

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

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A. No.11387 of 2024

Calcutta Jute Manufacturing
Company Limited

Vs.

Baleswar Shaw & Ors.

With

W.P.A. No.11392 of 2024

Calcutta Jute Manufacturing
Company Limited

Vs.

Munib Shaw & Ors.

With

W.P.A. No.11423 of 2024

Calcutta Jute Manufacturing
Company Limited

Vs.

Yogendra Sahini & Ors.

For the petitioners : Mr. Soumya Majumder, Advocate
Mr. S.K. Singh, Advocate
Mr. Ravi Kumar Dubey, Advocate

For the respondent No.1 : Mr. Rananeesh Guha Thakurta, Advocate
Ms. Senjuti Sengupta, Advocate
Ms. Dipa Roy, Advocate

For the State : Mr. Susovan Sengupta, Advocate
Mr. Manas Kumar Sadhu, Advocate
Ms. Sabnam De Bardhan, Advocate
Mr. Amit Kumar Ghosh, Advocate

Judgment on : 24.12.2024

Ravi Krishan Kapur, J.:

1. All these petitions raise common questions of law and fact and were heard analogously.
2. The petitioners assail orders passed by the Certificate Officer, Alipore in Case No. 22/Misc/22 dated 1 February 2024 and 21 March 2024, Case No. 50/Misc/23 dated 4 March 2024 and 21 March 2024 and Case No. 22/Misc/22 dated 1 February 2024 and 21 March 2024 respectively in proceedings initiated under section 8 of The Payment Gratuity Act, 1972.
3. The crux of the disputes between the parties is whether compound interest under section 8 of the Act should be calculated on the gratuity amount alone or on the gratuity amount and simple interest combined together.
4. Briefly, the petitioner is a company involved in the business of manufacturing and sale of jute products. Each of the private respondents were appointed as badli workers by the petitioner and continued in employment till retirement. Upon retirement, the respondents filed their respective claims in Form N as prescribed under the Act, before the Controlling Authority which was disposed of by orders dated 13 May 2021, 28 December 2022, and 27 April 2021 respectively directing the petitioner to make payment towards the principal amount of gratuity alongwith interest aggregating to Rs.4,16,544/- (Rs. 2,08,272 + Rs.2,08,272), Rs. 3,41,990.86/- (Rs.1,76,102.40 + 1,65,888.46) and Rs.3,49,409/- (Rs.1,73,232 + Rs.1,76,177) respectively. Subsequently, the respondent no 1 initiated certificate proceedings for recovery of the awarded amount. After a lapse of few years, the said amount was deposited by the petitioner company on 18 January 2024, 12 February 2024 and 18 January 2024 respectively.

In such circumstances, each of the employees claimed compound interest before the Certificate Officer due to the delay by the employer in making payment within the stipulated time. By the impugned orders dated 1 February 2024, 4 March 2024 and 1 February 2024 respectively, the Certificate Officer passed directions upon the petitioner to make further payments of Rs.1,83,914/-, Rs.53,723/- and Rs.1,57,501/- respectively towards compound interest @ 15% per annum for the period commencing from 13 June 2021 till 18 January 2024, 27 January 2023 till 12 February 2024 and 27 May 2021 till 18 January 2024 respectively. Subsequently, the respondent no. 4 by an order dated 21 March 2024 also directed attachment of the bank account of the petitioner and further prohibited all outward transactions till further orders and sought for information of the petitioner's remaining bank accounts.

5. It is contended that the respondent no. 4 erroneously calculated compound interest under section 8 of the Act on an aggregate amount of Rs.416544/-, Rs.3,41,990.86/- and Rs.3,49,409/- respectively which included the principal amount on account of gratuity alongwith interest whereas the calculation should have been only on the gratuity amount of Rs.2,08,272/- Rs 1,76,102.40/- and Rs.1,73,232 only. It is submitted that section 8 of the Act clearly provides for a ceiling limit on the amount of gratuity alone and not on the cumulative amount inclusive of the interest component. In view of the above, the impugned orders dated 1 February 2024, 4 March 2024 and 1 February 2024 and 21 March 2024 respectively have been passed in excess of jurisdiction and in violation of the provisions of the Act.

6. It is also submitted that the Act differentiates between liability for gratuity and interest. Section 4(3) of the Act provides for a ceiling limit on gratuity. The expression “for that amount” in section 8 of the Act can relate to gratuity alone. It is also contended that when a Certificate is issued for a specified amount for recovery, a prescribed time frame is contemplated within which the debt must be discharged by the employer. This is also in conformity with sections 6 and 7 of the Bengal Public Demands Recovery Act 1913. The second proviso to section 8 categorically restricts the amount of compound interest to a maximum amount of gratuity alone. On a combined reading of the provisions of the Act, read with the provisions of the Bengal Public Demand Recovery Act, 1913, the amount of compound interest payable in view of the plain language of the second proviso of section 8 of the Act can never exceed the amount of gratuity payable under the Act.
7. On behalf of the respondent no.1, it is contended that the gratuity referred to under the second proviso of section 8 of the Act is deemed to be inclusive of simple interest. Accordingly, in awarding compound interest the Certificate Officer has correctly taken the ceiling limit to be inclusive of the gratuity and the interest component. As such, there is no infirmity with any of the impugned order.
8. For convenience, the relevant sections of the Act of 1972 are set out below:

Section 4: Payment of gratuity.

(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:

1[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.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of 2[an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

3[Explanation.-- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed 4[5[such amount as may be notified by the Central Government from time to time] .]

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),--

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 6[may be wholly or partially forfeited]--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Section 7: Determination of the amount of gratuity.

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

1[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the

gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

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3[(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

4[(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

3[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

4[(e)] As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit--

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the 5[nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

6[Provided further 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 with the appellate authority such amount].

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

Section 8: Recovery of gratuity.

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

[Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]

(emphasis added)

9. The Payment of Gratuity Act, 1972, is a social welfare legislation. All labour and welfare legislations are to be broadly and liberally construed. The fundamental principle underlying gratuity is that it is a retirement benefit for long service and as a provision for old age. Demands of social security and social justice make it necessary to provide for payment of gratuity. On the introduction of the Act, a statutory liability is now cast on the employer

to pay gratuity within the stipulated time period. The Act makes a clear distinction between gratuity and interest. In *H. Gangahanume Gowda vs. Karnataka Agro Industries Corporation, Ltd.* [2003] 1 L.L.N 805, it has been held as follows:

“ 7. ...Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala v. M. Padmanabhan Nair* [(1985) 1 SCC 429 : 1985 SCC (L&S) 278 : (1985) 50 FLR 145] . Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987.

9. ...there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act.”

10. In *Sharda Nand Lal Das vs. Assistant Labour Commissioner in* [2019] 4 Mh.L.J, it has been held as follows:

“12. The scheme that emerges from the above quoted two sections provides for payment of gratuity to the employee within 30 days from the date it becomes payable. In fact, it is mandated that the employer shall pay the amount of gratuity as soon as it becomes payable, sub-section (3-A) of section 7 of the said Act provides that if the gratuity payable to the employee is not paid within the period specified in sub-section (3), which is 30 days, the employer shall pay simple interest at the rate notified by the Central Government from the date on which the gratuity becomes payable to the date on which it is paid. The only rider to the said requirement of payment of interest by employer is that if the delay is attributable to a fault of the employee and if the employer has obtained permission in writing from the Controlling Authority for delayed payment on such ground, no interest would be payable. The proviso to section

7(7) of the said Act mandates that if the employer files an appeal before the Appellate Authority challenging determination of gratuity by the Controlling Authority, it shall deposit the amount of gratuity with the Controlling Authority and that no appeal shall be admitted, unless such deposit is made. Section 8 of the said Act provides that if the amount of gratuity payable under the said Act is not paid by the employer within the prescribed time, the Controlling Authority shall issue a certificate to the Collector for recovery of the amount along with compound interest as notified by the Central Government. It is undisputed that the rate of simple interest payable under section 7(3-A) of the said Act as notified by the Central Government and relevant for the case of the employee is 10% per annum and the compound interest under section 8 of the said Act as per notification issued by the Central Government is 15% per annum compound interest.”

11. Section 7(3) confers liability on the employer to take steps for payment of gratuity. Section 7(3A) confers liability to pay simple interest at the rate specified by the Central Government except in cases where the delay is attributable to the employee. The provision to determine the amount of gratuity in section 7(4)(c) authorizes the Controlling Authority to “determine a dispute” and direct the employer to pay such an amount. Section 7(7) of the Act mandates only the gratuity amount to be deposited when preferring an appeal. The term “such amount” has been repeatedly used in the Act and can only mean gratuity. The liability to pay simple interest as stipulated under section 7(3A) of the Act for an employer is to make payment within 30 days from the date it becomes payable.
12. Section 8 of the Act defines the mode for recovery of gratuity. This section provides for sanction for such payment and the methodology for its recovery with interest for the delay in payment caused by default of the employer. The liability to pay compound interest does not stem from the certificate of the Controlling Authority but from the default in the performance of the duty of

the employer. Section 8 contemplates issuance of certificate by the Controlling Authority only for the amount of gratuity and not for “such amount” over and above the gratuity amount. The expression “for that amount” in section 8 is qualified by the “amount of gratuity”. In particular, the second proviso to section 8 specifically restricts the amount of compound interest which cannot exceed the amount of gratuity. Hence, no interest amount can be read into the gratuity amount in calculating compound interest under section 8 of the Act.

13. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24, it has been held as follows:

“20. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in a somewhat different context:

‘6. ... When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser.’

(See Shri Mandir Sita Ramji v. State (UT of Delhi) [Shri Mandir Sita Ramji v. State (UT of Delhi), (1975) 4 SCC 298], SCC p. 301, para 6.)

21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than

concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.”

14. Similarly, in *Bhasker vs Ayodhya Jewellers (2023)*⁹ SCC 281, it has been held as follows:

20. As a normal rule, while interpreting the statute, the court will not add words or omit words or substitute words. However, there is a well-recognised exception to this rule which is found in a decision of the House of Lords in Inco Europe Ltd. v. First Choice Distribution [Inco Europe Ltd. v. First Choice Distribution, (2000) 1 WLR 586 (HL)] , wherein the Court held thus : (WLR p. 592)

“ ... The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words. Some notable instances are given in Professor Sir Rupert Cross's admirable opusculum, Statutory Interpretation, 3rd Edn. (1995), pp. 93-105. He comments at p. 103:

‘In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role.’

This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine

the meaning of the enactment would cross the boundary between construction and legislation.”

21. *The principle laid down in the said decision was reiterated by this Court in Surjit Singh Kalra v. Union of India [Surjit Singh Kalra v. Union of India, (1991) 2 SCC 87]. In para 19, this Court held thus: (SCC p. 98)*

“19. True it is not permissible to read words in a statute which are not there, but ‘where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words’ (Craies Statute Law, 7th Edn., p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar [Hameedia Hardware Stores v. B. Mohan Lal Sowcar, (1988) 2 SCC 513] , SCC pp. 542-25 where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See : Sirajul Haq Khan v. Sunni Central Board of Waqf [Sirajul Haq Khan v. Sunni Central Board of Waqf, 1958 SCC OnLine SC 27 : 1959 SCR 1287 : AIR 1959 SC 198] , AIR p. 204, para 16 : SCR p. 1299.)”

15. There is no dispute as to the power of the Courts to award interest on interest or compound interest subject to the power conferred under statute or under the terms of a contract. On a plain and ordinary reading of the second proviso to section 8 of the Act, the interest component can never exceed the gratuity amount under the Act. The gratuity amount as specified in the second proviso to section 8 of the Act cannot be interpreted to mean inclusive of interest. This would amount to re-writing the section and adding words into the same which is prohibited. On a combined reading of section 8 of the Act, read with sections 6, 7, and 13 of the Bengal Public Demands Recovery Act, 1913, it is clear that the Collector does not have any power nor jurisdiction to charge compound interest which exceeds the gratuity amount payable under the Act. *[Sharda vs. Assistant Labour Commissioner 2019 (4)*

Mh.L.J, D. Khosla and Company vs. Union of India SCC OnLine SC 1898 and H. Gangahanume Gowda vs. Karnataka Agro Industries Corporation Ltd. (supra)].

16. It is true that the gratuity amount should be paid upon superannuation of an employee and the prolonged delay undoubtedly has a detrimental effect on the employee. Nevertheless, the interpretation of the section as contended by the respondent would tantamount to adding words to the plain language of the Act which is impermissible. It is well settled that where the language of the section is plain and unambiguous, the legislative intent must be given effect to and there is no scope to add, subtract, omit or substitute words. Accordingly, the impugned orders are unsustainable to the extent that they take into account the interest component in calculating the ceiling limit under the second proviso to section 8 of the Act. All the decisions cited by the respondent no. 1 are distinguishable and inapposite.
17. In view of the above, WPA 11387 of 2024, WPA 11392 of 2024 and WPA 11423 of 2024 respectively stand allowed. The impugned orders are set aside. The matter is remanded to the Certificate Officer for recalculation of the amount payable to the employees as compound interest and for recovery of the entire gratuity amount inclusive of both simple and compound interest payable. The above exercise is to be completed within a period of 4 weeks from the date of communication of this order to the Certificate Officer and without granting any unnecessary adjournments to either of the parties.

(Ravi Krishan Kapur, J.)