

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 24220 of 2024

With

CAN 1 of 2025

M/s. Duckback Information Systems Private Limited

Vs.

Union of India & Ors.

For the Petitioner : Mr. Rudraman Bhattacharyya, Sr. Adv.
Mr. Victor Chatterjee,
Mr. Hare Krishna Halder,
Mr. Koushik Bhattacharyya,
Mr. Debjyoti Dawn.

For the Respondent : Mrs. Priyanka Tibrewal,
Nos.1 to 3 Ms. Oisani Mukherjee.

For the Respondent No. 4 : Mr. Arnab Das,
Mr. Vaibhav Sharma.

For the Respondent No. 5 : Mr. Avijit Ghosal.

Hearing concluded on : 06.03.2025

Judgment on : 03.04.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred against an order dated 03.03.2020 passed by the respondent no. 2, Assistant Labour Commissioner (Central), Kolkata, and order

dated 08.07.2024 passed by the respondent no. 3 Deputy Chief Labour Commissioner (Central), Kolkata being the appellate authority under the Payment of Gratuity Act.

2. The petitioner's case in short is that:-

- (i) The Respondent no.5 was appointed in the service of the petitioner as Sales Executive, and, subsequently he was given higher responsibilities and was promoted to the post of Business Head. The said post is equivalent to the post of Chief Operating Officer (COO), as per contemporary corporate parlance.
- (ii) The Respondent no.5 purportedly claimed to have tendered his resignation on 10th April, 2013 and had stopped attending the office of the petitioner.
- (iii) The Respondent no.5 then submitted a Form I, claiming gratuity from the petitioner and applied for Gratuity in Form - N before the Controlling Authority, Government of West Bengal.
- (iv) The point of maintainability was raised by the petitioner herein with regard to the jurisdiction of the Controlling Authority, Government of West Bengal in entertaining such application of the respondent.
- (v) The matter went up to the Division Bench of the Hon'ble High Court at Calcutta and ultimately by an order dated

17th July, 2019 passed in APO 99 of 2019, the matter was decided that the central govt. shall be the appropriate authority.

- (vi) The petitioner had approached the LICl by a letter for disbursement of the amount of Rs.3,63,461/- to prefer an appeal, on depositing the said amount. The LICl refused to release such amount by a letter. The petitioner moved an application before the Learned Controlling Authority. The Learned Controlling Authority rejected such application by an email dated 28th August, 2020. The petitioner on such rejection approached the High Court and filed WPA 9553 of 2020.
- (vii) The Respondent employee preferred an appeal from the order dated 22nd December, 2020, being FMA 432 of 2021.
- (viii) Respondent employee further preferred a review being RVW No. 139 of 2022. In course of the review proceeding, LICl filed an affidavit in terms of the Hon'ble High Court's order dated 22nd December, 2020 and stated that LICl had issued and handed over a pay order of Rs.3,63,462/ in favour of the Assistant Labour Commissioner. **The Certificate of pre-deposition of the entire amount had been issued to the petitioner.**

- (ix) The petitioner filed an appeal before the respondent no. 3 under section 7(7) of the Payment of Gratuity Act, 1972, being Appeal No. 48 (43)/2023. E.Dy CLC(C). The appeal was ultimately rejected by the Appellate Authority. Hence this writ petition.

3. The Controlling Authority vide his order dated 03.03.2020 held as follows:-

“After considering all the averment and arguments of the parties, have arrived at a conclusion that the applicant is entitled for gratuity. I, therefore directed the M/s. Duckback Information Systems Pvt. Ltd.. is 4A, Council House Street, 2nd floor. Kolkata 700001, to pay Mr. Asis Chaudhury, an amount on Rs. 3,63,461/- (Rupees three lacks sixty three thousand four hundred sixty one only) towards gratuity under provisions of the Payment of Gratuity Act, 1972 and applicable 10% of interest on gratuity amount.

Determination of Gratuity Payable :

- 1. Date of Appointment: 10.02.1995*
- 2. Date of Resignation: 12.04.2013*
- 3. Wages last drawn : Rs. 35,000/- (Basic Salary per month)*

4. Period of Service: 18 years

5. Amount of Gratuity payable:

Rs. 3,63,461/- (Rupees three lacks sixty three thousand four hundred sixty one only)

Given under my hand and seal on 3rd March, 2020.

**Assistant Labour Commissioner
(Dr. A. Narsaiah)
Assistant Labour (Central), Kolkata
and Controlling Authority under the
Payment of Gratuity Act, 1972.”**

4. It appears that the LIC has issued a cheque for the said amount in favour of the Assistant Labour Commissioner (Central), Kolkata towards the said gratuity policy no. 212435.
5. An appeal was preferred by the petitioner herein against the said order of the Controlling Authority, wherein the appellate authority vide an order dated 8th July, 2024 held as follows:-

*“Though the Appellant has made effort to prove that the respondent is not a deserving beneficiary of the Payment of Gratuity Act and that he **has left the organization in an arbitrary manner, Appellant has not been able to explain as to whether the Appellant at any time communicated with the respondent as to his absence from the job.** Moreover, the Appellant has not been able to quantify the loss specifically incurred by the Respondents,*

because of the behavior of the Respondent. **Payment of Gratuity is a social security enactment** which can be forfeited only with regard to certain provisions laid down under Section 4(6) of the Payment of Gratuity Act which is as under:-

(a) the Gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused,

(b) the Gratuity payable to an employee may be wholly or partially forfeited- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

On going through the whole matter none of the above stands proven by the Appellant. **Therefore, in my opinion it is only justified that the Respondent be made payment of gratuity of Rs. 3,63,461/- as**

directed by the Controlling Authority alongwith the interest due to the Respondent immediately.

This is my order on this day of 8th July, 2024.

Sd/-

***Dy. Chief Labour Commissioner (Central)
Kolkata and Appellate Authority under
the Payment of Gratuity Act, 1972”***

6. The petitioners have challenged the said order in this writ application.
7. Notes of argument has been filed on behalf of the petitioner who has relied upon the following judgments:-
 - i. ***Gopinathan Nair (A.) vs N. Radha Bai and Ors, 1988
SCC OnLine Ker 71.***
 - ii. ***Horticulture Officer, Taluka Fruit Nursery,
Amravati vs Hanumantrao Mahadeorao Sawarkar,
in writ petition no. 2296 of 2011, Bombay High
Court.***
8. **CAN 1 of 2025** has been preferred by the private respondent praying for **interest on the gratuity** amount awarded by the appellate authority **from 10th July, 2013 till date of payment.**

9. The judgment of the Division Bench in RVW 139 of 2022 in FMA No. 432 of 2021 has been relied upon by the private respondent.
10. **From the materials on record it is appears that the private respondent submitted his resignation letter on 10th April, 2013, which was duly received on the 12th of April, 2013, by the company as per it's seal and signature with date.**
11. **Thus the case of the petitioner that the respondent no.5 had abandoned his services, is without basis and has no merit being not substantiated.**
12. As such the stand of the petitioner that the private respondent had not tendered a valid resignation is not substantiated, more so as there are no documents to show that the petitioner took necessary steps as per law, when it is alleged that the private respondent stopped attending office.
13. **The well reasoned order dated 08.07.2024 passed by the appellate authority being in accordance with law require no interference.**
14. **WPA 24220 of 2024 is dismissed.**
15. The petitioner is directed to pay the gratuity amounting to Rs. 3,63,461/- along with **statutory interest till payment** within 30 days from the date of this order.
16. All connected applications, if any, stand disposed of.

17. Interim order, if any, stands vacated.
18. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

Later:

After passing of the judgment, learned counsel for the petitioner prays for stay of operation of the judgment and order. Considering that the issue in the present case relates to gratuity and the petitioner is running from pillar to post since 2013 and the relief prayed for being under a beneficiary legislation, the prayer for stay stands rejected in the interest of justice.

[Shampa Dutt (Paul), J.]