IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

<u>Present:</u>

The Hon'ble Justice Lanusungkum Jamir
And
The Hon'ble Justice Rai Chattopadhyay

MAT 484 of 2025
With
I.A. No.: CAN 2 of 2025

Swasti Ghosh
Vs.
The Ld. Controlling Authority & Anr.

For the appellant	: Mr. Uday Sankar Chattopadhyay
	: Mr. Suman Sankar Chatterjee
	: Mr. Pronay Basak
	: Ms. Rajashree Tah
	: Ms. Trisha Rakshit
	: Ms. Aishwarya Datta
	: Ms. Bidisha Chakraborty
For the respondent No. 2	: Mr. Kishore Kr. Datta, Ld. A.G.
	: Mr. Narayan Chandra Bhattacharya
	: Mr. Lakshmi Kanta Pal
Heard on	**: 04/02/2026**
Judgment on	**: 13/02/2026**

<u>Rai Chattopadhyay, J.</u> :-

1. A judgment of the Hon'ble Single Judge dated January 14, 2025, in WPA No. 26418 of 2017 is under challenge in this appeal, and the subject matter of the lis is whether after the death of the erstwhile and retired employee of the respondent company, who happens to be the husband of the appellant, the respondent has acted lawfully and justifiably in withholding his gratuity, considering that the present appellant has not yet delivered the vacant possession of the government accommodation occupied by her, allegedly unauthorisedly.

2. The husband of the appellant retired on 31.12.2014. During the course of his employment, he was allotted premises No. 6, Sarat Chandra Avenue, Durgapur Steel Township for his residential purpose, which the employee was required to vacate within two months of his date of retirement.

3. After retirement, the said employee did not vacate the government quarter which he occupied during service. He has claimed gratuity before the Controlling Authority in March 2015. The Controlling Authority in the month of January 2017 has directed for the payment of gratuity to the said employee/his legal heir [present appellant], amounting to Rs.14,85,448/-.

4. The writ petition No. WPA 26418 of 2017 has been filed by the present respondent company challenging the order of payment of gratuity to the said employee/his legal heir on the grounds, inter alia, that the order of the competent Authority suffers from non-consideration of the specific provision of SAIL Gratuity Rules, which squarely apply in the case of the said employee, since retired; that the direction of the Authority was without jurisdiction as the same is not empowered to adjudicate with reference to the company's own Rules, that is, the SAIL Gratuity Rules; that according to the said Rules as applicable to the concerned employee, the company is duly empowered and competent to withhold the gratuity payable to the said employee, which the statutory Authority has failed to consider.

5. The said writ petition has been disposed of by the Hon'ble Single Judge vide the impugned judgment as mentioned above, in which the court has recorded that the impugned order in the writ petition was unsustainable and the same was set aside by the court. All consequential steps taken pursuant to the order impugned in the writ petition were also set aside by the court. The court has further directed that the Controlling Authority should reconsider the matter afresh after giving a right of hearing to both the company and the employee and pass a reasoned order within a stipulated period of time. Hence, being aggrieved, the appellant has filed the instant appeal.

6. Mr. Uday Sankar Chattopadhyay, learned advocate for the appellant has founded his argument on a well-settled legal principle that gratuity is being paid to an employee in recognition of meritorious conduct during the tenure of his service and as such no development of events, subsequent to cessation of employer-employee relationship by way of supervision or retirement or resignation should be considered as relevant for having any negative bearing upon the admissibility of gratuity. He submits that as per provision under section 4(6) of the Payment of Gratuity Act 1972, forfeiture of gratuity amount is only permitted in case of termination of the concerned employee from service for his unacceptable conduct in the course of his employment. He has further submitted that in case the SAIL Gratuity Rules contain anything inconsistent with the same as above, in terms of section 14 of the said Act of 1972, the provision of the statute overrides the same. Mr. Chattopadhyay has further submitted that the provision heavily relied upon by the respondent company in the SAIL Gratuity Rules, claiming to be an enabling provision, allowing the company to withhold the gratuity in case of extended occupation of the company premises by the employee beyond the stipulated period of time, has ultimately been omitted in the revised SAIL Gratuity Rules. Hence, according to the appellant, there is no scope for the appellant to rely upon the same. Next, Mr. Chattopadhyay submits that extensive opportunity of hearing has been granted to both the parties by the Authority, before coming to the decision, which was challenged and set aside by the Hon'ble Single Bench. Allegation of violation of principles of natural justice is therefore unfounded and the Court has committed a wrong in this regard, he says. It has further been argued that the employee has the right to receive better terms of gratuity in terms of the statute itself and the order of the Controlling Authority was flawless and unjustifiably interfered into and set aside by the Hon'ble Single Bench. Hence, the appellant seeks immediate payment of gratuity to her, by the respondent company.

7. The following judgments are relied upon by the appellant: -

i) ***Jorsingh Govind Vanjari Vs. Divisional Controller, Maharashtra State Road Transort Corporation, Jalgaon Division, Jalgaon,*** reported in ***(2017) 2 SCC 12*** – Relevant Paragraph Nos. 15, 16

ii) ***Union Bank of India and Ors. Vs. C.G. Ajay Babu & Anr.***, reported in ***(2018) SCC 529*** – Relevant Paragraph Nos. 15, 16, 17, 18, 19, 20.

iii) ***Steel Authority of India Limited & Anr. Vs. Taraknath Sengupta & Ors.*** reported in ***(2010) 2 Cal LT 473*** – Relevant Paragraph Nos. 27, 46.

iv) ***Tapan Chandra Vs. Union of India & Ors.***, reported in ***(2019) SCC OnLine Cal 5117*** – Relevant Paragraph Nos. 22.

8. Mr. Kishore Kr. Datta, learned senior counsel has appeared on behalf of the respondent/ SAIL.

9. Mr. Datta, learned senior counsel has appeared on behalf of the respondent/SAIL. According to the respondent, not the amended Rules but the SAIL Gratuity Rules, 1966 and Rule 3.2.1 (c) thereof is applicable in case of the said employee in so far as on the date of his superannuation in 2014 the amended Rules did not come into effect. It is submitted that the amended Rules of the company which came into effect from November 01, 2020 has no retrospective effect and it has to be applied only prospectively. In that event, the said employee is squarely covered under the provisions of the SAIL Gratuity Rules. Mr. Datta, learned senior counsel has further submitted that the controlling authority in his order dated January 11, 2017 has calculated gratuity payable to the employee as above in terms of the SAIL Gratuity Rules and has also held that the provision of withholding of gratuity for occupying unauthorizedly the official quarter as enshrined in the aid Rules shall not be applicable in case of the said person. He submits that the finding of the controlling authority is, therefore, self-contradictory. According to the respondent, the authority could not have applied one portion of the Rules and declined to apply the other portion thereof in case of a particular employee.

10. It is further submitted that, the company has initiated and succeeded in a proceeding against the present appellant under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in which the appellant having been found as an unauthorized occupant of the company quarter, has been directed to vacate the same allegedly the appellant has deliberately and consciously violated the said order of vacating the company quarter and has been forcefully and unauthorizedly occupying therein. A writ petition is filed in this Court against the said order of eviction whereas the statute as provided for filing of an appeal under Section 9 of the Act of 1971, to challenge any order of the competent authority under the Act. It has further been mentioned that, in terms of the Court's direction, the amount of gratuity was deposited by the company with the learned Registrar General of this Court at one point of time, though never withdrawn by the appellant. Since, the appellant never withdrew the amount of gratuity so deposited by the company with the learned Registrar General of this Court, as per Court's order, the said amount of money has been withdrawn by the company itself at a subsequent stage.

11. Mr. Datta, learned senior counsel has submitted that the concerned employee and the present appellant being his legal heir is responsible for gross violation of the conditions of service due to which the accommodation for residence has been provided to a company employee. By misusing the concession granted under the Rules, the concerned persons overstayed without any authority in the accommodation provided by the company, thereby depriving some in-service incumbents who are in genuine need of accommodation. Mr. Datta, learned senior counsel has submitted that the appellant who herself has violated the law, cannot come before this Court to seek equitable relief with unclean hands. That, considering her prayer would amount to violation of the well-celebrated legal principles that a person should come with clean hands before the Court of equity. He further mentions that, time and again, the appellant has shown adamancy and obstinacy as she deliberately violated Court's order on repeated occasions. According to the respondent, in exercise of Rules 3.2.1 (c) of the SAIL Gratuity Rules, 1966, which is applicable in case of the appellant and her husband (now deceased), the company is duly eligible and empowered to withhold the entire gratuity amount of the person unless and until the conditions of service as vacating residential quarter within two months of superannuation is fulfilled by the concerned persons. Mr. Datta, learned senior counsel has insisted that, there is no cogent ground to interfere with the order of the Hon'ble Single Judge as impugned in this appeal and the appeal may be dismissed.

12. It has been submitted by the respondent that statutory alternative remedy is not the only remedy available in accordance with law to the respondent and of remedy gross illegality and arbitrariness a litigant is free to move this Court seeking exercise of its jurisdiction under Article 226 of the Constitution.

13. To buttress his submissions, Mr. Datta, learned senior counsel has relied on the following judgments: -

i) ***Secretary, ONGC Ltd. and Another Vs. V.U. Warrier*** reported in ***(2005) 5 SCC 245***

ii) ***Steel Authority of India Ltd. Vs. Raghabendra Singh & Others*** reported ***in (2021) 18 SCC 272***

iii) ***Raghbendra Singh & Others Vs. Steel Authority of India Ltd. & Ors.*** reported in ***2020 SCC OnLine Jhar 1084***

iv) ***State of Madhya Pradesh & Ors. Vs. Sanjay Nagayach & Ors.*** reported in ***(2013) 7 SCC 25***

v) ***Wazir Chand Vs. Union of India & Ors.*** reported in ***(2001) 6 SCC 596***

14. The appellant on one hand seeks to be paid with gratuity amount which she claims to be still standing due and on the other hand she declines to accept the said amount when secured with the learned Registrar General of this Court. Upon being asked by the Court, no plausible reason for the same could be cited by the appellant.

15. Some facts are evidently existing in this case, like that the appellant and previously her husband also [now deceased], have been in occupation of the company premises, after superannuation of the said employee and even after the order of eviction being passed in a proceeding under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Also that the appellant has been fighting in Courts as if to recover the unpaid gratuity, whereas, she does not accept the entire gratuity amount made secured by dint of the Court's order.

16. Keeping in mind all as mentioned above, now this Court is inclined to consider the points of law which arose in this appeal. According to the appellant, payment of gratuity to an employee on his superannuation and vacating a residential accommodation earlier allotted for occupation of an employee are two different incidents of service which cannot be made intertwined. In other words, gratuity of an employee who has retired due to attaining the age of superannuation can never be withheld under the law, excepting any proven misconduct of him resulting into loss of the company. The appellant has largely relied on the provision of section 4(6) of the Payment of Gratuity Act, 1972 and says that the same would override if there is anything in contrary contained in the SAIL Gratuity Rules.

17. By saying so, the appellant approbates and reprobates at the same time, which cannot be sustained in the eye of law. The appellant is precluded to concede to the benefitting portion of the Rules, by virtue of which the Controlling Authority determines the higher amount of gratuity than the statutory limit as per the Act of 1972 whereas to resist simultaneously the other provision thereof to be applied against her, which may adversely affect her. Similar error has been done by the Controlling Authority, in his order dated January 11, 2017, who determines the amount of gratuity in terms of the SAIL Gratuity Rules, though declines to apply the provisions made there under to redress the menace of unauthorised occupation of the company premises.

18. The question still remains if the provisions under Clause 3.2.1 (c) of the SAIL Gratuity Rules, 1966 is applicable in case of the appellant or not. Let the same be quoted as hereinbelow: -

> ***"3.0 PAYMENT OF GRATUITY***
> ***…………………***
> ***3.2 Amount of Gratuity***
> ***…………***
> ***3.2.1 The amount of gratuity shall be equal to 15 days' emoluments for each completed year of service or part thereof in excess of six months subject to a maximum limit of Rs. 3,50,000/- provided that-***
> ***………….***
> ***(c) The company will have the right to withhold the gratuity amount payable to an ex-employee or his nominee/legal heir(s), in case of his death, for non-compliance of Company's rules including non-vacation of Company's accommodation. No interest shall be payable on the gratuity amount so withheld for the period of unauthorized occupation of Company's accommodation and up to one month after the vacation of the Company's accommodation."***

19. Considering the date of retirement of the deceased husband of the present appellant, the Court finds this rule to be applicable in his case. The subsequent amended Rules which came into force in 2020 is not the relevant Rules in case of the said person. Argument on behalf of the appellant in this regard, is thus discarded.

20. According to the Rule 3.2.1 (c) of the SAIL Gratuity Rules, the respondent company is empowered to withhold the gratuity amount payable, for non-compliance of the company's Rules, including the Rule of non-vacation of company's accommodation. Non-vacation of company's accommodation is an important, impactful incident having far-reaching consequences. The accommodation a person is allotted, is a public premises and according to the company's Rules the same is to be allocated to an employee in need of accommodation. Unauthorized occupying thereof beyond the period stipulated in the service conditions shall have adverse effect on the conditions of service of the employees who would succeed such an unauthorized occupant after his superannuation. This is bound to affect the smooth functioning of the organization itself and prejudicial to the larger interests of the society.

21. The Court, further notices that, Rule 3.2.1 (c) of the said Rules has no bearing with the relevant condition as incorporated under the Payment of Gratuity Act, under Section 4(6) thereof. The provision of the Act of 1972 whereas provides for withholding of gratuity being directly related with misconduct of the employee and loss suffered by the company due to the same, which is not so in case of the Rules of the company as above. The appellant being bound by the SAIL Gratuity Rules and having accepted the order of the Controlling Authority dated January 11, 2017 in terms of the said Rules cannot at a later stage deny application thereof in her case. According to the said Rules, no misconduct or loss of the company would be imperative for withholding of the gratuity amount payable to an ex-employee in case he himself or his legal heirs occupy the company premises in contravention of the company Rules, beyond the stipulated period, which is an evident fact in the instant case.

22. As submitted on behalf of the respondent, the Court finds that, unauthorized occupation of the company premises beyond the specified period has always been deprecated by the Courts. The judgment of ***Raghbendra Singh (Supra)*** is very apt in this regard to mention. The Supreme Court has even directed adjustment of penal rent due to unauthorized occupation of Government quarters with the death-cum-retirement benefits payable to the appellants in ***Wazir Chand's Case (Supra)***.

23. The Hon'ble Single Judge has meticulously considered all the relevant issues involved in the writ petition. An intra-Court appeal, the Appeal Court is not supposed to unsettle a judgment of the Hon'ble Single Judge unless the same suffers from manifest gross and palpable error in law or irrationality. The conduct of the appellant is worth noticing, as stated above. According to this case, the prayer of the appellant of being granted with the gratuity amount is only a frivolous and eye-wash in so far as she herself as once refused the amount of gratuity as adjudicated by the statutory authority. In such view of the fact, this Court is unable to find any impropriety or illegality in the judgment of the Hon'ble Single Judge dated January 14, 2025 as impugned in this appeal warranting interference of this Court. Hence, the appeal is devoid of any merit and is liable to be dismissed.

24. Accordingly, the appeal is dismissed and the judgment dated January 14, 2025, of the Hon'ble Single Judge in writ petition No. WPA 26418 of 2017 is upheld.

25. Having said all as above and before parting, this Court wants to indicate that for the ends of justice, the appellant is still granted opportunity to accept the amount of gratuity determined by the controlling authority in his order dated January 11, 2017, however, without any interest and immediately vacate the premises she is occupying at present, in case she applies in writing before the respondent company for disbursement of the said gratuity amount, within a maximum period of 15 days from the date of this judgment.

26. The appeal along with connected applications are disposed of.

27. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)