IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 3629 of 2025
Food Corporation of India
Vs.
Union of India & Ors.

For the Petitioner : Mr. Devajyoti Barman.

For the Respondent nos. 1 to 3 : Mr. Brijendra Pratap Singh,
Mr. Avinash Kankani.

Hearing concluded on : 06.05.2025

Judgment on : 19.05.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred against an order passed by the Appellate Authority under the Payment of Gratuity Act 1972 and Deputy Chief Labour Commissioner (Central) at Asansol, West Bardhaman, West Bengal in Appeal No. PG-17/2024-E on 17.09.2024.

2. The said Appellate Authority was considering an appeal preferred against an order of the Controlling Authority who had directed as follows:-

> *"……….The applicant submitted during the hearing that her husband has joined in FCI on 07/02/1988 and expired on 25/04/2017 after rendering 29*

> *years of service but, she has not yet received the gratuity in spite of submission of claim. Therefore, she prayed for payment of gratuity in her favour. The applicant submitted Copies of Form 16 of her husband Lt. Basu Das for 2016-17 related to income tax issued by the opponent alongwith copy of letter claiming gratuity. She has also submitted copy of Affidavit dated 29.5.17 showing her as wife of Lt. Basu Das.*
>
> *The Opponent submitted that the husband of applicant was 'No Work No Pay Worker' and not the 'Permanent worker' therefore, not entitled for gratuity. However, as per direction of this Authority they have submitted gratuity calculation statement in respect of the applicant showing date of joining of applicant as 27/7/2001 and date of expiry as 25/04/17 and last wages as Rs.39404/- (Basic 18150/- + DA 21254/-).....”*

3. The Appellate Authority vide an order dated 31st January, 2023 upheld the order of the Controlling Authority.

4. Being aggrieved the petitioner approached the High Court in WPA 28432 of 2023 wherein vide order dated 08.04.2024, the Court permitted the petitioner to adduce additional evidence in respect of the requirement of the workman having put in 240 days in a year continuously for 5 years.

5. The Appellate Authority on **rehearing the appeal**, on the direction of the High Court, noted as follows:-

> “*.........The Appellant submitted appeal petition to this office on 29/05/2024 and accordingly notices were issued to both the parties and hearing made on 24/06/2024, 26/07/2024, 20/08/2024 and finally*

concluded on 10/09/2024. ***Even after repeated requests no additional evidence/documents were made available by the parties. At last, the FCI management has submitted a list of the workers who has worked in their establishment year wise which has not been contested by the respondent who has worked in their establishment year wise which has not been contested by the respondent employee.....”***

And finally directed as follows:-

“Accordingly, the ***additional gratuity*** *is determined as under:*
Last wages drawn: Rs. 39404.00(Basic: Rs. 18150.00, DA: Rs. 21254.00)
Wages per day: Rs. 39404.00/26= Rs. 1515.53
No. of days gratuity entitled: 06x15=90days
Gratuity amount: Rs. 1515.53x90=Rs. 1,36,398.00 (Rupees One Lakh thirty six thousand three hundred and ninety eight only).
However, both the parties have not been able to clarify whether this gratuity has already been paid to the employee as a part of ***earlier gratuity payment****.........”*

6. The present writ has been preferred contending that the chart submitted by the them shows that the workman did not put in 240 days of work in a year, for 5 years continuously and as such is not entitled to any gratuity as he does not meet the requirements under the law.

7. On perusal of the order referred to above, it is not clear as to what the Appellate authority meant while directing payment of **additional gratuity** and also its query “whether this gratuity has already been paid to the employee as a part of the **earlier gratuity payment"**.

8. From the records there is nothing to indicate that any sum of gratuity has been paid to the workman and with the said fact in mind the present writ is to be decided.

9. The petitioner/**Food Corporation of India** is a statutory body and a nodal organization of the Government of India.

10. The petitioner's case is that:-

> *"...... **since 1975** some workmen were working under the local handling transport **contractors** under Modern Rice Mill, Abdarpur. **The said Modern Rice Mill stopped functioning in the year 1986. Upon sympathetic consideration and on their representation the said labourers were engaged at FSD Suri on "No Work No Pay" basis wherever there was any need of Additional labour force.** The status of the said labourers of Modern Rice Mill was not similar that of the regular Direct payment system workers of FCI Suri.*
>
> *In the year 2000 the said workmen filed a writ petition before this Hon'ble High Court at Calcutta being W.P.No.5571(W) of 2000 wherein the said writ petitioners were praying for an order of departmentalization by equating them with those under Direct Payment System. Since then the said workers were engaged on "No Work No Pay Basis" as per requirement of the petitioner. (The said Writ Petitions are still pending for final adjudication).*
>
> *In the context of pendency of the said two writ petitions the status of the employees including the present one is still a temporary one on 'No Work No Pay' basis........"*

11. The workman in this case died on 25.04.2017 after 29 years of service his wife the private respondent herein filed the case before the controlling authority on 12.12.2019 in Form-N under sub-rule 1 of rule 10 of the Payment and Gratuity (Central) Rules 1972 before the Learned Assistant Labour Commissioner (Central), Raniganj at Durgapur.

12. The petitioner/Food Corporation further states that in support of the said proceeding the private respondent filed written statement before the Controlling Authority, copies of Form 16, Bank statement, Income tax returns, and EPFO statement to prove the last salary paid by the FCI.

13. It appears from the documents on record, relating to file no. 1R-10(1)/MRM/87 dated 8th Jan. 08, is a document dated **08.01.88** signed by the District Manager, FCI Durgapur Camp-Suri and Chief Labour Inspector for Zonal Manager (East) Camp-Suri, that the some workers herein were engaged with a contractor for doing work of the petitioner till 1986 and thereafter were temporarily (no work no pay basis) engaged with FSD, Suri from January, 1988 onwards and continued to be engaged till their death /superannuation etc.

14. It appears from the material on record that relevant documents were filed by the workman/respondent including pension payment order of EPF organization and considering the same, the Controlling Authority held as follows:-

> *"…….On perusal, of contention of applicant and Opponent, it is found that in Form-16, the husband of Opponent is mentioned as Employer in respect of Applicant. The contention of Opponent for non-payment of gratuity for not being Permanent workman' cannot be accepted since, as per Section 4 of Payment of Gratuity Act 1972 gratuity is payable to an employees on termination of employment after rendering not less than 5 years continuous service. The status of workmen viz "Permanent / Temporary' etc. is not relevant for entitlement of gratuity. The Opponent vide the gratuity calculation statement accepted that the applicant worked under him for 15 years 8 months from 27/7/2001 to 25/04/2017 and the applicant therefore, entitled for gratuity for the said period since she could not produce document relating to his employment from 07/02/1988 to 26/7/2001. The identity of the applicant is also established by virtue of document submitted by her.*
>
> *In the present case the delay occurred not due to the fault of the applicant, but owing to wrong interpretation taken by the opponent.*
>
> *Taking the total views of the case, I hereby determined that the last pay drawn by applicant is Rs. 39404/- (Basic 18150/- + DA 21254/-). Therefore, the gratuity of applicant is calculated as (Last Pay X No. of years of service x 15)/26 i.e. (Rs. 39404 X 15 X 16)/26 i.e. Rs. 3,63,729/- (Rupees three lakh sixty three thousand seven hundred and twenty nine only) along with simple interest of 10% per annum w.e.f. 26-04-2017 to date of payment.*
>
> *I hereby direct the opponent i.e. the Divisional Manager, Food Corporation of India, Suri to make payment of Rs. 3,63,729/- (Rupees three lakh sixty three thousand seven hundred and twenty nine only) along with simple interest of 10% per annum w.e.f. 26-04-2017 to date of payment to Smt. Sanaka Das, W/o Lt. Basu Das towards gratuity within 30 days*

> *from the date of the received of the order under intimation to this authority and thus, I ordered accordingly….”*

15. The petitioner then in order to avoid paying gratuity played their last card, that of the worker not putting in 240 days of work in a year for five years continuously.

16. From the materials on record it appears that admittedly the worker in this case was employed with the petitioner/corporation at Suri since 1988.

17. Documents annexed to the writ application on record show that the worker thus joined the petitioner in 1988 and also produced Form 16 showing the petitioner as the employer and also the pension payment order of EPF organization.

18. These documents were sufficient to hold that the workman was attached to the petitioner company since 1988. The Controlling Authority overlooking these documents proceeded to accept the petitioner/organization's case that the workman was employed/attached to the organization since 2001 only on the basis of a Statement showing the number of days of work put in by the employee since then.

19. No other document in support of such Statement has been filed to substantiate their case that the worker was employed only since 2001, though documents on record show that he was absorbed in

1988. It appears that this document was neither before the controlling authority nor the Appellate Authority.

20. The Appellate Authority went a step further and granted gratuity for the period as and when the worker put in 240 days in a year as per the Statement of the petitioner alone without any documents in support.

21. It further appears that the Statement showing number of days of work put in by the worker each year filed by the petitioner herein after such delay without any supporting documents, in support, prima facie shows that the same was prepared only for the purpose of this case to deprive the worker of his entitlement to gratuity under a beneficial legislation.

22. It is surprising to note that the said Statement shows that during some years the workman put in more than 240 days and in some less than the requisite 240 days and some years as '0'. It prima facie appears that the number of days as shown has been put in such a manner so that there would be no continuous period of 5 years showing 240 days of work thus disqualifying the workman to receive gratuity. The calculation shown is unbelievable, considering the nature of calculation shown as observed above. This conduct itself by an organization of such stature (Food Corporation of India) goes against the principle of natural justice, more so when the workman has been attached to the organization from 1988 to 2017 (29 years) and the right has occurred to the workman under a beneficial legislation.

23. Thus in view of the said observations the order under challenge dated 17.09.2024 passed by the Appellate Authority under the Payment of Gratuity Act 1972 and Deputy Chief Labour Commissioner (Central) at Asansol, West Bardhaman, West Bengal, **is set aside.**

24. The order of Controlling authority dated 23.09.2021 is set aside only in respect of the calculation of the period and amount of gratuity and the said order stands modified accordingly.

25. The matter is remanded to the Controlling authority who shall calculate the amount of gratuity in respect of the workman in this case by taking the period from January, 1988 to 2017 (till his date of death) along with interest at the applicable rate.

26. The Controlling Authority shall write a fresh judgment showing fresh calculation, keeping in mind the observations of this Court, within 30 days from the date of this order specifying the date by which payment is to be made.

27. WPA 3629 of 2025 stands disposed of.

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

29. Interim order, if any, stands vacated.

30. 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.]