

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

Reserved on: 06.07.2026

Pronounced on: 17.07.2026

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*Whether the operative part or
full judgment is pronounced:*

Full

RP No.103/2022

GHULAM MOHI UD DIN WANI

... PETITIONER(S)

*Through: - Mr. Shafqat Nazir, Advocate, with
Ms. Heena Baqal, Advocate.*

Vs.

MANAGING DIRECTOR, J&K SIDCO & ORS.

...RESPONDENT(S)

Through: - Mr. Waseem Gull, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present review petition, the review petitioner, who happens to be respondent No.2 to the writ petition, has sought review of judgment dated 16.11.2021 passed by this Court in OWP No.689/2018 filed by the respondents herein.

2) Initially, the review petitioner, who was an employee of the Small Industries Industrial Development Corporation (for short "SIDCO"), upon his superannuation on 30th November, 2006, was paid gratuity in the amount of Rs.2.50 lakhs by his employer, the writ petitioner/ respondent. In the year 2012, the review petitioner approached the J&K Industrial Tribunal-

cum-Labour Court (hereinafter referred to as “the Tribunal”), by way of an application in terms of Section 33(c) of Industrial Disputes Act 1947, read with Section 15 of the Payment of Wages Act, for seeking recovery of balance amount of gratuity dues. The case set up by the review petitioner before the Tribunal was that he was entitled to Rs.3.50 lakhs on account of gratuity in terms of the decision taken by the Board of Directors of the SIDCO and, as such, he is entitled to balance amount of Rs.1.00 lakh on account of gratuity along with interest. During the pendency of the application, the review petitioner amended his application, and claimed that he was entitled to an amount of Rs.10 lakhs as gratuity in view of the changed rule position.

3) The SIDCO, in its objections filed before the Tribunal, claimed that at the time when the review petitioner had attained the age of superannuation, the gratuity ceiling was Rs.2.50 lakhs, which was enhanced to Rs.3.50 lakhs in the year 2008 but the order of enhancement of gratuity has not been given retrospective effect by the Board of Directors of the SIDCO.

4) The Tribunal, in terms of award dated 20.12.2017, came to the conclusion that J&K Civil Service Regulations, so far as the same relate to payment of gratuity, are applicable to the employees of the SIDCO and with the amendment of these

regulations in terms of SRO 94 dated 15th April 2009, the overall ceiling of death-cum-retirement gratuity has been enhanced to Rs.10 lakhs with effect from 01.01.2006. On this basis, the Tribunal held that there was no justification for the SIDCO to withhold the enhanced amount of gratuity to respondent No.2 as he has retired after 01.01.2006.

5) The aforesaid award came to be challenged by the SIDCO by way of a writ petition bearing OWP No.689/2018 before this Court. Vide the judgment under review, this Court, allowed the writ petition by holding that in terms of decision of Board of Directors of SIDCO, the review petitioner was entitled to maximum gratuity of Rs.2.50 lakhs, which they have duly paid to him. It was observed by this Court that the orders relating to payment of enhanced amount of gratuity to the employees of the SIDCO came into effect much after the superannuation of the review petitioner and, as such, the same are not applicable to his case.

6) The review petitioner (who is respondent No.2 in the writ petition) has sought review of the judgment dated 16.11.2021. Initially, in the review petition, it was urged by the review petitioner that in terms of minutes of dated 133rd meeting of the Board of Directors of SIDCO held on 08.12.2015, the decision regarding the enhancement of gratuity from Rs.3.50 lakhs to Rs.0.00 lakhs, was confirmed

by the Board of Directors, as such, the observations of the Writ Court that enhanced amount of gratuity cannot be granted to the review petitioner, is contrary to the record. However, during pendency of the review petition, it has been amended and vide the amended review petition, another ground has been urged by the review petitioner, by contending that, where two provisions relating to gratuity are in operation, the provision which confers a more beneficial entitlement upon the employee must prevail over a provision operating to his detriment.

7) Heard and considered.

8) It is a settled law that scope of jurisdiction of review of an order or judgment passed by a Court is very narrow. It is only if there is an error apparent on the face of the record or that there is a discovery of new evidence not previously available or a similar other reason, that a Court can review its own order/judgment. A review petition cannot be an appeal in disguise so as to determine the merits of the contentions already dealt with by the Court.

9) With the aforesaid legal position in mind, let us now analyze the facts of the present case. This Court, while passing the judgment under review, has clearly observed that the employees of SIDCO are governed by Regulation 78 of the Regulations of 1969, as amended from time to time. It has

been also observed that the service conditions of the employees of the SIDCO including the payment of gratuity are governed by its own regulations and it is only upon a decision by the Board of Directors of the SIDCO that the rules and regulations of the Government employees would apply to the employees of the SIDCO with necessary modifications as per the decision of the Board. This Court has went on to observe that in the instant case, the Board decided to apply SRO 94 of 2009 so far as it pertains to enhancement of ceiling of gratuity to its employees with effect from 24.05.2010 and not from 01.01.2006. Therefore, an employee of the SIDCO, who has retired prior to 24.05.2010, cannot claim the benefit of enhanced gratuity at the rate of Rs.10.00 lakhs.

10) The review petitioner claims that vide Board decision dated 08.12.2015, the decision of the sub-committee enhancing gratuity limit from Rs.3.50 lakhs to Rs.10 lakhs has been confirmed. A perusal of the writ record would show that decision of the sub-committee taken on 17.04.2008 was to enhance the gratuity from Rs.2.50 lakhs to Rs.3.50 lakhs and to enhance gratuity encashment limit of the SIDCO employees in future at par on the lines as available to the State Government employees and other PSUs. This is what has been confirmed by the Board of Directors in its meeting dated 08.12.2015. The word “future” mentioned in the

decision of the sub-committee is significant. It means that gratuity encashment limit available to State Government employees would apply to the employees of the SIDCO only in future and not to those employees who had already retired. Since the review petitioner had attained superannuation in the year 2006 itself and the decision to enhance the gratuity limit of the SIDCO employees to bring it at par with State Government employees was taken only on 07.04.2008, the same would not apply to his case. On this ground, the review petitioner does not have a case for review of the judgment.

11) However, there is yet another aspect of the matter which is required to be considered. The review petitioner has contended that where two provisions relating to gratuity are in operation, the provision which confers a more beneficial entitlement upon the employee must prevail over a provision operating to his detriment. In this regard, the review petitioner has relied upon the judgment of this Court in the case of **Project Construction Corporation Workers Association v. State of J&K and others** (SWP No.1539/2003 decided on 06.10.2023). In the said case, this Court has, after noticing the provisions contained in Sections 4 and 14 of the Payment of Gratuity Act, held that the provisions of Payment of Gratuity Act have predominance over all other rules enactments or instruments or contracts so far as the same

relate payment of gratuity. The Court further went on to hold that any rule in the Gratuity Rules of an establishment, which is in conflict with the provisions of Section 4 of the Payment of Gratuity Act, has to be ignored if the said rule is not beneficial to the employee, as compared to the provisions of Payment of Gratuity Act. The Court held that if under the provisions of the service rules of his establishment, an employee is entitled to receive amount of gratuity which is more than the amount of gratuity payable under the provisions of Payment of Gratuity Act, he has the option of choosing the amount of gratuity payable under the service rules of the said establishment.

12) Turning to the facts of the present case, as per the regulations of the SIDCO relating to payment of gratuity, in the year 2006 its employees were entitled to payment of gratuity up to a maximum limit of Rs.2.50 lakhs whereas, as per the Payment of Gratuity Act, in the year 2006, the maximum limit of gratuity payable to an employee of an establishment under Section 4(3) of the Payment of Gratuity Act. As already stated, because the provisions of Payment of Gratuity Act have predominance over the rules of an establishment which provide for payment of gratuity, therefore, an employee of an establishment is entitled to payment of gratuity at the rate mentioned in Section 4(3) of

the Payment of Gratuity Act, provided the same is more beneficial to him.

13) The aforesaid aspect of the matter has not been taken into account by this Court while passing the judgment under review. Since this Court has ignored the statutory provisions of law as contained in Payment of Gratuity Act while passing the judgment under review, as such, an error apparent on the face of the record has crept in, which deserves to be corrected.

14) Accordingly, the judgment under review passed by this court is recalled and the matter is directed to be listed for fresh consideration on the question whether the provisions of Payment of Gratuity Act are applicable to the case of the review petitioner and if so, whether he is entitled to enhanced amount of gratuity. The main writ petition (OWP No.689/2018) be listed for hearing on **10.08.2026.**

(Sanjay Dhar)
Judge

Srinagar,
17.07.2026

"Bhat Altaf-Secretary"

Whether the judgement is reportable: Yes/No