

Nabarun Chitramandir Vs Learned Certificate Officer and Others

Court: Calcutta High Court

Date of Decision: April 16, 2009

Acts Referred: Payment of Gratuity Act, 1972 " Section 4, 7, 7(4), 8

Citation: (2010) 1 LLJ 444

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Nirmalendu Bhattacharjee and Soumya Majumdar, for the Appellant; Pratimapratibha Chowdhury, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.

The petitioner in this writ petition dated February 4, 2002 is seeking a mandamus commanding the respondents

to forbear from taking any step or further step according to the direction of the Controlling Authority under the Payment of Gratuity Act, 1972 and

Assistant Labour Commissioner, Durgapur dated November 9, 2001 and the notice of the Certificate Officer, Durgapur dated November 27,

2001.

2. Though in the prayer reference has been made only to two things dated November 9, 2001 and November 27, 2001 respectively, as a matter

of fact, the petitioner is challenging as many as fifteen requisitions for certificate all dated November 9, 2001 issued by the controlling authority, and

fifteen notices to certificate debtor all dated November 27, 2001 issued by the certificate officer.

3. The controlling authority issued the requisitions for certificate dated November 9, 2001 u/s 8 of the Payment of Gratuity Act, 1972. The third to

eighteenth respondents filed separate applications all dated June 18, 1998 u/s 7 of the Payment of Gratuity Act, 1972. They claimed that as former

employees of the petitioner they were entitled to gratuity in terms of the provisions of Section 4 of the Act. They alleged that the petitioner did not

pay them gratuity.

4. From the requisitions for certificate: dated November 9, 2001 issued by the controlling authority to the certificate officer it appears that the

amounts mentioned in the requisitions were payable in terms of fifteen orders of the controlling authority all dated-November 23, 2000 made u/s

7(4)(c) of the Payment of Gratuity Act, 1972. On receipt of the requisitions the certificate officer issued the fifteen notices all dated November 27,

2001 to the petitioner, a firm, and its two-partners.

5. Though the third respondent has been made a party to the writ petition, order made in his favour by the controlling authority or the certificate

proceedings initiated for execution of the order have not been challenged in the present writ petition on the ground, as stated by counsel for the

petitioner, that, feeling aggrieved by the order of the controlling authority, the petitioner lodged an appeal.

6. Counsel for the petitioner says that the sixteen persons who filed the applications u/s 7 stated in their respective applications t that the cause of

termination of their services was forced unemployment. By referring me to the provisions of Section 4 of the Payment of Gratuity Act, 1972 he has

argued that for termination of service because of alleged forced unemployment, none of the sixteen persons approaching the controlling authority

was entitled to claim gratuity.

7. According to counsel, this fact is sufficient to show that the controlling authority had no jurisdiction to entertain the applications, and hence the

orders made u/s 7(4)(c), being vitiated by patent jurisdictional error, could not be used for issuing the requisitions for certificate. His submission is

that under the circumstances, on receipt of the requisitions the certificate officer did not acquire any jurisdiction, power and authority to issue the

impugned notices to certificate debtor.

8. Although fifteen separate requisitions for certificate were issued by the controlling authority in execution of the fifteen distinctly separate orders

made by him in fifteen cases initiated before him, and on the basis of the fifteen requisitions fifteen notices to certificate debtor were issued by the

certificate officer calling upon the petitioner and its two partners to pay the amounts mentioned in the notices, the petitioner took out a single writ

petition.

9. I do not think the question of multifariousness should be examined at this final stage, especially when the respondents ever raised any objection.

Interim order initially made was not extended, since no step was taken for the purpose. Subsequent interlocutory application seeking interim relief

was disposed of ordering that all steps taken by the respondents would abide by the result of the writ petition.

10. The fifteen orders dated November 23, 2000 made by the controlling authority u/s 7(4)(c) have not been challenged in this writ petition. None

of the orders has been produced with the writ petition. Against orders of the controlling authority the petitioner was entitled to appeal. It is

submitted that no appeal was lodged, counsel says that when appeal from the order of the controlling authority made in favour of the third

respondent was pending, the controlling authority made orders in the other cases and issued the impugned requisitions for certificate. According to

him, for this reason, the petitioner could not appeal against the orders.

11. There is no explanation why the petitioner did not challenge the Section 7(4)(c) orders the writ petition. By not challenging the, orders the

petitioner allowed them to attain finality. The controlling authority issued the impugned requisitions only on November 9, 2001. Hence I do not see

how the petitioner contend that since the Section 7(4)(c) orders dated November 23, 2000 were vitiated by jurisdictional error, the controlling

authority was not competent to issue the impugned requisitions.

12. There is no reason to say that the orders made by the controlling authority are void. They could be questioned alleging that the controlling

authority erroneously made them. After allowing them to attain finality, in my, opinion, the petitioner is not entitled to question the requisitions issued

in execution thereof contending that, since they were erroneous or without jurisdiction, the requisitions are bad. The certificate officer has simply

acted on the -requisitions. I, therefore, do not, find any reason to interfere with the impugned requisitions and notices.

13. Counsel for the petitioner submits that he needs leave to file a supplementary affidavit stating that during pendency of the writ petition the

certificate officer executed the certificates and recovered the amounts adopting improper procedure. According to him, in view of the order that all

actions taken by the respondents shall abide by the result of the writ petition, the respondents were not entitled to execute the certificates and

recover the amounts till the disposal of the writ petition. This is the proposition advancing which he prays for leave to file a supplementary affidavit.

14. The proposition is based on a wrong premise. By ordering that all actions taken by the respondents shall abide by the result of this writ

petition, this Court did not restrain the respondents from executing the certificates and recovering the amounts mentioned therein. This being the

position, I see no reason to grant leave to the petitioner to file a supplementary affidavit stating that during pendency of the writ petition the

certificate officer improperly executed the certificates and recovered the amounts.

15. For these reasons, the writ petition is dismissed. There shall be no order for costs.

16. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the

section concerned.