

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 13182 of 2026

Budge Budge Company Ltd. & Anr.
Vs
The State of West Bengal & Ors.

For the petitioners : Mr. Balai Ch. Paul,
Mr. Debmalya Ghoshal,
Ms. Tithi Roy.

For the Respondent No.4 : Mr. Rananeesh Guha Thakurta,
Ms. Senjuti Sengupta.

For the State : Ms. Soma Chakraborty,
Mr. Kaustrav Seal.

Judgment reserved on : 29.06.2026

Judgment delivered on : 29.06.2026

Shampa Dutt (Paul), J.:

1. Affidavit of service filed be kept with the record.
2. The writ application has been preferred challenging orders dated 05.12.2024 & Form – 'R' dated 23.12.2024 and 07.05.2026 passed by the Controlling Authority and the Appellate Authority respectively.

- 3.** On hearing the learned counsel for the petitioners and also the materials on records it appears from the impugned order passed by the Controlling Authority dated 5th December, 2024 that the Controlling Authority in its order has recorded as follows:-

“Op submitted copy of gratuity payment cheque (Marked as Exhibit P 1), Copy of receipt Voucher of gratuity (Marked as Exhibit P 2), Copy of Form '1' (Marked as Exhibit P 3), Copy of self-declaration of the applicant in bengali (Marked as Exhibit P 4), Copy of self-declaration of the applicant in English (Marked as Exhibit P 5), Copy of Gratuity Calculation Sheet (Marked as Exhibit P 6), Copy of working Chart (Marked as Exhibit P 7), Copy of reply to the applicant against his prayer of gratuity with postal acknowledgement (Marked as Exhibit P 8 & P 9), Copy of Memorandum of Settlement dated 30.08.1994, 30.07.2004, 19.08.2006 (Marked as Exhibit P 10, P11, P 12) Copy of certified standing order (Marked as Exhibit P 13).”

- 4.** It appears that in spite of the said documents being on record, the Controlling Authority in its findings did not take into consideration the said documents, which had been marked as ‘Exhibits’, and without considering the same, passed the impugned order granting relief to the private respondent by granting gratuity for a period of 36 years by holding the said period to be continuous service.
- 5.** It appears from the impugned order passed by the Controlling Authority that nowhere in the order has the said Authority decided as to the relevancy of the documents exhibited by the petitioners herein. There is no discussion nor any reference to the same, other than recording the same as Exhibits. In appeal the Appellate Authority reduced the period of continuous service from 36 years to 33 years, deducting the period, after superannuation.

- 6.** On perusal of the impugned order passed by the Appellate Authority which is dated 07.05.2026, it appears that the observations and findings of the Appellate Authority in paragraph 3 of the said order is not as per the materials on record. The relevant observation, as made by the Appellate Authority, is as follows:-

“Now, it is evident from the ESI card that, the employee entered into the service of the O.P. on 17.02.1976 positively. During the cross examination of the applicant by the O.P., he stated that he entered the service as a budli employee. From the documents and statements supplied by the parties, it is interpreted and held that the service of the employee from 17.02.1976 to 03.07.1982 was in a budli capacity and he was made permanent on 04.07.1982, from the date on which his detail service records are kept by the Company.

None of the parties submitted any documentary proof of whether the employee completed 240 days’ work in each of the year from 17.02.1976 to 03.07.1982. Here, following the essence of the order dated 15th February, 2002 of Hon’ble Supreme Court of India in the case of Range Forest Officer Vs. S. T. Hadimani. I would like to hold that, the onus of submitting proof of continuous service of the employee during the budli period cannot

be placed on the O. P. and it was for the employee to lead evidence to prove that. I further hold that in the absence of any proof, the Respondent Employer is not eligible for gratuity during his budli tenure i.e. 17.02.1976 to 03.07.1982, i.e. 6 years 5 months or 6 years rounded off.”

- 7.** The Appellate Authority was also of the view that the petitioners herein did not produce the attendance register or the muster roll though admittedly the Appellate Authority being a quasi judicial authority has the power to compel the production of such documents as per the Code of Civil Procedure.
- 8.** It appears from Exhibits ‘P-5’, ‘P-6’ and ‘P-7’ that the petitioners herein had provided relevant documents to substantiate the number of working days put in by the petitioner every year since 1982.
- 9.** It appears from the gratuity calculation sheet marked Exhibit ‘P-7’, that the number of years for which the petitioner is entitled to gratuity is **19**. From the said documents (marked Exhibit ‘P-7’) it also appears that for the majority period, the petitioner has (fairly) noted that the workman has put in more than 240 days in a year and as such exhibit 7 deserve due consideration in accordance with law.
- 10.** Considering the said facts, this Court finds that the Controlling Authority has totally/completely overlooked the said documents as

he has not even discussed the same, when the said documents marked exhibit appear to be in accordance with law.

11. Thus the impugned orders dated 05.12.2024 & Form – ‘R’ dated 23.12.2024 and 07.05.2026 passed by the Controlling Authority and the Appellate Authority respectively being erroneous and not in accordance with law are hereby set aside.

12. The matter is remanded back to the Controlling Authority, who shall pass a fresh reasoned order, in accordance with law deciding the number of years for which the workman is entitled to gratuity, taking into consideration the documents marked as Exhibits ‘P-5’, ‘P-6’ and ‘P-7’, as per the observations of this Court in this judgment, within 30 working days from the date of communication of this order.

13. The writ application is accordingly disposed of.

14. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)