

(2021) 11 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 3437 Of 2020

Toyeb Ali Midday

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

West Bengal Payment Of Gratuity Rules, 1973 — Rule 15
Bengal Public Demands Recovery Act, 1913 — Section 6, 51(1)(a)
Payment Of Gratuity Act, 1972 — Section 7, 7(7), 8, 9(1), 14
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2021) 11 CAL CK 0015

Hon'ble Judges : Abhijit Gangopadhyay, J

Bench : Single Bench

Advocate : Suvadip Bhattacharjee, Balaram Patra, Soumya Majumdar, Amrita Pandey, Susovan Sengupta, Bipin Ghosh

Final Decision : Allowed

Judgement

Abhijit Gangopadhyay, J

1. The petitioner was a worker of a Jute Mill namely M/s. Delta Limited being respondent No. 4 (The Jute Mill, in short). He joined the service in the Jute Mill on 27.04.1970 and superannuated on 29.05.2003. As his Gratuity was not paid by the Jute Mill he took steps in accordance with the Payment of Gratuity Act, 1972 so that he can get the gratuity amount.

A gratuity case was initiated by the concerned Controlling Authority being the respondent no. 2, who was the Assistant Labour Commissioner (ALC, in short hereafter) after receiving an application from the petitioner.

After proceeding in accordance with Payment of Gratuity Act, 1972 the ALC came to the conclusion that an amount of Rs. 1,83,119.00 was to be paid by the Jute Mill to the petitioner and he sent one requisition for a certificate to the Certificate Officer, an Officer in the District Magistrate's Office of the district of Howrah.

Office of the District Magistrate is the Respondent No. 3.

The Officer to whom the requisition for certificate was sent by the ALC is known as the Certificate Officer (CO, in short, hereafter).

2. The CO after receiving the requisition started a case under the Bengal Public Demands Recovery Act, 1913 (PDR Act, in short) and ultimately in the proceeding he recorded his dissatisfaction on the ground of not following the Rules under the Gratuity Act, 1972 by the ALC and by his order dated 21.10.2019 exercising power under Section 6 of the PDR Act the requisition for certificate was rejected.

3. This rejection of requisition of certificate has given rise to the present writ application whereby the petitioner being the superannuated workman filed the writ application for setting aside the order passed by the CO on 21.10.2019.

The respondents have not filed any affidavit in opposition, nor any such prayer was made by them at any point of time.

However, the petitioner and the CO have filed their written notes of arguments. No written note of arguments has been submitted by the Jute Mill. In fact the Jute Mill adopted the submission of the State and made no other submission.

The Jute Mill has not shown any inclination before this Court for the Payment of Gratuity amount to the petitioner.

The State submits that unless the PDR Act is fully followed by the CO no certificate can be issued for realizing the due gratuity amount.

The petitioner has submitted that PDR Act has no applicability in realizing the due gratuity except for the purpose of execution of the certificate for realising the gratuity amount with interest and the CO has no power or authority to question the decision taken by the ALC and the law in this regard is settled. The CO is only an executing authority who cannot go behind the order for payment of gratuity amount.

4. The petitioner has further submitted that the Collector (here the CO) is mandated to recover and pay the amount mentioned in the certificate issued by the ALC along with compound interest and the CO does not have any other power or authority under the PDR Act. But here the CO instead of taking steps in accordance with the Payment of Gratuity Act, 1972 has raised certain questions which are outside his jurisdiction and has rejected the requisition for certificate whereby the Jute Mill has been benefitted by avoiding such payment of gratuity.

5. The petitioner has further submitted that the Payment of Gratuity Act is a special Act and a subsequent Act (comparing to PDR Act) with overriding effect and provision of the PDR Act cannot be followed for the overriding effect of the Payment of Gratuity Act, 1972 (vide section 14 thereof) and in a gratuity case the certificate debtor (here the Jute Mill) shall not be allowed to re-agitate the questions of non-payment of gratuity which was the subject matter of

determination under Section 7 of the Gratuity Act, 1972. If the PDR Act is followed again after the decision of the Controlling authority under the Payment of Gratuity Act 1972 then the entire procedure prescribed under the Payment of Gratuity Act, 1972 would become otiose and nugatory. It would lead to absurdity and proceeding under the PDR Act would militate against the provisions of the payments of Gratuity Act and thus it would be open for an employer who has not paid the gratuity to question the determination of liability before the Collector.

It is the petitioner's further submission that under Section 7(7) of the payment of gratuity Act there is an appeal provision and the defaulting employer can take shelter under that provision as the payment of gratuity Act 1972 has the overriding effect as laid down in section 14 of the Act.

The petitioner has relied upon, in this regard, a judgment of this High Court reported in (2014) SCC online Cal 4758 (Murlidhar Ratanlal Exports Ltd -versus- State of West Bengal), also reported in (2014) 141 FLR 583.

6. The CO has raised three questions in his argument and also in written notes of submissions which are as follows:

(a) Whether the Certificate Officer, Howrah in refusing to make his signature upon such certificate being issued at the behest of the Controlling Authority under the Payment of Gratuity Act, 1972 has acted contrary to the provisions incorporated in the Bengal Public Demands Recovery Act, 1913?

(Emphasis mine)

(b) Whether the Certificate Officer, Howrah can go into the question of recovery of any demand incorporated in the certificate issued by the Controlling Authority vide his letter dated March 11, 2019 before putting his signature upon such certificate.

(Emphasis Mine)

(c) Whether the statutory provisions for Appeal under Section 51 (1) (a) of the Bengal public Demands Recovery Act, 1913 is applicable in the facts and circumstances of this case.

Such questions have been framed formally in the written notes of submissions of the CO which was submitted by his Advocate signed on 18.01.2021.

7. The Jute Mill being the respondent No. 4 has wholly adopted the submissions of the CO in the same tune and has said they would not make any other submissions.

8. In the course of the hearing I called for the records of the gratuity case of the petitioner being gratuity case No 72/15/G/HOW. The Joint Labour Commissioner produced the true copies of all papers contained in the file (total pages 16) which was accepted instead of the originals as those copies have been certified as true copies.

9. Here the fundamental question which emerges is, for recovery and payment of unpaid gratuity to a superannuated worker/employee whether Payment of Gratuity Act, 1972 is sufficient for realising and paying the due gratuity amount or after taking necessary steps by the Controlling Authority under the Payment of Gratuity Act, 1972 again the PDR Act, 1913 is required to be followed in full.

10. Recovery of gratuity has been provided in section 8 of the Payment of Gratuity Act, 1972 which is as follows:

"Section: 8 Recovery of gratuity.

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereto : Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate: Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act".

(Emphasis Mine)

11. What is found from this Section 8 is, payable gratuity under the said Act, if not paid by the employer within the prescribed time to the persons entitled, the controlling authority shall, on an application made to it by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same (with compound interest) as arrears of land revenue.

(Emphasis Mine)

12. The period from which interest is to be calculated has also been given in it. Therefore, three things are required to be taken note of in the above provision of recovery of gratuity:

(i) The Controlling Authority has to issue a certificate (on an application made to it by the entitled person);

(ii) Certificate is to be issued to the Collector;

(iii) The Collector shall recover the payable gratuity with interest as arrears of land revenue and pay the same to the persons entitled thereto.

(Emphasis Mine)

13. Here, in this case the Controlling Authority (being the ALC) instead of issuing a certificate has issued a requisition for certificate which appears from page 22 of the writ application. The requisition is dated 11th March, 2019.

14. Duty of the Collector (here the CO) was to recover the amount with compound interest from the employer (here the Jute Mill) as arrears of land revenue and to pay the same to the person entitled (here, the petitioner).

15. It is to be noted that the claimant is a superannuated Jute Mill worker retired in the year 2003 and deprived of his lawful claim for more than 15 years and now became the object of bureaucrat's game which would come to light from the facts noted below.

16. The ALC, being the controlling Authority sent the "requisition for a certificate" on 11.03.2019 (vide page 22 of the writ application) which the CO clearly knew as a "certificate" which we will come to know gradually.

17. The CO started acting under the PDR Act. While applying different provisions of PDR Act the CO who is an erudite scholar of law (which comes to light from the records produced before me and mentioned below) raised different questions in respect of service of notice etc. upon the Jute Mill. While hearing the case, the energetic submissions of the State and the smiling adoption of the submissions of the State by the Jute Mill and after perusing the written notes of the parties I have felt that complete advantage to the Jute Mill was given by the CO so that the Jute Mill can avoid payment of gratuity. The letter of the ALC dated 16.09.2019 (at page 23 of the writ application) shows the CO played the same role for a large number of claim of gratuity cases.

18. The CO in his order dated 31.07.2019 (which appears from page 10 (10 of 16) of the record produced before me) quoted one case law of Yogesh Kumar Rana -versus- energy Department Case (2017) saying that the Hon"ble Madhya Pradesh High Court observed that

"No one should be condemned heard (Sic). Notice is the first limb of this principle.... In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play..."

After quoting this the CO observed that the certificate proceeding would be vitiated in the absence of a notice in form "R" and show cause notice to the defaulter company being the Jute Mill.

19. With such observation the requisition was returned to the Competent Authority being the ALC.

20. ALC gave reply to the order of the CO by writing a letter dated 6.8.2019. On receiving this reply the CO in his order dated 21.08.2019 (page 13 of 16 of the record produced) wrote as follows:

" Thus in the absence of proper documentary evidence of posting of Form "R"s the "presumption" of receipt of Form "R"s by the OP as per the spirit of Section

114, Indian Evidence Act, 1872 and Section 27 of General Clauses Act, 1897 cannot be done. In *Pritham Singh Vs State of Punjab* AIR 1956 SC 415:1956 Cr LJ 805 the Supreme court opined that, "a Judge cannot allow his own view and observation to take the place of evidence".(vide 5th to 10th time of the order).

(Emphasis mine)

After recording as above the CO held that the record placed by the Controlling Authority could not be taken as evidence of sending the notice in Form "R" to the OP i.e. the Jute Mill.

21. This order was sent by the CO to the ALC. The ALC gave another reply on 16.09.2019 which was considered by the CO and the CO held as follows:

"Perused the letter vide memo no. 1291/DLC/HOW dated 16.09.2019.

As per Order sheet dated 21/08/19,

the requisition vide memo no. 296/72/15/G/DLC/HOW dated 11/03/19, has been found defective as it was sent to the Collector, Howrah for taking up under Bengal PDR Act, 1913 without following Rule 15 of West Bengal Payment of Gratuity Rules, 1973 for despatching Form "R" to M/S Delta Ltd. But the requisitioning Officer namely the controlling Authority under the Payment of Gratuity Act, 1913 sent back again this requisitions vide 1291/DLC/HOW dated 16.09.19 without rectifying the defects mentioned/pointed out in the order dated 31.07.19 & 21/08/19.

As the letter vide memo no.1291/DLC/HOW dated 16.09.19 does not contain any new material with the help of which, the defect/errors in the requisition can be cured, it is not possible by this court to take up this requisition for signing a certificate under sec 6 of Bengal PDR Act, 1913.

The dissatisfaction of the certificate officer with the said requisition is hereby recorded and therefore, in exercise of power conferred upon me under sec 6 of Bengal PDR Act,1913 the requisition for certificate is hereby rejected.

Send a copy of this order to the CA under Payment of Gratuity Act, 1913".

From this order of the CO two remarkable things are found:

- i) He has held that the requisition was sent to the collector for "taking up under Bengal PDR Act, 1913;"
- ii) The CO was well aware about Rule 15 of West Bengal payment of gratuity Rules 1973.

It is required to be noted that in the letter of the controlling authority i.e. the ALC dated 11.03.19 (Annexure P-3 of the writ application and page 1 of the true copy of the records produced before this court) there was absolutely no reference for taking up (the matter) under Bengal PDR Act, 1913. This "Bengal PDR Act 1913" is wholly the invention of the CO for rejecting the requisition.

(Emphasis mine)

Now it is required to be seen whether the CO understood the request of the Controlling authority being the ALC as a "requisition for certificate" or a "certificate" according to the Payment of Gratuity Act, 1972.

It will be checked soon.

22. Now we take note of the judgment of this High Court in Muralidhar Ratanlal Exports Limited - VS- State of West Bengal & others relied upon by the writ petitioner, reported in 2019 SCC on line and also in (2014) 141 FLR 583. Relevant portion from the 4th page of the judgment is as follows:

"..... submits that even in such execution proceeding the executing authority had the power to set aside the order by which the liability was determined. Mr. Chowdhury even had gone to the extent in contending that in such proceeding the executing authority could go to the merit of the claim which had attained finality. If such interpretation is accepted, then the provision of appeal would be rendered otiose and executing authority would be bestowed with a power which the statute does not confer or contemplate. The statutory time to prefer an appeal had expired. It was only thereafter such applications were filed before the respondent Nos. 3 and 4 with such untenable pleas in an attempt to reopen the issue and to deny a just claim. The Bengal Public Demands Recovery Act, 1913 was enacted to consolidate and amend the law relating to recovery of public demands in Bengal. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity but employees engaged in factories, mines, oil fields, plantations, space, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The said Act is a self-contained Code. The said Act is a special Act and a subsequent Act. The said Act provides for determination of the amount of gratuity and also there is a provision for appeal. The mode of execution is also prescribed in Section 8 of the said Act which prescribes that if the amount of gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall, on an application be made to it in this behalf by the aggrieved person would issue a certificate for that amount to the collector which shall recover the same together with compound interest as arrears of land revenue and pay the same to the person entitled thereto. It is because of this provision that the collector as an executing authority recovers and realizes the amount under the Public Demands Recovery Act. The provisions of the Public Demands Recovery Act cannot be extended to an aggrieved person to re-agitate the issue which is the subject matter of determination under Section 7 of the Gratuity Act, 1972 either before the Certificate Officer or the appellate authority under the Public Demand Recovery Act. The appellate authority under the Public Demand Recovery Act does not exercise any appellate power over and in respect of the order passed by the Controlling Authority. If such an interpretation is given and power is extended to the collector and the appellate authority under the Public Demands Recovery Act

then the entire procedure prescribed under the Payment of Gratuity Act would become otiose and nugatory. It would not only lead to absurdity and militate against the provisions of the Gratuity Act but also it would be open for an aggrieved employer to question the determination of liability before the collector bypassing the provision of appeal under Section 7(7) of the said Act and disregarding the special period of limitation"

(Emphasis mine).

23. By the order of 21.08.2019 the requisition for certificate was rejected under Section 6 of PDR Act, by the CO who referred several judgments of different High Courts, Supreme Court and also referred the Evidence Act and the General clauses Act but avoided the case decided by this court in the year 2014 which contains the most relevant observation in respect of such cases.

24. From the two orders of the CO dated 31.07.2019 and order dated 21.08.2009 it is found that the CO referred to one case of Madhya Pradesh High Court of the year 2017 emphasising the importance of following the principle of natural justice; referred to Section 114 of Indian Evidence Act, 1872; referred to Section 27 of General Clauses Act, 1897; and referred to the observation of Supreme Court in a judgment reported in AIR 1956 SCC 415. But while rejecting the requisition he himself did not follow the principles of natural justice and without giving any party any opportunity of hearing rejected the requisition. Such act of the said RO is ex facie hypocrite and illegal and bad in the eye of law.

From the written submission of RO it is found that he wanted the old and aged deprived person, a retired worker to prefer appeal against his order i.e. an appeal under PDR Act.

The fundamental question is for whose benefit this was done? The retired worker or the Jute Mill?

25. Now it is time to take a look to the written notes of submissions of CO filed before this court at the end of the hearing. On 7th January 2021 this court directed the parties to file their written notes of submission which was filed on 18th January 2021. From this written notes of CO (vide page 3 and 4 thereof) it is evident that the concerned CO always understood "the requisition for a certificate" as a "certificate" itself and in the written notes of submission it is categorically mentioned that "to make his signature upon such certificate being issued at the behest of the controlling authority" and "question of recovering of any demand incorporated in the certificate issued by the controlling authority". Therefore, it was a clear understanding of the CO that a certificate was issued by the Controlling authority (i.e. the ALC) and not a requisition for it.

Despite understanding that it was not a "requisition for a certificate" but a "certificate" issued by the controlling authority (here the ALC), the CO deliberately made false statement and made false representation by introducing Bengal public demands recovery Act 1913(which was nowhere in the letter of

ALC dated 11.03.2019 vide Annexure P-3 of the writ application which has been noted above) while rejecting the "requisition for certificate" and despite understanding that a "certificate" has been issued by the controlling authority and his duty was to recover the money and to pay it to the entitled person, he himself without any reason and out of nothing brought in his order dated 21.10.2029(i.e. rejection order) the reference of PDR Act and rejected the case of the deprive worker. The CO always pretended that he was to sign a certificate, whereas he knew that he was not.

It is a remarkable fact that the Controlling Authority being the ALC in his very first letter to the Collector and District Magistrate (vide Annexure P-3 of the writ application and page 1 of the true copy of the records produced) requested "to take necessary action under Section 8 of the Payment of Gratuity Act, 1972 for recovery of the said amount.

(Emphasis mine)

If request was made by the Controlling Authority being the ALC to take necessary action under Section 8 of the Payment of Gratuity Act how does the question of proceeding under PDR Act to sign a certificate etc. arise? Now it is clear from the documents on record that to frustrate the whole effort for payment of gratuity, the RO invented the proceeding under PDR Act and has knowingly made a false statement and at the same time made a false representation as to proceeding under PDR Act so that Jute Mill can avoid such payment.

The whole action of CO was for no purpose other than the purpose of enabling the Jute Mill to avoid such payment and knowingly he made a false statement and recorded a false representation at the same time in the order sheet dated 21.10.2019 while recording the order of rejection (of the workers lawful claim) in order dated 21.10.2019.

26. A seasoned Government officer being the CO despite understanding that a "certificate" for realization of gratuity amount under Section 8 of the Act was sent to him, has instead of executing the certificate in accordance with the Payment of Gratuity Act, 1972 rejected it by exercising some power not only not unknown to the relevant act being the gratuity Act 1972 but also an invention of the PDR Act out of nothing. It is wholly disbelievable to this court that the CO who knows rule 15 of the West Bengal payment of gratuity rules 1973 did not know section 8 of the payment of gratuity Act 1973.

The three questions framed by the CO in his written notes of submission are wholly absurd and the only reply to those questions framed by the CO is that he acted with intentional and deliberate illegality in proceeding with the case for recovery and payment of the gratuity amount to the retired worker. On the contrary he while acting as a government officer has enabled the Jute Mill to avoid the payment of gratuity to the retired employee and knowingly made false statement and false representation at the same time recorded in the Government

records as found from the certified true copies produced before this court which has been discussed above.

27. On the basis of the discussions made above I pass the following order:

(i) The impugned order of the Recovery Officer dated 21.10.2019 (at annexure Page-5 of the writ application) is set aside and quashed. The present CO shall execute the order of payment of gratuity as appears from annexure P-1 of the writ application following Section 8 of the Payment of Gratuity Act, 1972 forthwith.

(ii) That particular Recovery Officer who dealt with the gratuity case No 72/15/G/HOW and ultimately rejected the certificate shall be dealt with under Section 9 (1) of the Payment of Gratuity Act 1972 and for this purpose the Principal Secretary, or the Secretary Labour Department, Government of West Bengal, as the case may be shall make a complaint against that particular Recovery officer, who I am told is still in service, for taking cognizance of offence under Section 9 (1) of the said Act to the appropriate Magistrate within a period of two weeks from the date of communication of this judgment and order to him.

(iii) The Authority under the Payment of Gratuity Act, 1972 shall calculate the rate of interest including the compound interest on the gratuity amount from the date of default for payment of gratuity and shall communicate the same to the respondent No. 4 within a period of 4 weeks from the date of communication of this order who shall pay the said amount along with payment of gratuity to the petitioner.

(iv) The vigilance Commissioner of State of West Bengal is directed to initiate an inquiry against that particular Certificate Officer who dealt with the gratuity Case No 72/15/G/HOW and passed the order dated 21.10.2019 and to take all steps required for enquiring the action of the said particular Recovery Officer and to take subsequent action thereafter.

(v) If the due gratuity amount and the interest including compound interest is not paid by the Respondent No. 4 namely M/s. Delta Limited to the writ petitioner the appropriate Government and the Controlling Authority shall take immediate steps for Recovery of the gratuity amount with the interest including the compound interest thereon.

28. With the aforesaid direction the writ application is allowed with cost of Rs. 5 Lakh imposed upon the Respondent No. 4 namely M/s. Delta Limited, half of which shall be paid to the petitioner and the rest shall be paid to the High Court Legal Services Authority within a period of 4 weeks from the date of this order.

29. The Registrar General of this Court is directed to communicate this order forthwith to the Principal Secretary/the Secretary, Department of Labour Government of West Bengal.

30. The petitioner also has the liberty to communicate this order to all

respondents.

The writ application is allowed with costs.