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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7757/2021

DALPAT SINGH ..... Petitioner

Through: Mr. S.K. Das, Advocate

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF AGRICULTURE AND FARMERS WELFARE & ORS ..... Respondent

Through: Mr. Neeraj, SPC with Mr. Vedansh Anand, Mr. Mahesh Kumar Rathore, Mr. Rudra Paliwal and Mr. Sanjay Pal, Advocates for R-1 & 2.
Mr. Yashvardhan, Ms. Kritika Nagpal, Mr. Akshay Gupta and Mr. Gyanendra Shukla, Advocates for R-3.
Mr. Puneet Taneja, Mr. Manmohan Singh Narula and Mr. Anil Kumar, Advocates for DTPC.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **04.03.2024**

(The proceeding has been conducted through Hybrid Mode)

1. Learned counsel for the parties had argued on the preliminary objection of maintainability of the present writ petition raised by the respondents.

2. According to Mr. Yashvardhan, learned counsel for respondent, the

present writ petition would raise disputed questions of fact and as such, this Court would not entertain any such writ petition where it would entail evidence to prove or disprove the submissions made. The other issue which learned counsel had raised was in respect of an alternate and efficacious remedy being available under the Payment of Gratuity Act, 1972 and the Rules made thereunder of the year 1973.

3. According to Mr. Yashvardhan, all the issues relatable to an entitlement of an employee towards gratuity falls within the four corners of the aforesaid Act. Learned counsel, to that extent, relies upon the judgments of the Supreme Court in ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd and Ors*** reported in **(1985) 1 SCC 260**, ***Tin Plate co of India Ltd vs. State of Bihar and Ors*** reported in **(1998) 8 SCC 272** and ***Assistant Commissioner of State Tax and Ors vs. Commercial Steel Ltd*** reported in ***(2021) SCC OnLine SC 884*** in support of his contention that unless there is a breach of Fundamental Rights; violation of Principles of Natural Justice; an excess of jurisdiction or a challenge to the *vires* of the Statute of delegated legislation, in no other case, a writ ought to be entertained.

4. He submits that the Payment of Gratuity Act, having not only the Controlling Authority, as a quasi judicial authority to determine the disputes raised therein but also an Appellate Authority too, would automatically confer the Act as a complete Code in itself. He submits that in such circumstances, this Court should dismiss the present petition as lacking jurisdiction.

5. That apart, learned counsel submits that similarly situated employees have already preferred the proper procedure by raising the

disputes/complaints before the Controlling Authority under the Payment of Gratuity Act, 1972. He submits that there is no special or other equity in favour of the petitioner as to why the present petition should be entertained by this Court and the petitioner ought not to be relegated to the correct remedy under law.

6. Moreover, learned counsel also submits that the DPE OM as also their own OM, indicates that for the period between 01.01.2017 till 28.03.2018, though the enhancement of gratuity to the extent of Rs.20 Lacs was indeed made applicable however, the same was subject to the affordability of every CPSEs. In that view of the matter, Mr. Yashvardhan submits that the said issue itself would be a disputed question of fact which would be determinable, by, if necessary, filing necessary documents and carrying out evidence. That surely could not be done by this Court.

7. *Per Contra*, Mr. S.K. Das, learned counsel appearing for the petitioner refers to the Annual Reports of the respondents from the years 2014-15 through till 2017-18 attached to the rejoinder to submit that in all these years, the respondent-corporation has been making huge profits and as such, the issue of affordability or taking evidence thereon would not arise.

8. In particular, he refers to the Annual Report for the years 2017-18 at page 45 and in particular at page 46, Serial No.3 regarding the "Financial Results of the Company". According to learned counsel, a perusal of the said financial result would show that the Corporation earned a net profit of Rs.2497.50 Lakhs after making provisions for Gratuity, Leave Benefits, Bonus, PRP, wage revisions arrears for employees, CSR at 2% of the average PBT of last three years and provisions for Income Tax and Deferred Tax as per the Income Tax Act, 1961. He submits that if one were to go by

mere figures as contained in the Annual General Reports itself, there is no doubt about the fact that the question of affordability would not even arise in the present case. On that basis, he submits that the present petition in the present form is maintainable before this Court.

9. This Court has heard the arguments of learned counsel for the parties.

10. After having perused the records, though at the first blush, this Court was in agreement with Mr. Yashvardhan on the issue that there is an effective and alternate remedy available and there would be no requirement for this Court to go into the facts of the present case. More so, for the reason that the DPE guidelines dated 03.08.2017 itself make it apparent that the same would be subject to affordability of the CPSEs. The period during which such consideration has to be taken note of is w.e.f. 01.01.2017 till 28.03.2018. It is not disputed that the petitioner had retired on 30.11.2017, which falls within the said period.

11. At page 31 of the writ petition, the various indices in Annexure II was indicated. The question of affordability appears to be in such Annexure in respect of those CPEs as also companies which are either having some financial constraints or are not performing well. The said indices do not seem to be one which would affect the present respondents.

12. Be that as it may.

13. Since the figures, have been placed on record by way of Annual Reports and Mr. Yashvardhan sought some time to take instructions on those, it appears apposite by this Court to defer the orders to be passed on the issue of maintainability as of now. Mr. Yashvardhan also submits that some of the complaints/applications which were filed before the Controlling Authority appear to have been decided by the authority. He seeks further

time to place the said orders on record in support of his contention.

14. Counter affidavit on merits may also be filed in the meanwhile, within four weeks from today. The respondent is at liberty to place the orders of the similar cases passed by the Controlling Authority under the Payment of Gratuity Act, 1972 alongwith the counter affidavit. An advance copy may also be furnished to Mr. Das, learned counsel for the petitioner who may, if so required, file a comprehensive rejoinder thereto.

15. List the matter on 09.05.2024 in first 15 matters for decision on maintainability.

TUSHAR RAO GEDELA, J

MARCH 4, 2024

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