

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 1574 of 2025

**Pioneer Cooperative Car Parking Servicing & Construction
Society Ltd.**

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Milan Chandra Bhattacharyya,
Ms. Sulagna Bhattacharyya (Bagchi).

For the State : Mr. Nirmalya Biswas,
Mr. Md. Ziaur Rahaman.

For the Respondent No. 4 : Mr. Balaram Patra,
Mr. Suvadip Bhattacharjee.

Hearing concluded on : 24.01.2025

Judgment on : 30.01.2025

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred praying for direction upon the respondents not to proceed with the impugned proceeding being case no. G-40/24 pending before the Controlling Authority under Payment of Gratuity Act, 1972 and further directing the respondents to reject the application 'O' filed under rule 10(1) of the West Bengal Payment of Gratuity Rules, 1973 as not maintainable both in law and

on facts and further prayed for quashing of the proceeding in G-40/24 pending before the Controlling Authority under Payment of Gratuity Act 1972 and to set aside the order dated 07.01.2025 with direction upon the respondents to reject the application for gratuity claimed in annexure P in form 'O'.

- 2.** The petitioner herein is a cooperative society and the members are the workers, workers are salaried, they get bonus, incentive, pension etc. They get gratuity age of worker is 60, membership is conterminous with the retirement or extended period.
- 3.** The petitioner's further case is that the respondent no. 4 was a worker and he reached the age of superannuation on 31.03.2021. He was allowed to continue with his job even the completion of 60 years. He also applied for further extension on 01.09.2023 to avail lucrative salary hike, he continued till November, 2023. Society wrote a letter to him on 17.02.2024 to deposit the amount enjoyed by him through defalcation within a week, failing which BOD will have to adjust all his funds payable to him.
- 4.** Several allegations have been made by the petitioner's society against the respondent no. 4.
- 5.** By an order dated 26.06.2024 the Controlling Authority under the Payment of Gratuity Act has directed the parties to appear for hearing on 10.07.2024 at 01.30 p.m. and has directed written statement to be filed, if any. The said notice was issued in form 'O'.
- 6.** The society/petitioner herein has filed written objection before the Controlling Authority.

7. The petitioner's grievance is in respect of the order dated 07.01.2025 by which the Controlling Authority has held that the application before the authority is not barred by limitation and 20.01.2025 has been fixed for hearing and filing written statement.
8. **Unfortunately, the petitioner has then proceeded to make personal remarks and indecent aspersions against the Controlling Authority.**
9. **The petitioner without going into the legality of the order challenged has concentrated on making derogatory remarks in the writ petition against the Controlling Authority, who happens to be a lady officer. Such pleadings are unbecoming from a member of the bar and this Court condemns such pleadings.**
10. Heard the parties.
11. **Rule 7 (5) lays down as follows:-**

"7. Application for gratuity-

.....

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer concerned, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period and any dispute in this regard shall be referred to the controlling authority and his decision thereon shall be final."

12. **It is the contention of the petitioner that the employee on superannuation accepted the extension of service and by such act has waived his claim of gratuity and, as such, no gratuity is**

payable. It is also submitted that the claim is barred by limitation.

- 13. In *G.B. Pant University of Agriculture and Technology vs Sri Damodar Mathpal, in Special Leave to Appeal (C) No(s). 1803 of 2018, decided on 18 November, 2021*, the Supreme Court held:-**

*“Having heard learned counsel for the petitioner and having perused the material placed on record, we are at one with the view taken by the High Court **that mere exercise of option by an employee, to avail the benefit of extension of age of retirement to 60 years, could not have operated against his entitlement to gratuity**; and exercising of such an option will not deprive the private respondents to gratuity unless and until the establishment i.e., the petitioner-University, was exempted in strict compliance of Section 5 of the Payment of Gratuity Act, 1972, after prior approval of the State Government. There being no such exemption availed by the petitioner-University, the High Court has rightly not interfered with the principal part of the orders passed by the Controlling Authority and the Appellate Authority. On the other hand, the High Court has been rather considerate to the petitioner in reducing the rate of interest awarded to the private respondents from 10% to 6% p.a. In view of the above, no case for interference is made out. Hence, these special leave petitions stand dismissed. All the pending applications stand disposed of.”*

- 14. Thus the exercise of option by the respondent herein, having availed the benefit of extension age does not operate against his entitlement to gratuity.**

- 15. The respondent herein superannuated on 31.03.2021 and continued on extension till November, 2023.**

- 16. The proceeding in this case has been initiated in 2024 being G-40/24.**

- 17. The order challenged though not argued on merit is as follows:-**

“On perusal of oral and written averments and the judgments cited by both the parties, the undersigned holds the following decisions:

I) In terms of Rule 7(5), an application for payment of gratuity filed even after the expiry of the stipulated time-period and if the applicant adduces the sufficient cause for the delay in preferring his claim before this forum; no claim for gratuity under the Act concerned shall be invalid merely because the claimant failed to present his application within the specified time-period as per statute.
II) Besides, the employer is duty-bound to issue Form L/M to the employee concerned in terms of Rule 8; whereas the intent applicant sent Form-'J' on 22.03.2024. But the employer did not do the same.
III) Last but not the least, that non payment of gratuity is a continuing offence and there is no question of any delay in approaching the Appropriate Authority under the Act concerned.

Hence, the Form -'N' dtd. NIL is maintainable before this forum and the said appl. is taken on merit and the op Co. is directed to submit W/S on 20/01/25 at 1.00 p.m."

- 18. Rule 7(5) of the act permits the controlling authority to condone any delay in preferring an application for payment of gratuity and the rule also provides that any dispute in respect of limitation shall be referred to the controlling authority, whose decision shall be final.**
- 19. On perusal of the order dated 07.01.2025 this Court finds no illegality in the order, and being in accordance with law requires no interference.**
- 20. WPA 1574 of 2025 stands dismissed with cost of Rs. 50,000 (fifty thousand) to be paid to the State Legal Services Authority.**
- 21. All connected application, if any, stands disposed of.**
- 22. Interim order, if any, stands vacated.**

- 23.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)