IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 17547 of 2024
Sail Growth Works
Versus
Sm. Angura Das & Ors.

For the Petitioner	:	Mr. Nirmalendu Ganguly, Mr. Angshunath Chakraborty.
For the Respondent No.2	:	Mr. Shiv Chandra Prasad, Mr. Debapriya Samanta.
Hearing concluded on	:	10.03.2025
Judgment on	:	10.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred against an order dated 18.10.2023 passed by the respondent no. 3 being the appellate authority under the Payment of Gratuity Act and Deputy ALC(C), Asansol, granting gratuity in favour of the petitioner.

2. The respondent no. 1 herein being engaged **through a contractor** to perform works of the petitioner has claimed gratuity after rendering service through the contractor to the principal employer being the petitioner herein.

3. Learned counsel for the writ petitioner has relied upon the following judgments in support of his contention that the claim is barred by limitation:-

1) ***M. Jayaseelan-vs- The Management, Jaigopal Garodia Vivekananda Vidyalaya, Vivekananda Nagar, Avadi and another, reported in W.A. No. 570 of 2020 of the High Court of Madras;***

2) ***Londhe Prakash Bhagwan -vs- Dattatraya Eknath Mane and Ors. reported in (2013) 10 SCC 627, Para 9 of which reads as follows:-***

> *"**Para 9.** Even if we assume that no limitation is prescribed in any statute to file an application before the court in that case, can an aggrieved person come before the court at his sweet will at any point of time? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a person and without submitting any cogent reason therefor. The court has no power to condone the same in such case. (See Cicily Kallarackal v. Vehicle Factory, State of Orissa v. Mamata Mohanty and K.R. Mudgal v. R.P. Singh). In these cases, it has been held that the application should be rejected on the ground of inordinate delay. Furthermore, it is to be noted that appointment of the appellant was within the knowledge of Respondent 1 from day one but he did not take any step for such a long time."*

4. The claim of gratuity has been made after being in service from 01.04.1982 till 31.08.1998. An application was submitted before the Controlling Authority under the Payment of Gratuity Act, also raising the issue of limitation and praying for condonation of delay (referred to in Para 1 of the order).

5. It appears that delay has been **deemed to be condoned** as the authority then proceeded to hear and dispose of the matter on merit.

6. **The Controlling Authority rejected** the application for payment of gratuity on the following grounds:-

(i) *The Applicant could not submit any document to prove that he had applied for gratuity to the contractor concerned and contractor refused to pay.*

(ii) *The contractors have not been impleaded as a party in the claim for gratuity & moreover the very existence of contractors is doubtful after 15 years of closure of establishment.*

(iii) *The Applicant was engaged under multiple contractors, but service period in respect of each contractor & documentary evidences in support of the same are not available.*

(iv) ***Documentary evidences in respect of period of service, continuous service, last drawn wages***

> ***not available for computation of gratuity amount as the establishment was closed during the year 2003 and documents not available. The Principal Employer cannot be compelled to maintain records for over a decade that too in respect of contract labour.***

7. **An appeal** was preferred by the respondent no. 1 herein. The Appellate Authority under the Payment of Gratuity Act, 1972 and the Deputy Chief Labour Commissioner (Central), Asansol, West Bengal, held as follows:-

i) The work of the appellant was directly supervised by M/s IISCO.

ii) The existence of contractor was for the sake of outsourcing of manpower to reduce the liability.

iii) The appellant was engaged directly for the core activity of production of the company and they have given output for the company itself.

8. The appellate authority then considering the materials on record, **granted gratuity in favour of the workman, for continuous service of 16 years amounting to Rs. 18,369/- on the finding *"that the Appellant was engaged through various contractors from time to time for doing the job of Principal Employer. Although there was no direct***

relationship of employee and employer between the Appellant and the Respondent Company but there was certainly indirect relationship of employer and employee between the Principal Employer and the Contract workers and the contract workers were engaged for the production of the company. Provident fund contributions of the Appellant was being deposited in the PF Account by the Respondent Company. Hence, it is established fact that the contract between the IISCO-Employees Primary Co-operative Stores Ltd., Kulti Works and the Principal Employer was just a paper arrangement".

9. Learned counsel for the Union of India has relied upon the judgment in ***Hussainbhai, Calicut-vs-The Alath Factory Thezhilali Union, Kozhikode and Ors.*** **reported in (1978) 4 SCC 257** which reads as follows **(Para 5 to 7):-**

> *"The true test is where a worker or group of workers labour to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off.* ***The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labour legislation***

> ***casts welfare obligations on the real employer based on Artc. 38,32,42,43 and 43A.*** *If livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and the aggrieved workmen, the employer is in substance and in real life-terms, by another.*
>
> *(Para 5 to 7)"*

10. The said judgment has laid down the guidelines to determine the relationship of employer and employee in a given case. More so, an employee who has been engaged through contractors. The Court while passing the judgment has stated that **"such relationship are to be looked at lifting the veil or looking at the conspectus of factors governing employment."**

11. The petitioner has further relied upon the following judgments of Co-ordinate Bench of this Court:-

1) ***Sailen Seth –vs- Deputy Labour Commissioner & Ors. reported in 2010 SCC OnLine Cal 1763;***
2) ***Kajal Bouri –vs- The Appellate Authority and Anr. reported in WPA 13641 of 2018 of the Calcutta High Court.***

12. Both these judgments are not in line with the following judgments of this High Court, one of which is of a Division Bench (in appeal).

13. The concept of workers being employed through contractors by a company to principally carry out the work of the company and their related rights as to their dues has been laid down by a Single Bench and the Division Bench of this Court.

14. A Single Bench of this Court in **WPA 2221 (W) of 2015** in its **order dated 14.7.2016** held as follows:-

> *"Under the 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 the principal employer is to pay the wages of the contractor. Under Section 2(h) of the said Act wages have been assigned the same meaning as given to it by Clause (vi) of Section 2 of the Payment of* ***Wages Act, 1936. Wages includes gratuity under Section 2(vi)(d) of the said Act."***

15. In appeal, the Division Bench in **MAT 1858 of 2016** in its **order dated 18.11.2021** considering the order of the Single Bench directed as follows:-

> *"Therefore, we are of the view that the* ***appellant can be directed to pay the gratuity*** *amount to the widow of the deceased employee within 60 days from the date of receipt of the copy of this order and upon payment of the same to the widow of the deceased employee,* ***the appellants are granted liberty to recover the said amount from the said contractor who is impleaded as the fifth respondent in the writ petition namely M/s. Radha Mohan Singh having its office at Chasnala main Road, P.O. Chasnala, Dist. Dhanbad, Jharkhand, Pin 828835."***

16. As such, in the present case, it has been proved that the respondent no. 1 was employed through the contractors to do the work of the petitioner company for a specified period in respect of which the appellate authority held that the respondent no. 1 was entitled to the gratuity as calculated by the authority.

17. Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970, lays down:-

> ***"Section 21(4)*** *In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and* ***recover the amount so paid from the contractor*** *either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."*

18. Section 2 Payment of wages Act, 1936, lays down:-

> ***"Section 2. Definitions:-***
>
> **.........................**
>
> *(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-*
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> *(a)any remuneration payable under any award or settlement between the parties or order of a Court;*
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> *(b)any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;*

(c)any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d)any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e)any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include-

(1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the [appropriate Government];

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).”

19. Gratuity, payable under the Payment of Gratuity Act, 1972, is a gratuitous payment required to be made by an employer to his employee at the time of termination of services of the employee or upon such employee's death.

Section 21 (4) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), mandates that a principal employer is responsible for the payment of 'wages' to a contract employee in the event of a contractor's failure to pay within the stipulated timelines or in the event of a contractor making a short payment. The principal employer then has the ability to recover the amount paid as 'wages', from the contractor. Section 2(h) of the CLRA defines the term 'wages' as all remuneration (whether by salary, allowances or otherwise) expressed in terms of money or capable of being so expressed, which would if the terms of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes, among others, "(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment...". However, it excludes "(6) any gratuity payable on the termination of employees in cases other than those specified in (d)." In ***Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate***

Authority, Joint Commissioner of Labour, Coimbatore & Anr, 2012 LLR 1160, it has been held by the Madras High Court that gratuity payable under the Payment of Gratuity Act, 1972 falls within this definition of 'wages'.

20. The principal employer or the contractor may be liable to pay gratuity to contract employees, depending on the circumstances.

Principal employer

- The principal employer is liable to pay gratuity to contract employees if the contractor fails to pay.
- The principal employer is liable to pay gratuity if the contractor makes a short payment.
- The principal employer is liable to pay gratuity if the contractor terminates the services of the contract employee.
- The principal employer is liable to pay gratuity if the contract employee works for multiple contractors.

Contractor

- The contractor is liable to pay gratuity to contract employees if they have worked for at least five years and the contract is separate from the company.
- The contractor is liable to pay gratuity to contract employees who have rendered continuous service.

The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) and the Payment of Gratuity Act, 1972 govern the payment of gratuity to contract employees.

21. Therefore, the order of the Appellate Authority dated 27.07.2022 is **modified** to the extent that the petitioner herein on making the payment of gratuity, **shall be at liberty to recover the said meagre amount of Rs.18,369/- from the contractor.**

22. WPA 17547 of 2024 is disposed of.

23. All connected applications, if any, stand disposed of.

24. Interim order, if any, stands vacated.

25. 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.]