

S/L.02.  
May 22, 2025.  
KAUSHIK.

WPA No. 18633 of 2024

Smt. Manju Chowdhury @ Manju Devi  
Vs.  
The State of West Bengal and Others

Mr. Bikash Shaw  
Mr. Sk. Saad Islam

... for the petitioner.

Mr. Balai Chandra Paul  
Ms. Sumouli Dey

...for the respondent no. 4.

Mr. Soumitra Bandyopadhyay  
Mr. Priyabrata Batabyal

... for the State.

The grievance of the petitioner is directed against two separate orders dated 23<sup>rd</sup> July, 2021 passed by the Controlling Authority and 28<sup>th</sup> July, 2023 passed by the Appellate Authority arising out of Gratuity Case No. 18/G/2015.

Briefly, the petitioner is the wife of Late Rajesh Chowdhury, who was an employee of the Dalhousie Jute Company Limited, Baidyabati, Hooghly.

It is alleged that the petitioner's husband was appointed by the respondent company on 1<sup>st</sup> July, 1998 and had offered its services for a period of fifteen years. The petitioner's husband died on 17<sup>th</sup> November, 2013 leaving behind his wife. On 27<sup>th</sup> March, 2015, the petitioner, as legal

representative of the deceased, made an application under prescribed Form No. J of the Payment of Gratuity Rules, 1973 claiming gratuity viz. a viz. her deceased husband. Upon failure of the private respondent to make payment towards the gratuity dues, the petitioner made an application before the respondent no. 2 on 27<sup>th</sup> April, 2015 for necessary directions under Form No. N of the Act of 1972.

In this background, the respondent authorities initiated Gratuity Case No. 18/G/2015.

By an order dated 30<sup>th</sup> May, 2019, the respondent no. 2 dismissed the application of the petitioner, inter alia, finding that the petitioner's husband was ineligible for any gratuity.

Being aggrieved by the order dated 30<sup>th</sup> May, 2019, the petitioner filed an appeal before the respondent no. 3 i.e. the Appellate Authority which was numbered as Appeal No. 58/GA/2019.

By an order dated 23<sup>rd</sup> July, 2021 (the impugned order), the respondent no. 3 set aside the order dated 30<sup>th</sup> May, 2019 and directed the respondent no. 2 to allow payment of proportional gratuity for a period of year to the petitioner upon verification of the deceased's eligibility with liberty to modify the order dated 30<sup>th</sup> May, 2019.

In this background, the petitioner made an application for review challenging the order dated

23<sup>rd</sup> July, 2021. The said application for review was dismissed by an order dated 28<sup>th</sup> July, 2023, inter alia, rejecting such application on the ground that the same was not maintainable.

Being aggrieved by the above order, the petitioner has filed this writ petition.

It is contended that the Appellate Authority while passing an impugned order had erred in recording the fact that the petitioner has failed to render continuous service in the respondent no. 4 in terms of the Act. The respondent authority has also erred in not considering the proviso in section 4 of the Act of 1972 whereby, an employee upon being disabled or upon the death of the same, the condition of rendering continuous service of five years for obtaining gratuity payments are not necessary. In such circumstances, the petitioner assails the finding of their being no continuous service as well as the interpretation to the proviso in section 4 of the Act of 1972.

On behalf of the private respondents, it is contended that the petitioner's husband was a '*badli*' worker and continued in such status until his death. It is further contended that in the long span of 15 years the petitioner's husband never worked for a continuous span of 240 days, which is a pre-condition to any payment under the Act.

In such circumstances, the petitioner has failed to bring on record or demonstrate that the petitioner's deceased husband had continuously worked for 240 days in any of the years during his terms of service. It is well-settled that the onus to show, that the petitioner has satisfied the mandate of 240 days in order to be entitled to gratuity is solely that of the petitioner. The Register of Leave maintained by the respondent no., 4 clearly suggests that the petitioner's husband never fulfilled the mandate of 240 days and is not entitled to gratuity. In such circumstances, in view of the clear embargo in section 4 of the Act of 1972, the petitioner has failed to qualify for any gratuity.

Section 2A of the Act reads as follows:

*"Section: 2A Continuous service.*

*For the purposes of this Act, -*

*(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order [\*\*\*] treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.*

*(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer -*

*(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -*

*(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and*

*(ii) two hundred and forty days, in any other case;*

*(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than –*

*(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and*

*(ii) one hundred and twenty days, in any other case;*

*Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -*

*(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;*

*(ii) he has been on leave with full wages, earned in the previous year;*

*(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and*

*(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.*

*(3) where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy five per cent of the number of days on which the establishment was in operation during such period.”*

A plain reading of the above section would make it clear that the word “continuous service” mean uninterrupted service being rendered by an employee for the stipulated period in order to be entitled to any gratuity under the Act.

Both the Controlling Authority as well as the Appellate Authority has found that the

petitioner was not eligible on facts and had not completed continuous service. The petitioner's deceased husband was described as a '*badli*' worker in the respondent company for his entire service tenure. There are no documents, which the petitioner had been able to produce before the Controlling Authority to substantiate that her deceased husband had rendered services continuously for this fifteen year period. In such circumstances, the petitioner is not entitled to payment of gratuity under the Act.

In an unreported decision of this Court in *WPA 23514 of 2023 Sk. Ekbal @ Ekbal Sk. Vs. The State of West Bengal & Ors* dated 3 April 2024 is as follows:

*“11. After hearing the parties and considering the materials on record, I have no hesitance to accept that the burden of proof to produce evidence to show that the petitioner was in continuous service in the years between 1968 to 1973 lies on the writ petitioner, particularly when it has been alleged that the petitioner was a Badli worker during that period and did not have the qualifying period of service entitling him to receive gratuity. Even though it has been argued on behalf of the petitioner that the requirement of 240 days is no more germane after the amendment to the 1972 Act on 11th February, 1981 with the introduction of Section 2A in 1972 Act but the fact remains that the petitioner, as the employee, is required to adduce evidence to show that he was in continuous service during those years. This is more so on a conjoint reading of the provisions of section 4(2), section 2(b), section 2(c) and section 2A of the 1972 Act wherefrom the qualifying service and the entitlement is explicit. Without the evidence it is not possible for the Controlling Authority also to decide the issue. Only on the employee discharging his primary burden, the burden of proof may shift on the*

*employer. In absence of the primary onus being discharged by adding evidence to that effect the Controlling Authority as also the Appellate Authority was right in rejecting the petitioner's claim for the period between 1968 and 1973.*

*12. I am also not in agreement with the contention of the petitioner that the ratio laid down in Sita Ram (supra) is not applicable in the case of the petitioner since it was passed in the context of I. D. Act and the case in hand is under 1972 Act as the issue is in respect of giving onus and its discharge. The burden of proof to claim a relief or an entitlement cannot be ignored and has to be discharged by the claimant at the first instance. The Controlling Authority and the Appellate Authority, being the fact finding courts, have come to a specific conclusion on facts which cannot be reopened in judicial review considering its limitation, particularly in absence of palpable irregularity or error apparent on the face of record."*

In view of the above, there is no merit in the writ petition.

WPA 18633 of 2024 stands dismissed without any order as to costs.

(Ravi Krishan Kapur, J.)