

M/L 26
10.06.2025
Court No.17
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
WPA 359 of 2025
Basantapur Education Society
Vs.
The State of West Bengal & Ors.

Mr. Tapas Kumar Sinha
Mr. Subir Sabud

...for the Petitioner.

Sk. Md. Galib
Ms. Sujata Mukherjee

...for the State.

Mr. Robiul Islam
Mr. Masooq Rahman

...for the Respondent No.4.

The exception to the report of the respondent nos.2 and 3 filed on behalf of the petitioner be kept with the record.

The respondent no.4 was the Headmaster of a Government aided school. He, in the year 2001, took voluntary retirement from his said service and had joined the Domkol Institute of Engineering and Technology, a college run by the petitioner-society. On attaining the age of superannuation, the respondent no.4 has retired from his said service also on December 31, 2017 and thereafter had applied for payment of gratuity but the petitioner had denied the same.

The respondent no.4 aggrieved by such refusal had approached the Controlling Authority under the Payment of Gratuity Act, 1972 (in short 'the said Act of 1972'). A case bearing No. GR/03/ALC/DOM/2020 was registered under Rule 10 of the West Bengal Payment of Gratuity Rules, 1973.

The Controlling Authority by the order dated July 1, 2024 had allowed the prayer of the respondent no.4 and had directed the petitioner to pay a sum of Rs.2,64,396/- on account of gratuity.

The petitioner aggrieved thereby had preferred an appeal being case No.GA-1/2024 before the Appellate Authority. The Appellate Authority by the order dated November 13, 2024 has affirmed the order of the Controlling Authority.

The petitioner, in the instant writ petition, has assailed the said order of Appellate Authority.

Mr. Sinha, learned advocate for the petitioner submits that the respondent no.4 since was in employment under the State Government and had received the gratuity in terms of his earlier appointment, is not an employee within the meaning of Section

2(e) of the said Act of 1972; therefore, the Appellate Authority has committed error of law in affirming the order of the Controlling Authority.

He candidly submits that the points he is now urging, was not taken either before the Controlling Authority or before the Appellate Authority, but it being a point of law can be canvassed in the present proceeding.

Mr. Robiul Islam, learned advocate for the respondent no.4 submits that the term employee as defined under Section 2(e) of the said Act of 1972 excludes a person who holds a post under the Central Government or State Government but in the present case, his client after taking voluntary retirement from his earlier service with the State Government, has joined his present employer; therefore, he squarely comes within the definition of 'employee'.

Mr. Galib, learned advocate for the State adding to the said submission of Mr. Islam submits that the respondent no.4 is an employee of the petitioner; his earlier employment is not a disqualification for being treated as such.

Heard learned advocates for the parties; perused the materials on record.

There is no dispute that a point of law can be urged at any stage of the proceeding, however, the earlier employment of the respondent no.4 though was with the State Government but upon resignation, the employer-employee relationship between the respondent no.4 and the State Government ceased to exist.

The definition of the employee enshrined under Section 2(e) of the said Act of 1972 excludes a person who holds a post under the State Government or Central Government which is not the case here, therefore, I am unable to accept the submission of Mr. Sinha, consequently, the order impugned does not call for any interference.

WPA 359 of 2025 is therefore dismissed without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)