

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 7598 of 2026

Eastern Coalfields Limited

Vs.

Union of India & Ors.

For the Petitioner : Mr. Manik Das.

For the Respondent No. 1/U.O.I. : Mr. Ranjan Kumar Sinha,
Mr. Madhav Jana.

For the Respondent No. 4 : Mr. Anup Krishna Das,
Mr. Rajarshi Ghosh.

Judgment reserved on : 09.04.2026

Judgment delivered on : 09.04.2026

Shampa Dutt (Paul), J.:

1. Affidavit of service filed be kept with the record.
2. The writ application has been preferred praying for direction upon the the respondent No. 2, being the Deputy Chief Labour Commissioner (Central), Asansol and the Appellate Authority under Payment of Gratuity Act, 1972, to cancel, rescind, withdraw the impugned order dated 19th December, 2025, passed by the respondent No. 2 in Appeal

No. PG. 06 of 2025-E, thereby setting aside the order dated 13th February, 2025 passed by the respondent No. 3, being the Assistant Labour Commissioner (Central), Asansol and the Controlling Authority under the Payment of Gratuity Act, 1972, in File/Application No. 48(42)/2024/E-2.

3. The petitioner states that:-

- i.** The petitioner states that the respondent No. 4 was employed with the petitioner No. 1 Company as Senior P.A. and got superannuated with effect from 29th February, 2024, her date of appointment being 2nd March, 1990. The respondent No. 4, at the time of her superannuation, was serving as 'Senior P.A', UM No. 092992, at the Headquarter of the petitioner Company in the District of Paschim Bardhaman.
- ii.** The petitioner states that the respondent No. 4 was allotted a residential quarter being Quarter No. B/EQ/23/026 at Dishergarh under Kulti Police Station in the district of Paschim Bardhaman (hereinafter referred to as the "said Quarter") during her service tenure by the Company and the said quarter is still in possession of the respondent No. 4 as the respondent No. 4 has not yet vacated the quarter.
- iii.** The petitioner states that as per the prevailing practice, the respondent No. 4, amongst others, was intimated as to the date of her superannuation by an Office Order bearing Ref. No. ECL/CMD/C-6/WBE-Sup/2022/198 dated 14-02-2023.

- iv.** By a Circular bearing Reference No. CIL:D(P&IR):SECH:005:144:133 dated 11th November, 2021 (hereinafter referred to as the "said circular"), Coal India Limited (hereinafter referred to as the "CIL") directed all its subsidiaries including the petitioner No. 1 Company to take measures as stated therein for vacation of quarters after retirement of the employees including charging of penal rent from the concerned retired employee for unauthorized occupation of the quarter after retirement and withholding of the retiral benefits until quarter is vacated by the concerned employee.
- v.** The aforesaid Circular dated 11th November, 2021 of the CIL was circulated by the management of the Company to all its areas and collieries vide Office Order bearing Ref. No. ECL/CMD/C-6/WBE-33/1197 dated 02-12-2021 for needful action in the matter to get the quarters vacated by the unauthorized occupants that is the retired employees.
- vi.** Amongst the retiral benefits as are available to an employee, provident fund, which is called Coal Mines Provident Fund (in short "CMPF") and pension are not within the domain of the petitioner as in coal sectors, the CMPF and pension are maintained and disbursed by the Coal Mines Provident Fund Organisation, which is a separate and independent organization and as such no adjustment or deduction for penal rent or otherwise for withholding quarter can be made by a coal company against CMPF or pension.

vii. The petitioner states that the respondent No. 4, though got superannuated with effect from 29th February, 2024, yet, till date, has not vacated and handed over the quarter to the petitioner Company and is still illegally occupying the same and is using water and electricity thereat at the cost and expenses of the petitioner Company.

- 4. In the present case,** as the petitioner refused to release the gratuity, the dispute as to the gratuity amount payable to the respondent no.4 has been adjudicated by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as, “1972 Act”).
- 5.** The petitioner states that the petitioner, under cover of a letter dated 10-09-2024, deposited the entire amount of gratuity pertaining to the respondent No. 4 with the Controlling Authority, being the respondent No. 3 herein, vide cheque No. 973434 dated 04-09-2024, drawn on State Bank of India, Sanctoria, Asansol and the said cheque having been encashed, the gratuity amount of the respondent No. 4 is presently lying with the respondent No. 3.
- 6.** The petitioner states that the respondent No. 3 disposed of the said application by an order dated 13th February, 2025, inter alia, holding that gratuity cannot be withheld for non-vacation of Company's quarter thereby directing the petitioner to pay the gratuity amount of Rs. 20,00,000/- (Rupees twenty lacs) within 30 (thirty) days from the date of receipt of the aforesaid order.
- 7.** The petitioner state that on or about 31-03-2025, the petitioner preferred an appeal against the aforesaid order dated 13th February,

2025 before the respondent No. 2. Such appeal was numbered as Appeal No. PG. 06 of 2025-E (hereinafter referred to as the "said appeal").

8. The petitioner states that the said appeal was disposed of by the respondent 2 by his order/decision dated 19th December, 2025 (hereinafter referred to as the "impugned order") whereby the respondent No. 2, inter alia, affirmed the order dated 13th February, 2025 passed by the respondent No. 3 and directed the respondent No. 3 to release the gratuity amount to the respondent No. 4.
9. **The respondent no. 4 inducted as a licensee, has admittedly overstayed after his licence expired on superannuation.**
10. The following government office memorandum dated 20th October, 2023, provides for recovery of Govt. dues from gratuity payable and these dues include **“3(a) dues pertaining to Government accommodation including arrears of licence fee as well as damages (for the occupation of the Government accommodation beyond the permissible period after the date of retirement of the allottee, subletting, unauthorised occupation, transfer to an ineligible office, etc.) and dues or arrears in respect of electricity, water and PNG charge, if any;”**
11. In *M/s. Steel Authority of India Ltd. vs Raghendra Singh & Ors., in SLP to Appeal (c) No(s). 11025/2020, decided on 15,12,2020*, the Supreme Court held:-

“.....We, however, set aside the observations made in paras 19 and 21 qua the principles of penal rent

being charged as we are of the view that if an employee occupies a quarter beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable including gratuity. This is so in view of the judgment in *Secretary, ONGC Ltd. v. V.U. Warriar* (2005) 5 SCC 245 and the reliance placed in the impugned judgment on the case of *Ram Naresh Singh v. Bokaro Steel Plant* [Civil Appeal No.4740/2007] dated 31.03.2017 is misplaced as is not even a judgment but an order in the given facts of the case.....”

12.In ***Secretary ONGC Ltd. & Anr. vs V.U. Warriar, AIR 2005 SC***

3039, decided on 20 April, 2005, the Supreme Court held:-

“.....The present appeals are directed against the judgment and order passed by the High Court of Judicature at Bombay dated February 15, 2003 in Writ Petition No. 3947 of 1994 and also against an order dated January 14, 2004 passed in Civil Application No. 63 of 2003.

According to the High Court, the legal position was no more res integra that pension and gratuity were rights accrued in favour of employees on their retirement. Those benefits, therefore, could not be withheld even if an employee unauthorisedly occupied accommodation and was, therefore, liable to pay damages or penal rent under the relevant rules. The only remedy available to the employer was to take appropriate action but the amount of pensionary benefit could not be set off against the so- called dues for unauthorized occupation.

*It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer [vide *Garment Cleaning Works v. Its Workmen*, [1962] 1 SCR 711]. In *Calcutta Insurance Co. Ltd. v. Their Workmen*,*

[1967] 2 SCR 596, after considering earlier decisions, this Court observed that "long and meritorious service" must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. **If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid to the harmonious employment of labourers or workmen. The Court proceeded to state that the misconduct may be such as to undermine the discipline in the workers - a case in which it would be extremely difficult to assess the financial loss to the employer.**

In Jarnail Singh v. Secretary, Ministry of Home Affairs and Ors, [1993] 1 SCC 47, this Court had an occasion to consider the provisions of the Central Civil Services (Pension) Rules, 1972. The definition of "pension" included gratuity under Rule 3. Rule 9 conferred on the President right to withhold or withdraw pension in certain circumstances. The order was passed against the appellant withholding pension and the entire amount of death- cum- retirement gratuity otherwise admissible to him. The direction was given on serious irregularities found to have been committed by the appellant. The appellant challenged that order unsuccessfully before the Central Administrative Tribunal. He, therefore, approached this Court. His contention was that an amount of gratuity could not have been withheld. Negating the contention, the Court held that the power to withhold gratuity was conferred on the President under the relevant rules and hence, such action could not be said to be illegal. According to the Court, there could be adjustment of Government dues against the amount of death-cum- retirement gratuity payable to Government servant.

In Wazir Chand v. Union of India and Ors., [2001] 6 SCC 596, a retired employee continuously kept the quarter occupied unauthorisedly. He was charged penal rent in accordance with rules and after adjustment of dues, balance amount of gratuity was paid to him. He contended that it was bounden duty of the Government not to withhold the gratuity amount. The Court, however, dismissed the appeal observing that it was "unable to accept" the prayer of the appellant. **The Court observed that the appellant having unauthorisedly kept the government quarter was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death-cum-retirement benefits.**

The matter can be considered from another angle also. It is well-settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found". Before more than fifty years, in G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras v. Raman & Raman Ltd., Kumbakonam, Tanjore District and Ors., [1952] SCR 583, the Constitution Bench of this Court speaking through Chandrasekhara Aiyer, J., observed that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice."

(emphasis supplied) Similarly, in the leading case of Sangram Singh v. Election Commissioner, Kotah & Anr., [1955] 2 SCR 1, dealing with the ambit and scope of powers of High Courts under Article 226 of the Constitution, Bose, J., stated-

"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Art. 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

(emphasis supplied) The above principle has been reiterated and followed by this Court in several subsequent cases.

As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent- petitioner before the High Court was a responsible officer holding the post of Additional Director (Finance & Accounts). He was, thus, "gold collar" employee of the Commission. In the capacity of employee of the Commission, he was allotted a residential quarter. He reached the age of superannuation and retired after office hours of February 28, 1990. He was, therefore, required to vacate the quarter allotted to him by the Commission. The Commission, as per its policy, granted four months' time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarter was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to Commission, but the

*possession of that quarter was restored to him taking into account the fact that he had retired and now he will have to vacate the quarter allotted to him by the Commission. In spite of that, he continued to occupy the quarter ignoring the warning by the Commission that if he would not vacate latest by June 30, 1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner - respondent herein - and on that ground also, **the order passed by the High Court deserves to be set aside.....**”*

13.In the present case, the private respondent superannuated on 29th February, 2024, and was served with a notice to vacate the official quarter occupied by him, which has not been done till date.

14.Considering that the rent due from the said respondent and the penal rent are all govt. dues, the petitioner is entitled to deduct the same from the retiral dues, of the respondent including gratuity.

15.If such conduct is tolerated/indulged, it will only encourage others to act in such manner, leading to a situation, where quarters cannot be provided to employees who are in service and entitled to such facility.

16.Accordingly, in view of the judgment in **Raghabendra Singh (Supra)** and **V.U. Warriar (Supra)**, the impugned order dated 19th December, 2025, passed by the respondent No. 2, Deputy Chief Labour Commissioner (Central), Asansol and the Appellate Authority under Payment of Gratuity Act, 1972, in Appeal No. PG. 06 of 2025-E, and the order dated 13th February, 2025, passed by the respondent No. 3, being the Assistant Labour Commissioner (Central), Asansol and the

Controlling Authority under the Payment of Gratuity Act, 1972, in File/Application No. 48(42)/2024/E-2, **are set aside.**

- 17.** The deposit of Rs. 20,00,000/- be returned to the petitioner herein, who is at liberty to deduct the rent due along with penal rent from the total gratuity due **till the respondent no. 4 vacates the Govt. accommodation, which is forcibly occupied by him.**
- 18.** On the respondent no. 4 vacating the Govt. accommodation, the total Govt. dues be deducted from the gratuity and the balance (if any) be paid to the respondent no. 4 within 15 days thereafter.
- 19. WPA 7598 of 2026 is disposed of as allowed.**
- 20.** All connected application, if any, stands disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Urgent photostat certified copy of this Judgment, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Dutt (Paul), J.)