

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Lanusungkum Jamir

And

The Hon'ble Justice Rai Chattopadhyay

MAT 682 of 2025

With

I.A. No.: CAN 1 of 2025

With

MAT 683 of 2025

With

I.A. No.: CAN 1 of 2025

With

MAT 684 of 2025

With

I.A. No.: CAN 1 of 2025

With

MAT 685 of 2025

With

I.A. No.: CAN 1 of 2025

M/s Heinen & Hopman Engineering (I) Pvt. Ltd.

Versus

State of West Bengal & Ors.

For the appellant

: Ms. Barnamoy Basak

For the State

: Mr. Sk. Md. Galib

: Ms. Priyamvada Singh

**... in MAT 682 of
2025**

: Mr. Tamal Taru Panda

**... in MAT 683 of
2025**

: Mr. Vimal Kr. Shahi, Ld. AGP

: Ms. Kakali Naskar

**... in MAT 684 of
2025**

: Mr. Sk. Md. Galib
: Ms. Sujata Mukherjee

**... in MAT 685 of
2025**

For the respondent No. 3 : Mr. Saurabh Sankar Sengupta
: Mr. Indranil Biswas
: Mr. Richik Rakshit

For the LIC of India : Mr. D.K. Kundu
: Mr. Arjun Basu

Heard on : **13/01/2026**

Judgment on : **16/02/2026**

Rai Chattopadhyay, J. :-

- 1.** The four appeals as mentioned above, deal with the similar issue. Hence, those have been heard analogously and are being disposed of by the dint of this single judgment.
- 2.** The sole and very limited point of law involved in these appeals is whether the decision of the competent statutory authority under the West Bengal Shops and Establishment Act, 1963, suffers with gross jurisdictional error and/ or erroneous assumption of jurisdiction by the respondent statutory authority, thereby misconceiving the authority, eligibility and power to entertain and pass an order in the respondent's application in Form-N under Rule 31 of the Shops and Establishment Rules 1964 and if yes, whether the order dated 18.11.2024, passed by the same is a valid and legal one or not.
- 3.** A judgment of the Hon'ble Single Judge, dated April 11, 2025 in writ petition No. WPA 1617 of 2025 is under challenge in these appeals, in which the Court has held that the respondent/applicant's prayer for '*pension*' being within the definition of '*wages*' under section 2(vi) of the Payment of Wages Act 1936, is not covered under the exclusion clauses mentioned in section 2(vi)(3) of the Act, hence there is no merit in the contentions of the company, that so far as the West Bengal Shops and Establishments Act, 1968 is concern, there is no provision for payment of '*pension*', enshrined therein. Thus, the Hon'ble Single Bench's verdict goes against the present appellant. Therefore, the appellant being aggrieved has filed the instant appeal.
- 4.** Suffice is to say to understand the background facts of the case that the private respondents in the appeals have been working in the appellant company, submitted resignation and were ultimately released on 02.9.2022. All terminal benefits including gratuity were paid to them and accepted by

them without any protest and unto the full and final settlement of their dues with the appellant company.

5. After about six months of their tendering resignation as well as acceptance of terminal benefits including gratuity, the respondents filed statutory Form-N under Rule 31 of the Shops and Establishments Rules 1964, on 10.4.2024, before the Joint Labour Commissioner, Barrackpore, for determination and payment of pension, under the non-contributory pension fund maintained by the present appellant company. On 14.8.2024 they have filed an application being No. SP-04 of 2024, with prayers inter-alia that to invoke provisions under section 10A of the Industrial Disputes Act 1947, for reference of the dispute before the appropriate authority and to direct the defaulters, that is the present appellant/company, to pay the superannuation benefits of the present respondents with effect from 03.9.2022, as per the superannuation policy declared in circular dated 03.5.2012.

6. SP-04 of 2024 was disposed of vide the order dated 18.11.2024, which is as follows:

“ I have gone through the written statement and written objection by the OP as well as counter affidavit on behalf of the complaint and counter affidavit on written objection by the applicant.

Now, the Referee under the Shops & Establishment Act, 1963 is on the decision that the pension as enshrined in the Payment of Wages Act, 1936 and the Pension of the employees of Heinen & Hopman Engineering (I) Pvt Ltd are different in nature.

The pension or the superannuation plan of the abovementioned company is the term and condition of employment or work done in such employment and it is crystal clear.

So this pension is very much a wage under the definition of 2(vi) of Payment of Wages Act, 1936 and so under the jurisdiction of Shops & Establishment Act, 1963.

Hence, all the objections including the jurisdiction issue as raised by the OP is overruled.

The OP is directed to take part in these proceedings.”

7. Hence, it has been held that ‘pension’ as enshrined in the Payment of the Wages Act 1936 and the ‘pension’ of the employees of the present appellant/company are different in nature; the ‘pension’ or the superannuation plan of the above mentioned company has been construed as the conditions of employment of the present respondents; pension is ‘wage’ under the definition of 2(iv) of the Payment of Wages Act 1936; and that the authority has jurisdiction to deal with the matter, since ‘pension’ is covered under the said definition of ‘wages’ as envisaged by the statute. On these grounds the appellant’s objections have been overruled by the said authority.

8. The appellant's challenge as to the said order including that on the ground of lack of jurisdiction of the said statutory authority, has been turned down by the Hon'ble Single Bench in the impugned judgment dated 11.4.2025.

9. **The appellant's argument:**

- Order of the competent authority dated 18.11.2024 is without jurisdiction and null and void;
- Judgment of the Hon'ble Single Bench is erroneous, based on wrongful application of law;
- 'Pension' has never been contemplated under the West Bengal Shops and Establishment Act 1963, the said Act upholds the only objective to regulate holidays, hours of work, payment of wages and leave of persons employed in shops and establishments;
- Due to operation of the exclusion clause under section 2(vi)(3) of the Payment of Wages Act 1936, the respondents are not entitled to pension in the fund accumulated with the contribution which is excluded under law;
- These propositions though accepted by the competent authority, but it has erroneously held that 'pension' under the company Scheme vide the Trust Fund is different in nature, from that as provided under the Payment of Wages Act, 1936; this decision of the authority is based on no reason;
- As per section 2(vi)(3) of the Payment of Wages Act 1936, contribution to pension being excluded to be 'pension', accumulation thereof including interest cannot be termed as 'pension' either;
- The competent authority has erred in finding and the Hon'ble Single Judge has erred in upholding that 'pension' under the Scheme vide the Trust Fund of the appellant company is a condition of service of the respondent;
- The respondents cannot be considered to be the 'persons employed', in terms of section 2(10) of the West Bengal Shops and Establishment Act 1963, on the date of their application;
- The respondents' application should only be decided in the context of their eligibility as per the amended company Scheme vide the Trust Deed, which was existing and prevalent on the date of consideration of their prayer and order of the authority and not otherwise; in this regard a

judgment of the Supreme Court in **Somdev Kapoor vs State of West Bengal & Others** reported at **(2014) 14 SCC 486**, has been referred to;

- The amended Scheme vide Trust Deed existing on the relevant date makes only the retired employees eligible for pension and not who has tendered resignation like the present respondents;
- Section 14 of the West Bengal Shops and Establishment Act 1963 categorically provides the scope as to when a 'person employed' under the Act can file an application before the appellate authority, in the statutory Form-N under Rule 31 of the West Bengal Shops and Establishment Rules 1964; the present applications filed by the respondents are only misconceived and beyond scope of and authority under the statute;
- By referring to a judgment of Division Bench of this Court in **M/s Gupta Electric Company & Another vs The Learned Chief Judge, Small Causes at Calcutta** reported at **1993 (2) CHN 168**, it has been submitted that in case of jurisdictional error committed by the Referee, the aggrieved person can maintain his cause in a Court exercising plenary power under Article 226 of the Constitution of India; hence no dispute as regards maintainability of the writ petition could have been raised;
- On the contrary, the respondents could not have lodged claim before the statutory authority as their claim, if any, amounts to only a money claim, triable by a competent Civil Court.

10. The respondents' argument:

- According to the terms of employment of the respondents, which includes benefit under the company superannuation Scheme vide the Trust Deed, pension is payable to the respondents as part of 'wages' in terms of the definition of 'wages' as provided under section 2(vi) of the Payment of Wages Act 1936;
- It is the statutory obligation of the employer to fulfil terms of contract of employment, which includes benefit under the Scheme vide the Trust Fund, as well as anything payable even beyond the contract of employment, upon fulfilment of the conditions of employment contract by the employees concerned;
- Bombay High Court says in the judgment of **V.B.Godse vs R.H.Naick [(1953) 1 LLJ 577]** that if the employee has served his master, carried out the terms of the contract, fulfilled his obligations and on that being certain amount is payable by the employer to the employee, then that sum would be 'wages' within the meaning of definition of 'wages' under

the Act of 1936; that, in order to bring a particular payment under the definition of 'wages', two things are necessary – (1) a definite sum and (2) A contract indicating when the sum becomes payable.

- The ratio decided in **V.B.Godse's case (supra)** has later been upheld by the Supreme Court in **Md. Quasim Larry vs Muhammad Samsuddin & Others [AIR 1964 SC 1699]**.
- Upon fulfilment of the terms of contract of employment by the employee, regarding which there is no dispute in this case, if the employer-employee relationship is severed [like in this case by way of resignation tendered by the respondents], the respondents are eligible to be paid under the contract or instrument [in this case the company superannuation Scheme vide the Trust Deed] – which amounts to 'wages' in accordance with law;
- As per ratio of the judgment of Bombay High Court in **Balaram Abaji Patel vs M.C.Ragojiwalla & Others [AIR 1961 Bom 59]**, remuneration would be 'wages', if remuneration satisfies two conditions----(1) that it should be payable to "a person employed in respect of his employment or of work done in such employment" and (2) it should be payable "if the terms of the contract of employment, express or implied, were fulfilled".
- Wages and dearness allowance [awarded by the Industrial Court], over and above the wages and dearness allowance stipulated by the contract between the parties could be recovered as 'wages' under the Payment of Wages Act 1936, [as per **Balaram Abaji Patel's case (supra)**]; that the emphasis laid by the legislature is not upon 'the terms of contract', but upon what liability is imposed upon the employer, when the contract has been fulfilled;
- To pay the employee as per the Scheme vide the Trust Fund is the employer's liability after severance of the unblemished service tenure of the employee with the appellant/company;
- As per the Division Bench Judgment of Bombay High Court in **A.D.Divakar vs A.K.Shah [57 Bom LR 1074]**, there is nothing in the definition of 'wages' which supports the assumption that the amount payable must be under the terms of a contract expressed or implied. It in terms means 'all remuneration or other sums which become payable if the terms of the contract of employment, express or implied, are fulfilled by the employee'....., therefore 'wages' does not merely mean remuneration payable by the employer under the terms of the contract, express or implied, it includes any amount which the employer legally becomes liable to pay to the employee on fulfilment of the contract;

- Thus, as per observation of various High Courts and the Supreme Court, any definite amount which is payable by the employer to its employee in the event of fulfilment of terms and conditions of the employment by the employee, such part of remuneration would be 'wages', if the remuneration satisfies two conditions as mentioned above;
- Employee's contribution to pension fund and actual remittance of pension to the beneficiary employees, are two separate and distinct phenomena.
- With reference to a Bombay High Court Judgment in **Rahim HajubhaiShaukh(A) Vs. Siraj Kashem Nadar and others** reported in **1969 ILLJ 226 BOM**, it is submitted that, provisions of Section 22 of the Payment of Wages Act, 1936 have been interpreted in the said judgment of the Division Bench of Bombay High Court in a manner that, where a statute creates special jurisdiction, taking away the jurisdiction of the Civil Court, the statute ought to be strictly construed; however, even though the statute has to be strictly construed, it does not and cannot mean that the very intention of the legislature ought to be defeated by placing an unduly narrow construction of such provision, in order to oust the jurisdiction of the authority concerned.
- Regarding jurisdictional bar of the Civil Court in a matter of 'wages' within the purview of the Payment of Wages Act, 1936, the respondents have relied on the judgment in (i) **Dushyant Janbandhu Vs. Hyundai Autoever India Private Limited** reported in **2025 (266) AIC 158**, (ii) **Premiere Automobile Limited Vs. Kamlekar Shantaram WadKae of Bombay & Others** reported in **AIR 1975 SCC 2238**, (iii) **Jitendra Nath Biswas Vs. Empire of India and Ceylon Tea Company & Other** reported in **AIR 1990 SC 255**.

- 11.** Resignation of an employee may interrupt qualifying service, potentially affecting pension eligibility, unless protected by specific provisions. As per deed of variation of the trust deed of appellant/company, the eligibility criteria for pension in terms of completed continuous years of service has been provided in the following manner:-

"8A) The Members will be entitled for Pension as per the following Categories :-

(i) Those who will complete continuous 5 years of Service will get 15% of his last drawn Salary as Pension which shall be paid to the Member monthly in arrears.

(ii) Those who will complete continuous 10 Years of Service will get 30% of his last drawn Salary as Pension which shall be paid to the Member monthly in arrears.

(iii) Those who will complete continuous 15 years of Service will get 45% of his last drawn Salary as Pension which shall be paid to the Member monthly in arrears.

(iv) Those who will complete continuous 20 years and above of Service will get 60% of his last drawn Salary as Pension which shall be paid to the Member monthly in arrears."

- 12.** The other issue which has arisen in this appeal is with regard to whether the pension accumulated in the trust fund under the Scheme of the company amounts to 'wages' as per Payment of Wages Act, 1936 and the West Bengal Shops and Establishments Act, 1963 or not. The appellant's specific reliance has been on Section 2(vi)(3) of the Act of 1963 that, if not the contribution paid by the employer to a pension fund is 'wages' in terms of the said statutory provision, then how can the accumulation of such contribution in that event be termed as wages – as has been allegedly erroneously held by the Hon'ble Single Judge. The answer is not very difficult to find in the settled legal provisions as existent on date particularly, through the judgments referred to by the respondents. The law is absolutely unambiguous and clear that, there should be some amount payable to the recipient/employees upon their fulfilling the expressed or implied terms of contract of employment. The Courts have even extended the scope of the meaning of the word 'wages' to the remuneration which may not have been spelt out in the contract of employment itself but payable to a person upon fulfilling the terms of contract of employment.
- 13.** So far as eligibility criteria in terms of continuous completed years of service as per the amended trust deed of the company as mentioned above, there can be no doubt about the eligibility of the respondents as to the usufruct of the superannuation fund maintained by the company under the trust deed. So far as the due fulfilling till the date of their resignation, of the terms and conditions of the contract of employment is concerned, the same is also not disputed in the instant case. It is also an admitted fact that, till the time the respondents were in employment, they were considered duly covered under the superannuation scheme as per the trust deed. In such circumstances, the arguments of the appellant that the accumulation in the fund may not be termed as 'wages' as per the statutory definition can hardly be convincing and does not inspire confidence of the Court. It is pertinent to mention that the Court is unable to find any specific provision in the trust deed or manner therein to have excluded an employee from the benefit of pension and his ineligibility in case the employee tenders resignation. On the other hand, as mentioned above, eligibility for pension is acknowledged on different steps of service life with the appellant company. The argument of the appellant with reference to Section 2(10) as well as 14 of the West Bengal Shops and

Establishments Act, 1963 is also not acceptable. The eligibility of the respondents accrues in terms of their continuous completed period of service with the company which is an undisputed fact in the instant case. It is irrelevant whether on the date of application, the concerned person has been employed with the appellant company or not.

14. This Court concedes to the submission made on behalf of the respondents that, the employee's contribution to the pension fund and actual remittance of pension to the beneficiary employees, are two separate and distinct phenomena. The Court finds that, while providing resources to the fund an employer may not be held statutorily accountable though he is so liable in case of disbursement accumulated pension to an employee who is eligible as per provision made under the governing Rules, like the amended trust deed in the instant case.
15. In ***Rahim Hajubhai Shaukh's case (supra)***, the Bombay High Court finds that, Payment of Wages Act, 1936 is intended to provide a short and speedy remedy to a workman who is not paid wages as defined in the Act. According to the Court there, the definition 'wages' as occurs in Section 2(vi) of the Payment of Wages Act, 1936 has a wide meaning and includes within its fold the benefits to which a workman is entitled to, on termination of service either under the contract of employment or under any law, award, settlement. That, the definition includes within it a large number of benefits which but for the wide definition may not be included in the 'wages'. The Court has also found that the statutory authority has to decide under Section 15 of the said Act all claims including all incidental matters after hearing the parties and making such enquiry, as it deems proper. The Court has further held that, it cannot be gainsaid that the remedy is to some extent a summary remedy and to the extent to which the jurisdiction can be exercised by the authority, such jurisdiction is taken away from the Civil Court. That, it is well-settled that, where a statute creates special jurisdiction taking away the jurisdiction of the Civil Court, the statute ought to be strictly construed.
16. The Court finds the proposition of law as above, to be apt and proper. In view of the statute itself, having created a special jurisdiction within the purview of the Act itself and the dispute having been found to be with regard to a subject matter, which is also within the purview of the same statute, the specified and prescribed authority under the statute and not any Civil Court shall exercise power in the said dispute.
17. The authority under the West Bengal Shops and Establishments Act 1963, should be the appropriate authority, to adjudicate claim as regards 'pension', if and when such 'pension' amounts to 'wages', in accordance with the said statute. Definition of 'Wages' in the West Bengal Shops and Establishments Act 1963, is as per its definition in the Payment of Wages Act 1936, which is as follows:

"2. Definitions,--

(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise)

expressed in terms of money or capable of being so expressed which would, if the terms of

employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include—

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of appropriate Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

- 18.** The definition of 'Wages' is enriched with the appropriate interpretation made by the Courts as discussed above. It is the settled law that what would be considered as 'wages' for an employee, as per law, is not dependent only on the terms and conditions incorporated in his service contract, but it may travel beyond. Necessary is that the employee should fulfil his part of duty or obligation under the service contract. Whatever is payable to him by the employer upon satisfaction of this condition by the employee, tantamount to 'wages', as per law. It has no relevance with whether a particular category of pay was expressly included in the service conditions in contract, or not. It is also irrelevant if termination of employment has been due to retirement on attaining the superannuation age or by way of tender of resignation by an employee. These settled legal principles when read with clause (8A) of the

amended trust deed of the appellant company, clearly shows that upon expiry of a specified tenure of completed service, the employees would be entitled for grant of pension irrespective of the fact that they have tendered resignation prematurely, before reaching to the age of superannuation.

- 19.** The question arises that does resignation legally interrupt pension eligibility and how, if at all, voluntary resignation is different from superannuation. In a case governed by the trust-based Scheme, like the present one, in which the Scheme provides pension upon completion of a specified number of years of completed service, without linking it to superannuation – resignation should not defeat eligibility. Here in this case, though the Scheme name and proposed purpose has mention of superannuation oriented approach, the deed has not actually excluded scope of benefit to being advanced to employees resigned from service, in its clauses, in specific and explicit terms. It has not expressly conditioned pension on superannuation only or stated that resignation would amount to forfeiture of pension. The Scheme vested entitlement based on completed year of service without providing for any forfeiture clause. Pension has been treated as an earned remuneration and once eligibility is crystallized, it becomes a legal right. In the company Scheme vide the trust deed, membership thereof is not conditioned only to ‘superannuated’ employees, meaning the vesting to be offered only upon attaining retirement age.
- 20.** Since the respondent’s rights arise from the trust deed itself, earned benefits cannot therefore be arbitrarily denied. Pension vested on completion of service slabs and resignation occurred after completion of qualifying service period. Therefore, in absence of any forfeiture clause being existent in the trust deed, such a resignation does not legally interrupt eligibility of the respondents to the pension, provided under the trust deed.
- 21.** A non-contributory pension fund vide the trust deed, is maintained by the company as part of its corporate social responsibility (CSR), specifically grounded on ethical, philanthropic and economic concerns being brought into its operations bearing positive impact towards the society at large. It should go beyond profit maximization, focusing on sustainability and ethical practices. It is a well established doctrine of employment and administrative law that even where a pension scheme is non-contributory (fully funded by the employer), once created, it cannot be administered arbitrarily or whimsical. It becomes a legally enforceable obligation for the employer, not a discretionery favour. Even if the scheme grants any amount of discretion to the employer, that discretion must comply with the fundamental legal principles. Where the pension fund is set up as a trust, as it is in the instant case, the employer cannot treat the fund as its own property or else that would amount to the employer’s unjust enrichment, which is prohibited under the law. It is a binding obligation voluntarily created by the employer upon itself. Non-contribution only affects funding mechanism – not the legal enforceability of the fund. Once the employees (the respondents herein) feel eligibility conditions as per law, that pension thereafter becomes a legal right

governed by the principles of law and fairness – not by any discretion or whim of the employer. Pension, the employee earns by rendering service, is protected by law. The appellant/company that establishes the non-contributory pension fund assumes a legal obligation to administer the same fairly, lawfully and in accordance with the established legal doctrines.

- 22.** This Court is unable to find any palpable illegality or gross miscarriage of justice in the judgment and order of the Hon'ble Single Judge and for the said reason no justifiable ground is found to interfere with the same. The amount of pension for which the respondents have found to be eligible in terms of the trust deed, duly falls within the definition of 'wages' as per statute and the employees' application in terms of Rule 31 of the West Bengal Shops and Establishments Rules, 1964 in statutory Form-N is therefore, maintainable before the appropriate authority under the said statute.
- 23.** Hence, no illegality or impropriety is found in the impugned judgment of the Hon'ble Single Judge dated 11.4.2025 in WPA No. 1617 of 2025. The appeals therefore, should be dismissed.
- 24.** Accordingly, MAT 682 of 2025, MAT 683 of 2025, MAT 684 of 2025 and MAT 685 of 2025 stand dismissed. The judgment and order dated 11.4.2025 passed by the learned Single Judge in WPA 1617 of 2025 is affirmed. Consequently, the order dated 18.11.2024 passed by the competent authority under the West Bengal Shops and Establishments Act, 1963 is upheld. All connected applications, being CAN 1 of 2025 in the respective appeals, also stand disposed of.
- 25.** Urgent certified copy of this judgment, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)