

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 3101 of 2025

M/s Baynee Industries and Another
-vs-
The State of West Bengal and Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Ms. Sanjukta Dutta.

For the State : Mr. Malay Krishna De,
Mrs. Kakali Naskar.

For the Respondent : Mr. Bipin Ghosh.
Nos. 2 and 4

For the Respondent : Mr. Rananeesh Guha Thakurta,
No. 6 Ms. Sejuti Sengupta.

Hearing concluded on : 18.02.2025

Judgment on : 18.02.2025

Shampa Dutt (Paul) , J.

1. Affidavit of service filed by the petitioner be kept with the record.
2. The present writ application has been preferred by the petitioner challenging the order dated 25.5.2022 passed by the Controlling Authority, order dated 30.9.2024 passed by the

Appellate Authority and Orders dated 28.10.2022 and 21.11.2024 passed by the Certificate Officer.

3. It is the case of the petitioner that the respondent no. 6 herein had claimed gratuity at the rate of Rs. 12,35,038/- for putting in service on and from 7.2.1973 to 17.3.2014. It is further stated that vide a gazette **Notification dated 18.5.2010** Section 4 of the Payment of Gratuity Act, was amended and **the ceiling limit of gratuity was fixed to Rs. 10,00,000/-**.
4. On 19.9.2013, out of Rs. 10,00,000/-, an amount of Rs. 2,50,000/- was already paid by the petitioners as gratuity vide cheque no. 405055 and Rs. 2,00,000/- on 18.01.2016 vide cheque no. 000246 totalling Rs. 4,50,000/-.
5. On **29.3.2018 the amendment Act of 2018** came into force. Section 4 of the Act was amended and as per amendment the amount of gratuity payable to an employee under the act was fixed at **maximum amount of Rs. 20,00,000/-**.
6. It is the case of the petitioner that the said amendment was not given retrospective effect.
7. In compliance of a certificate being issued under Section 8 of the Act and subsequent warrant of arrest being issued, an execution proceeding was initiated. The Certificate Officer directed payment of compound interest on the amount of Rs. 5,32,023/- for the period from 25.5.2022 to 3.10.2024 over the gratuity amount of Rs. 14,13,068/- which was inclusive of simple interest.

- 8.** It is the case of the petitioner that the respondent no. 6 was entitled to the maximum limit of Rs. 10,00,000/- towards the amount of gratuity considering his date of superannuation. But the respondent had claimed an amount of Rs. 12,35,038/- in his claim application.
- 9.** The petitioner now intends to initiate appropriate proceedings for recovery of such excess amount paid with interest and as such prays for quashing of the orders under challenge.
- 10.** It appears from the said materials on record that respondent no. 5 passed an order on 25.5.2022 directing payment of gratuity with interest upto 25.5.2022 amounting of Rs. 14,13,068/-.
- 11.** The petitioner's case is that the said respondent no. 5 did not deduct Rs. 4,50,000/- already received by the respondent no. 6 as gratuity and as such it was determined that the total amount which was to be paid to the respondent no. 6 amounted to Rs. 18,63,068/- which included Rs. 4,50,000/- allegedly already received by the respondent no. 6.
- 12.** It appears from the said order that the respondent no. 5 took into consideration that the respondent no. 6 had superannuated in 2014. The order was being passed by the respondent no. 5 on 25.5.2022. The respondent no. 5 directed payment of gratuity along with interest upto 25.5.2022 which amounted to Rs. 14,13,068/-. The respondent no. 5 did not take into consideration the amount of Rs. 4,50,000/-

allegedly already received by the respondent no. 6 as claimed by the petitioner.

- 13.** A demand draft of Rs. 5,50,000/- was made over to the Certificate Officer on 10.9.2024 by the petitioner. Subsequently, in view of execution proceedings another demand draft of Rs. 8,63,068/- was handed over for the alleged outstanding amount. The total amount of demand draft amounted to Rs. 14,13,068/- as directed by the respondent no. 5 vide order dated 25.5.2022.
- 14.** Learned counsel for the respondent no. 6 submits that an appeal was preferred against the order of the Controlling Authority by the petitioners herein. The appeal was dismissed on merit and as such the order of the Controlling Authority has attained finality. It is further submitted that as the petitioner has already paid the gratuity and complied with the said orders of the concerned authorities, the Court cannot consider the prayer for reopening the matter after it has been finally closed.
- 15.** It is the case of the petitioner on the other hand that they had to make the payment under compulsion and had done so on the ground that it would not prejudice their rights and as such they have now preferred the present writ application praying for reconsideration of the said orders so as to enable the petitioner to initiate appropriate proceedings before the

appropriate forum for recovery of the excess amount as allegedly paid under compulsion.

16. Though the respondent no. 6 has claimed a sum of Rs. 12,35,038/- as gratuity, it was decided by the Life Insurance Corporation of India's pension and Group Scheme Department that the said claim would be allowed to the limit of Rs. 10,00,000/- as per the date of superannuation (2014).
17. The notice of payment of gratuity issued by the Controlling Authority shows the following findings of the Controlling Authority:-

*“And whereas the application was heard in your presence /absence, on and after the hearing I have come to the finding that the said applicant Sri Narendra Pal Seth is entitled to **a payment of Rs. 7,85,038/- plus interest from 17.04.2014 till the date of order (i.e. 25.5.2022) which stands at Rs. 14,13,068/-** (Rupees Fourteen Lakhs Thirteen Thousand and Sixty Eight) only as gratuity along with simple interest @ 10 % under Section 7 (3A) of the Payment of Gratuity Act, 1972 (Act 39 of 1972).”*

18. The Controlling Authority took into consideration the claim of the company that a sum of Rs. 4,50,000/- had already been paid on account of gratuity to the respondent no. 6 by two account payee cheques.

19. The respondent no. 6 before the Controlling Authority claimed that said amount of Rs. 4,50,000/- were issued against remuneration due to him. But **the Controlling Authority held in favour of the company and stated that the said sum of Rs. 4,50,000/- was received by the respondent no. 6 as gratuity.**

20. As such it appears that the Controlling Authority granted gratuity of a sum of Rs. 7,85,038/- **on and above** the sum of Rs. 4,50,000/- which stands at total of Rs. 12,35,038/- which is the actual claim of the petitioner, who superannuated in the year 2014, thus beyond the permissible limit.

21. **Section 4 Clause 3 Payment of Gratuity Act, lays down:-**

“4. Payment of gratuity.-

(1)

(2)

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

26. Subs. for “ten lakh rupees” by Act 12 of 2018, S. 4 (w.e.f. 29.03.2018).

27. In exercise of the powers conferred by sub-section (3) of Section 4 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees. [Vide S.O. 1420 (E), dated 29.03.2018].”

22. The Controlling Authority thus granted a sum which was above the sum of Rs. 10,00,000/- (Rs. 7,85,038/- + Rs. 4,50,000/- total being Rs. 12,35,038/-) which was not as per

the amendment to Section 4 of the Payment of Gratuity Act amended as per Gazette Notification dated 18.5.2010.

23. The amendment enhancing the amount of gratuity to the maximum of Rs. 20,00,000/- came into effect on 29.3.2018 long after the superannuation of the respondent no. 6.
24. It appears that the amendment does not note that the said amendment shall have retrospective effect.
25. In **Subodh S. Salaskar vs Jayprakash M. Shah & Anr., AIR 2008 SC 3086, 1 August, 2008**, the Supreme Court held:-

*“24. Ex facie, it was barred by limitation. No application for condonation of delay was filed. No application for condonation of delay was otherwise maintainable. The provisions of the Act being special in nature, in terms thereof the jurisdiction of the court to take cognizance of an offence under Section 138 of the Act was limited to the period of thirty days in terms of the proviso appended thereto. The Parliament only with a view to obviate the aforementioned difficulties on the part of the complainant inserted proviso to Clause (b) of Section 142 of the Act in 2002. It confers a jurisdiction upon the court to condone the delay. It is, therefore, a substantive provision and not a procedural one. The matter might have been different if the Magistrate could have exercised its jurisdiction either under Section 5 of the Limitation Act, 1963 or Section 473 of the Code of Criminal Procedure, 1976. The provisions of the said Acts are not applicable. In any event, no such application for condonation of delay was filed. If the proviso appended to Clause (b) of Section 142 of the Act contained a substantive provision and not a procedural one, it could not have been given a retrospective effect. **A substantive law, as it is well-settled, in absence of an express provision, cannot be given a retrospective effect or retroactive operation.***

25. In *Madishetti Bala Ramul (Dead) By LRs. v. Land Acquisition Officer* [(2007) 9 SCC 650], this Court held as under:

"18. It is not the case of the appellants that the total amount of compensation stands reduced. If it had not been, we fail to understand as to how Section 25 will have any application in the instant case. Furthermore, Section 25 being a substantive provision will have no retrospective effect. The original award was passed on 8-2-1981: Section 25, as it stands now, may, therefore, not have any application in the instant case."

The question is now covered by a judgment of this Court in *Anil Kumar Goel v. Kishan Chand Kaura* [2008 AIR SCW 295] holding:

"8. All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision is question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not. (See: *Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government and Ors.*, AIR 1984 SC 87).

9. There is nothing in the amendment made to Section 142(b) by the Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28.11.1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted."

26. In the present case also, the respondent no. 6 had made his claim much prior to the amendment of 2018 and thus could not have foreseen it.

27. In **G.J. Raja vs Tejraj Surana, AIR 2019 SC 3817, on 30 July, 2019**, the Supreme Court held:-

“15. While considering general principles concerning ‘retrospectivity of legislation’ in the context of Section 158-BE inserted in the Income Tax Act, 1961, it was observed by this Court in Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited¹ as under:-

“28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow’s backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips v. Eyre*², a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.”

16. Similarly, while considering the effect of modified application of the provisions of the Code, as a result of Section 20(4)(bb) of the Terrorist 1(2015) 1 SCC 1 2 (1870) LR 6 QB 1 Criminal

Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana and Disruptive Activities (Prevention) Act, 1987, whereunder the period for filing challan or charge-sheet could get extended, this Court considered the issue about the retrospective operation of the concerned provisions in Hitendra Vishnu Thakur and others vs. State of Maharashtra and others³ as under:-

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

21. *Though arising in somewhat different context, proviso to Section 142(b) which was inserted in the Act by Amendment Act 55 of 2002, under which*

cognizance could now be taken even in respect of a complaint filed beyond the period prescribed under Section 142(b) of the Act, was held to Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana be prospective by this Court in Anil Kumar Goel v. Kishan Chand Kaura⁵. It was observed:-

“10. There is nothing in the amendment made to Section 142(b) by Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28-11-1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted.”

28. Accordingly the amendment of 2018 having no retrospective effect will not apply in the present case.

29. Thus the amount granted in favour of the respondent no. 6 in this case is prima facie more than his entitlement of Rs. 10,000,00/- (only in respect of the principle amount) and the petitioner is entitled to proceed in accordance with law for recovery of the same.

30. WPA 3101 of 2025 is disposed of.

31. All connected application, if any, stands disposed of.

32. Interim order, if any, stands vacated.

33. 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.)