

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 16795 of 2026

Air India Limited
Vs.
Union of India & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Mr. Sishnujit Roy,
Mr. Shourya Samanta.

For the in-person : Mr. Shib Shankar Mitra.

Judgment reserved on : 28.07.2026

Judgment delivered on : 27.08.2026

SHAMPA DUTT (PAUL), J.:

1. The writ application has been preferred against an order dated 05.08.2025 passed by the respondent No.2 and the order dated 15.01.2025 passed by the respondent No.3, praying for direction upon the respondents to act in accordance with law, being the Controlling Authority and the Appellate Authority, respectively.

2. Vide the impugned orders, the Controlling Authority considered the prayer for gratuity of the respondent No.4 and calculated gratuity as follows:

*“5. The applicant submitted that while gratuity has been paid to him for the period from 2013 to 2024, no such payment has been made for the earlier period from 1993 to 2013. He contended that he was willing and available to work throughout these years and was, in fact, employed for more than 240 days annually; however, **the shortfall in actual working days, if any, was solely due to the respondent’s failure to provide him with adequate work assignments.** He argued that any discontinuity in service, therefore, cannot be attributed to his fault and should not prejudice his claim for gratuity.*

*6. The applicant further emphasized that **no formal communication order was ever issued by the respondent declaring a break in his service.** In the absence of such a declaration, and in view of the settled principle under Section 2A(1) of the Payment of Gratuity Act, 1972, the applicant’s service should be treated as continuous, thereby making him eligible for gratuity for the entire tenure from 1993 to 2013.”*

3. The petitioner as opposite party therein stated that:-

“9. That the claim of the Petitioner for gratuity in respect of the period from 1993 to 2012 is misconceived and untenable in law. During the said

period, the Petitioner did not complete continuous service of 240 days in any year, which is the statutory minimum requirement under Section 2A of the Payment of Gratuity Act, 1972 for qualifying continuous service in a year.

*11. The Hon'ble High Court in The Ganges Manufacturing Company limited vs State of West Bengal & Ors., also held that **where it an admitted fact that the worker did not work for 240 days continuously, he could not have been reckoned for the purpose of payment of gratuity under the Payment of Gratuity Act, 1972. This is regardless of whether it was because of the workman himself or because of the employer.***"

4. The petitioner further submitted that in the present case as well, it is an admitted fact by the worker that he did not work for 240 days continuously hence rendering him ineligible for gratuity during the period of 1993-2012. Hence, it is a well-settled principle of law that **the onus to prove continuous service lies upon the employee who claims gratuity for such period.** Mere assertion without substantiating documents such as wage slips, attendance records, or appointment letters is insufficient to establish such claim.

5. Finally the Controlling Authority relying upon the provisions of Section 2A of the Payment of Gratuity Act decided as follows:-

“18.6. Further, It is expressly provided under Section 2A(2) of the Payment of Gratuity Act, 1972 that where an employee does not fulfil the conditions of continuous service as laid down under Section 2A(1), only then will the deeming provisions under Section 2A(2) apply. However, in the present case, a closer examination reveals that the applicant squarely falls within the scope of Section 2A(1).

18.7. It has been admitted by the respondent, Air India, that the applicant remained in continuous engagement with the organization from 1993 to 2024. The sole ground on which gratuity is being denied for the period 1993 to 2013 is the alleged non-fulfilment of the 240 days threshold in each year. However, it is critical to emphasize that Section 2A(1) of the Payment of Gratuity Act, 1972 does not predicate continuous service on the completion of 240 days. Instead, it defines continuous service more broadly – as uninterrupted service, including service interrupted only by certain permissible factors such as sickness accident, leave absence, on duty without break-in-

service order, or other causes not due to the fault of the employer.

*18.8. Accordingly, unless there exists a formal order declaring a break in service, as required under the certified Standing Orders or applicable rules, or the interruption is shown to be due to the employee's own fault, **the service must be treated as continuous under Section 2A(1).** In the present case, no such break-in-service order has been placed on record, nor has any misconduct or fault been attributed to the applicant. **Hence, the applicant's service from 1993 to 2013 qualifies as continuous service under Section 2A(1) itself. As such, there is no necessity to invoke the deeming provisions under Sub-section (2) of Section 2A.***

*18.11. In the present case, the applicant's service from 1993 to 2013, **though allegedly lacking 240 days of work in each year, has not been formally interrupted by any break-in-service order, nor is any fault attributed to him. Thus, by virtue of the legal fiction created in Section 2A(1), his service is to be treated as uninterrupted.** Following Lord Asquith's reasoning,*

once this deeming provision is triggered, the inevitable legal consequence-namely, eligibility for gratuity-must also be deemed to follow, and the employer cannot "boggle" or refuse to accept the natural outcome of the deemed continuous service. So, if the statute says the employee is deemed to be in continuous service, we must also treat the employee as having all including eligibility for rights and entitlements that flow from actual continuous service gratuity under Section 4 of the Act. We cannot say: **"Oh, we'll pretend you were in continuous service for the sake of Section 2A(1), but we won't give you gratuity because you haven't actually worked 240 days in a year."** That would be letting our "imagination boggle" at the consequences - which the law forbids.

18.20. Accordingly, **there is no necessity to apply the threshold of 240 working days for the years in question where the applicant may have worked fewer days, since the continuity of service stands preserved by operation of law.** The reliance placed by the Respondent on the Hon'ble Supreme Court's judgment reported in 1981 I LLJ 308 (*Lalappa Lingappa v. Laxmi Vishnu Textile Mills*) is of no assistance to their case, in view of the subsequent

statutory settled law provided under section 7(3-A) as well as the judgment of the Hon'ble Supreme Court titled as H Gangahanume gowda vs Karnataka Agro Industries Corp. Ltd., the controlling authority arrives at a conclusion that the applicant is entitled to interest amount on gratuity."

- 6.** The Controlling Authority then calculated the gratuity as follows:-

"21. Gratuity Calculation

- (i) Date of appointment : 17/03/1993*
- (ii) Date of termination/Resignation : 30/09/2024*
- (iii) Last wages drawn : 20,228*
- (iv) Length of service : 31 years 6 months*
- (v) Gratuity payable : Rs. 20,228 x 15 x 32=3,73,440*

Gratuity payable @ 15 days for each completed year of service and part thereof, hence, the applicant is eligible for the amount Rs. 3,73,440 – Rs. 1,40,040 = Rs. 2,33,440.

- 22. Therefore, after considering all the averment, arguments, facts and evidence of the applicant and keeping in view the settled law provided under section 7(3-A) as well as the judgment of the Hon'ble Supreme Court titled as H. Gangahanume Gowda vs Karnataka Agro Industries Corpn. Ltd., the controlling authority arrives at a conclusion that the applicant is entitled to a gratuity of Rs. 2,33,400/- (Rupees Two Lakhs Thirty Three Thousand Four Hundred only) along with interest for the delay in payment of the gratuity w.e.f. 30/09/2024 till the payment of gratuity."*

7. In appeal by the petitioner herein, the appellate authority decided as follows:-

*“As regards the contention relating to completion of 240 days, it is an admitted fact on record that the respondent has rendered service continuously from 1993 to 2024. The concept of "continuous service" is defined under Section 2A of the Act. **Where an employee is in continuous service within the meaning of Section 2A(1), there is no requirement to resort to the deeming provisions under Section 2A(2) or to undertake a computation of the actual number of days worked.** In the present case, the service of the respondent squarely falls within the ambit of Section 2A(1) of the Act. Notably, the appellant has failed to place on record any order indicating a break in service of the respondent.*

This position has been comprehensively analysed by the Controlling Authority in paragraphs 18.1 to 18.21 of its order, with due reliance on judgments of the Hon'ble High Courts and the Hon'ble Supreme Court.”

8. The pleading of the worker before the controlling authority being relevant is reproduced herein:-

“3. The applicant made a submission that he was employed as a Casual Helper for a period of 31 years 6 months by the opposite party, The Chief Manager HR, Tata Air India Limited, Terminal 2, Basement, NSCBI Airport, Kolkata, West Bengal - 700052 (hereinafter referred to as employer), (hereinafter referred to as the Respondent).

The applicant submitted that while gratuity has been paid to him for the period from 2013 to 2024, no such payment has been made for the earlier period from 1993 to 2013. He contended that he was willing and available to work throughout these years and was, in fact, employed for more than 240 days annually; however, the shortfall in actual working days, if any, was solely due to the respondent's failure to provide him with adequate work assignments. He argued that any discontinuity in service, therefore, cannot be attributed to his fault and should not prejudice his claim for gratuity.”

9. The worker has admitted that his initial employment in 1993 was as a ‘casual helper’ with no rights of a permanent employee.
10. It appears that he remained empanelled as a casual helper from 1993-2012.

11. The petitioner states and as admitted the private respondent was paid gratuity from 2013 to 2024. Now the claim is from the year 1993 to 2012.
12. Admittedly all long the private respondent remained a casual employee.
13. The petitioner states that in 2007 the erstwhile Indian Airlines merged with Air India and formed the National Aviation Company of India Limited (NACIL) with a goal of creating larger, more competitive national carrier. The NACIL was ultimately renamed as Air India Limited on 26.10.2010.
14. The petitioner states that as the private respondent put in the required number of days subsequently he was paid the gratuity due.
15. **The private respondent has admitted before the authority that any shortfall of the 240 days is not his fault but the management, for not providing him work for the requisite number of days.**
16. In ***Sk. Ekbal @ Ekbal Sk. vs The State of West Bengal & Ors., in WPA 23514 of 2023, order dated 03.04.2024, held:-***

“.....After hearing the parties and considering the materials on record, I have no hesitance to accept that the burden of proof to produce evidence to show that the petitioner was in continuous service in the years between 1968 to

1973 lies on the writ petitioner, particularly when it has been alleged that the petitioner was a Badli worker during that period and did not have the qualifying period of service entitling him to receive gratuity. Even though it has been argued on behalf of the petitioner that the requirement of 240 days is no more germane after the amendment to the 1972 Act on 11th February, 1981 with the introduction of Section 2A in 1972 Act but the fact remains that the petitioner, as the employee, is required to adduce evidence to show that he was in continuous service during those years. This is more so on a conjoint reading of the provisions of Section 4(2), Section 2(b), Section 2(c) and Section 2A of the 1972 Act wherefrom the qualifying service and the entitlement is explicit. Without the evidence it is not possible for the Controlling Authority also to decide the issue. Only on the employee discharging his primary burden, the burden of proof may shift on the employer.....”

17. In *The Ganges Manufacturing Company Limited vs State of West Bengal & Ors.* in FMA 882 of 2024, order dated 21.11.2024, held:-

“8. The status of a Badli workman appears to have been completely ignored by the Appellate Authority as well as the Single Bench. In the case of ***Lalappa Lingappa & Ors. Vs. Laxmi Vishnu Textile Mills Ltd.*** reported in **(1981) 2 SCC 238**, the position of a Badli workman specially has been discussed in Paragraphs 16 and 18, which is set out hereinbelow.

16. As regards badli employees, there can be no doubt that they are not in uninterrupted service and, therefore, they do not fall within the substantive part of the definition “continuous service” in Section 2(c), but are covered by Explanation I. In *Delhi Cloth & General Mills Co. v. Workmen* [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] the court, while dealing with a gratuity scheme, repelled the contention urged on

behalf of the badli employees that since they had to register themselves with the management of the textile mills and were required every day to attend the mills for ascertaining whether work would be provided to them or not, the condition requiring that they should have worked for not less than 240 days in a year to qualify for gratuity was unjust and observed:

“If gratuity is to be paid for service rendered, it is difficult to appreciate the grounds on which it can be said that because for maintaining his name on the record of the badli workmen, a workman is required to attend the mills he may be deemed to have rendered service and would on that account be entitled also to claim gratuity.”

18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the Delhi Cloth Mills case [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] . The badli employees are nothing but substitutes. They are like “spare men” who are not “employed” while waiting for a job: Conlon v. Glasgow [36 Scottish LR 652] . Vallabadas Kanji (P) Ltd. v. Esmail Koya [1978 Lab IC 809 : ILR (1978) 1 Ker 405 : 52 FJR 470] taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of “continuous service” in Section 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty.

10. *If, however, such Badli workman is allotted duties for continuously 240 days in year, it could be deemed that he was in continuous service within the meaning of Section 2A (1) and (2) read*

with Section 2(c) which defines “employee”, and would be entitled to gratuity provided he fulfills the criteria under Section 4. There is no dispute to the fact that the workman for the aforesaid 4 years did not render 240 days service in a year. Having said that, it is equally true that the Company was in lockout for the aforesaid 4 years.

15. *Casual workmen do not normally remain on any payroll on record of a Company. It is only permanent workman who are on the muster roll of the Company. To make a Badli workman entitled to gratuity for the aforesaid 4 years where admittedly he has not been engaged for 240 days in a year whether it is the fault of the workman or otherwise, would be completely fallacious in view of the succinct explanation of the status of the Badli workman in the **Lalappa Lingappa case (supra)**.*

21. *The workman has admittedly been paid gratuity for a period of 8 years of the Badli period when he actually rendered service of 240 days for the entire period in which he was made permanent employee. Gratuity cannot be computed for the aforesaid 4 years i.e. 1981, 1982, 1988 and 1993.”*

- 18.** In **Lalappa Lingappa and Ors. vs Laxmi Vishnu Textile Mills Ltd. and Mahadu Sitaram and Ors. vs Laxmi Vishnu Textile Mills Ltd., 1981 2 SCC 238**, held:-

“4. *Two questions arise in these appeals. The first is as to whether permanent employees are entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave for a number of days in a year and had actually worked for less than 240 days, due to absence without leave. The second is as to whether the badli employees are entitled to such gratuity on becoming permanent employees, for the badli period in respect of the years in which there was no work allotted to them due to their failure to report to duty. These questions relate to the years in*

which these employees were not actually employed for 240 days in a year, due to their absence without leave.

12. *The expression “continuous service” in the context of a gratuity scheme was interpreted by this Court in Jeewanlal (1929) Ltd., Calcutta v. Workmen [AIR 1961 SC 1567 : (1962) 1 SCR 717, 722-23 : (1961) 1 LLJ 513] as follows:*

“‘Continuous service’ in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If the employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service. Similarly, participation in an illegal strike which may incur the punishment of dismissal may not by itself bring to an end the relationship of master and servant. It may be a good cause for the termination of service provided of course the relevant provisions in the standing orders in that behalf are complied with; but mere participation in an illegal strike cannot be said to cause breach in continuity for the purposes of gratuity.”

(emphasis added)

The legislature has departed from the meaning given by this Court in the above case to the expression “continuous service” by incorporating the words “not due to any fault on the part of the employee concerned”, to give that expression a restricted legal connotation.

15. *In our judgment, the High Court rightly observed: “It is important to bear in mind that in Explanation I the legislature has used the words ‘actually employed’. If it was contemplated by Explanation I that it was sufficient that there should be a subsisting contract of employment, then it was not necessary for the legislature to use the words ‘actually employed’.” It is not permissible to attribute redundancy to the legislature to defeat the purpose of enacting the Explanation. The expression “actually employed” in Explanation I to Section 2(c) of the Act must, in the context in which it appears, mean “actually worked”. It must accordingly be held that the High Court was right in holding that the permanent employees were not entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave and had actually worked for less than 240 days in a year.*

16. *As regards badli employees, there can be no doubt that they are not in uninterrupted service and, therefore, they do not fall within the substantive part of the definition “continuous service” in Section 2(c), but are covered by Explanation I. In Delhi Cloth & General Mills Co. v. Workmen [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] the court, while dealing with a gratuity scheme, repelled the contention urged on behalf of the badli employees that since they had to register themselves with the management of the textile mills and were required every day to attend the mills for ascertaining whether work would be provided to them or not, the condition requiring that they should have worked for not less than 240 days in a year to qualify for gratuity was unjust and observed:*

“If gratuity is to be paid for service rendered, it is difficult to appreciate the grounds on which it can be said that because for maintaining his

name on the record of the badli workmen, a workman is required to attend the mills he may be deemed to have rendered service and would on that account be entitled also to claim gratuity.”

18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the Delhi Cloth Mills case [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] . The badli employees are nothing but substitutes. They are like “spare men” who are not “employed” while waiting for a job: Conlon v. Glasgow [36 Scottish LR 652] . Vallabadas Kanji (P) Ltd. v. Esmail Koya [1978 Lab IC 809 : ILR (1978) 1 Ker 405 : 52 FJR 470] taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of “continuous service” in Section 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty.”

19. Section 2A Payment of Gratuity Act, lays down:-

“2A. [Continuous service.- For the purposes of this Act,-

(1)An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in

respect of which an order [* *] treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.*

(2)*Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer-*

(a)for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i)one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii)two hundred and forty days, in any other case;

(b)for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-

(i)ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii)one hundred and twenty days, in any other case.

[Explanation .-For the purposes of clause (2), the number of days on which an employee has actually

worked under an employer shall include the days on which-

(i)he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii)he has been on leave with full wages, earned in the previous year;

(iii)he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv)in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed [such period as may be notified by the Central Government from time to time.]

(3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent., of the number of days on which the establishment was in operation during such period.”

20. Under Section 2A(1) the principle requirement is “uninterrupted service”.

21. The private respondent being a casual employee was not in “uninterrupted” service as defined under Section 2A(1) of the payment of gratuity act and as such the said provision being not applicable to him was wrongly applied in considering his claim by the authorities while passing the impugned order.

- 22.** As **the private respondent falls under Section 2A(2) of the act and admits that he was not provided work for the requisite number of days for the period claimed,** stating that it is the petitioner's fault, is not acceptable considering the relevant provision of the act (***Ganges Manufacturing Company Ltd. (Supra)***).
- 23.** The impugned order dated 05.08.2025 passed by the respondent No.2 and the order dated 15.01.2025 passed by the respondent No.3, **thus being not in accordance with law are set aside.**
- 24. WPA 16795 of 2026 is allowed.**
- 25.** Applications, if any, connected thereto stand disposed of consequently.
- 26.** Interim order, if any, stands vacated.
- 27.** Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul), J.]