21.05.2026
Ct. No. 30
S.L. No.1
SM

WPA 22093 of 2025
Vijai Shree Pvt. Limited (Fort William Jute Mill Division)
Versus
Sogra Bibi & Ors.

Mr. Soumya Majumder, Sr. Adv
Mr. S.K. Singh
Mr. Ravi Kumar Dubey
…….for the petitioner
Mr. Rajib Ray
…….for the ESI Authority

1. The writ application has been preferred challenging the orders dated 28.02.2024 and order dated 04.09.2025 passed by the Controlling Authority and the Appellate Authority respectively.

2. Being aggrieved by the said orders, the petitioner preferred the writ application with a prayer, calling for records from the ESI authorities in respect of the details of the deceased employee.

3. The Court granted liberty to add the Employees' State Insurance Corporation as party respondent no. 5 and on being added, the learned counsel for the respondent no. 5/ESI Authority has filed two reports, one dated 22nd September, 2025 and another dated 15.05.2026 annexing the documents in respect of the deceased employee along with all details of the said employee in the report dated 22.12.2025.

4. Learned senior counsel, Mr. Majumder appearing for the petitioner submits that the said report along with its documents clearly supports the case of the petitioner that the deceased employee had not put in 240 days of work in a year, for during a substantial period for which also gratuity has been claimed.

5. On filing written notes of argument Mr. Majumder has relied upon the following judgments:-

(i) (2002) 3 SCC 25 The Range Forest Officer Versus S.T. Hadimani (Para 3).

(ii) (2005) 5 SCC 100 Mananger, Reserve Bank of India, Bangalore Versus S. Mani And Ors(Para 28 to 32, 51).

(iii) **A judgment of the Division Bench of this High Court, passed in FMA 882 of 2024 on 21.11.2024 has been relied upon (Para 14-19).**

6. Finally, this Court also in its **judgment dated 07.05.2026 passed in WPA 24185 of 2023** held:-

"(i)………

(ii)………

(iii) ***Lalappa Lingappa and Ors. vs Laxmi Vishnu Textile Mills Ltd. and Mahadu Sitaram and Ors. vs Laxmi Vishnu Textile Mills Ltd., 1981 2 SCC 238.***

> ***"4.*** *Two questions arise in these appeals. The first is as to whether permanent employees are*

entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave for a number of days in a year and had actually worked for less than 240 days, due to absence without leave. The second is as to whether the badli employees are entitled to such gratuity on becoming permanent employees, for the badli period in respect of the years in which there was no work allotted to them due to their failure to report to duty. These questions relate to the years in which these employees were not actually employed for 240 days in a year, due to their absence without leave.

12. *The expression "continuous service" in the context of a gratuity scheme was interpreted by this Court in Jeewanlal (1929) Ltd., Calcutta v. Workmen [AIR 1961 SC 1567 : (1962) 1 SCR 717, 722-23 : (1961) 1 LLJ 513] as follows:*

"'Continuous service' in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If the employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service. Similarly, participation in an illegal strike which may incur the punishment of dismissal may not by itself bring to an end the relationship of master and servant. It may be a good cause for the termination of service provided of course the relevant provisions in the standing orders in that behalf are complied with; but mere participation in an illegal strike cannot be said to cause breach in continuity for the purposes of gratuity."

(emphasis added)

The legislature has departed from the meaning given by this Court in the above case to the expression "continuous service" by *incorporating the words "not due to any fault on the part of the employee concerned", to give that expression a restricted legal connotation.*

15. *In our judgment, the High Court rightly observed: "It is important to bear in mind that in Explanation I the legislature has used the words 'actually employed'. If it was contemplated by Explanation I that it was sufficient that there should be a subsisting contract of employment, then it was not necessary for the legislature to use the words 'actually employed'." It is not permissible to attribute redundancy to the legislature to defeat the purpose of enacting the Explanation. The expression "actually employed" in Explanation I to Section 2(c) of the Act must, in the context in which it appears, mean "actually worked". It must accordingly be held that the High Court was right in holding that the permanent employees were not entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave and had actually worked for less than 240 days in a year.*

16. As regards badli employees, there can be no doubt that they are not in uninterrupted service and, therefore, they do not fall within the substantive part of the definition "continuous service" in Section 2(c), but are covered by Explanation I. In Delhi Cloth & General Mills Co. v. Workmen [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] the court, while dealing with a gratuity scheme, repelled the contention urged on behalf of the badli employees that since they had to register themselves with the management of the textile mills and were required every day to attend the mills for ascertaining whether work would be provided to them or not, the condition requiring that they should have worked for not less than 240 days in a year to qualify for gratuity was unjust and observed:

"If gratuity is to be paid for service rendered, it is difficult to appreciate the grounds on which it can be said that because for maintaining his name on the record of the badli workmen, a workman is required to attend the mills he may be

> ***deemed to have rendered service and would on that account be entitled also to claim gratuity."***
>
> ***18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the Delhi Cloth Mills case [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] . The badli employees are nothing but substitutes. They are like "spare men" who are not "employed" while waiting for a job: Conlon v. Glasgow [36 Scottish LR 652] . Vallabadas Kanji (P) Ltd. v. Esmail Koya [1978 Lab IC 809 : ILR (1978) 1 Ker 405 : 52 FJR 470] taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in Section 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty."***
>
> *22. Thus relying upon para 16 and 18 in the judgment in* **Lalappa Lingappa (Supra)***, the principle of 240 days remaining the same, (though a pre-amendment judgment), it is clear that as the petitioner during the said period that is 18.03.1989 to 30.11.1994,* ***was admittedly a badli worker****, and had actually not worked during the said period, when there was suspension of work (lock out),* ***he is not entitled to gratuity for the said period****."*

7. Accordingly, this Court finds that the documents filed by the ESI authorities are to be permitted to be admitted in evidence before the authorities concerned as the same shall assist the authorities in arriving at a fair and just decision.

8. On perusal of the impugned orders passed by the appellate authority and the Controlling Authority, it appears that both the orders suffer from inherent defects, errors and illegality.

9. It further appears that the Controlling Authority also did not call for any evidence in support of the claim of the respondent no. 1 that she was the legal heir and also the nominee of the deceased/workman. It appears that it is only the statement of the respondent no. 1 that she is the nominee of the deceased/workman and another person claiming to be the wife of the deceased along with children who has given a no objection in favour of the respondent no. 1 that has been believed by the authority. No legal heirs certificate or any other proof has been produced to even prima facie show that the respondent no. 1 is the legal heir of the deceased employee.

10. Accordingly, the impugned orders dated 28.02.2024 and order dated 04.09.2025 passed by the Controlling Authority and the Appellate Authority **are hereby quashed and set aside.**

11. The matter is remanded back to the Controlling Authority who shall now hear the matter afresh and while doing so shall first direct the claimant to prima facie prove that she is the legal heir of the deceased/workman. Proper documents are to be produced and permitted to be admitted in evidence in course of the hearing afresh.

12. The petitioner is also directed to produce relevant documents before the said authority in support of their contention that the deceased/workman had not made any nomination in his service records. The said fact/evidence has to be placed before the Controlling Authority for due consideration.

13. In case no nomination is provided in the official documents, the responsibility of the respondent no. 1 will increase to prove that prima facie she is the legal heir of the deceased employee.

14. The reasoned findings and order in that respect has to be duly recorded by the authority.

15. The next issue is regarding the claim of the petitioner herein that the deceased employee has not put in 240 days of work in a year for a specified period for which prima facie the ESI records have been called for.

16. The Controlling Authority shall permit the petitioner to file the documents produced by the ESI before the High Court, as evidence before the Controlling Authority, who shall then adjudicate the period for which gratuity is to be calculated and on being satisfied as to the entitlement of the respondent no. 1, the Controlling Authority shall proceed in accordance with law to dispose of the case finally.

17. **Writ application stands disposed of.**

18. Applications, if any, connected thereto stand disposed of consequently.

19. Interim order, if any, stands vacated.

20. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]