IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 9627 of 2025

Jay Chandar Shah
Vs
The State of West Bengal & Ors.

For the Petitioner	:	Mr. Anirban Kar, Mr. Munshi Ashiq Elahi, Mr. Rohit Mahata.
For the Private Respondent	:	Mr. Soumya Majumder, Sr. adv., Ms. Amrita Pandey, Ms. Sneha Singh.
Hearing concluded on	:	07.07.2025
Judgment on	:	14.07.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred by the petitioner workman praying for setting aside of the order dated 17.03.2025 passed by the Appellate Authority under the Payment of Gratuity Act, 1972.

2. Vide the said order under challenge the Appellate Authority affirmed the order of the Controlling Authority dated 22.08.2022 in Gratuity Case No. G-51/18. The Controlling Authority while considering the prayer of the petitioner for his gratuity held as follows:-

"…………In the present case the workman had discharged his initial onus by producing whatever documents available with him and in his custody to establish that he was on employment for 240 days in a year. The employer is in possession of the best evidence which he could not produce. So an adverse inference may be drawn in view of the failure on the part of the employer to produce the original service record. While the employer who is statutorily bound to maintain the attendance registers of his employees fails to produce the same, a poor jute mill worker being in a weaker position to his employer is not expected to preserve the details of service records after his retirement.

Given above, drawing an inverse inference, I am left with no other option but to hold that the employer had failed to establish that the workman had not rendered continuous service from 16.04.1980 to 01.07.2018 in the O.P company, they could only establish that he had worked for less than 240 days for 15 years.

Moreover, the employer himself admitted that the workman, Jay Chandar Shah is entitled for gratuity of 9 years. The employer had not paid the said amount *of gratuity to the workman nor had he deposited with the Controlling Authority such amount as he admitted to be payable by him as gratuity as per sec 7(4) of the Payment of Gratuity Act, 1972.*

The amount of entitled gratuity of the worker namely Jay Chandar Shah is determined as follows:-

Date of Joining	*16.04.1980*
Date of superannuation	*01.07.2018*
Last drawn wages	*Rs. 470.68/- per day*
Period of service	*38 years-15 years= 23 years*
Amount of gratuity	*Rs. (470.68x15x23)= 1,62,385/-*

The O.P failed to make even part payment of gratuity amount of Rs. 1,62,385/- to the applicant due to no fault of the applicant. Further, O.P had not obtained any permission in writing from the Controlling Authority for any delayed payment u/s 7 (3A) of the Payment of Gratuity Act, 1972.

Hence, I am of the opinion that as per Sub-Section 3A of Section 7 of the Payment of Gratuity Act, 1972, the workman is entitled to simple interest @ 10% per annum on his gratuity amount. Calculation of interest is detailed below:-

Due Gratuity (Rs.)	***Rate of Interest***	***Period***	***Interest Accrued (Rs.)***
1,62,385/-	*10%*	*01.08.2018 to 17.08.2022*	*65,710/-*

The applicant, Jay Chandar Shah, is, therefore, entitled to Rs. 2,28,095/- (Rs. 1,62,385/- + Rs. 65,710/-). The

OP company M/s Murlidhar Ratanlal Exports Ltd, Unit: India Jute Mill, Serampore, Dist- Hooghly, Pin-712201 is hereby directed to pay the applicant, Jay Chandar Shah Rs. 2,28,095/- (Two Lakh Twenty Eight Thousand Ninety Five) only as per sub-section 3A of section 7 of the payment of Gratuity Act 1972 within 30 days from the date of receipt of the direction in Form 'R' along with this findings."

3. While deciding the said claim of gratuity, the Controlling Authority held that the company could establish that the employee worked for less than 240 days for 15 years.

4. Thus, the Controlling Authority granted gratuity by deducting 15 years from the total period of service being 38 years and granted gratuity as applicable for 23 years.

5. **The relevant finding for deducting the said period of 15 years is as follows:-**

"…………However, from the original leave register it was only seen that the applicant had not completed 240 days of work/calendar year for the years 1989, 1991-1999, 2001-2005 i.e. 15 years. It contained no information of the years 1980-1988, 1990, 2000, 2006-2018 (total 23 years). The leave register, a hardbound record of the number of days a worker worked for a year contained LB number, name & number of days worked by each PF holding worker during the year & leave accumulated over the years. Some of these original registers maintained year wise were shown by the OP & there was no evidence to doubt that they had not been maintained over the years & had suddenly been manufactured to suit the

needs of the OP. The applicant failed to produce any documents to prove that he had ever asked the OP about the number of days he has worked or his leave, he did not contest the content of any document maintained by the OP related to his tenure; the applicant could not even submit wage slips, he has one which means he was given others but has lost them which makes if difficult on his part to establish his full working tenure…………"

6. Being aggrieved the petitioner preferred an appeal before the Appellate Authority under the Act. The Appellate Authority affirmed the findings of the Controlling Authority.

7. Being aggrieved with the order of the Appellate Authority the present writ application has been preferred.

8. **From the materials on record, the following is evident:-**

i. The petitioner joined the respondent no. 4 company in the weaving department having L.B. No. 18455 on 16th April, 1980.

ii. He retired on 1th July, 2018, after putting in 39 years of continuous service. Photocopy of the Identity Card of the petitioner shows his date of joining as 16.04.1980 and he was enrolled under the provident fund on 16.08.1989 (annexure P1).

9. **A hand written attendance sheet,** a copy of which has been marked as annexure P6 shows the number of days of work put in by the workers.

10. The said documents show the number of days of work put in by the petitioner in the following years as:-

Year	Days (work)
1989	20
1991	119
1992	53
1993	18
1994	9
1995	38
1996	42
1997	33
1998	76
1999	NIL (206)
2001	NIL (191)
2002	NIL (157)
2003	NIL (73+w/s 132)
2004	NIL (205+w/s17)
2005	12 DW (236)

11. The Controlling Authority found that the employer who has not challenged the orders of the authorities could not provide any such information for the years from 1980-1988, 1990, 2000, 2006-2018 and held the same in favour of the petitioner/workman.

12. Section 2(f) of the Employees Provident Funds Act, defines the word "employee":-

> ***"Section 2 (f)*** *"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person,—*
> *(i)employed by or through a contractor in or in connection with the work of the establishment;*
> *(ii)engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment;"*

13. Admittedly, the petitioner has rendered continuous service for not less than 5 years. It appears from the order of the Controlling Authority, which was affirmed by the Appellate Authority that the Controlling Authority on going through the "original" leave register found that the petitioner had not completed 240 days of work/calendar year for the years 1989, 1991-99, 2001-05 that is for 15 years. Such copy of the said hand written attendance register has been annexed to the writ application and discussed above, was held to be the "original" attendance register.

14. As the respondent company could not produce any information for the period from 1980-1988, 1990, 2000, 2006-2018 (total 23 years), **the Controlling Authority** relying upon the judgment of the Supreme Court in ***M/s. Sriram Industrial Enterprises Ltd. vs Mahak Singh & Ors. reported in AIR 2007 SC 1370,*** held that as the employer did not produce any evidence, the Court was entitled to draw adverse inference against the employer and as such the Controlling Authority held that there being no documents to show as to whether the petitioner had put in less than 240 days of work for the said 23 years, adverse presumption could be drawn that the petitioner had put in 240 days of work in a year, and granted gratuity as per the Act for the said period of 23 years.

15. Admittedly, the petitioner was in employment with the respondent company on and from 16.04.1980 in the weaving department and superannuated on 01.07.2018. The petitioner worked continuously for 39 years with the opposite party company. These facts are not denied by the company.

16. The only defence that the company came up with is that, for 15 years as specified by the Controlling Authority, copies of hand written attendance register was produced, which prima facie showed that the petitioner had put in less than 240 days of work in a year for the said period.

17. And as the company did not produce any documents for the 23 years, the authority on drawing adverse interference was of the view the benefit of doubt should go to the workman and held that for the 23 years he had put in 240 days of work and calculated gratuity accordingly.

18. The petitioner has relied upon the following judgments in support of his case:-

a) H. D. Singh vs Reserve Bank of India & Ors., (1985) 4 SCC 201.

b) Hooghly Infrastructure Pvt. Ltd. vs Sk. Alam Ismail & Ors., 2025 SCC OnLine Cal 2376.

c) Food Corporation of India vs Union of India & Ors., in WPA 3623 of 2025, decided on 19.05.2025, Calcutta High Court.

d) Sriram Industrial Enterprises Ltd. Mahak Sing and Ors., (2007) 4 SCC 94.

19. Copy of the examination in chief of the company before the Controlling Authority has been produced. It appears from the said evidence of the company that initially the company functioned under the name “The India Jute Industries Limited” up to the year 1993. In 1994 the Hooghly Mills Company Ltd. took over the mill and the petitioner became an employee of the said company.

20. Subsequently, the present respondent/company Murlidhar Ratan Lal Exports Limited took over the mill in 2007.

21. It is admitted by the representative of the company that *“the office cum labour bureau continue to run on the basis of available records of the workman/documents/paper etc.”,* left behind by the Hooghly Mills Company Ltd.

22. Paragraph 3 of the examination in chief is relevant and is reproduced here:-

> *“C) Jay Chandra Shah, L.B. No. 18455, superannuated from the services of the company on 01/07/2018. His date of joining on 16/04/1980. He was made P.F. Member from 16/08/1989.* ***The long gap from date of joining to P.F. Membership is due to shortages of the number of days he worked in a year (i.e. 120/240 days) which was supposed to be completed for entitlement of P.F. Membership.*** *It is found that Jay Chandra Shah, has completed 120/240 days work in the year i.e. 16/08/1989 and was enrolled as P.F. Member with effect from 16/08/1989* ***(i.e. not entitle P.F. Membership from date of Joining 16/04/1980 to date of P.F. 16/08/1989 = 09 Years)*** *Documents in supports of his P.F. Membership with effect from 16/08/1989 is attached herewith (Marked as Annexure "A".)”*

23. Taking into consideration the evidence of the said representative of the company who was examined on behalf of the company, it appears that as per the company's version the petitioner was given PF membership in 1989, as since his joining on 16.04.1980 till 31.12.1988, the petitioner apparently had not put in 240 days of work in a year.

24. Considering, the said stand of the company, if the PF membership was given to the petitioner on and from 16.08.1989, it can be presumed that in the year 1989, the petitioner had put in 240 days of work, as he was provided PF membership on the said date.

25. The document of PF membership is part of the record. There is nothing on record to show, nor is there any evidence to show that the weaving/fishing department was ever closed for any period during the tenure of the petitioner.

26. Though Jute is a seasonal product, the by products are processed throughout the year. There is nothing on record to show that the weaving department or the fishing department where the petitioner worked was closed down occasionally in a year.

27. As such it can be safely presumed that the department where the petitioner worked was functional throughout the year.

28. It is admitted by the company that part of the records went missing when the company was transferred from one hand to another.

29. **Copies of attendance register produced are not in the prescribed format and such hand written attendance sheets are prepared to deprive a workman of his legitimate dues by showing the number of working days less than the required number of days.**

30. It is also a practice to not provide work for the required number of days with the intention of, once again depriving a workman or an employee from his legitimate dues.

31. Admittedly, the petitioner has put in work for the requisite number of days in the year 1989. Which as per the statement of the company on affidavit earned him the provident fund membership. As such the said admission on oath, give rise to the presumption that the workman put in 240 days a year continuously till his superannuation.

32. Hand written attendance sheets produced by the company if believed to be maintained by the company appear to be prepared for the purpose of depriving the workers of their legitimate dues under the beneficial legislation.

33. Accordingly, taking into consideration that the petitioner was given the membership of his provident fund account in the year 1989, it can be presumed that he has put in the requisite number of days in a year continuously for more than 5 years on and from 1985 till his superannuation, which makes him eligible for gratuity under the Act.

34. On the said findings, this Court is of the view that the petitioner is **entitled to gratuity for the period of 30 years.** Though it is on record that he joined in the year 1980, but giving benefit to the company that the PF membership was granted in the year 1989, when the petitioner met the requirements of having put in 240 days of work in a year, this Court directs that gratuity in respect of the petitioner be calculated on and from 1989 till his superannuation in 2018.

35. The order of the Controlling Authority dated 22.08.2022 and the Appellate Authority dated 17.03.2025 passed in Gratuity Case No. G-51/18, **are modified accordingly.**

36. 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 1989 to 2018 (till his date of superannuation) along with interest at the applicable rate.

37. 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.

38. WPA 9627 of 2025 stands disposed of.

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

40. Interim order, if any, stands vacated.

41. 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.)