

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**LPA No. 172/2024 in
OWP No. 1741/2018**

Reserved on: 20.05.2026
Pronounced on: 30.05.2026
Uploaded on: 30.05.2026

Whether the operative part or
full judgment is pronounced: "FULL"

**J&K Road Transport Corporation, M.A. Road,
Srinagar through its Managing Director**

...Appellant(s)

Through: - Mr. Shakir Haqani, Advocate

v/s

- 1. UT of Jammu and Kashmir through
Commissioner/Secretary to Government, Labour
Department, Civil Secretariat, Srinagar/Jammu**
- 2. Controlling Authority under Payment of
Gratuity Act (Asstt. Commissioner, Labour)
District Srinagar**
- 3. Special Tehsildar Recoveries, Srinagar**
- 4. Mohd. Sidiq Bhat
S/o Ghulam Ahmad Bhat R/o Baghyas,
Zampakadal, Chattabal, Srinagar**
- 5. Abdul Gani Wani S/o Late Mohd Ismail Wani
R/o Lasjan Srinagar**
- 6. Mohd. Ashraf Khan S/o Abdul Gani Khan R/o
Buchwara, Dalgate, Srinagar**
- 7. Abdul Aziz Dar S/o Mohd Ismail Dar
R/o Baranpathar, Batamaloo**

...Respondent(s)

Through:

Mr. Zahoor Jan, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

J U D G M E N T

Sanjay Parihar-J

1. The appellants are aggrieved of the judgment dated 23.04.2024 passed by the Writ Court in OWP No. 1741/2018, whereby the Court declined to

exercise jurisdiction under Article 226 of the Constitution and dismissed the writ petition with costs of ₹40,000/-. The Writ Court held that the appellant-Corporation had an efficacious alternate remedy against the order of the Controlling Authority directing payment of gratuity to the respondents. Instead of availing the statutory remedy within the prescribed period of limitation, the appellant-Corporation allowed the limitation period to expire and thereafter sought review of the order of the Controlling Authority despite being fully aware that the remedy of appeal had become time-barred. The Writ Court further observed that the conduct of the appellant-Corporation did not reflect bona fide prosecution of proceedings, but rather an attempt to circumvent the law of limitation and obstruct the due administration of justice. The said judgment is assailed in the present appeal on the grounds detailed in the memorandum of appeal.

2. Briefly stated, the factual background giving rise to the present Letters Patent Appeal is that respondents Nos. 4 to 7 were employed as Drivers with the appellant-Corporation and, upon their retirement, sought release of their post-retiral dues. Though part payment was made, a portion of the gratuity amount was withheld, compelling them to file separate applications before the Controlling Authority under the Payment of Gratuity Act, 1972 at Srinagar (hereinafter referred to as “the Authority”). The respondents asserted that despite repeated requests, the appellant-Corporation failed to release gratuity in accordance with the Payment of Gratuity (Amendment) Act, 2010. Respondent No.4, Mohd. Sidiq Bhat,

claimed that against the gratuity amount of Rs.4,57,980/-, he had been paid only Rs.2.50 lakhs, leaving a balance of Rs.2,07,980/-. Likewise, respondent No.5, Abdul Gani Wani, claimed gratuity of Rs.4,53,320/-, out of which only Rs.2.50 lakhs had been released, leaving arrears of Rs.2,03,320/-. Respondent No.6, Mohd. Ashraf Khan, claimed gratuity amounting to Rs.5.86 lakhs calculated @ 65% DA, whereas only Rs.2.50 lakhs had been paid, leaving a balance of Rs.3,36,000/-. Similarly, respondent No.7, Abdul Aziz Dar, claimed gratuity of Rs.4,19,300/-, against which only Rs.2.50 lakhs had been disbursed, leaving an unpaid balance of Rs.1,69,300/-.

3. Before the Authority, the appellant-Corporation appeared and pleaded that the Corporation had been running in losses for several years and was under severe financial constraints, thereby rendering it incapable of paying the revised gratuity to its retired employees. However, the entitlement of the respondents to gratuity was not disputed. Consequently, the Authority held the appellant-Corporation liable to pay the balance gratuity amount together with interest at the rate of 9% per annum from 01.05.2012 till the date of actual payment, and directed payment within 30 days from receipt of the order. The amounts determined by the Authority were as follows:

- Mohd. Ashraf Khan – Rs.3,54,946/-;
- Abdul Aziz Dar – Rs.2,27,658/-;
- Mohd. Sidiq Bhat – Rs.2,93,672/-; and
- Abdul Gani Wani – Rs.2,74,868/-.

4. Instead of complying with the aforesaid direction, the appellant-Corporation appears to have filed a review petition seeking review of the order passed by the Authority, which, however, came to be dismissed on 26.08.2018. During the pendency of the said review proceedings, the limitation period prescribed for filing an appeal against the order of the Controlling Authority expired. Consequently, upon dismissal of the review petition, the Authority proceeded to initiate recovery proceedings for realization of the gratuity arrears from the appellant-Corporation.
5. It is these recovery proceedings, along with the original order awarding gratuity, which came to be assailed before the learned Single Judge by way of a writ petition. The principal contention raised by the appellant-Corporation was that the Controlling Authority had erroneously computed the gratuity arrears by applying the principle of Dearness Allowance (DA), despite the employees of the Corporation being governed by the Cost-of-Living Allowance (COLA) scheme and not by DA. According to the appellant-Corporation, the computation was thus contrary to the applicable service conditions and settled principles of law. It was further pleaded that, having lost the statutory remedy of appeal, no efficacious alternative remedy remained available, compelling the appellant-Corporation to invoke the writ jurisdiction of this Court. It is in this backdrop that the matter has come up for consideration before this Court.
6. During the course of hearing, learned counsel for the appellant-Corporation fairly conceded that, in view of the statutory remedy of appeal available under Section 7 of the Payment of Gratuity Act, 1972,

the writ petitions were not maintainable. However, he contended that the Writ Court failed to appreciate the facts of the case in their proper perspective and dismissed the petitions on grounds extraneous to the controversy involved. Learned counsel candidly admitted that where an efficacious alternative remedy is available, the Writ Court ordinarily ought to refrain from exercising its jurisdiction under Article 226 of the Constitution.

7. Per contra, learned counsel appearing for the respondents vehemently argued that the appellant-Corporation had itself acted mischievously and in bad faith. It was contended that despite being fully aware that the Controlling Authority constituted under the Payment of Gratuity Act had no power to review or recall its order, the appellant-Corporation nevertheless pursued such remedy and allowed the prescribed period of limitation for filing an appeal to expire. According to the respondents, this conduct clearly demonstrated lack of bona fides on the part of the appellant-Corporation, which, instead of availing the remedy in accordance with law, intended to frustrate the course of justice by misrepresenting the legal position. It was thus argued that the Writ Court rightly concluded that the petitions were liable to be dismissed.
8. We have given our thoughtful consideration to the submissions made at Bar.
9. During the course of hearing, learned counsel for the appellant-Corporation, relying upon **2023 Live Law (SC) 70**, contended that where the controversy involved is purely legal in nature and does not entail

adjudication of disputed questions of fact, the High Court ought to decide the matter instead of dismissing the writ petition on the ground of availability of an alternative remedy. There can be no quarrel with the said proposition. However, the real question is whether the controversy in the present case was purely legal in nature. The answer clearly lies in the facts emerging from the record. Before the Controlling Authority, the appellant-Corporation had projected financial constraints as the reason for not honouring the gratuity claims, whereas before the Writ Court, it sought to contend that gratuity was required to be regulated in terms of the COLA Rules and not on the basis of Dearness Allowance. Significantly, it was never the case of the appellant-Corporation before the Controlling Authority that the Authority lacked jurisdiction to entertain and decide the gratuity claims, nor was it pleaded that the Authority had exceeded its jurisdiction while processing such claims. The question as to whether gratuity was to be governed by the COLA Rules or by the applicable Dearness Allowance was itself a matter falling within the domain of determination by the Controlling Authority.

10. It would be profitable to note that a learned Single Judge of this Court, while deciding a batch of petitions filed by the appellant-Corporation challenging orders passed by the Controlling Authority allowing claims for payment of gratuity, examined the scheme of Section 7 of the Payment of Gratuity Act, 1972 and the Rules framed there-under. In ***J&K State Road Transport Corporation and Another v. Nazir Ahmad Mir and Another***, 2021 Legal Eagle (J&K) 481, the Court held as under:

“In view of the mechanism of appeal provided under the Act, which of course is subject of making of pre-deposit of the entire amount of gratuity before the Controlling Authority or the appellate authority, there is no point in entertaining these petitions. I would have agreed with the plea of Mr. Haqani, learned senior counsel, that since the orders impugned are without jurisdiction, as such, there is no bar for entertaining the writ petition under Article 226 of the constitution of India, provided he could make out a case of impugned orders being without jurisdiction. His contention that the Controlling Authority was not competent in law to sanction DA is devoid of merit and cannot be accepted. The Controlling Authority has only determined the amount of gratuity payable in terms of Section 7 of the Act and in the process has applied the applicable rate of DA. This does not render the impugned orders, by any stretch of reasoning, without jurisdiction. True it is, this court may entertain writ petition under Article 226 of the constitution of India despite availability of alternative remedy provided the order impugned is either without jurisdiction or passed in violation of principles of natural justice or where the vires of legislative enactment or statutory rules is under challenge. None of the aforesaid grounds exist in these petitions and the same are therefore held to be not maintainable.”

11. Given the aforesaid legal position, the appellant-Corporation had the remedy of filing an appeal against the orders of the Controlling Authority; however, they chose not to assail the order of the Controlling Authority in appeal and instead came up with a review application filed on 04.06.2018, which was dismissed by the Authority on 26.08.2018. It appears that the review proceedings were initiated by the appellant-Corporation after expiry not only of the original limitation period of 60 days under Section 7 of the Act of 1972, but also beyond the minimum condonable period of a further 60 days. Learned counsel for the appellant-Corporation vehemently contended that the question of actual disbursement by the Corporation of the gratuity arrears was required to be determined in

accordance with the Gratuity Act of 1972, the Rules, and the directions issued by the Corporation from time to time; however, the Controlling Authority fell into error by taking recourse to payment of gratuity commensurate with the DA slab, which, according to the appellant, was not the correct position.

12. Herein, the Controlling Authority merely has determined the amount of gratuity payable in terms of Section 7 of the Act and applied the DA arrears. This does not render the order of the Controlling Authority without jurisdiction because, while considering the prayer for payment of gratuity, the Controlling Authority is required to conduct an inquiry, which has been held to be a judicial proceeding, and any person aggrieved by the order passed by the Controlling Authority in terms of Sub-Section (4) is given the right to question the said finding by preferring an appeal to the appropriate Government or such other Authority as may be specified by the Government in this behalf. The expression “determines the amount of gratuity” would include determination of any liability to pay gratuity. The entitlement of the employee to gratuity must necessarily be worked out by the Authority for the period during which the employee continued in service.

13. Since, in the present case, the appellant-Corporation had been burdened with four successive awards, and while filing an appeal in terms of Sub-Section 7(7), the second proviso stipulated that no appeal by an employer shall be admitted unless, at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that

the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub-Section (4), or deposits such amount with the appellate authority. Having regard to the plea taken by the appellant-Corporation before the Controlling Authority that its financial health was weak and, therefore, it was unable to discharge the liability of payment of gratuity, it appears that, in order to avoid such liability, the Corporation adopted the process of filing a review petition, unmindful of the consequences that the Controlling Authority had no power to review its own order.

14. Be that as it is, since the appellant-Corporation had raised a bona fide issue as to whether the respondents were entitled to gratuity arrears commensurate with the COLA or DA, such question squarely falls within the domain of determination by the appellate authority. The writ petition was, therefore, rightly not maintainable. However, the Writ Court, instead of relegating the appellant-Corporation to avail the statutory remedy before the appellate authority in terms of Section 7(7) of the Act, proceeded to decide the writ petition, unmindful of the fact that any observations made therein were bound to prejudice the parties in pursuing the appeal, as the case may be. Since the writ petition itself was not maintainable, the parties ought to have been relegated to the appellate authority to pursue their remedies in accordance with law. The appellant-Corporation had a statutory right to avail the remedy provided under the Act, and the Writ Court ought to have considered the matter from that perspective instead of proceeding to hold that there was any

misrepresentation or deliberate misconduct on the part of the appellant-Corporation. Merely because the appellant-Corporation had filed a review petition did not imply any intention to misrepresent facts or plead falsehood. The Corporation may have been advised to seek review without being mindful of the legal consequence that such a review petition was not maintainable. Be that as it may, we allow this appeal and set aside the judgment of the Writ Court by dismissing the writ petition, while leaving it open to the appellant-Corporation to avail the remedy of appeal provided under the Payment of Gratuity Act, 1972. The period spent by the appellant-Corporation in pursuing the review petition and the writ petition shall, having regard to the submissions made by the parties, be excluded while computing the period of limitation for filing the appeal. Nothing stated herein above shall prejudice the parties in any manner while perusing the appeal.

15. ***Disposed of*** as such.

(Sanjay Parihar)
Judge जयते

(Sanjeev Kumar)
Judge

SRINAGAR

30.05.2026

Akshil Dev

Whether the order is speaking? : **Yes**

Whether the order is reportable? : **Yes**