

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 8398 of 2025

Himangshu Karmakar
Vs
Food Corporation of India & Ors.

For the Petitioner : Mr. Samiran Mandal,
Mr. Abhinaba Dan.

For the Respondent/FCI : Mr. Kamal Kumar Chattopadhyay,
Ms. Rimi Chatterjee,
Mr. Tanjir Ali.

Hearing concluded on : 11.06.2025

Judgment on : 23.06.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondents to release interest @ 10% per annum for delayed payment of the gratuity amount from the date of retirement of the petitioner till the date of actual payment of gratuity amount made by the respondent i.e. on and from 01.12.2018 to 04.10.2023.
2. The petitioner's case is that he was appointed as a Causal Labour through a Contractor in Food Corporation of India, Food Storage Depot, Bikna, District-Bankura and was serving the Food Corporation of India

(hereinafter referred to as FCI) since 1989 onwards and retired from service on attaining the age of 60 years on 30.11.2018.

3. The petitioner along with 58 others moved a writ petition (W.P. No. 1491(W) of 1997) praying for benefits and status of pay as a class IV employee of the FCI wherein the Court on 23.06.1998 directed the Food Corporation of India authorities including the then District Magistrate, Bankura to pay wages to the writ petitioners including increments and other allowances at par with the wages as of the Class-IV staff of the Food Corporation of India. Two appeals were preferred, one by the FCI and the other by the petitioners in the writ petition against the said order, wherein the division bench upheld the order of the single bench.
4. FCI went up to the Supreme Court, where the Civil Appeal being No. 6064/6065 of 1998 was dismissed with cost on 28th September, 2000.
5. A contempt proceeding was then initiated for non compliance of the order. By virtue of an order in the contempt proceeding, the petitioner has been receiving the wages as received by the Class-IV employees of FCI in scale-II.
6. The petitioner retired on superannuation on 30.11.2018 and was paid provident fund dues but not the gratuity to which he claims he was entitled.
7. The controlling authority vide order dated 23.12.2021 directed payment of gratuity to the tune of Rs. 8,44,494/- in favour of the petitioner.
8. An appeal was preferred by the respondent/FCI which was dismissed by the appellate authority on 27.12.2022 affirming the order passed by the controlling authority.

9. FCI then preferred a writ against the said order, which was dismissed on 03.07.2023.
10. **Gratuity amount was then deposited in the SBI account of the petitioner on 04.10.2023 but without interest.**
11. **The controlling authority's finding in its order dated 23.12.2021 as to interest is as follows:-**

*"8. In the light of the discussions supra, I find that the Applicant is entitled for payment of gratuity and the Employer has failed to make the payment as per the provisions of the Payment of Gratuity Act, 1972 and Rules made thereunder. Also, the Employer has not deposited the gratuity amount with the Controlling Authority. **As regards interest on gratuity, no specific prayer has been made by the Applicant in this regard and also considering the facts of the present case, it would be appropriate not to pass any order imposing interest on the Respondent Corporation for delay in payment.**"*

12. **The appellate authority vide order dated 27th December, 2022 held as follows:-**

"It is admitted fact that the worker/respondent initially served as contract labour through contractor and was not given appointment order by the respondent corporation, however, the appellant corporation has paid wages/salary to the workman directly from 1989 as per direction of Hon'ble Supreme Court of India dated 14.01.2010 in the status of Cat. IV(scale-II). It is also admitted fact appellant corporation has remitted provident fund contribution in respect of the respondent worker to EPFO and the corporation directly was extracting work from the respondent and was also paid directly which implies that employee-employer relation actually existed.

Besides, Payment of Gratuity Act, 1972 has overriding effect even on the Regulations framed by Food Corporation of India. Section 14 of the Act reads as under:

"The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act".

On the basis of above facts and submission of the parties and analysis, I do not find any merit to interfere with the findings and decision of the Controlling Authority who has delivered this decision after keeping in view the documentary and oral evidences presented before him."

13. The High Court in WPA 6359 of 2023 vide a judgment dated 03.07.2023 held:-

"21. Admittedly the petitioner had paid wages directly to respondent no. 4, for having employed him in the petitioner's establishment. Thus, payment of gratuity is a natural consequence of the order dated 14th January 2010. Such a right to receive gratuity cannot be interfered with in absence of a statutory prohibition. As such the orders passed by the Controlling Authority and the Appellate Authority do not appear to be perverse or without jurisdiction. No case for interference has been made out.

22. The writ application fails. The Controlling Authority is directed to take immediate steps for disbursal of gratuity in favour of the respondent no.4."

14. Section 4 of the Payment of Gratuity Act lays down:-

"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....”

15. The Controlling Authority decides the issue of gratuity under Section 7(4) of the Act and the interest on gratuity is decided/calculated as per Section 7(3-A) of the Act.

16. Section 7(3A) and Section 7(4) of the Act, as laid down:-

“Section 7(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.

Section 7(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.*

Explanation.- [* *]*

[(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.]

[(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.]

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

[(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 [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."

17. Thus in this case the Controlling Authority was wrong in not granting interest as the said provision is very clear in respect of payment of interest on gratuity. The question of praying for the same does not arise as the petitioner is entitled to it under the law.
18. The gratuity payable to the employee is the duty of the employer under Section 4 and sub Section (2) of Section 7 of the Payment of Gratuity Act.
19. In this case the petitioner was granted all benefits including retiral benefits (Para 5(e) of the order dated 14.01.2020 passed in Civil Appeal 9472-9473 of 2003 by the Supreme Court).
20. The petitioner and other contract labours were granted wages at par with of class-IV employee of FCI, since 1998 (as noted by the High Court in CA 1632 of 1998 in W.P. 1491 of 1997 on 23.06.1998).

- 21. In spite of such directions, affirmed up to the Supreme Court, the FCI has gone into prolonged litigation leading to delay in payment of gratuity.**
22. Thus in view of Section 7(3A) of the payment of gratuity act, the decision of the controlling authority in the order dated 23.12.2021 regarding the interest on gratuity being not in accordance with law is liable to be set aside **as the said provision does not provide for any discretion regarding grant of interest.**
23. The petitioner has relied upon the judgment of Calcutta High Court single bench in ***Atul Chandra Mahata vs State of West Bengal & Ors. in WP 10925(W) of 2003 decided on 27.11.2003***, wherein the Court granted interest on the delayed payment of gratuity.
- 24. The writ petition is thus allowed.**
- 25. The order of the controlling authority to the extent of refusal of interest is set aside.**
- 26. Order of the Controlling Authority dated 23.12.2021 and the Appellate Authority dated 27.12.2022 stand modified accordingly.**
27. The FCI/Respondent shall pay interest at the statutory rate on and from 01.12.2018 to 04.10.2023 within 30 days from the date of communication of this order failing which, the FCI/Respondent shall be liable to pay further interest on the interest awarded @ 18% per annum till payment.
- 28. WPA 8398 of 2025 is disposed of.**
29. There will be no order as to costs.
30. All connected applications, if any, stand disposed of.

- 31.** Interim order, if any, stands vacated.
- 32.** Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)