He was appointed on contract from time to time. The same, according to the appellant, involves retrenchment and, therefore, there was no continuous service rendered by the writ petitioner.
7. The writ petitioner, on the contrary, contended that his service was continuous for a period of 12 years, comprising of 240 days of each completed year.
8. There are some disputed questions of fact that arise as to whether the writ petitioner was in continuous service. This is a matter that may require trial on evidence. The Payment of Gratuity Act, 1972 is a complete code which prescribes appropriate proceedings including trial on evidence.
9. In view of the effective efficacious and alternative remedy available before the authorities under the Payment of Gratuity Act, namely the controlling authority and the appellate authorities, this Court is of the unequivocal view that the writ petition could not have been entertained.

10. If the writ petitioner had in fact rendered continuous service, he would have been entitled to Rs.1,53,750/- as gratuity for services rendered.
11. This court therefore directs that the appellant shall deposit a sum of Rs.1 lakh with the controlling authority within a period of two weeks from date.
12. The writ petitioner shall file an application under the relevant section 4 of the Payment of Gratuity Act before the controlling authority within a period of seven days from date.
13. Upon receipt of the application, the controlling authority shall, with due notice to the appellant, decide the issue of entitlement of gratuity of the writ petitioner in accordance with the statute and the prescribed rules therefor, preferably within a period of three months of filing of the application.
14. Upon receipt of the aforesaid sum of money, the same shall be deposited in an interest bearing fixed account with a nationalized bank which shall abide by the proceedings under the Act of 1972 as indicated above.
15. It is, however, made clear that in default of any application being made within a period of seven days from date, the appellant shall not be obliged to make the deposit.
16. It is also ordered that if the writ petitioner makes such an application as indicated above and there is default on the part of the

appellant in making deposit as indicated above, the order of the Single Bench shall automatically stand revived and the writ petitioner shall be entitled to the full sum of gratuity together with interest at the rate of 8 per cent per annum from the date of its accrual till the date of actual payment.

17. With the aforesaid observations the impugned judgment and order dated June 26, 2023 stands set aside and APOT/339/2023, along with the connected applications, accordingly stands disposed of.
18. Consequently, CC/110/2023 shall not be proceeded with by the writ petitioner. The rule issued by the Single Bench shall be kept in abeyance.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA, J.)