

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

WPA 11065 of 2024

Balurghat B.Ed College & Ors.

Versus

State of West Bengal & Ors.

For the Petitioners : Mr. Pratik Majumder
Mr. Ratikanta Pal.
Mr. Snehaish Dey.
..... Advocates

For the State : Mr. Sirsanya Bandopadhyay Id.SSC,
Mr. Debopriya Karan
..... Advocates

For the Respondent no.6 : Mr. Pravas Kumar Mondal
..... Appearing in person

For the Respondent No. 7 : Mr. Parashar Baidya
Mr. K. Banerjee
.....Advocates

For the Respondent No. 8 : Mr. Amitava Chaudhuri,
Mr. N. Roy
..... Advocates

Heard lastly on : 26.02.2026

Judgment on : 18.05.2026

Jay Sengupta, J.:

1. This is an application challenging the order of the Controlling Authority dated 23rd December, 2022 and the order of the Appellate authority dated 09th November, 2023.

2. Learned Counsel appearing on behalf of the petitioner has submitted and has relied on the written notes as follows. The Petitioner no. 1 being a non-profit, unaided, and self-financing institution affiliated to Baba Saheb Ambedkar Education University, has been constrained to approach this Court, inter alia, praying for setting aside of the order dated 23rd December, 2022 passed by the Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner, Balurghat, Dakshin Dinajpur as well as the order dated 9th November, 2023 passed by the Appellate Authority under Payment of Gratuity Act, 1972 (herein after referred to as "the said orders"). On 2th May, 2005, the Respondent no. 6 was engaged as a Lecturer in the Petitioner no. 1 College purely on contractual basis. The service of the Respondent no. 6 was renewed every year purely on contractual engagement basis as the affiliation of the College was and is still subject to yearly renewal. Every year the service of the respondent no. 6 was renewed purely on contractual basis until the respondent no.6 himself tendered his resignation from service on 15th February, 2016. Such registration was duly accepted by the College and mentioned in proceedings

of meeting of Governing Body. Such acceptance of resignation was also conveyed to the respondent no. 6. However, soon after his resignation, he requested the college authority for re-engagement and on the request of the Respondent no. 6 and based on his declaration made on a non-judicial stamp paper on 3rd March, 2016, the College authority engaged him afresh only on humanitarian ground on and from 3rd March, 2016 provisionally and on purely temporary basis mentioned in proceedings of meeting of Governing Body. In the meantime, it was noticed that some of the members of the faculty of the petitioner college did not possess the educational qualifications required by National Council for Teacher Education (hereinafter referred to as "NCTE") and as such, vide a circular bearing Ref. No. 235/B.B.Ed./2012-13 dated 29th June, 2013, such members of the faculty were, inter alia, requested to either furnish a certificate of enhanced qualification suited with the NCTE norms, if any, or to submit their respective resignation letters. The Respondent No. 6 after perusal of such circular, had put his signature on the same on 1st July, 2013. As such, the Respondent no. 6 was made aware about the fact that he had to submit fresh certificate of enhance qualification as mandated by the NCTE norms. Time and again, the Respondent no.6 was given ample opportunity to submit such a fresh certificate. On having failed to do so, his contractual service was not extended after 30th June, 2020 and all the service benefits were disbursed in favour of Respondent No. 6. Challenging the action of the Petitioner No. 1 College for not extending his service beyond 30th June, 2020, the Respondent no.6 instituted a Writ Petition being, W.P.A. No.

11618 of 2021 before this Court, which, was ultimately dismissed on 17th September, with an observation that the Respondent No. 6 failed to upgrade himself as per NCTE norms and the remuneration for the period during which the contract was subsisting was cleared by the College. While dismissing the said Writ Petition, the Hon'ble Judge was also pleased to hold that the respondent no. 6 herein had suppressed the fact of tendering resignation in the Writ Petition. It is worth mentioning that the Controlling Authority was a party to such Writ Petition and, as such, had the knowledge of what transpired in such proceedings. Thereafter, the Respondent no. 6 filed an application under Rule 10 (1) of the West Bengal Payment of Gratuity Rules, 1973, before the Deputy Labour Commissioner, Balurghat, alleging non disbursement of gratuity amount. Such application was allowed by the Assistant Labour Commissioner and Controlling Authority under Payment of Gratuity Act, 1972, inter alia, observing that the Respondent no. 6 is entitled to a sum of Rs. 1,99,229/ plus the penal interest on account of gratuity since he has rendered continuous service for 15 years from 2nd May, 2005 till 30th June, 2020. Vide an order dated 23rd December, 2022, the College was directed to disburse such an amount within a period of 30 days from the date of such an order. Challenging the order dated 23rd December, 2022, the College Authority, on 16th January, 2023, preferred an appeal being Appeal No. 1 of 2023, before the Deputy Labour Commissioner and the Appellate Authority. Such appeal was dismissed by an order dated 9th November, 2023 and the Petitioner College was directed to pay a sum of Rs. 2, 58, 998/- including penal interest to the Respondent no. 6 on

account of gratuity. Challenging both the decisions, the Petitioners have approached this Court, inter alia, praying for setting aside the order of the Controlling Authority dated 23rd December, 2022 and the order of the Appellate Authority dated 9th November, 2023. Section 4(1) of the Payments of Gratuity Act mandates that gratuity becomes payable to an employee on the termination of his employment after rendering a continuous service for not less than five years. Furthermore, 'Continuous Service' has been defined in Section 2A (1) of the said Act, which enumerates that an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave, lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after commencement of the Act. In the instant case, the Respondent No. 6 was appointed on 2nd May, 2005 and resigned from service on 15th February, 2016. After there being a break-in-service for 15 days, the Respondent no. 6 was re-engaged on humanitarian ground on and from 2nd March, 2016. Such re-appointment or re-engagement is a fresh appointment and there is a break-in-service in the interregnum. After such an engagement, the Petitioner was in service till 30th June, 2020 which is less than 5 years from the date of fresh engagement, i.e., 2nd March, 2016. Since the service of the Respondent no. 6 was not renewed after the month of June, 2020, the period from 20 March, 2016 till 30th June, 2020 cannot be taken into consideration for payment of gratuity since such period falls

short of the prescribed period of 5 years of service. The period constituting break-in-service, i.e., the period from 15th February, 2016 till 1st March, 2016 can also not be taken into consideration for calculating gratuity, since during such period, the respondent no. 6 was not in service. The respondent no. 6 was well aware of his rights and obligations of the conditions of offer of appointment and knowingly, the Respondent no. 6 resigned from such service only because he got a better opportunity and now the Respondent no 6 cannot claim continuity in service after his re-engagement as the same was a fresh and new appointment. Furthermore, vide a judgement and order dated 17th September, 2021 passed in WPA No. 11618 of 2021, it was categorically held that all the dues of the Private Respondent No. 6 has been paid by the Petitioner No. 1 College, which also attained its finally, since no appeal from such observation/order was ever preferred by the Respondent no. 6. The Controlling Authority should have refrained from passing any direction for payment of gratuity for the period from 2nd March, 2016 till 30th June, 2020. After the fact of the resignation tendered by the respondent no. 6 and acceptance thereof was established by the petitioners, the respondent no. 6 relying on the affidavit at page 24 of the opposition submitted that the entry made under head B.(i)"Teaching Experience" showed that the duration under such head had been mentioned to be "from 02.05.2005 till date". He contended that such entry in the affidavit showed that there was no break in his service. To this, the petitioners had pointed out that the concerned entry was regarding "Teaching Experience" and not period of continuous service. The break in respondent no. 6's service was for

a period of 15 days in the year 2016 and it is nobody's case that for the rest of the period of 2016, the respondent no. 6 did not have any experience in teaching. Thus, this entry which is for "Teaching Experience" cannot be relied upon to establish continuity of service. It is also not out of place to mention that the respondent no. 6 later contended that the correction in date of appointment made in the 3rd paragraph of the affidavit at page 24 of the opposition has not been made by him and that the same has been done by the college authorities beyond his knowledge. To this, the petitioners humbly say as follows. i) The concerned affidavit was placed before this Hon'ble Court by the College Authorities through their report by way of an affidavit filed in connection with writ petition bearing no. WPA 11618 of 2021. The respondent no. 6 herein had an exception to such report where he has not raised any issue of interpolation, ii) Even while annexing the same affidavit in his opposition filed in connection with the instant writ petition, the respondent no. 6 has not raised any issue of interpolation in his opposition. The contention of interpolation is an afterthought, iii) The correction in the affidavit has been authenticated by the concerned notary public by putting his signature with date on both sides of such correction, iv) The College and its authorities stood to gain nothing by making any interpolation in the concerned affidavit, v) Without prejudice to the above, it is humbly submitted that the correction and/or the authenticity thereof has got no bearing in the instant case. The document at page 27, especially the entry in column 10 (Date of Joining) and 11 (Date of Resignation) thereof made against the name of the respondent no. 6 appearing against serial no.

2 was relied upon by the respondent. The petitioners humbly state that in the concerned document, the date of first joining of the respondent no.6 has been entered and not his second joining date in 2016. This document was created in the year 2017, when the respondent was still serving in the college and for such reason, under "Date of Resign", "Does not Arise" has been entered. The resignation of the petitioner was in 2016 and he was re-engaged in 2016 itself. As far as the year 2017 is concerned, there was no resignation by the respondent no. 6, who was still serving in the college and as such, the question of any such resignation for the year 2017 does not arise. Additionally, it is humbly submitted that when the fact of tendering resignation in the year 2016, acceptance thereof and communication of such acceptance clearly transpires from the resignation letter itself and also the proceedings of the meeting of the governing body held on 29th February, 2016 and the declaration submitted by the respondent no. 6 himself, such facts cannot be unsettled by seeking to interpret a few entries in a document which neither relates to the continuity of the service of the respondent no.6 nor conclusively support his contention, especially when such facts relating to his resignation and suppression thereof have already been settled by the Judgment and order dated 17th September, 2021 passed by a Single Judge of this Court in Writ Petition being WPA No. 11618 of 2021. Judgements - (1981) 2 SCC 238: Lalappa Lingappa and Others -versus- Laxmi Vishnu Textile Milss Ltd, (2003) 5 SCC 455: Northzone Cultural Centre and Another -versus- Vedpathi Dinesh Kumar.

3. The respondent no. 6, appearing in person has submitted and has relied on the written notes as follows. The Respondent no 6, namely Pravas Kumar Mondal, was appointed as a lecturer in the Balurghat B.Ed. College on 2nd May 2005 on a contractual basis. Thereafter, he was appointed as a lecturer with a permanent post on 30.06.2008. From then, he continued service sincerely and received a salary up to 30.06.2020. From July, 2020, the salary of Respondent no 6 was stopped. From December 2020, the college authority allowed other teaching staff of the said college to render service except the Respondent 6. The college authority treated the petitioner as "discontinued or unwilling" without giving him any opportunity of hearing or notification. Because the respondent no 6 demanded a salary from July 2020 onward. But the college authority didn't respond. Then the Respondent no 6 filed a Writ Petition in Calcutta High Court, being W.P.A. no 11618 of 2021 on 14th July 2021, seeking salary from July 2020 onward and continuing service. Due to inadvertent mistakes by Respondent no 6 herein, he overlooked the then Affidavit of the College in their opposition properly, and some information was not presented properly at that time, before this Court. As a result, my (Respondent no 6 herein) Writ Petition W.P.A. 11618 of 2021 was dismissed on 17.09.2021. The following grounds.

a) Respondent 6 's service was purely contractual and renewed yearly, b) He had suppressed the fact of tendering resignation in this writ petition, c) He failed to submit the upgrade qualification certificate as per NCTE- 2014 norms; his contractual service was not extended beyond 30.06.2020. The college paid him all service benefits up to 30.06.2020, except gratuity.

However, respondent 6 was not sound financial and mental condition to challenge this order again. Desperately hoping to get some money. Respondent no 6 applied for payment of gratuity before the Controlling Authority under the Payment of Gratuity Act 1972, & Assistant Labor Commissioner, Balurghat, Dakshin Dinajpur. On 16.11.2021, with all documents. The Appellate Authority ordered the college authorities to pay Gratuity with interest to Respondent-6 on 9th November 2023. As the college did not submit the salary statement of respondent no 6, the amount of Gratuity due is calculated from 02.05.2005 to 30.06.2020 as Rs. 2,58,998/- with interest by the controlling authority, based on the last pay drawn of Rs. 24770/- claimed by respondent 6 as per bank passbook records. Then, being dissatisfied with the above order, the college authority filed the present Writ Petition WPA 11065 of 2024 on 12th April 2024. In this petition, the college submits that respondent no 6 is not entitled to get gratuity for the period from 02.05.2005 to 30.06.2020 because there is a 16-day break in service as he resigned on 16.02.2016, and further, he joined on 03.03.2016. By tampering with the Bio-data affidavit, "the correction of the date of appointment from 02.05.2005 to 01.07.2019, they wanted to prove that Respondent 6 herein service was purely contractual and renewed yearly, so the Petitioner College can terminate the employee at any time. It is already mentioned in the High Court order dated 18.09.2024. As per NCTE-2005 norms. The status of B.Ed. College teachers' service is fulltime and regular. It is not a contractual job. The college submitted SSR before NAAC in January 2017, describing the jobs of B.Ed. College teachers are

permanent. The college fixed his job as per NCTE norms on 30.06.2008. NCTE Prescribed Teacher Code no. APE0045 and ERCAPP1390. The resignation problem was solved as an internal matter of the college in the following way. a) Despite giving a resignation letter on 15.02.2016, Respondent no 6 didn't join any other institution. On the other hand, the college couldn't arrange an alternative teacher for the same post. According to the service conduct rule of the college, as stated in the letter 26.02.16, the college authority called respondent no 6 to appear before GB members on 29.02.2016. Respondent no 6 submission on 29.02.16 before the G.B. that he suddenly took such a decision in a very emotional state, and he regretted this act. Hearing the cause of submission of the resignation letter and in reference to the service conduct rule, they allowed him to continue service from 03.03.2016 with the same salary. And 15 days' salary (15.02.2016 to 29.02.2016) cut from his salary for February, 2016. (Paragraph 12, page 5,6), b) GB's decision was duly reflected in the bank salary statement, Provident Fund statement and the 42nd of 67 pages of the Public Notice published on Balurghat B.Ed. College website, where it is written in the 2nd row that respondent 6's "date of joining -2.05.2005" experience 12 Yrs 05 months, the date of resignation "doesn't arise" and Remarks if any 'Nil', c) It should be noted that respondent 6 did not apply to reinstate him to the same post as written in the self-declaration. He was compelled to sign on such a declaration (3rd March 2016) according to their instructions. Moreover, It was not a fresh appointment. After resignation, neither respondent 6 didn't make any application for a fresh appointment,

nor did the college give any fresh appointment letter, nor did it give any new joining letter. Even the college authority didn't serve a break-in-service notice to Respondent no 6, d) Further, from a legal point of view, the college didn't provide any information about resignation or seek any permission for fresh appointment from the affiliated university, BSEAU, as per NCTE norms. Which was mandatory for the college. Further, from reports i.e. the list of teachers submitted by the college to the affiliated university BSEAU for the 2019-20 and 2020-21 sessions, it is clear from the 2nd row of the both lists that Respondent no 6 joined this college on 02.05.2005 on a full-time basis, and he continued his service for the year 2021, i.e. July 2020-June 2021 session. There are no remarks about resignation or re-appointment. So it is clear that the respondent no 6 service is continuous from 02.05.2005 to 30.06.2020, and he is entitled to get gratuity as per the gratuity law. BSEAU's report on 18.03.25 also states that "thereafter, (2020-2021 session) respondent no 6 name has not been reflected in the list of teachers by the petitioner college It means his service was continued during the 2020-21 session, but the college sacked him illegally and forcefully from his service on 30.06.2020 without any financial benefits. He was dismissed from his job just six and a half years before his scheduled retirement date of 03.12.2026, according to the University teacher is up to 65 years. This activity is totally illegal and inhuman. Petitioner's college states that respondent 6's service is not renewed beyond 30.06.2020 (2019-2020 session) because he failed to submit the required enhanced qualifications as per NCTE 2014. This allegation is totally false. Because they sent

Respondent no 6's name in "the list of teachers for the 2020-2021 session was submitted by the college to the affiliated university. BSEAU. Moreover, according to NCTE Circular, it was not mandatory for respondent no 6 because he joined this college as per NCTE -2005 norms. Therefore, all the allegations against respondent 6 are false, deliberately distorted and intended to deprive him of financial benefits. Here, the petitioner played a double standard role. On the one hand, the petitioner has provided accurate information about respondent no 6, to the Eastern Regional Committee (ERC), Bhubaneswar, and to the affiliated university, Baba Saheb Ambedkar Education University (BSAEU). On the other hand, the petitioner has dismissed respondent 6 from his service with effect from 30.06.2020 without any information or opportunity of hearing. Thus, the petitioner college authorities have consciously concealed information, presented false and misleading information before the Honourable High Court, mentally disturbed the respondent no 6 and are forcing him to live a life of financial hardship.

4. Learned counsel for the State has submitted as follows. Section 4(1) of the Payment of Gratuity Act, 1972 is explicitly clear as to when gratuity can be paid to an employee and stipulates that in order to be eligible for payment of gratuity an employee has to render continuous service for not less than five years. In the present case, the respondent No. 6 was appointed on 02.05.2005 and on 15.02.2016 he resigned from service. Since, the service period of the respondent No. 6 from 02.05.2005 to 15.02.2016 is more than 5 years, the respondent No. 6 is entitled to receive the gratuity

amount for the service rendered by him from 02.05.2005 to 15.02.2016. Respondent no. 6 resigned (as alleged by the petitioner) from service on 15.02.2016 and was re-engaged by the petitioner no. 1 college on 03.03.2016. The break in service was of 18 days. Sub-clause (a)(ii) of Clause 2 of Section 2-A of The Payment of Gratuity Act, 1972, states that if an employee completes 240 days of service in a given year, the employee would be entitled to gratuity for that period. In the present case, at the time of hearing before the Joint Labour Commissioner (P), Dakshin Dinajpur, the petitioner was in possession of the best evidence, which the petitioner could not produce with regard to the number of days the respondent no.6 worked in a year. The Joint Labour Commissioner (P), Dakshin Dinajpur in his Appeal order (Page 69 to the Writ application, middle portion) held that "In the present case, the respondent 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." Since, the respondent no. 6 was on employment for 240 days in a given year from the date of his re-engagement on 03.03.2016 to till the date of his last service on 30.06.2020. Hence, the respondent no. 6 is entitled to receive gratuity along with interest as per order passed by the Joint Labour Commissioner (P), Dakshin Dinajpur. The Writ petition is devoid of any merit and the same may be dismissed by this Court.

5. It has been submitted on behalf of the respondent no. 8 that, as per the Gour Banga University Act, 2007 and the Gour Banga University First

Statutes, there are no provisions in regard to a College affiliated under the University of Gour Banga, is duty bound to inform the University about the day to day affairs of the said affiliated College like appointment / resignation / re-employment of Teachers, Staffs, Contractual Teachers, Contractual Staffs etc. Moreover, in the present case, the Respondent No. 6 (Sri Pravas Kumar Mondal) was engaged by the Petitioner College i.e., Balurghat B.Ed. College in the year 2005, purely on contractual basis and his service was extended from time to time, by the Petitioner College i.e., Balurghat B.Ed. College, by way of yearly renewal of the contract and the same is also evident from page nos. 25 to 34 of the Writ Petition. In this regard, it is further submitted that, the Respondent No. 6 herein, gave his resignation before the Petitioner College, by way of a resignation letter dated 15.02.2016, which is also evident from page no. 35 of the Writ Petition and thereafter, he was again re-engaged by the Petitioner College on the basis of the Governing Body Resolution dated 29.02.2016, which is evident from the page nos. 37 to 38 of the Writ Petition and on the basis of 'Declaration' made by the Respondent No. 6 on non-judicial stamp paper in this regard, which is also evident from the page no. 39 of the Writ Petition. Accordingly, in this context, it is submitted that, a College affiliated with the University of Gour Banga is not duty bound to intimate the University about resignation of one of its Assistant Professors and his subsequent re-employment in the said College as Assistant Professor, so as to validate the same, so the Petitioner College has never intimated anything in regard to the contractual

engagement, resignation and subsequent re-engagement of the Respondent No. 6 in the said College to the University of Gour Banga.

6. It has been submitted on behalf of the respondent Babasaheb Ambedkar Education University that as per the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014, all the colleges should have a minimum number of faculty strength for an intake of one basic unit of fifty students and two units of one hundred students in two years. Accordingly the colleges send their list of teachers at the time of applying affiliation from the University and also at the time of renewal. That since having requisite number of teachers for undergoing such courses are mandatory, therefore, it is the duty of the college authority to maintain such number of teachers for the academic year for which affiliation has been granted. In view thereof, the colleges are also required to inform the University in the event a particular teacher resigns from the post and in case of his reappointment. Further, it appears from the records of the University that Balurghat B.Ed. College having college Code 07001 has been affiliated under this University from the year 2019, vide University Letter No. WBUTTEPA/RO/738/2019 dated 25.07.2019. From the records it also reveals that the name of Mr. Pravas Kumar Mondal (Assistant Professor) has been reflected in the list of teachers as submitted by the college for the year 2019 and 2020. Thereafter, the name of Mr. Pravas Kumar Mondal has not been reflected in the teachers list submitted by the petitioner college. Copies of the relevant record were annexed.

7. I heard the learned counsels for the parties and perused the writ petition and the affidavits.

8. It appears that the respondent no. 6 was appointed as a lecturer at the Balurghat B.Ed. College on 02.05.2005 on a contractual basis. Thereafter, he was appointed as a lecturer on permanent basis on 30.06.2008. From then on, the petitioner claimed to have continued his service and received salary upto 30.06.2020. It is alleged that from July, 2020, the salary of the respondent no. 6 was stopped and from December, 2020, the College authority allowed other teaching staffs of the College to run the service, except the respondent no. 6. The College authority apparently rendered the petitioner “discontinued or unwilling” without giving him any opportunity of hearing. The respondent no. 6 demanded his salary from July, 2020 onwards, but the College authority did not respond.

9. In connection with the above, the respondent no. 6 filed the writ petition before this Court being WPA 11618 of 2021. The private respondent claimed that there was an inadvertent error on his part, which led to dismissal of the writ petition on 17.09.2021. The College authority paid him his service benefit upto 30.06.2020, except gratuity. The respondent no. 6 was allegedly not in sound financial and mental condition to challenge the said order of this Court.

10. The respondent no. 6 filed an application for payment of gratuity before the Controlling Authority under the Payment of Gratuity Act, 1972. The Appellate Authority finally ordered the College authority to pay gratuity with interest to the respondent no. 6 on 09.11.2023. The College

purportedly did not submit the salary statement. The amount of gratuity was calculated from 02.05.2005 to 30.06.2020 as Rs. 2,58,998/- with interest. Being dissatisfied with the order, the College authority filed the present writ petition in 2024. The prime contention of the College was that the respondent no. 6 was entitled to get gratuity only for the period from 02.05.2005 to 30.06.2020 because there was a 16 day break-in-service as he had resigned on 2016 and thereafter he joined back only on 03.03.2016. It has been claimed by the respondent no. 6 that the College authority tampered with the bio-data affidavit by trying to correct the date of appointment from 02.05.2005 to 01.07.2019.

11. According to the respondent no. 6, the issue of resignation was resolved as an internal matter of the College. It is true that the respondent no. 6 had given a resignation letter dated 15.02.2016, but he did not join any other institution. Before the General Body, the respondent no. 6 submitted on 29.02.2016 that he had suddenly taken a decision in an emotional state, but regretted the same later. Hearing this, the General Body allowed him to continue service from 03.03.2016 with the same salary. Even in a notice published in the website of the College, the respondent no. 6's date of joining was shown as 02.05.2005 with experience of 12 years 05 months. Although the respondent no. 6 was compelled to sign on a declaration dated 03.03.2016 as claimed, it was clearly not a case of fresh appointment. Even after resignation, the respondent no. 6 did not make any application for fresh appointment. Nor did the College give any fresh appointment letter or issue a new joining letter. The report dated

18.03.2025 submitted by the BSEAU stated that the name of the respondent no. 6 was reflected in the list of teachers. In fact, as per the respondent no. 6, he was illegally dismissed from his job before his scheduled retirement date of 03.12.2026 as the retirement age of the University teachers was 65 years.

12. This Court now is to consider the correctness of the orders passed by the Controlling Authority and the Appellate Authority as regards the benefit of gratuity payable to the respondent no. 6.

13. As an earlier writ petition being WPA 11618 of 2021 filed by the respondent no. 6 seeking particular reliefs was dismissed on certain grounds and the same has not been challenged, such issues cannot be reopened at this stage. However, from the final order dated 17.09.2021 passed in the said application, it appears that the same related to the petitioner's prayer for re-employment in the College and the said prayer was turned down. The context was that the College did not renew the petitioner's services after 30.06.2020. It was submitted by the College that the remuneration till that date had been paid and the contract was not extended. It was in this context that the Court held that the question of payment of further remuneration did not arise. The requirement of payment of gratuity was, quite clearly, not gone into. Therefore, the question of payment of gratuity remains open to be decided.

14. The issue of purported suppression of the fact of resignation by the petitioner in the earlier writ proceeding and its explanation given in the present writ petition are well matched by the allegation of the petitioner here

that the College tampered with the bio-data affidavit by trying to correct his date of appointment.

15. Be that as it may, so far as the resignation of the respondent no. 6 is concerned, it is abundantly clear that the same was treated quite like an internal matter of the College and, although placed before the General Body, was treated quite like an off the record matter. Otherwise, the petitioner could not have been asked to continue at the same post without issuance of a formal and fresh appointment letter. The rigors of formally sacking of a person as having resigned and re-employing him at a short, subsequent date have not been followed by the College authorities.

16. In fact, as per the report filed by the respondent/BSEAU, it is clear that 2020-2021, the College had furnished a list of teaches along with their experience. There was a statutory requirement for the College to furnish such list. As per the list, the same contained the name of the present petitioner mentioning his experience as 12 years 05 months, as would have been the claim of the respondent no. 6.

17. In view of the above, it is abundantly clear that the College authorities had effectively considered the petitioner's service as a continuous one and expressed it to be so at official forums. Therefore, the College authorities cannot now do a volte' face and take a contrary stand that there was a gap of 16 day in the service life of the petitioner so as to somehow deprive him of his gratuity benefits.

18. In fact, the Appellate Authority was quite justified in drawing an adverse presumption regarding the allegation of not rendering continuous

service for the stipulated period as the College had failed to produce the relevant original attendance register. It also recorded that the present petitioner did not even pay the undisputed amount of gratuity to the present respondent No. 6.

19. Moreover, the Appellate Authority and the Controlling Authority had passed well reasoned orders while granting benefits of gratuity to the respondent no. 6.

20. In view of the above discussions, I do not find any merit in this application.

21. Accordingly, the writ petition is dismissed.

22. Consequently, as the petitioners have failed to pay gratuity to the respondent No. 6, in terms of Section 7(3A) of the Payment of Gratuity Act, the petitioners shall also be liable to pay interest on the principal sum of gratuity unpaid till the date of payment. Therefore, apart from, the sum of Rs. 2,58,998/- only payable as on the date of judgement of the Appellate Authority i.e., 09.11.2023, the petitioners shall also pay to the respondent No. 6 interest on the principal sum of Rs. 1,99,299/- at the simple rate of 10% per annum from 09.11.2023 till the date on which the sum is actually paid to the respondent No. 6.

23. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)