

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 23053 of 2024

UCO Bank

Vs

Union of India and Ors.

For the Petitioner : Mr. Victor Chatterjee
Mr. Sourya Roy.

For the UOI : Mr. Animesh Mukherjee,
Mr. Suchit Talukder.

For the Respondent No.3 : Ms. Sanjukta Dutta.

Judgment reserved on : 27.08.2025

Judgment delivered on : 22.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an order dated 27.03.2024 passed by the respondent no.2/Appellate Authority in Appeal No.PG.38/2023-E arising out of Case No.PG/32/2021/ALCR (Sri Ajit Kumar Mondal – Vs – The Chairman, UCO Bank).

- 2.** It is the case of the petitioner that in or about July, 1984, the respondent 3 was working as a temporary peon, on daily wages basis, with the petitioner and was posted at Chora Branch and continued to work as a casual peon till October, 1989.
- 3.** In view of a settlement between the management of the petitioner and its various employees' Union, namely All India UCO Bank Employees' Federation, United Commercial Bank Employees' Association and All India UCO Bank Staffs' Federation (hereinafter called "the said Workmen Unions") a settlement had been arrived at on 12th October, 1989, whereby it was, inter alia, decided that casual worker of the subordinate cadre, subject to their entitlement to being absorbed in terms of the said settlement, may apply to the competent authority in the prescribed format and subject to their meeting necessary eligibility criteria as mentioned in the Circular issued by the petitioner dated 19.10.1989 and subject to available vacancy read with the Circular dated 31st March, 1990, they would be absorbed/regularized. By virtue of the said settlement, the wages of the casual workers had also been revised as recorded therein.
- 4.** Accordingly, upon receiving necessary applications a panel of daily wagers/casual workers was prepared at the instance of the petitioner, which included the name of the respondent No. 3,

then working as a casual worker at Chora Branch office of the petitioner.

5. In or about December, 2003, the respondent No. 3 was appointed in the service of the petitioner, in the subordinate cadre, on terms and conditions as recorded, in his Letter of Appointment No. RO/KOL/PAD/COM/111/2003-04 dated 31.12.2003 as Peon-cum-Farash w.e.f. 17.06.2003.
6. The respondent No. 3 retired from service of the petitioner on attaining superannuation on 28.02.2017 and all his terminal benefits have duly been paid by the petitioner.
7. The petitioner states that the respondent no.3 then filed an application before the Controlling Authority and Assistant Labour Commission (Central at Ranipur, Durgapur), claiming gratuity from the year 1984, till the date of his retirement on 28.02.2017, treating him as in-service from 1984 to 2017 total 33 (Thirty Three) years of service. The petitioner appeared before the Controlling Authority and denied the claim of the respondent no.3, on the ground that in the said Bipartite Settlement dated 12th October, 1989 which culminated in issuing the Circulars 19.10.1989 and 31.03.1990 between the management and workmen Union it was, inter alia, agreed as follows:-

“6. Pending Disputes:

Any person eligible for absorption under this settlement shall withdraw any case pending before any

Conciliation Officer, Labour Court, Tribunal or any other court of law and his claim, if any, shall be deemed to have been settled in terms of this settlement. Upon any person applying for absorption in terms of this settlement shall be deemed to have accepted the benefits under this settlement in full satisfaction in respect of any pending dispute or claim. He shall not be eligible for any benefits beyond what is stipulated in this settlement."

8. The Controlling Authority by an order dated 26th April, 2023, has directed the petitioner to pay an additional sum of Rs. 2,32,541/- to the respondent 3 towards his unpaid gratuity under the Payment of Gratuity Act, 1972.
9. Being aggrieved the petitioner preferred an appeal against the said order, wherein the Appellate Authority, the respondent No. 2 herein, upon hearing, by an order dated 27.03.2024, affirmed the order of the Controlling Authority and Assistant Labour Commissioner (Central), Raniganj at Durgapur.
10. It appears from the document at page 29 being Annexure- 'D' of the affidavit for disclosure of documents filed on behalf of respondent no. 3 that in the year 1984, the petitioner was engaged **only for 69 (Sixty Nine) days on temporary basis.** Admittedly, the petitioner was empanelled for future absorption as peon-cum-farash in the panel dated 18.03.1991, and was finally absorbed on and from 17.06.2003.

11. On perusal of the order, passed by the Controlling Authority in this case, it appears that the said Authority considering the case of both the parties held:-

“.....on perusal of the submission of both the applicant and the employer and also the documentary proof submitted in favour of their claim by both the parties, the undersigned has come to the conclusion that, the claim of the applicant regarding Gratuity amount is valid which is established by the fact that the Management of the Bank had agreed to fill up regular vacancy of the bank with the casual worker, who had rendered service for a period of 240 days prior to the settlement dated 19.10.1989 and the panel list of employees recommended for absorption, which directly indicates that Sri Ajit Kumar Mondal has worked as casual labour for 03 years from a period prior to 19.10.1989. The applicant has also submitted a copy of his appointment letter dated 21.07.1984 issued by the bank, which denotes his entry in bank service on 23.07.1984 as Peon cum farash. Further, the applicant has also submitted photocopy of wages paid and entered in bank pass book to prove his continuity of service. However, the bank has considered the employees service from 17.06.2003 which is in appropriate. In light of the above, Gratuity amount of Sh. Ajit Kumar Mondal is calculated as under: Length of Service 23.07.1984-28.02.2017, which is 32 years 07 months and 05 days, say, 33 years. Last Pay Rs. $(22666.67 \times 15 \times 33)/26 = \text{Rs. } 4,31,538.52$, Rounded off to Rs. 4,31,539/- (Rupees Four lakh, thirty one thousand five hundred and thirty nine only) as per Payment of Gratuity Act, 1972.....”

12. The Appellate Authority vide its order dated 09.03.2024 held as follows:-

".....On merit the ground of the appeal are taken as under:

- 1. That employee has worked for 13 years 8 months with the employer.*
- 2. That employee should not get gratuity for no work no pay basis or irregular period of service. He is only entitled to get gratuity for the permanent period.*
- 3. That in the appointment letter it was clearly mentioned that "you shall not be entitled to claim any benefit for higher wages or service or any other perquisites for the period you were engaged on casual basis". Each of them put their consent at the time of joining and waived their claims and the subsequent claim after retirement is totally illegal and baseless.*

The bank has requested to set aside the impugned order of the Controlling authority dated 26.04.2023.

The employee in his support filed various documents on the basis of which the Controlling Authority & Asst. Labour Commissioner (Central), Raniganj at Durgapur concluded that for 33 years, however, not all in permanent capacity.

Order

After careful consideration I am of the opinion that the Controlling Authority & Asst. Labour Commissioner (Central), Raniganj at Durgapur has undergone proper investigation and merit of the cases as far as facts of the cases are concerned. No fresh evidences/records

have been shown so that the order of the Controlling Authority is interfered with. It is a settled law point that Payment of Gratuity Act, 1972 does not discriminate between casual or permanent. Besides as far as the question of terms of condition of appointment letter is concerned, it cannot overrule the provision of the Payment of Gratuity Act Relevant Section 14 is reproduced 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 any instrument or contract having effect by virtue of any enactment other than this Act".

In this circumstances nothing brought in my notice that calls for interference as Appellate Authority with the order of the Controlling Authority & Asstt. Labour Commissioner (central), Raniganj at Durgapur. The order seems to be reasonable and as per legal matrix.

Accordingly, I hereby confirm the order of the Controlling Authority & Asstt. Labour commissioner (Central) Raniganj at Durgapur dated 26.04.2023 and instant appeal is disposed off accordingly....."

- 13.** The respondent no.3 worker, has relied upon several documents and the following details in support of his contention of continuity of service:-

i. Ravi Shankar Malani Versus State Bank of India and Others, 2022 SCC Online Cal 1579.

- ii. *Netram Sahu Versus State of Chhattisgarh And Another, (2018) 5 Supreme Court Cases 430.*
- iii. *Jaggo Versus Union of India and Others, 2024 SCC Online SC 3826.*

14. Section 2A of the Payment of Gratuity Act, defines continuous service:-

“[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 orders, 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 purposes 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 [such period as may be notified by the Central Government from time to time.]

(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.]”

15. **In the present case**, admittedly respondent no. 3 was a daily wager/casual worker from on or about July, 1984 with the petitioner's bank.
16. He was empanelled for absorption in the panel prepared of daily wagers/casual workers and was absorbed/regularized from the panel on and from 17.06.2003.
17. Though the respondent no. 3 was paid all his dues including gratuity for the period when he was regularised till his superannuation, he has now claimed gratuity to be calculated for the period from when he was employed as a daily wager/casual worker that is on and from 23.07.1984 till 28.02.2017 (superannuation).
18. During the period from 23.07.1984 to 17.06.2003, the respondent no. 3 was admittedly engaged as a daily wager/casual worker (not uninterrupted) and as such would be covered under Section 2A (1)(a)(ii) of the Payment of Gratuity Act.
19. The respondent no. 3 was not covered under clause (1) of Section 2A of the PG Act, being **not in uninterrupted service** as a daily wager/casual worker and as such is required to qualify under Section 2A (1)(a)(ii) of the PG Act.

20. The Supreme Court in ***Regional Director, Employees State vs South India Flour Mills (P) Ltd. Etc. Etc., 1986 AIR 1686, decided on 29 April, 1986***, held:-

“..... Sub-section (4) clearly indicates employment of a casual employee when it provides "and where an employee is employed for part of the week". When an employee is employed for part of a week, he cannot, but be a casual employee. We may also refer to sub-section (3) of section 42 relating to general provisions as to payment of contributions. Sub-section (3) reads as follows:

"Where wages are payable to an employee for a portion of the week, the employer shall be liable to pay both the employer's contribution and the employee's contribution for the week in full but shall be entitled to recover from the employee the employee's contribution....."

21. As such, the respondent no. 3 has to have put in 240 days of work in a year (Section 2A (2)(a)(ii) PG Act for five years continuously (Section 4(1) of the PG Act) to be held to be in continuous service and thus eligible for gratuity.
22. The controlling authority considering the materials before it calculated gratuity from 23.07.1984 till 28.02.2017 (33 years), as he found the respondent no. 3 to be eligible.
23. But, it appears that in the year 1984, the respondent no. 3 was engaged only for 69 (sixty nine) days on temporary basis (Annexure 'D' at page 29).

- 24. Since 1985**, there are no documents to show, how many days the respondent no. 3 was engaged in a year. So considering the documents filed by employee, the controlling authority decided in favour of the respondent no. 3 and so did the appellate authority.
- 25.** The calculation for the period from 1985 to 2017, comes to about 33 years, as already calculated.
- 26.** As the respondent no. 3/employee was a regular employee since 2003, the number of days put in since then is not relevant as the employee was then covered under Section 2A(1) of PGA, being in uninterrupted service and was entitled to gratuity as per Section 4(1) of the Act.
- 27.** Thus, the orders under challenge being in accordance with law requires no interference.
- 28. Writ petition is dismissed.**
- 29.** The petitioner to make the payment as directed by the order under challenge within 30 days from the date of this order.
- 30.** Connected application, if any, stands 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]