

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Lanusungkum Jamir
And
The Hon'ble Justice Rai Chattopadhyay**

**MAT 592 of 2025
With
CAN 1 of 2025
CAN 2 of 2025**

***Narendra Pal Seth
Vs.
M/s Baynee Industries and Ors.***

For the Appellants	: Mr. R. Guha Thakurta : Mr. S. Sengupta
For the respondent No. 1	: Mr. Soumya Majumdar, ld. Sr. Adv. : Ms. S. Dutta
For the respondent Nos. 4 & 6	: Mr. Bipin Ghosh
For the State	: Mr. Malay Krishna De : Ms. Kakali Naskar
Heard on	: 18/08/2025
Judgment on	: 09/09/2025
<u>Rai Chattopadhyay, J. :-</u>	

1. A judgment and order of the Hon'ble Single Judge dated February 18, 2025 in WPA 3101 of 2025, is under challenge in the instant appeal. The respondent No.1/writ petitioner/company, had challenged the following before the Hon'ble Single Judge in the said writ petition: (i) order dated May 25, 2022 passed by the

Controlling Authority; (ii) order dated September 30, 2024 passed by the Appellate Authority; and (iii) orders dated October 28, 2022 and November 21, 2024 passed by the Certificate Officer.

- 2.** In the order dated May 25, 2022, the Controlling Authority has held that the appellant/workman is entitled to payment of gratuity for 41 years of service; that the appellant would be entitled to Rs. 7,35,038/- plus interest admissible under section 7(3A) of the Payment of Gratuity Act amounting to Rs. 6,28,030/-, from April 17, 2014 to May 25, 2022, totalling a sum of Rs. 14,13,068/- . He has further directed that the sum of Rs. 14,13,068/- to be paid to the appellant, within 30 days. This order was challenged in the writ petition.
- 3.** An appeal was preferred by the company against the order of the Controlling Authority dated May 25, 2022. The Appellate Authority has dismissed of the same by dint of its order dated September 30, 2024, for the reason inter alia that the company has not deposited the specified amount , that is the amount of gratuity as directed by the Controlling Authority (vide order dated May 25, 2022, in this case) in terms of section 7(4) of the Payment of Gratuity Act, 1972, which is a statutory pre-condition for an appeal to be maintainable before the said Authority. This order has also been challenged before the writ Court.

- 4.** October 28, 2022 is the Certificate issued by the Certificate Officer under section 8 of the said Act of 1972, for recovery of the sum of Rs. 14,13,068/- as gratuity which includes the statutory simple interest, and that the said sum of money is recoverable along with the compound interest thereon to the tune of 15% per annum, with effect from June 25, 2022, till the actual date of payment. This certificate dated October 28, 2022 was challenged in the writ petition.
- 5.** The order dated November 21, 2024, is the calculation sheet, by dint of which, the compound interest over the gratuity amount of Rs. 14,13,068/- was calculated, to amount to Rs. 5,32,023/- for the period from June 25, 2022 to October 3, 2024; disbursement thereof to the appellant was also contemplated in the said order. The writ petitioner has also challenged the instant order before the Hon'ble Single Judge.
- 6.** After hearing the parties, the Hon'ble Single Judge has delivered judgment dated February 18, 2025, which is impugned in the instant appeal filed by the appellant/workman. The Hon'ble Single Judge has inter alia held that in view of the substituted provision of section 4(3) of the Payment of Gratuity Act 1972 vide Act 12 of 2018 [with effect from March 29, 2018], since the upper limit of gratuity payable to an employee should not exceed Rs. 10 Lakhs, which is a provision, only effective prospectively, and having no

retrospective operation, the workman/appellant has been granted relief more than what he was entitled to in accordance with law. Hence, the Court has directed that the respondent No.1/company would be entitled to proceed in accordance with law for recovery of the excess payment of gratuity, against the applicant/workmen. This is the conspectus on which the instant appeal has been preferred.

7. The appellant's first point in argument challenging the impugned judgment is that the judgment of the Hon'ble Single Judge has in effect revisited a point, that is, entitlement of the appellant of the amount of gratuity, for the second time, once the same having been finally settled between the parties in a proceeding before the Court of Law. According to the appellant, the same is not maintainable in the eye of law. Mr. Guhathakurta, learned advocate who has represented the appellant, has submitted that in the contempt proceeding being CPAN No. 892 of 2024, vide order dated December 6, 2024, the Court has recorded settlement of claim of gratuity payable to the appellant and as such the amount settled has already been disbursed to him. Mr. Guhathakerta has submitted that in this way and pursuant to the order of the Court, the issue of payment of gratuity as regards the appellant has been set at rest. According to him, the same cannot be reopened and reconsidered by the Court, once having been finally determined and accepted by the respondent No.1/company. In such view of

the matter, according to the appellant, the judgment delivered by the Hon'ble Single Judge is not in conformity with the law.

- 8.** It has further been stated that a statutory appeal and not the writ petition, was the remedy available to the respondent No.1/company to pursue with. That, in view thereof, the writ petition filed by the respondent number 1/company, being WPA No. 3101 of 2025, should not be held as maintainable in the eye of law. It is submitted that the respondent No.1/company, though filed a statutory appeal, but only belatedly and without compliance with the prescribed pre-conditions therefor, by submitting the amount of gratuity as was directed to be paid to the appellant/workman. Hence, its appeal was not maintainable due to operation of law, and the Appellate Authority has rightly dismissed the appeal vide his order dated September 30, 2024.
- 9.** Lastly, it has been submitted that according to the records, the Life Insurance Corporation of India has informed in its communication later dated December 5, 2024, that the appellant would be entitled to Rs. 10 Lakhs as the principal sum of gratuity. The appellant has put forth an argument that the decision of the respondent authority is however contra to what has been stated by the LIC in its letter dated December 5, 2024. The appellant has raised grievance regarding determination of gratuity amount by the Controlling Authority to the tune of Rs. 7,85,038/-and setting off

an amount of Rs. 4,50,000/-. According to the appellant, any question of payment of gratuity directly by the company would not arise in view of the appellant being covered under a Group Gratuity Scheme with the LIC. According to the appellant, the sum of money to the tune of Rs.4,50,000/- earlier paid by the respondent company to him, has been towards due and outstanding salary of the appellant and not towards any gratuity payment. It is submitted that the respondent authorities as well as the Hon'ble Single Judge have made gross error in considering this aspect. That, hence recovery of any amount from the appellant, for the so called reason of being disbursed in excess, would not be equitable.

- 10.** The respondent No. 1 has been represented by Mr. Majumdar, learned Senior Counsel. His first point of argument is that the amended provision of the Payment of Gratuity Act, 1972 vide the amendment Act of 2018, which came into the effect on and from the date of March 29, 2018 shall have no manner of retrospective application. Therefore, the amended provision of law which is a substantive law conferring vested rights, is to be considered with respect to the cases which arise positively than from the date of coming into force of the amended substantive law. Mr. Majumdar, learned Senior Counsel has elaborated that the upper limit of gratuity has been determined to be Rs. 10 lakhs pursuant to amendment of Section 4 (3) of the Act of 1972 which has come into effect from March 29, 2018. On the other hand, the present

appellant/workman has retired much before the said date in the year 2014. According to the respondent company, a law which was prevalent as regards payment of gratuity on the date of retirement of the concerned person, would be applicable in case of that person, the appellant in the instant appeal. To substantiate his submissions as made above, Mr. Majumdar, learned Senior Counsel has referred to the following judgment of the Hon'ble Supreme Court:-

i) *Purbanchal Cables and Conductors Private Limited Vs.*

***Assam State Electricity Board* reported in (2012) 7 SCC 462.**

ii) *Subodh S. Salaskar Vs. Jayprakash M. Shah* reported in (2008) 13 SCC 689

iii) *G.J. Raja Vs. Tejraj Surana* reported in (2019) 19 SCC 469

iv) *Shitla Sharan Srivastava Vs. GOI* reported in (2001) 6 SCC 106

- 11.** Mr. Majumdar, learned Senior Counsel has further elaborated that the Appellate Court is to interfere only when an order of the Hon'ble Single Judge is clearly wrong and not otherwise. He submits that the Appeal Court may not overturn the order appealed against if it has some contra opinion than the Hon'ble Single Judge or even if the order of the Hon'ble Single Judge is not right. To substantiate his submission as above, Mr. Majumdar,

learned Senior Counsel has relied on a judgment of the Supreme Court reported in **1980 Vol. 2 SCC 593 [Gujarat Steel Tubes Ltd Vs. Gujarat Steel Tubes Mazdoor Sabha]**.

- 12.** Therefore, Mr. Majumdar, learned Senior Counsel has insisted that this Court may not interfere into the impugned order and direct for a time-bound compliance thereof. According to him, the present appeal is liable to be dismissed.
- 13.** So far as the proposition/law that the gratuity would be payable upon retirement and calculated on the basis of the last pay drawn at the time of retirement by the concerned person is well-settled and also has remained undisputed in the instant case. The gratuity is primarily payable in terms of the law prevailing on the date of retirement, based on the salary or emoluments at that point of time. While the actual payment of gratuity may occur later, the amount and entitlement are determined as of the date of retirement. Delayed payment, if any, may attract interest but the calculation of gratuity amount is anchored to the date of retirement. In this regard, a judgment of the Supreme Court may be mentioned, reported in **(2013) 2 SCC 772 [Kallakurichi Taluk Retired Officials Association, Tamil Nadu and Ors. Vs. State of Tamil Nadu]** in which the Court has held that the gratuity is a one-time benefit payable upon retirement and calculated on the basis of pay-scale or emoluments at the time of

retirement; that the entitlement of gratuity crystalizes on the date of retirement and the transaction is deemed complete then, regardless of actual payment date; that delay in payment do not alter the amount of gratuity, instead, they may attract interest for the period of delay, but the calculation of gratuity amount remains rooted to the retirement date. In the said judgment, the Court has relied on a previous verdict of the same in the ***State Government Pensioners' Association Vs. State of Andhra Pradesh*** reported in ***AIR 1986 SC 1907***, which is as follows – “*The amount got crystalized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed.*” Similarly, in the judgment in ***Himachal Road Transport Corporation Vs. Himachal Road Transport Employees' Union***, reported in ***(2021) 4 SCC 502***, the Supreme Court has held that the gratuity is a one-time benefit disbursed in accordance with Rules prevalent at the time of retirement and any subsequent revision of pay scale does not automatically alter the gratuity amount already calculated, unless explicitly provided by the law or the Rules.

- 14.** In the case of ***Shitla Sharan Srivastava (supra)*** relied on by the appellant, the Supreme Court has held that in case of gratuity payable to the employee under the provisions of the statute, the higher ceiling limit effected from a date subsequent to the

retirement date of the said employee would not be applicable to him. Instead, the person would be entitled to an amount of gratuity in accordance with law as per the ceiling limit as prevalent on the date of his retirement.

- 15.** The short issue involved in this appeal is whether the judgment of the Hon'ble Single Judge dated February 18, 2025 in WPA 3101 of 2025 is a lawful and justified one, in so far as the Court has directed the present appellant for refund of the money already paid to him on account of gratuity and interest, which is said to have been in excess of the highest ceiling as provided under the law. The relevant facts bereft of any necessary elaboration is that after having superannuated in the year 2014 and long battle fought before the Tribunal and this Court, the appellant was paid gratuity along with statutory and compound interest to the tune of Rs. 14 lakhs. The respondent No. 1/Company has thereafter come up with a plea that highest ceiling as provided under the Payment Of Gratuity Act, 1972, as on the date of retirement of the appellant was Rs. 10 lakhs. Therefore, the amount of gratuity along with interest payable to the present appellant in terms of law is to the said upper ceiling limit only and not beyond. Hence, according to the respondent No.1/company/the writ petitioner the excess amount paid to the present appellant beyond the highest ceiling limit as above was recoverable.

- 16.** From the discussion as made above, it has been understood that as per the settled law, the gratuity shall be payable to a person as per the Rule/law prevalent on the date of his retirement. Admittedly, on the date of retirement, the relevant provision of the Payment Of Gratuity Act, 1972 was that, the amount of gratuity payable to an employee shall not exceed “ten lakh rupees” (as per Section 4(3) of the Payment of Gratuity Act, 1972). Later on in 2018, vide Act XII of 2018 with effect from March 29, 2018 the words “ten lakh rupees” were substituted by the words “such amount as may be notified by the Central Government from time to time”. Pursuant to the notification No. SO 1420 (E) dated March 29, 2018 the amount of gratuity payable to an employee under the said capital Act shall not exceed 20 lakh rupees.
- 17.** The said amended provision of Section 4 (3) of the Payment of Gratuity Act, 1972 vide Amendment Act XII of 2018 being a substantive law conferring vested rights to the beneficiary should have only prospective effect. The same is not applicable retrospectively to cover the case of the petitioner as on his date of superannuation, which is much earlier than the date of coming into force of the said amended provision of law. The Supreme Court in the cases of ***Purbanchal Cables (Supra)***, ***Subodh S. Salaskar (Supra)*** and ***G. J. Raja (Supra)*** has categorically dealt with this aspect and laid down the law. The following portion of the

judgment of ***Purbanchal Cables (Supra)*** may be extracted for benefit of discussion:-

“45. In *Govind Das v. ITO* [(1976) 1 SCC 906 : 1976 SCC (Tax) 133] this Court speaking through P.N. Bhagwati, J. (as he then was) held: (SCC p. 914, para 11)

“11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the *Laws of England* (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.”

** ** ** **

“49. In *Zile Singh v. State of Haryana* [(2004) 8 SCC 1] this Court examined the various authorities on statutory interpretation and concluded: (SCC pp. 8-9, paras 13-14)

“13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—‘*nova constitutio futuris formam imponere debet non praeteritis*’—a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the

previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (*ibid.*, pp. 468-69).”

18. In **Subodh S. Salaskar (Supra)**, the Court by referring to a previous judgment in **Anil Kumar Goel Vs. Kishan Chanda Kurna** reported in **(2007) 13 SCC 492** has held that all laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity unless the legislative intent is clear and compulsive. Similarly, in the case of G.J. Raja (Supra), the Court has referred to an earlier decision in **Commissioner of Income Tax (Central) – 1, New Delhi Vs. Vatika Township Private Limited** reported in **(2015) 1 SCC 1** has laid down that of the various Rules guiding how a legislation has to be interpreted on established Rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The Court has further held that the idea behind the Rule is that a current law should govern current activities; that the law passed today cannot apply to the events of the past.
19. This principle of law is, therefore, now well-settled that “*lex prospicit non respicit*”; law looks forward not backward. It would be profitable to mention the judgment in **Phillips Vs. Eyre** reported in **1870 LR 6 QB 1** where it has been held that a retrospective legislation is contrary to the general principle that legislation by

which the conduct of mankind is to be articulated 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.

- 20.** There cannot be any hostility as to the said settled principle of law regarding prospective effect of a substantive enactment incorporating vested rights and as a matter of fact, in the instant case, there is no such challenge put forth as to the said principle. Therefore, the Court unhesitatingly finds that the law prevalent as on the date of retirement of the appellant has provided for a maximum ceiling limit of Rs. 10 lakhs as regards gratuity, which is inclusive of interests if applicable thereto. The subsequent change brought in the law pursuant to the amendment Act of 2018 which has in effect enhanced the highest ceiling limit of gratuity amount, shall have no manner of application in case of the present appellant. In consideration of the law as discussed above and the factual background of the instant case, the court is therefore, concerned to find that as per the law prevalent on the date of his retirement, the appellant could have only been entitled to an amount of gratuity along with interest, either statutory or interest granted for delayed payment of gratuity only to the maximum ceiling limit of Rs. 10 lakhs. However, fact remains that admittedly, the appellant has been granted gratuity to the tune of Rs. 14 lakhs.

- 21.** At this juncture, the appellant has argued that since by dint of Court's order, he has been paid gratuity it is only equitable that he may be allowed to remain with whatever amount on account of gratuity he has been paid off. As a matter of fact, the Court notices that the appellant has not challenged the legal provision said to have existed on the date of his superannuation that is, gratuity payable up to the highest ceiling limit of Rs. 10 lakhs.
- 22.** It is pertinent to mention that equitable principles are subordinate to the statutory and legal provisions. The Court applies equity in a manner consistent with the existing legal Rules. It is the settled principle of law that "equity follows the law"; that equity acts as a supplementary, interpretative and corrective tool within the bounds of the law ensuring justice without overriding clear legal mandates. In cases of conflict, law prevails over equity ("dura lex sed lex"). A judgment of Supreme Court may be mentioned in the case of ***T. Ravi Vs. B. Chinna Narasimha*** reported in **(2017) 7 SCC 342** in which the Court explains that "equity always follows the law", emphasizing that equity is a subordinate and supportive element that aids in achieving justice without overstepping legal boundaries; that equity is not meant to supplant or contradict statutory law but to operate within its boundaries. It is invoked when the law is silent, incomplete, or produces unjust results due to rigid application. The Supreme Court in ***Tirith Kumar Vs.***

Daduram (widely known as Ram Janmabhumi Temple Case)

reported in **2024 SCC OnLine SC 3810** has articulated that equity steps in to fill gaps left by positive law especially when the law is silent or ambiguous. The Court states that, “Where positive law is silent as to the applicable legal principles, equity assumes a primary role as the source of law itself.” However, this role is confined to fill in gaps not to override clear legal mandates.

23. Whether in case of the appellant, the equity should come into play would depend on the aspect if the law governing payment of gratuity on the date of superannuation of the appellant leaves a gap or requires to be supplemented for its proper implementation. However, it is not so in the instant case. A categorical, unambiguous and definite provision of law governs the right of the appellant on the date of his superannuation as regards receipt of the gratuity amount. There is no scope for diluting the same by allowing interplay of equity with the said unambiguous and well-defined statutory provision applicable in case of the appellant. Hence, there would not be any iota of doubt that as on the date of superannuation the appellant would be entitled to a sum of gratuity along with interest to the tune of Rs. 10 lakhs as that is the maximum ceiling limit as on the said date as per law.
24. Admittedly, in this case the appellant has been paid an amount of gratuity to the tune of Rs. 14 lakhs. Hence, the same is in excess of

his lawful entitlement as per the statutory provision. The said excess amount which has been remitted to him beyond his entitlement is recoverable from him or in other words, the appellant would be duty-bound to reimburse the said excess amount of money to the respondent company.

- 25.** On the premise as discussed above, this court is unable to find any illegality or impropriety in the judgment of the Hon'ble Single Judge dated February 18, 2025 in WPA 3101 of 2025. Hence, the appeal should be dismissed.
- 26.** For the reasons as above, the instant appeal being No. MAT 592 of 2025 is dismissed.
- 27.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)