

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 25455 of 2024

Hooghly Infrastructure Pvt. Ltd.

Vs

Anandi Rajak & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.

Mr. S.K. Singh,

Mr. R.K. Dubey.

For the State : Mr. Dipanjan Datta, Sr. Adv.

Mr. Soumen Chatterjee.

Hearing concluded on : 10.02.2025

Judgment on : 04.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been filed praying for direction upon the respondents not to give further effect orders dated 18.05.2016 and 31.05.2024, passed by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972.
2. The petitioner's case is in short is that the Respondent No. 1 was engaged in Petitioner Company as a Badli worker on 07.03.1976.

The Respondent No.1 got his provident fund membership only on 04.11.1981. The Respondent No.1 attained his age of superannuation on 06.08.2009 as Badli itself. Throughout this period i.e., 07.03.1976 to 06.08.2009 the respondent no.1 worked as badli employee i.e., in place and stead of permanent employees, who are absent for any reason whatsoever. The certified standing orders of the company authorizes the company to engage 'badli' workman as substitute of a permanent workman who used to be on leave or absent i.e., during temporary vacancy caused by absenteeism.

- 3.** On reaching the age of superannuation the Respondent No.1 applied for gratuity in Form "I" on 14.06.2012 and thereafter approached the Controlling Authority for computation as well as direction for payment gratuity in Form 'N' on 11.11.2012 alleging non-payment of gratuity and claimed a sum to the tune of Rs. 2,09,439.83p along with simple interest.
- 4.** On 03.07.2013 the petitioner submitted their written statement against the application for gratuity before the Controlling Authority. The respondent no.1 also filed his rejoinder/reply on 13.08.2013 against the written statement filed by the petitioner.
- 5.** It is submitted that the respondent no. 1 had not completed qualifying service of 5 years continuous service for 240 days,

each year, to be eligible for gratuity under the Act. It is further pointed out that the respondent no. 1 has not produced any document to prove his stand of entitlement of gratuity or having worked for 240 days for a continuous period of 5 years.

6. Ultimately the Controlling Authority passed an order dated 18.05.2016, inter alia, directing the petitioner to pay gratuity for total period of **service of 33 years** amounting to Rs. 1,32,638/- along with interest for six years nine months Rs. 89,796/-, totalling to Rs. 2,22,434/-.
7. Being aggrieved by and dissatisfied with the order passed by the Controlling Authority, the petitioner filed an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972, Barrackpore, North 24 Parganas on 10.11.2016.
8. At the time of filing of appeal the petitioner duly deposited the principal amount amounting to Rs. 1,32,638/- vide cheque no. 170062, dated 08.11.2016 drawn at AXIS BANK Ltd., Barrackpore Branch.
9. The petitioner was served with order dated 31.05.2024 under cover of notice dated 20.06.2024 in Form S. while passing the order dated 31.05.2024, the appellate authority upheld the order passed by the Controlling Authority.

10. The said order has been challenged in the present writ application.
11. On hearing the learned counsel for both parties and on perusal of the order passed by the Controlling Authority, it appears that

the Controlling Authority held as follows:-

“.....Applicant had submitted following documents before the Controlling Authority in support of his claim.

- a) Copy of ESI card. (Exhibit 1)*
- b) Copy of Identity card. (Exhibit 2)*
- c) Copy of retirement notice. (Exhibit 3)*
- d) Copy of wage tickets including available last wage slip. (Exhibit 4)*
- e) Copy of P.F receipt slip. (Exhibit 5)*
- f) Certificate by Employer. (Exhibit 6)*
- g) Copy of Form 'T' submitted to the O.P. (Exhibit 7)*

Further O.P admitted that he made a table showing year wise working days on the basis of actual attendance of the applicant but denied showing any such attendance register vide his submission of letter dated 15/09/2015 (Exhibit 8) before the Controlling Authority, violating the order of controlling authority. Further O.P. could not produce any document regarding his break of service. Thus it may be concluded that he worked during this period continuously.

The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. Now Section 106 in The Indian Evidence Act, 1872 says that when any fact

is especially within the knowledge of any person, the burden of proving that fact is upon him. And Sec.111 of the said act states that Proof of good faith in transactions where one party is in relation of active confidence. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Therefore, burden of proof lies upon a person who has to prove the fact and which never shifts. OP had produced false evidence and tries to mislead the controlling Authority. Further O.P. could not produce any such documentary evidence that proves beyond doubt that petitioner had never worked 240 days during this period.

Further O.P. had accepted Form-I without any demur and did not reject it. Moreover even after receiving Form "I" as stated above, the Opposite Party Company did not respond or intimate the applicant and did not issue Form "L" or "M" against Form "I", which is a gross violation of the statute.

Further it is also found that O.P. did not take permission from the Controlling Authority for delay payment. It is also found that applicant is not responsible for delay payment of gratuity. Thus it is ordered that the applicant is entitled to a payment of simple Interest @ 10% per annum on the gratuity amount from the date on which gratuity becomes payable to the date on which it is paid as per provision of Sub-Section 3A of Section 7 of The Payment of Gratuity Act, 1972.

Hence, it is ordered that the applicant Sri Anandi Rajak is entitled to a payment of Rs. 1,32,638/- (Rupees One Lakh Thirty Two Thousand Six Hundred and Thirty Eight) only as gratuity with a 10% simple interest on the said amount which comes to Rs. 89,796/- totalling to Rs. 2,22,434/- (Rupees Two Lakh Twenty Two Thousand Four Hundred and Thirty Four only), from the Opposite

**Party employer "M/s Hooghly Infrastructure Pvt. Ltd.,
Unit: Hukumchand Jute Mill" P.O.: Hazinagar, Dist.:
North 24 Parganas, within 30 (thirty) days from the
date of receipt of this direction along with notice in
Form 'R' attached herewith as provided under Rule
17 of the West Bengal Payment of Gratuity Rules,
1973.**

**Sd/-
Controlling Authority,
Under
The Payment of Gratuity Act, 1972"**

**12. The Appellate Authority in disposing of the appeal order
dated 20.06.2024, held as follows :-**

"..... In the instant case, the respondent 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 appellant was 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 appellant to produce the original service record even on being ordered by the Ld. Controlling Authority (vide Mahant Shri Srinivas Ramanuj Das Vs Surjanarayan Das & Anr; AIR 1967 SC 256). While the appellant who is statutorily bound to maintain the attendance registers of his employees fails to produce the same, the respondent, being a jute mill worker and placed in a weaker position to his employer is hardly expected to preserve the details of his service records after expiry of a long period of time from his retirement.

Given above, drawing an adverse inference, I am left with no other option but to hold that the appellant employer failed to establish that the respondent workman had not rendered continuous service from 07/08/1976 to 04/08/2009 in his company. Hence, I found no reason to differ with the views of the Ld. Controlling Authority

(respondent no. 1). The instant appeal is thus decided against the appellant and disposed of herewith.

Sd/-
Appellate Authority
Under the Payment of Gratuity Act, 1972
Barrackpore, North 24 Parganas”

13. From the materials on record the following is evident:-

- (i) The respondent no. 1 was employed with the petitioner company as a ‘badli worker’ from 7.3.1976 till 06.08.2009 **(33 years)**.
- (ii) The respondent no. 1 became a member under the Provident Fund Scheme in the year 1981.
- (iii) The job for **33 long years** involved working in place of permanent workman/employee in their absence on leave or otherwise.
- (iv) In support of his case of the period of employment, the employee has produced a copy of his ESI Card (Exhibit -1) and his superannuation notice (Exhibit -3) along with his wage slip (Exhibit-4).
- (v) The petitioner company did not produce any documents inspite of the fact that it is the duty of the employer to maintain all documents relating to its employee and other matters, to be maintained and preserved as per law.

14. The petitioner has relied upon the following the judgments:-

- i. ***Calcutta Jute Manufacturing Company vs The State of West Bengal and Anr., in WP 12342(W) of 2015, decided on 15.05.2018, Calcutta High Court.***
- ii. ***Sk. Ekbal @ Ekbal Sk. vs The State of West Bengal & Ors., in WPA 23514 of 2023, decided on 03.04.2024, Calcutta High Court.***
- iii. ***The Ganges Manufacturing Company Limited vs State of West Bengal & Ors., in FMA 882 of 2024, decided on 21.11.2024, Calcutta High Court.***

Wherein the courts held that duty to produce documents to show continuous service lies on the writ petitioner.

15. Section 25D of the Industrial Disputes Act, lays down:-

“25D. Duty of an employer to maintain muster-rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.”*

16. In *Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022*, the Supreme Court held:-

“.....25. It is settled principle of law that while considering the order/judgment of Constitutional

Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that **initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however this Tribunal cannot ignore the fact that UC has not filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable.**" 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. **The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act,** particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be

eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. **It is worthwhile to mention here that Section 25-D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment.** This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, **the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference against the management.”** 23 Based on the above hypothesis, the report proceeded to decide “prima facie” the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the “Unions have not seriously disputed the same”, the Dogra Report concludes that “such claimants are to be given benefit of absorption only once”. The Dogra Report also notes that workers who had started working beyond the

cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In *State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc.*, (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."....."

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for **33 years** in permanent posts and **has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act. (Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))**
18. The employee has now superannuated after **33 years** and if such conduct of the employer is ignored, there shall be clear abuse of the process of law.
19. The benefit is under a beneficial legislation and an employee who has **admittedly worked for 33 years** and has rendered his service towards the work to be carried out by a regular employee thus **will have definitely put in work for the number of days required to make him entitled to such benefits.** He even is a member of the PF scheme.
20. The facts as seen proves that **the employee has provided selfless service towards permanent posts and as such has carried out work of a regular employee for the period required each year to entitle him to the said benefits, which led to his employment for 33 years.**

21. Having done so, the least that he is entitled to, are the retiral dues (social security) which includes gratuity and such benefits should be made to the employee without any hindrance as the employee has **given his whole life to serve the company.**
22. Thus the order under challenge being in accordance with law requires no interference by this Court.
23. **WPA 25455 of 2024 stands dismissed.**
24. All connected applications, if any, stand disposed of.
25. Interim order, if any, stands vacated.
26. 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.]