

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 13641 of 2018

Kajal Bouri
Versus
The Appellate Authority & Anr.
With

WPA 13646 of 2018

Md Feku @ Md Abrar
Versus
The Appellate Authority & Anr.
With

WPA 13655 of 2018

Smt. Dukhni Rabidas
Versus
The Appellate Authority & Anr.
With

WPA 13660 of 2018

Domni Rabidas
Versus
The Appellate Authority & Anr.
With

WPA 13664 of 2018

Md. Anwar Hussain
Versus
The Appellate Authority & Anr.

With
WPA 13671 of 2018

Bipti Rabidas
Versus
The Appellate Authority & Anr.

With

WPA 13678 of 2018

Bimali Rabidas
Versus
The Appellate Authority & Anr.
With

WPA 13680 of 2018

Smt. Lakhiya Rabidas
Versus
The Appellate Authority & Anr.
With

WPA 13681 of 2018

Kailash Bouri
Versus
The Appellate Authority & Anr.

For the petitioner : Mr. R. N. Majumder
Mr. S. M. Obaidullah

Heard on : 20th December, 2023

Judgment on : **20th December, 2023.**

Raja Basu Chowdhury, J:

1. The present batch of writ petitions concerns a challenge to the respective orders passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”).
2. Shorn off unnecessary details, the facts are that the petitioners are the contract labourers and were working under a contractor employed by Indian Iron & Steel Company Ltd. (IISCO) at its Kulti Works. The petitioners contend that IISCO was later amalgamated with Steel Authority of India Limited (SAIL) on 16th February, 2006.

According to the petitioners, the petitioners were employed and worked for the principal employer (IISCO), at the establishment of the principal employer, continuously for several years without any break. The petitioners, however, used to get their monthly wages from their respective contractor. On their retirement from service, the retrenchment compensation was, however, paid by the principal employer. Unfortunately for the petitioners since, gratuity was not disbursed in their favour by the contractor or by the principal employer, the petitioners had filed individual applications in Form 'N' before the Controlling Authority under the said Act. On contest the Controlling Authority had held the principal employer to be liable for payment of gratuity and accordingly by issuing individual notices in Form 'R', had called upon the principal employer to make payment of the gratuity so determined.

3. Records reveal that being aggrieved with such decision, the respondent no.2 had preferred an appeal under the provision of Section 7(7) of the said Act. The Appellate Authority, however, taking note of the legal position and by proceeding on the premise that no employer-employee relationship subsisted between the parties had while allowing the appeal set aside the order passed by the Controlling Authority.
4. Being aggrieved, the present writ petitions have been filed.
5. Since, a common question of law is invoked in the aforesaid writ petitions they are taken up for consideration together.

6. Mr. Majumder, learned advocate representing the petitioners in all connected writ petitions submits that the respective petitioners were working for the principal employer in the establishment of the principal employer. Admittedly, the principal employer had paid gratuity for several workers. Since the respective petitioners were working in the establishment of the principal employer, the principal employer was obliged to make payment of gratuity. By referring to the provisions of Section 2(e) of the said Act, it is submitted that the definition of employee does not exclude a contract worker. It is still further submitted that the principal employer is otherwise obliged to make payment of gratuity in terms of the provisions contained in Section 21(4) of the Contract Labour (Regulation & Abolition) Act, 1970. He submits that the aforesaid aspect had not been taken into consideration by the Appellate Authority at all and by ignoring such provision the Appellate Authority had mechanically allowed the appeal by setting aside the order passed by the Controlling Authority. He prays that this Hon'ble Court may be pleased to set aside the order passed by the Appellate Authority and to restore the order passed by the Controlling Authority.
7. The respondents, however, have not contested the cause. On 19th December, 2023 when the matter appeared in the list, the respondents were not represented. As such, the matter was adjourned. Even today the respondents are not represented, as such

aforesaid matters are taken up for consideration ex parte as against the respondents.

8. Heard the learned advocate appearing for the petitioners and considered the materials on record. The issue, that falls for consideration in the present batch of writ petitions, is whether notwithstanding there being no employer-employee relationship with the respective petitioners on the one hand and the respondent no.2 on the other, can be the respondent no.2 as principal employer be made liable for making payment of gratuity. To appreciate the above, the relevant Section 2(e), 2(f) and Section 4(1) of the said Act is extracted hereinbelow:

“2. (e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

2.(f) “employer” means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—

(i) belonging to, or under the control of, the Central Government or a State Government a person or authority appointed by the appropriate Government for

the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

4. *(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—*

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his

nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.”

9. A combined reading of the provisions of Section 2(e) and 2(f) and Section 4(1) of the said Act in no uncertain terms provides that for the provisions of the said Act to apply there must be a employer-employee relationship which may be expressed or may be implied. The determination of gratuity thus, cannot be divorced from the employer-employee relationship. In this case, I find that admittedly, the respective petitioners were the contract labourers. The respective petitioners have admitted in the writ petitions that the respective petitioners were being paid wages directly by the contractor. The petitioners, however, contend that *ex gratia* was disbursed in their favour by the principal employer.
10. Although, Mr. Majumder, by placing reliance on the provisions of Section 21(4) of the Contract Labour (Regulation & Abolition) Act, 1970 has attempted to impress upon this Court that it is the obligation of the principal employer to make payment of not only

the wages but also the gratuity as may be found due, I find that a Co-ordinate Bench of this Hon'ble Court had the occasioned to consider the provisions of the said Act and the Contract Labour (Regulation & Abolition) Act, 1970. In the case of ***Sailen Seth vs. Deputy Labour Commissioner*** reported in **2010 (3) CHN (CAL) 899**, the Coordinate Bench had returned the finding that the said Act and the Contract Labour Act seeks to achieve different objects and as such it would be improper to direct payment of gratuity with reference to Contract Labour Act. Similar view has been taken by this Court in the case of ***FIS Payment Solution and Services India Pvt. Ltd. vs. Tapan Roy & Ors.*** delivered on 12th September, 2023 in **WPA 10495 of 2022**.

11. It may be noted here that the Hon'ble Supreme Court while dealing with the applicability of the provisions of Section 25(2)(v)(a) of the Contract Labour Act and Section 21(4) thereof, in the case of ***Hindustan Steel Works Construction Ltd. vs. Commissioner of Labour & Ors.*** reported in **(1996) 10 SCC 599** had in clear and no uncertain terms observed that the principal employer shall not be liable to pay any additional amount under Section 21(4) of the Contract Labour Act but shall only be liable to the extent of any difference between the wages contracted for in its agreement with the contractor or the lesser wages paid by the contractor to the contract labourers, with a right to recover the same from the contractor. The obligation under Section 21(4) of the Contract

Labour Act being limited to payment of differential wages and the term wages for the purpose of Section 21(4) of the Contract Labour Act, being limited to contractual wages, no other amount can be included thereunder. A similar view has been taken by the Hon'ble High Court of Gujarat at Ahmedabad in the case of ***Indian Oil Corporation vs. Chief Labour Commissioner (Central)*** reported in **MANU/GJ/1644/2018**.

12. Having regard to the aforesaid, I do not find any irregularity committed by the Appellate Authority in allowing the appeal thereby, setting aside the order passed by the Controlling Authority. The petitioners have also not been able to identify any irregularity far less any jurisdictional error committed by the Appellate Authority. In view thereof, the writ petitions fail and are accordingly dismissed.
13. Dismissal of the aforesaid writ petitions shall, however, not prevent the petitioners from maintaining their respective claims as against their employer, being the contractor.
14. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)