

03.12.2025

Ct. No. 10
Sl. No. 3
Moumita

In The High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26522 of 2025

**Pioneer Co-operative Car Parking Servicing
and Construction Society Limited.**

Vs

The State of West Bengal & Ors.

Mr. Milan Ch. Bhattacharjee, Sr. Adv.
Ms. Sulagna Bhattacharjee
..... for the Petitioner

Mr. Balaram Patra
Mr. Suvadip Bhattacharjee
....for the respondent no. 3

Mr. Sirsanya Bandopadhyay, Ld. SSC
Mr. Tarak Karan, Ld. Adv.
...for the State

The petitioner in the instant case is a co-operative society registered with provisions of the West Bengal Co-operative Societies Act, 1973. The petitioner files the instant writ petition for the following reliefs.

Prayer 'page-34'

- (a)** *"A writ in the nature of Mandamus declaring that sub-Rule (5) of Rule 7 of the West Bengal Payment of Gratuity Rules, 1973 is ultra vires the Constitution of India and ultra vires the provisions of Payment of Gratuity Act, 1972 and the limitation Act, 1963;*
- (b)** *A writ in the nature of Mandamus declaring further once imposing bar with regard to limitation and by that Sub-section withdrawing the bar of limitation and delegating he same to the Controlling Authority is purely ambiguous and disharmonious and as such, it should be declared void ab initio;*

- (c)** *A writ in the nature of Mandamus declaring that there is no relationship of master and servant between the petitioner Co-operative Society and Utpal Dutta nor they are governed by the West Bengal Co-operative Societies Act, 1973 and West Bengal Co-operative Societies Rules, 1974 relating to Service Conditions and they do not come under the Service jurisprudence either under the West Bengal Services or under the Co-operative Services since it is a lis between the Co-operative Society and the Members as a result to declare that Payment of Gratuity Act, 1972 has no manner of application in the Society;*
- (d)** *A writ in the nature of Mandamus directing the respondents, their men, agents, assigns and subordinates to forbear from giving effect and further effect of the impugned order dated 3rd November, 2025 and to declare the said order is ultra vires the law, irregular and void ab initio.*
- (e)** *A writ in the nature of Certiorari directing the respondents to transmit, authenticate the records of this case to this Hon'ble Court so that conscionable justice may be administered by granting relief as prayed for;*
- (f)** *Rule NISI in terms of the prayers (a) to (d) above and to hear the parties and make to Rule absolute;*
- (g)** *An ad interim order be passed upon the respondents restraining their men, agents, assigns and subordinates from giving effect and further effect to the impugned order dated 3rd November, 2025 being Annexure-p/3 herein and to be restrained from holding any sitting or hearing with regard to merits or otherwise till the disposal of Rule;*
- (h)** *Costs of and incidental to this application be paid by the respondents;*
- (i)** *Such further and/or other orders be passed, direction and/or directions be given as to this Hon'ble Court may deem fit and proper."*

The petitioner submits that the private respondent is not an employee of the petitioner. Neither any master and servant relationship nor any “employee and employer” relationship exists since the private respondent is the member of the co-operative society. The petitioner states that already the matter is pending before the controlling authority and has been fixed on 9th January, 2026 for hearing the same on merits. The petitioner submits that the order passed by the controlling authority dated 03.11.2025 is palpably wrong and is contrary to the directions given by the Division Bench of this Court, vide order dated 07.02.2025 wherein it was observed in paragraph 5 to 9 which reproduced below.

‘It is now well settled that limitation and jurisdiction are mixed questions of fact and law. The issue of limitation shall, therefore, be finally decided by the Controlling Authority after receiving oral and documentary evidence from both the parties.

It is only after deciding the limitation issue first based on the evidence that the parties bring on record, that the Controlling Authority if at all may proceed to determine the issue on merits of the claim of gratuity.

In view of the aforesaid, this Court is inclined to set aside the impugned judgment of the Single Bench dated 30.10.2025. The order of payment of cost.

It is expected that the parties and their representatives before the Controlling Authority conduct the proceeding in a cordial and conducive atmosphere.

It is expected that the Controlling Authority decides the matter as expeditiously as possible preferably within a period of five months from date.'

The petitioner draws the attention of this Court to *Clause e and f of Paragraph 30 at page 155A* of the order dated 3.11.2025 by showing that the controlling authority had passed the order contrary to the direction of the Division Bench of this Court. The controlling authority was directed to decide the limitation issue first based on evidence and thereafter proceed to determine the issue on merits of the claim of gratuity.

The respondent submits that already the matter has been fixed on 9th of January, 2026 for hearing the matter on merits. The point of limitation has already been decided by the controlling authority. The question of touching the merits of the case at the time of deciding the point of limitation does not arise at all. The respondent has vehemently opposed the contention of the petitioner with regard to the existence of the relationship of the employments which was never a subject matter of challenge before the controlling authority.

After careful consideration of the case, I am of the considered view that upon perusing the finding of the controlling authority *at page 155 A in Paragraph 30*, I find that controlling authority has touched and considered with regard to the merit of the case pertaining

to the claim of the gratuity of the private respondent. The *Clauses e and f of Paragraph 30* appears to have been decided on merits being contrary to the direction of the Division Bench of this Court. The same are expunged keeping other observations of the controlling authority unaltered. The controlling authority has already decided on the point of limitation and is directed to proceed on merits of the case for deciding the locus of the private respondent along with the entitlement of his claim of gratuity.

The matter is disposed of by expunging the *Clauses e and f in Paragraph 30 at page 155 A* and is expunged and modified to that extent, keeping the other observations unaltered.

With the above observations and directions, this writ petition **WPA 26522 of 2025** stands ***disposed of***, without any order as to costs.

(Smita Das De, J.)