

(2016) 12 CAL CK 0060
In the Calcutta High Court
Case No : W.P. No. 15306(W) of 2016

Ramsarup Industries Ltd

APPELLANT

Vs

Controlling Authority under the Payment of Gratuity Act,
1972

RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 152 FLR 559

Hon'ble Judges : Mr. Subrata Talukdar, J.

Bench : Single Bench

Advocate : Mr. Jayanta Dasgupta and Mr. Uddipan Banerjee, Advocates, for the Petitioner; Mr. Siddhartha Sarkar and Mr. M. Mandal, Advocates, for the Respondent; Mr. Victor Chatterjee, Amicus Curiae, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

Subrata Talukdar, J.—In this application, Sri Jayanta Dasgupta, learned senior Counsel, appears for the writ petitioner with Sri Uddipan Banerjee, learned Counsel.

2. On behalf of the respondent no.3, Sri Siddhartha Sarkar, learned Advocate appears.

Pursuant to the order of this Court dated 16th November, 2016, Sri Victor Chatterjee, learned Advocate appears to assist this Court.

3. Sri Dasgupta raises the fundamental point that the Controlling Authority by the order impugned dated 18th August, 2014 failed to consider whether the petitioner was the employer of the respondent no.3. Sri Dasgupta submits that the definition of employee/workman is different in the Payment of Gratuity Act, 1972 as compared to the Employees' Provident Fund & Miscellaneous Act, 1952 as well as the Employees' State Insurance Act, 1948 (for short the 1952 and the 1948 Acts respectively).

4. Sri Dasgupta further points out that these jurisdictional points be decided by the writ Court. Therefore, the remedy of appeal as provided under the 1972 Act does not require to be exhausted by the petitioner/Company prior to filing of this writ petition.

5. Sri Chatterjee, learned amicus curiae, submits that an employee cannot have two employers. Sri Chatterjee further submits that the definition of employer in the 1972 Act, inter alia, refers to an ultimate control over the affairs of an establishment meaning thereby, the affairs of its own establishment as distinct from the establishment of the contractor. Sri Chatterjee points out that principal employer cannot be said to be in ultimate control over two establishments viz. the contractor's establishment and his own.

6. Sri Chatterjee relies upon a decision reported in the matter of Madras Fertilizers Limited v. Controlling Authority under the Payment of Gratuity Act & Ors. 2003 Vol.1 LLJ 224 Sri Chatterjee submits that the Contract Labour Act provides for payment of wages and, gratuity component is inclusive of such wages. Therefore, there is no separate requirement under the 1972 Act to pay gratuity to a contract labourer after the wages, inclusive of gratuity, have been disbursed during the course of his employment under the contractor.

7. Having heard the parties and considering the materials placed this Court prima facie finds adequate substance in the submissions of both Sri Chatterjee and Sri Dasgupta, learned Counsel.

8. Accordingly, there shall be an interim order in terms of prayer (f) of the writ petition for a period of sixteen weeks from date.

9. Let Affidavit-in-Opposition be filed within a period of four weeks from date; reply within two weeks thereafter.

10. Liberty to mention after the period granted to exchange affidavits is complete.