

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2763 of 2025

**Midnapur District Service cum Marketing & Industrial Cooperative
Union Ltd.**

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Dhiman Kumar Sengupta,
Ms. Farhin Mustaque.

For the Respondent No. 7 : Mr. Indranil Nandi,
Mr. Deba Prasad Samanta,
Mr. Sayak Konar.

For the Respondent No. 3 : Mr. Ankit Sureka,
Mr. Biplab Das,
Mr. Partha Sarathi Pal.

**For the Respondent
Nos. 1 to 6** : Mr. Ushanath Banerjee, Sr. (Spl.) GP
Mr. Debopriya Chatterjee.

Hearing concluded on : 19.05.2025

Judgment on : 23.05.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred challenging an order dated 05.12.2024 passed by the Appellate authority confirming the order dated 10.03.2015 passed by

the controlling authority holding that the Payment of Gratuity Act is applicable to the society and quashing of the Notice dated 20.12.2024 issued by the Controlling Authority & Assistant Labour Commissioner vide Memo No. 532/ALC/TAM/2024.

- 2.** It is the contention of the petitioner that the order of the Controlling Authority is bad on the ground that only two issues were adjudicated.
- 3.** It is further stated that the order of the appellate authority is bad in law as the authority has upheld the order of the Controlling Authority by only considering the said issues as decided by the Controlling Authority.
- 4.** In the present case the Controlling Authority under Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act) received from the employee, an application in form "N" dated 19.01.2011, filed under rule 10 of the West Bengal payment of Gratuity Rules, 1973 for a direction under section of the said act for Payment of Gratuity due to him from the Petitioner/Employer.
- 5.** In this instant case, the Controlling Authority under the said act passed an order dated 10.03.2015 directing the O.P./Employer to pay gratuity amounting to Rs. 2,13,911.00 (Rupees Two Lakh thirteen thousand nine

hundred & eleven) only to the respondent/applicant Rejaul Hoque, S/O Late Sk. Mokshad Ali of Vill.- Bar Padumbasan (Paschim Pally), P.O.- Tamluk, Purba Medinipur as payment of Gratuity including interest.

- 6.** Being aggrieved an Appeal Case under the Payment of Gratuity Act, 1972 was preferred by the Petitioner, M/s Midnapur District Service Cum Marketing & Industrial Co-operative Union Ltd., before the Appellate Authority under the Payment of Gratuity Act, 1972, Haldia and the same was disposed of by the Appellate Authority by virtue of his order dated-23.09.2015 directing the instant petitioner to act as per the order of the Controlling Authority dated 10.03.2015 under the Payment of Gratuity Act, 1972.
- 7.** The O.P./ Employer filed a Writ Petition [WP no. 30325(W) of 2015] against the Order of the Appellate Authority before the High Court at Calcutta. The High Court, while disposing of the claim of the petitioner, had set aside the order of the Appellate Authority and directed the Appellate Authority to take a fresh decision in this matter. Thereafter, the Appellate Authority passed an order afresh on 05/12/2024 upholding the order of the Controlling Authority dated 10.03.2015.

8. The relevant findings of the Controlling Authority in its order dated 10.03.2015 are as follows: -

“The case of the applicant to put in brief is that he joined the O.P. establishment on 17.10.1974, as a General Assistant -Cum-Cashier and Superannuated on 31.01.2009, as a Manager in the said establishment. Last salary drawn by him was Rs. 6,780.50/- (B.P. 3307.50 +D.A. 3473) per month. He has not been paid any Gratuity. The applicant claimed amount Rs. 133002.00 as Gratuity i.e. considering his length of service as 34 years.

O.P stated in his written statement that they (i.e. O.P/employer) never employed ten or more employees on any day of proceeding 12 months, nor even for the formation of the aforesaid society under the Societies Act. Applicant in his examination in chief stated that since 17/10/1974, the said Co-Operative Society had 8 Branches, Centres, Trade points namely-

- 1) Blacksmithy and carpentry Centre (Fully Govt. Aided) situated at Vill- Dakshin chara Sankararah, P.O Tarnluk, Dist. Midnapore (Now Purba Medinipur).*
- 2) Boat Making Centre (i.e. manufacturing of wooden boats) situated at Vill- Amalhanda, P.O- Denan, P.S- Kolaghat, Dist. Midnapore (Now Purba Medinipur).*
- 3) Tiles Production Centre situated at Vill- Amalhanda, P.O- Denan, P.S- Kolaghat, Dist. Midnapore (Now Purba Medinipur).*
- 4) Pilot Mat Scheme situated at Dasagram, P.O- Dasagram, P.S- Sabang, Dist. Midnapore (Now Paschim Medinipur).*

5) Pilot Mat Scheme situated at Bural, P.O- Bural, P.S- Sabang, Dist. Midnapore (Now Paschim Medinipur).

6) Pilot Mat Scheme situated at Sabang, P.O&P.S- Sabang, Dist. Midnapore (Now Paschim Medinipur).

7) Pilot Mat Scheme situated at Temathani, P.O- Lutunia, P.S- Sabang, Dist. Midnapore (Now Paschim Medinipur).

8) Retail Sales Counter at Tamluk Town under the name and style of "SAMABAY BIPANI".

All these are running from the year 1977 to 2000 and some are still existed. 25 men were working in those centres.

In their examination in chief O.P. states that out of 25 person only 9 persons were employees of that society but they were not in service at a time.

A report of Chief executive Officer, Midnapur District Service - Cum - Marketing Industrial Co-operative Union Ltd., Tamluk (which have been filed by the applicant) stated that in addition to 6 employees 10 daily rated workers were engaged in tile centre of the said establishment. The said statement has also been supported by joint application dated 20/09/1991 of 10 employees.

Hence the issue to be determined are as follows-

1) Whether the O.P. Establishment had/has 10 or more no. of employees at a time or not.

2) Whether the amount claimed by the applicant is justified or not.”

9. The Controlling Authority then calculated the amount of gratuity the employee was entitled to.

10. It appears from the said order that it is a detailed order and only the issues raised (in dispute) were duly adjudicated in accordance with law, and as the case of the employee as to his period and nature of work was not challenged, the same was not required to be considered and or adjudicated.
11. Petitioner has relied upon the judgment in ***Independent Schools' Federation of India (Regd.) vs Union of India & Anr., in Civil Appeal No. 8162 of 2012, decided on August 29, 2022***, where the Supreme Court held:-

"3. The PAG Act enacted and enforced with effect from 16th September 1972, requires payment of gratuity to an employee after he has rendered continuous service for not less than 5 years, on his superannuation, retirement or resignation or on his death or disablement due to accident or disease. However, sub-section (3) to Section 1 of the PAG Act restricts its applicability to the following establishments:

"1. Short title, extent, application and commencement.-

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(3) It shall apply to -

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the

preceding twelve months, as the Central Government may, by notification, specify in this behalf."

In the present case, we are only concerned with clause (c) and not clauses (a) and (b) to sub-section (3) to Section 1 of the PAG Act. As per clause (c), the PAG Act applies to an establishment or a class of establishments in which ten or more employees are employed, as the Central Government may, by notification, specify on this behalf.

4. *In exercise of powers conferred by clause (c) to Section 1(3) of PAG Act vide notification No. S.O. 239, the provisions of the PAG Act were made applicable to the "local bodies" in which ten or more persons are employed, as a class of establishments, with effect from 8th January 1982. **As a result, the schools under the local bodies with ten or more employees became liable to pay gratuity to their employees. However, the notification did not apply to private schools."***

12. Both parties have filed written notes.

13. The order of the Appellate Authority dated 20.12.2024 was passed on the following findings:-

"(i) From the audit report it is evident that during the financial year 1986-1987, the Cooperative Society had six (6) employees, namely, Sk. Rejaul Haque Manager, Sri Ajit Kumar Das, Sri Balaram Ojha and Sri Mahadev Manna all were Sales. Supervisors, Sri Murari Mohan Maity - Peon Cum Night Guard, and Sri Maniklal Das - Night Guard of Tiles centre. Out of them, it is found from the Attendance Register of Tiles Centre that Sri Balaram Ojha (Sales Supervisor) and Sri Maniklal Das (Night Guard) had put

their attendance at Tiles Centre, Vill. Amlahanda, P.O. Denan, P.S. Kolkaghat, Dist. Purba Medinipur.

(ii) The Audit Report (1986-1987) reveals that total sales during that year was Rs. 4,45,531.85. It definitely reflects that there must had been some other workers engaged in production of tiles, whose attendance or payment vouchers have not been produced by the appellant at the time of hearing, although the same were called for production by the Respondent before the Ld. Controlling Authority under the Payment of Gratuity Act, 1972.

*(iii) The Chief Executive Officer of the said Cooperative Society in his report, vide Ref. No. 520/DSCM/Mid/91-92, date-16.11.1991 stated that **"At present 6 (Six) employees are in the Union working in different section. In addition to that 10 nos. of daily rated workers are engaged in the Tile Centre of the Union."***

It is needless to mention that the Hon'ble Division Bench of Bombay High Court in their judgement in Lakshmi Vishnu Textile Mills-versus-P.S. Mavlankar case [reported in (1979) I L.L.J. 443 Bom] held that daily rated workmen are entitled for gratuity in the same way as monthly rated and weekly rated workmen.

iv) Besides, there were Boat Making centre, Pilot Mat Scheme, Blacksmithy and Carpentry centre and General Store under the Appellant Cooperative Society. Without any employee it is unlikely to continue such businesses.

v) It appears from records that the Appellant Cooperative Society had created a Gratuity Fund during 2001-02 and maintained the same till financial year 2011-12. From the audit reports it is found that they have deposited amounts to this fund on a regular basis. Later on, they renamed the same as 'Staff Welfare Fund'.

vi) They have paid an amount of Rs. 1,28,656/- as gratuity to Sri Ajit Kumar Das, who was a Junior to the Respondent, on August, 2010 (as has been reflected in the Audit Report of the financial year 2010-11) on his retirement. The Appellant stated that the payment was made due their ignorance. It is quite surprising for such a registered Cooperative Society, where every decision has been considered and confirmed by the Board of Directors. The Appellant stated that subsequently as per resolution of the meeting dated - 31.10.2011, the CEO had issued notice to Sri Das on 26.12.2011 to refund the gratuity amount. However, they have failed to

substantiate whether the said amount was refunded or not.

vii) Although the onus to prove anything lies upon the claimant himself, but here in this case the custodian of documents being the Appellant Cooperative Society, the responsibility goes upon them to prove or disprove the facts by producing all relevant documents/files / vouchers to the appropriate authority.

From the above facts and figures it is evident that the Appellant, M/s. Medinipur District Service Cum Marketing & Industrial Co-operative Union Ltd., comes under the purview of the Payment of Gratuity Act, 1972.

Hence, I found no reason to differ with the views of the Ld. Controlling Authority under the Payment of Gratuity Act, 1972, Tamluk, dated 10.03.2015. The instant appeal is thus decided against the Appellant and disposed of herewith.

***Sd/-
Appellate Authority
Under the Payment of Gratuity
Act, 1972
Haldia, Purba
Medinipur”***

14. Thus, the said findings of Appellate Authority are specific, clear and based on materials on record including evidences both oral and documentary.
15. It appears from the **documents annexed to the supplementary affidavit filed by the petitioner that the Audit Statement of accounts and cash account for the period from 01.04.2010 to 31.03.2011, including the year 2009-2010 that the petitioner has made payments towards gratuity fund and also paid gratuity to employees and Clause 5 therein shows funds earmarked for 'gratuity'.**
16. The only issue raised by the petitioner is that as the number of employees was all along less than 10(ten) the employees are not to the benefit from the payment of Gratuity Act.
17. On careful consideration of the orders under challenge and **as seen from the audit report, it is clear that the petitioner establishment is covered under the Payment of Gratuity Act** as it meets the criteria under Section 1(3)(c) of the Act. And as it applies to the petitioner establishment, the workman/respondent is entitled to the dues as adjudicated by the authorities.

18. The judgment in ***Independent Schools' Federation of India (Regd.) vs Union of India & Anr., (supra)*** does not help the petitioner herein.
19. Being denied the lawful dues under a beneficial legislation after having served for about 34 years is against the principle of natural justice and is an unfair labour practice.
20. **The order dated 05.12.2024 passed by the Appellate authority confirming the order dated 10.03.2015 passed by the controlling authority being in accordance with law requires no interference.**
21. **WPA 2763 of 2025 stands dismissed.**
22. All connected application, if any, stands disposed of.
23. Interim order, if any, stands vacated.
24. 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.]