

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

WPA 29089 of 2023

SAIL Growth Works
vs.
Sri Durga Mahato & Ors.

For the petitioner	: Mr. Nirmalendu Ganguly, Mr. Anshunath Chakraborty	Advocates
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For Respondent no. 2 & 3	Mr. Ajit Kumar Mishra, Mr. Abhishek Dey, Mr. Kushagra Maskara	Advocates
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Heard on	21.05.2025
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Judgment on	: 2 nd July, 2025.
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Arindam Mukherjee, J.:

The petitioner has challenged the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act) as also the Deputy Chief Labour Commissioner (Central) Asansol, West Bengal dated 23rd September, 2023. By the order impugned, the Appellate Authority has allowed the appeal by setting aside the order of the Controlling Authority under the said Act dated 6th December, 2021 and has further held that the appellant/workman is entitled to gratuity from the writ petitioner.

Facts of the Case:

1. Durga Mahato, the respondent no. 1 as the employee filed an application under Rule 10(1) of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as the said Rules) on 26th November, 2014 impleading the General Manager SAIL Growth Works, Kulti as the principal respondent. SAIL Growth Works is the petitioner in the instant writ petition and has been alleged to be the employer of the respondent no. 1. The Controlling Authority and the Appellate Authority are respectively, the respondent no. 2 and 3 in the writ petition.

The employee (Respondent no. 1) in his application has alleged the following :

- (i) He was engaged in IISCO and its Kulti Works (hereinafter for the sake of convenience referred to as the erstwhile establishment) continuously from 15th March, 1980 through varieties contractors, the last of which was IISCO Employees' Primary Co-operative Stores Ltd. (hereinafter referred to as the said Stores Ltd.) till the separation of his services in 2003. The separation of service occurred due to closing down of the erstwhile establishment in 2003.
- (ii) The last drawn wages is Rs.3519.32 on the basis whereof for 33 years of continuous service the employee has claimed a sum of Rs. 46,699/- from the writ petitioner being the principal employer.
- (iii) Similarly placed employees like the respondent no. 1 have been paid the gratuity pursuant to the orders of the Controlling Authority and the Appellate Authority under the said Act.
- (iv) The employee is entitled to claim gratuity in view of the provisions of the Article 14 of the Constitution of India since gratuity has been held by the Hon'ble Supreme Court to be not a bounty.

- (v) There is no deliberate laches on the part of the respondent no. 1 (employer) and there is also no legal embargo in claiming the same from the writ petitioner.

The writ petitioner has objected to the claim made by the respondent no. 1 by filing an objection wherein the main points taken are as follows:

- (i) There is no employer-employee relationship between the writ petitioner and the respondent no. 1 (employee)
- (ii) The concerned Contractor/Contractors are necessary and proper parties to the proceedings but have not been impleaded as such.
- (iii) The application has been filed after expiry of 12 years when the employee has accepted that the separation of his services took place in 2003 and as such the claim is barred by limitation. Moreover, records after expiry of 12 years are not expected to be available or can be traced out. Furthermore, IISCO Kulti works was taken over by the writ petitioner pursuant to the decision taken by the Central Government in the year 2006-2007 and as such it is impossible to track the records prior to 2003 in 2014.
- (iv) Under an agreement the employee (respondent no. 1) has been paid ex gratia in lieu of his legal dues and as such should refund such ex gratia amount before claiming gratuity.
- (v) The claim of the employee is barred by the principles of waiver, acquiesce and estoppels and laches.

The Controlling Authority has dismissed the claim of the employee after condoning the delay and admitting the same mainly on the following grounds:-

- (i) The contention of the respondent no. 1 (employee) was that the management of IISCO, Kulti Works and the said Stores Ltd is the same but with different name and status, Persons acting as Joint Secretary Administration and/or Special Officer of the said Stores Ltd. were permanent employee of IISCO. The Control and Management of the Stores Ltd was with IISCO and the said Stores was a Joint Venture (JV) of the officers and/or executives of IISCO.
- (ii) The applicant claimed to be directly associated with the production of IISCO and the monthly wages and Provident Fund were paid by IISCO management. The provident fund nomination form, pension form and gate pass were issued by the IISCO Management. IISCO works, Kulti was, therefore, the employer of the respondent no. 1 and as such was liable to pay the gratuity and not the contractor.
- (iii) The Controlling Authority held after hearing the respondent no. 1 (applicant therein) and the writ petitioner (respondent therein) that admittedly the respondent no. 1 was working in the IISCO works at Kulti on being engaged by a contract. Thus, there was no direct employer-employee relationship as envisaged under the provisions of Section 2 of the said Act. The issue as to whether the contractor (said Stores Ltd.) is an alter ego of the writ petitioner cannot be adjudicated as per the Controlling Authority under the provisions of the said Act. This issue can be gone into by the Competent Authority under the Industrial Disputes Act, 1947 or under the Contract

Labour (Regulation and Abolition) Act, 1970. The respondent no. 1 although had alleged that the said stores shown as the contractor is only on papers without there being any document in support thereof cannot also be accepted. Moreover, no documents have been produced by the respondent no. 1 (applicant-employee) to demonstrate that the said Stores (contractor) is an alter ego of the writ petitioner. So far as the issue of absence of licence in favour of the said Stores (Contractor) as alleged by the applicant is concerned, the Controlling Authority has opined that the same cannot be gone into or adjudicated by it while exercising the jurisdiction under the said Act. The Controlling Authority, therefor, rejected the claim and held that the writ petitioner is not the employer of the respondent no. 1 and as such is not liable to pay gratuity to respondent no. 1 (the employee). The application was, therefore, dismissed.

- (iv) Challenging the order of the Controlling Authority dated 6th December, 2021, the respondent no. 1 filed an appeal before the Appellate Authority under the said Act. The Appellate Authority has held that the said Stores (Contractor) is the alter ego of IISCO works, Kulti and as such the writ petitioner who has stepped into the shoes of IISCO works at Kulti is liable to pay the gratuity and has therefore set aside the order of the Controlling Authority by an order dated 27th September, 2023.

Submission of the writ petitioner:

- A. On behalf of the writ petitioner, it is submitted that the Appellate Authority without proper appreciation of fact and application of law has

set aside the order of the Controlling Authority. The said order is, therefore, has to be set aside and /or quashed.

B. In support of its contention, the writ petitioner relied upon the judgments reported in

1. (2017) 3 Maharashtra Law Journal 294 (Cummins (I) Ltd. vs. Industrial Cleaning Services & Ors.).

2. A coordinate Bench judgment reported in 2024 LLR 21 (FIS Payment Solutions and Services India Pvt. Ltd. vs. The Assistant Labour Commissioner (Central)-II and Controlling Authority & Ors.)

3. A coordinate Bench judgment dated 12th September, 2023 passed in WPA no. 10495 of 2022 (FIS Payment Solutions and Services India Pvt. Limited vs. Tapan Roy and Ors.)

4. A Division Bench judgment and order of this Court delivered in MAT 245-249 of 2021 on 7th January, 2022 filed by (FIS Payment Solutions and Services Private Limited) against the persons claiming to be its employees.

Relying upon the aforesaid judgments, it is submitted that in absence of employer-employee relationship, being clearly demonstrated, the Appellate Authority could not have upset the factual finding made by the Controlling Authority. No new document was placed before the Appellate Authority for which the Appellate Authority could have held the said Stores (Contractor) to be an alter ego of IISCO works, Kulti. The said Stores (Contractor) was not a party to the proceedings though, the writ petitioner had even before the Controlling Authority in its objection

submitted that the Contractor/Contractors are necessary and proper parties.

C. The licence of the said Stores (contractor) cannot be with the writ petitioner for being produced before the Appellate Authority. The Appellate Authority therefore has erred in law in fastening the liability of paying gratuity principally on the ground that the Contractor's licence of the said Stores (Contractor) could not be produced. Assuming without admitting that while engaging the said Stores as the Contractor, the licence of the said Contractor was furnished with IISCO works, at Kulti but with the passage of time and that the writ petitioner in view of the decision taken by the Central Government had taken over IISCO works, at Kulti for the purpose of operating the same in 2006-07. Such documents cannot be said to be available with the writ petitioner and has not been produced. The records which were available before the IISCO works at Kulti was not made available to the writ petitioner and as such the writ petitioner was unable to produce the same for which no influence can be drawn against the writ petitioner to have not produced the licence to fasten the responsibility of paying gratuity to the contractual worker under the respondent no. 1. Furthermore, the separation of services of the petitioner took place in 2003 while the writ petitioner started operating the works from 2006-07. If the respondent no. 1 had approached the Controlling Authority within a short span from 2003 or immediately after the writ petitioner stated operating the IISCO works, at Kulti then also an effort could have been made for the purpose of getting the documents of the Contractors through whom the respondent no. 1 had been engaged from 15th March, 1980. It is also not

possible for realizing the amounts that has been directed to be paid by the Appellate Authority from the Contractors by the writ petitioner in the capacity of the principal employer after passage of so many years. The writ petitioner apart from being not liable to pay gratuity to the respondent no. 1 as it's employer is also not in a position to recover the money which is permissible in law on the liability of paying the gratuity of the employees engaged through Contractor is saddled upon it as the principal employer. The writ petitioner, therefore, has sought for setting aside of the said order passed by the Appellate Authority.

Submission on behalf of the Respondent no. 1.

1. The respondent no.1 has reiterated the said submissions that were made before the Controlling Authority and the Appellate Authority that the writ petitioner is the alter ego of the Contractor being the said Stores. The Contractors is shown on papers just to avoid and evade payment of gratuity to the employees of the Contractor. The respondent no. 1 also submits that no documents including statutory licence required by a Contractor to operate has been produced either before the Controlling Authority or before the Appellate Authority by the writ petitioner. On having failed to do so, an adverse presumption is required to be formed on the ground that the writ petitioner has withheld the material documents as the same are likely to go against the writ petitioner.
2. The respondent no. 1 has cited a judgment reported in **2010 (3) CHN 899 (Sailen Seth vs. Deputy Labour Commissioner & Ors.)**. Relying upon the said judgment in Sailen Seth (supra) as also the judgment of the Supreme Court considered in Sailen Seth (Supra) it is

submitted by the respondent no. 1 that the writ petitioner is liable to pay gratuity to the petitioner as the principal employer.

Analysis and Conclusion.

1. On a perusal of records annexed to the writ petition, it appears that IISCO on 1st January, 2003 issued a circular requesting its employees to accept Voluntary Retirement Scheme (in short VRS) during 2002-03 for which adequate payments will be made. It was also clearly mentioned that the last date of submission of the VRS application form was fixed on 31st January, 2003. Further, by another circular dated 10th March, 2003 it was stated that all those employees who do not opt for the VRS within 31st March, 2003 will be eligible only for retrenchment compensation as per Government of India notification dated 5th May, 2000. The majority of the permanent employees /staff and member of IISCO works at Kulti accepted the VRS and the rest were paid retrenchment compensation. The IISCO works at Kulti was temporarily shut down. Subsequently in 2007 the writ petitioner, a public sector undertaking under the Central Government was directed to take charge to operate the IISCO works at Kulti. Since then the writ petitioner is operating the IISCO plant and works at Kulti.
2. The respondent no. 1 has admitted to have been engaged through the Contractor in 1980 and continued with the same till his services came to an end in 2003 with the closure of the IISCO, Kulti works. The respondent no. 1, therefore, has a service tenure of about 30 years. There is also no dispute as to the respondent

no. 1 getting Gratuity in terms of the said but the question is from whom i.e., the Contractor or the principal employer. The respondent no. 1 is also entitled to approach the Controlling Authority under the said Act, if he is not paid the gratuity.

3. On a consideration of the judgments cited at the Bar as also the judgments of Supreme Court referred to herein and upon considering the ratio laid down in such judgments, I find that there exists no employer-employee relationship between the writ petitioner and the respondent no. 1. Until it is found that the Contractors through whom respondent no. 1 was admittedly engaged was a camouflage for denying the contractual workers of his/her legitimate dues. This step will, however, be a suicidal attempt on the part of the principal as he becomes liable in such a situation to pay the gratuity amount and the principal employee, therefore, will take such risk.
4. Since, the employer-employee relationship under the normal condition is between the contractor and the employee (the respondent no. 1 in the instant case), the Appellate Authority by holding that the last contractor i.e., the said Stores being an alter ego of IISCO works at Kulti without any document or positive findings cannot hold IISCO to be liable to pay gratuity as the principal employer. The Appellate Authority, therefore, has erred in law as also on fact. The Controlling Authority was correct when it came to the conclusion that the dispute as to the employer in the context of the submissions made by the respondent no. 1 was not open under the provisions of the said Act before the Controlling

Authority. The same reasoning also applies in case of the Appellate Authority which derives power under the said Act. The Controlling Authority was also right when it observed that the employer-employee dispute as raised by the respondent no. 1 is the subject matter of Industrial Disputes Act, 1947 and the (Contract Labour) Regulation and Abolition, Act, 1970. It is also correct that the scope of determination of a dispute regarding the employer-employee under the said Act is also very limited.

5. The Controlling Authority, however erred by not adding the contractors as parties when the writ petitioner raised this point to resolve the issue once for all by permitting the contractors an opportunity to put forth their respective case with document. This exercise could have been done even though it was the choice of the appellant (respondent no. 1) to choose the parties. The Appellate Authority also did not do so but proceeded to fasten liability on the writ petitioners on certain untenable grounds.
6. In the context of employer-employee relationship, the provisions of Section 2 (e) of the said Act which defines “employee” and Section 2 (f) which defines “employer” are set out for convenience.

“2. (e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

2.(f) “employer” means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop— (i) belonging to, or under the control of, the Central

Government or a State Government a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned, (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority, (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;”

7. On a plain reading of the provisions of Section 2(e), its application that ‘employee’ means any person (other than ‘apprentice’) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this said Act applies but does not include any such person who holds a post under the Central or a State Government.
8. On the other hand, ‘employer’ is defined in relation to any establishment of factory, mine, oilfield, plantation, port or railway company or shop which is under the control of the Central Government or a State Government. Only under Section 2(f) (iii) it has been held that “in any other case”, the person who or authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop and where the said affairs are entrusted to any other person whether called a Manager, Managing Director or by

any other name. The judgment cited by the respondent no. 1 in *Sailen Seth (supra)* has proceeded on the view that being the principal employer, the said employer is liable to pay gratuity to any person entitled to receive such gratuity under the said Act in case of failure on the part of the contractor for such stipulated in Section 2(f) (iii). This cannot be a sound logical deduction as this may create anomalous situation at galore by encouraging the contractors from absolving themselves from the responsibility of paying gratuity even though they are liable to do so on the pretext that the principal employee is there to pay. The principal employer will then be either not in a position to realize or recover such money from the contractor on having paid all his dues or will be entangled in long civil battle to realize the same.

9. In *Sailen Seth (supra)*, the Contractor was before the Controlling Authority. It was also noted by the Court while passing the order that a huge sum had been kept withheld by the principal employer from the payments to be received by the Contractor for realizing any unpaid gratuity from the contractor being the employer of the contractual employee. This Court in *Sailen Seth (supra)* therefore, had proceeded on the basis of Section 2(f) (ii) and held the principal employer to be liable to pay the gratuity to the contractual employee. This view has been dissented by the Bombay High Court in *Cummins (supra)* as also by a Coordinate Bench in *FIS Payment Solutions and Services Pvt. Limited. (supra)*, I am inclined to agree with the views in (*Cummins* and *FIS Payment Solutions and Services Pvt. Limited. (supra)*). This Court

has also noted the judgment of the Division Bench in MAT 245-249 of 2021 and is of the view that the Contractor was a necessary and proper party. In absence of the contractor, and the agreement between the contractor and IISCO works at Kulti as also the appointment conditions of respondent no. 1, were considered by the Appellate Authority it was not possible to hold that IISCO works, Kulti was an alter ego of the contractor as alleged by the respondent no.1. The Appellate Court, therefore, has erred in law as also in fact while passing the order impugned dated 27th September, 2023 on having failed to take note of the points of discussion made hereinabove particularly in the context of the instant case where the contractor/contractors are not parties and the claim has been made after more than 12 years. The Controlling Authority had also erred by not adding the contractor or the contractors as party to the proceedings when the writ petitioner had specifically raised a point in its objection that the contractor was a necessary and proper party even if the choice of party was left with the applicant (respondent no. 1).

10. In the aforesaid facts and circumstances, the order dated 27th September, 2023 is set aside. The matter is remanded back to the Controlling Authority after setting aside its order dated 6th December, 2021 with a direction upon it to add the contractors as party to the application before it and decide the same afresh after permitting the respondent no. 1 (employee) the writ petitioner and the contractors to produce additional documents to find out the terms of appointment of the respondent no. 1 *vis-a-vis* the

agreement between the writ petitioner and the contractors with regard to the payment of gratuity to the respondent no. 1 is concerned.

11. The writ petition is disposed of accordingly.

Urgent Photostat certified copy of this Order, if applied for, be given to the parties, upon compliance of necessary formalities.

(ARINDAM MUKHERJEE, J.)