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

FMA 1661 of 2025
with
CAN 1 of 2025
arising out of
MAT 1755 of 2025

M/s Xpro Limited Biax Division- Barjora Unit- 2
Vs.
The State of West Bengal and Ors.

For the Appellant	: Mr. Ranjay De, ld. Sr. Adv.
	: Mr. Nayan Rakshit
	: Mr. Nilay Rakshit
For the State	: Mr. Debangshu Dinda
	: Mr. Avijit Sarkar
	: Mr. Abdus Salam
For the respondent No. 4	: Mr. Atanu Biswas
	: Mr. Mrinal Saha
	: Mr. Sourav Saha
Heard on	**: 02/02/2026**
Judgment on	**: 19/02/2026**

Rai Chattopadhyay, J. :-

1. An interplay of the statutory provisions under section 4(1) and 4(6) of the Payment of Gratuity Act 1972, is in issue in the instant appeal and the appellant has challenged judgment of the Hon'ble

Single Judge dated August 28, 2025, in writ petition No. WPA 4620 of 2025.

2. The respondent No.4 has been an employee with the appellant company vide an appointment letter dated August 15, 2012. He has been issued a show-cause notice dated July 21, 2022, by the appellant. An enquiry proceeding was initiated against him and he was served with the notice of enquiry. Immediately after receipt of the notice of enquiry, the said respondent has tendered resignation on August 15, 2022. According to the appellant his resignation has never been accepted by it, which the appellant has informed vide letter dated August 15, 2022.

3. As in the enquiry proceeding the respondent No.4 was found guilty of the misconduct as alleged against him, an order of termination was issued against him on October 11, 2022.

4. Admittedly vide an order dated November 21, 2022 issued under section 4(6) of the Payment of Gratuity Act 1972, the entire gratuity of the writ petitioner has been forfeited by the appellant company. The said respondent however, submitted an application before the statutory competent authority for payment of gratuity on January 16, 2023. In the said proceeding before the competent authority, the present appellant has contested. The Controlling Authority has passed an order dated February 09, 2024, directing the appellant to pay gratuity amount to the respondent to the tune of Rs. 1,37,308/-with 10% interest from October 11, 2022 to the date of actual payment. Appeal by the company before the statutory Appellate Authority has been turned down, vide its order dated December 30, 2024.

5. The writ petition filed subsequently by the present appellant has been dismissed by the Hon'ble Single Judge vide the impugned order dated August 28, 2025. Hence, this appeal.

6. Mr. Ranjay De, learned senior advocate for the appellant has submitted that the decisions of the Controlling as well as the Appellate Authorities under the statute have issued orders which suffer with gross legal and factual error. He says that the judgment of the Hon'ble Single Judge also suffers with illegality as the same is in contravention of the law settled in ***Mahanadi Coal Fields case*** [***Mahanadi Coalfields Ltd. v. Rabindranath Choubey*** reported in ***(2020) 18 SCC 71***]. Mr. De, learned senior advocate has submitted that after the decision of the Supreme Court in ***Mahanadi Coal Fields case (supra)*** , it is now well settled that the Payment of Gratuity Act 1972, can govern the conditions concerning payment of gratuity; it cannot control and provide with respect to an employer right to hold a departmental enquiry (after retirement). He submits that neither the statutory Authorities nor the Court had any jurisdiction to go into the legality of the order of the disciplinary authority, which, according to him, is the gross error apparent on the face of the orders of the statutory Authorities. He says that the Hon'ble Single Judge has gone further to set aside the entire disciplinary proceeding, which is also an authorised and illegal order passed by the said Court. Attacking the judgment of the Hon'ble Single Judge as impugned in this appeal it has been submitted that the court has founded its judgement on the principles decided in ***Jaswant Singh Gill's case*** [***Jaswant Singh Gill Vs. Bharat Coking Coal Ltd.*** reported in ***(2007) 1 SCC 663***], which is no further a good law after promulgation of the judgement in ***Mahanadi Coal Fields case (supra).***

7. In this regard Mr. De has taken this Court elaborately to the relevant documents as annexed with the stay petition and also relies on the two Division Bench judgments of this Court including that delivered by this Bench, in (i) ***MSTC Limited Vs. Malay Sengupta & Others*** reported in ***2025 SCC OnLine Cal 9649***; and (ii) ***State Bank of India & Others Vs. Ratan Kumar Rababi and Others*** reported in

2022 SCC OnLine Cal 1218, which he says, have been delivered after taking into consideration the ***Mahanadi Coal Fields case (supra).***

8. Mr. Atanu Biswas, learned advocate has represented the respondent No.4 in this appeal.

9. Per contra, according to Mr. Biswas who has represented the respondent No. 4 in this appeal, the said respondent has been subjected to gross violation of natural justice as well as arbitrariness, discrimination and illegality while being forced to face disciplinary proceeding which is not maintainable in the eye of law. By saying so, the respondent has tried to put forth that, withholding of the gratuity by the appellant company in his case taking shelter under Section 4(vi) of the Payment of Gratuity Act, 1972 is only an unsubstantiated plea in so far as in disciplinary proceeding, no willful omission or negligence by the said respondent causing any damage, loss or destruction of property of the appellant has been proved.

10. According to Mr. Biswas, there are other glaring violations as regards compliance with the principles of natural justice in the disciplinary proceeding and an application issued to the said respondent is concerned. He submits that, the disciplinary authority himself has acted as the presenting officer with the appellant. It is submitted that the enquiry report was supplied to the respondent along with the termination letter and no second show-cause notice was ever issued to him affording him the opportunity to defend his cause before a termination order was issued. By this way, allegedly, the said respondent was devoid of a fair opportunity to defend the enquiry report also it is submitted that, there is discrepancy amongst the show-cause notice issued, the charge- sheet issued and the termination letter issued against the said respondent. Thus, according to the respondent, due to various discrepancies and irregularities the entire disciplinary proceeding is liable to be vitiated.

11. Mr. Biswas, learned advocated for the respondent while defending the impugned judgment passed by the Hon'ble Single Judge as well as the orders of the Controlling Authority and the Appellate Authority as mentioned above has submitted that in all those orders, the respective authority/Court has duly found that, charges against the respondent has not been proved. He submits that, the charges having not been proved, the appellant company could not make the provisions of Section 4(vi) of the Act of 1972 applicable in his case that, due to his misconduct, the appellant has suffered loss. In such factual background, according to Mr. Biswas, there is no scope to apply the ratio decided in ***Mahanadi Coal Field's case (supra).*** In the instant case, in so far as the ratio therein has been decided on the factual background where the Court has come to a decision regarding the employer having suffered loss due to the misconduct alleged and proved against the employee.

12. Mr. Biswas, learned advocate for the respondent No. 4 has further contended that, the appellant should be debarred from raising the points as above in this appeal in so far as the submissions and contentions of the respondent in the affidavit-in-opposition has not been controverted by the appellant by filing any affidavit-in-reply. Hence, according to him, due to operation of the doctrine of non-traverse, the plea of the appellant as above is unsustainable in the instant case.

13. The judgment of the Hon'ble Single Bench dated 28.8.2025 stands in clear doctrinal inconsistency and contradiction to the ratio decidendi laid down in ***Mahanadi Coal Field's case (supra).*** The Supreme Court has held there that the Controlling Authority under the Payment of Gratuity Act, 1972, cannot assume jurisdiction beyond what is statutorily conferred. That, the authority cannot sit in appeal over findings recorded in a duly conducted domestic inquiry or reappreciate the evidence. That, its function is confined to determining whether the conditions under Section 4(6) of the said Act for forfeiture of gratuity are legally satisfied or not. This is evident from the Court's discussion that the Controlling Authority *"cannot assume the jurisdiction of an appellate authority"* and cannot interfere with findings of fact already recorded. The Court has summarized its decision in paragraph 41 of the judgment which may be quoted bellow:

> ***"41. We are unable to agree with the decision rendered in Jaswant Singh Gill case inter alia for the following reasons:***
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> ***41.1. The order of termination was not questioned, nor the authority under the Payment of Gratuity Act, 1972, had jurisdiction to deal with it.***
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> ***41.2. The validity or enforceability and vires of Service Rules 34.2 and 34.3 were not questioned.***
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> ***41.3. The Controlling Authority under the Payment of Gratuity Act, 1972, had no jurisdiction to go into the legality of order of the disciplinary authority.***
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> ***41.4. The scope of the case before this Court was confined to validity of the order of the Controlling Authority and to questions which could have been dealt with by the Controlling Authority.***
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> ***41.5. No fetter is caused on the efficacy of the Rules by Sections 4(1) and 4(6) of the Payment of Gratuity Act, 1972. The Rules need not be statutory to have efficacy as they are not repugnant to the Payment of Gratuity Act, 1972. This Court did not consider the scope of provisions of the Gratuity Act and provisions of Rule 34.2, providing legal fiction of employee deemed to be in service even after superannuation.***
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> ***41.6. The Controlling Authority had no jurisdiction to deal with Rules 34.2 and 34.3 or to pronounce upon validity thereof or of dismissal. Thus, the observations made, travelling beyond the scope of the proceedings, cannot be said to be binding and cannot constitute the ratio with respect to continuance of departmental enquiry after superannuation and what kind of punishment can be imposed by an employer. The jurisdiction of authority was only to consider payment of gratuity under Section 4(6) of the Payment of Gratuity Act, 1972."***

14. Admittedly the respondent No.4 has neither challenged the disciplinary proceeding, nor the order of termination issued against him. He files a statutory claim before the Controlling Authority under the Payment of Gratuity Act 1972, which authority derives its power and jurisdiction from the statute itself. The Court finds it suitable to mention here the principle enumerated in the judgment of ***Nazir Ahmad v. King Emperor*** reported in ***1936 SCC OnLine PC 41*** by the Privy Council, wherein the Privy Council has laid down the principle that *"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."*

15. Ratio in the case of ***Mahanadi Coal Field (supra)*** restricts the authority to determining whether statutory requirements under Section 4(6) of the Act of 1972, are satisfied—not whether dismissal itself was justified. It cannot assume appellate jurisdiction or re-appreciate the evidence. The law as declared in ***Mahanadi Coal Field's case (supra)*** is clear and binding under Article 141 of the Constitution. The Hon'ble Supreme Court has authoritatively held that the Controlling Authority under the Payment of Gratuity Act, 1972, does not exercise appellate jurisdiction over disciplinary proceedings. Its role is confined to examining whether the statutory preconditions under Section 4(6) are satisfied. It cannot re-appreciate evidence recorded in a duly conducted domestic enquiry; sit in appeal over findings of misconduct; or reassess the proportionality of punishment. Enquiry by the authority is restricted to a narrow statutory scrutiny that is, whether the termination is on account of misconduct of the nature contemplated under Section 4(6) of the said Act and whether such misconduct occurred in the course of employment.

16. Selected portion of the order dated February 09, 2024 of the Controlling Authority may be quoted here:

> ***"Under sub-section 6(a) of Section 4 of the Payment of Gratuity Act, 1972, gratuity can be forfeited only to the extent of damage or loss caused to the Company. In case, the termination of the employee is for any act or willful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the***

> ***gratuity by way of forfeiture. Whereas under sub-section 6(b) of Section 4, the forfeiture of gratuity, either wholly or partially, is permissible under two situations: (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment.***
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> ***In this instant case, though the Opposite Party Co. arranged Domestic enquiry against the alleged misconduct of the applicant but neither they had registered any FIR nor had filed any criminal complaint before a competent court of law to establish the misconduct or offence of the Applicant. There is no conviction of the applicant for the alleged 'serious nature of the misconduct' which according to the Opposite Party Co. is an offence involving moral turpitude. Hence, the 'offence' of the applicant is not established. Hence, there is no justification for the forfeiture of gratuity as mentioned in termination notice issued by the by the Opposite Party Co. dated 21.11.2022 and the applicant is rightly entitled for Gratuity."***

17. The Appellate Authority upholds the decision as above of the Controlling Authority in its order dated December 30, 2024 and reproduced the reasons shown by the Controlling Authority as noted bellow:

> ***"In the instant case, the appellant employer conducted a domestic enquiry against the alleged misconduct of the respondent employee but the employer neither had registered any FIR nor did they filed any criminal complaint before a competent court of law to establish the misconduct, riotous disorderly conduct or offence of the respondent.***
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> *** *** *** *** ***
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> ***In view of above, I do not find any reason to differ with the findings of the Ld. Controlling Authority and thus the order of the Controlling Authority is confirmed. Hence, Ld. Controlling Authority shall take necessary action as per the said Act and said Rule."***

18. The Hon'ble Single Bench in the said impugned judgment dated August 28, 2025, upholds orders of both the statutory authorities and recorded as follows:

> **"26.** The said/conduct of the enquiry/disciplinary authority is clearly an abuse of power and totally against the principles of natural justice, there being no independent, specific findings of the disciplinary authority against the petitioner. No reasoning nor the principles of natural justice was followed.
> **27.** The findings of Disciplinary Authority is based on 'no evidence' and has been passed without considering the principles of natural justice, which is a clear perverse determination of fact **[State of Rajasthan – vs – Heem Singh (Supra)]**.
> **28.** Relying upon the judgment in **Western Coal Fields Ltd. vs Manohar Govinda Fulzele, (Supra)**, this Court sets aside the order and punishment of the disciplinary authority for the reasons stated above and directs the petitioner to pay the total amount of gratuity along with simple interest @ 8% p.a. with effect from 30th April, 2009 till payment **within 60 days from the date of this order."**

19. In the present case the admitted facts are that a domestic enquiry was conducted, the respondent employee chose not to participate, the Enquiry Officer recorded findings of misconduct, the order of termination dated October 11, 2022 was never challenged and the employer thereafter passed an order of forfeiture of the gratuity under Section 4(6) of the Payment of Gratuity Act, 1972.

20. The orders of the Controlling as well as the Appellate Authorities, upheld by the Hon'ble Single Judge, have spelt out the reasons that since no FIR was lodged and no criminal conviction was recorded, the misconduct could not be treated as an offence as prescribed under the law and therefore gratuity could not be forfeited. This reasoning suffers from a manifest error of law. In ***Mahanadi Coal Field's case (supra)***, the Supreme Court clarified that forfeiture under Section 4(6)(b)(ii) does not depend upon a prior criminal conviction. The statutory language requires that the misconduct committed in the course of employment. The determination is to be made on the basis of the disciplinary findings, not upon the outcome of criminal proceedings. By insisting upon registration of an FIR or a conviction as a condition precedent, the said Authorities—and the Hon'ble Single Judge introduced a requirement which the statute does not contemplate and which the Supreme Court has expressly declined to impose. The impugned judgment effectively re-opened the findings of the domestic enquiry by holding that the *"offence is not established."* Such an approach amounts to a re-appreciation of the factual conclusions reached in disciplinary proceedings. The Hon'ble Single Judge, by affirming the reasoning that the absence of criminal prosecution negates credibility of the allegations and finding against the respondent in the disciplinary proceeding, has effectively conferred appellate powers upon the Controlling Authority—contrary to the ratio in ***Mahanadi Coal Field's case (supra).***

21. The Court re-examines the validity of the disciplinary proceedings and its findings. It assesses the legality of forfeiture on broader grounds. It appears to scrutinize whether the termination and forfeiture were justified, potentially stepping into fact-finding territory. The Court has evaluated proportionality of punishment or validity of dismissal and decided contrary to the binding principles decided in the ***Mahanadi Coal Field's case (supra).*** Thus, the Court has also failed to appreciate that the statutory Authorities in its orders, have exceeded jurisdiction vested in it by law. The Court itself has overstepped by misconstruing the scope of interference provided and settled under the law.

22. Finally, it is required to be mentioned that the Hon'ble Single Judge in the impugned judgment dated August 28, 2025 has wrongfully placed reliance on the ratio of the Supreme Court decision in ***Jaswant Singh Gill Vs. Bharat Coking Coal Ltd.*** reported in ***(2007) 1 SCC 663*** in so far as the subsequent three-Judges Bench decision of the said Court in ***Mahanadi Coal Field's case (supra)*** has over-ruled the decision in ***Jaswant Singh Gill's case (supra).***

23. For all the reasons as discussed above, the Court finds that the impugned judgment of the Hon'ble Single Judge is unsustainable as it is not based on the settled law on the date and has accepted exercise of erroneous jurisdiction by the statutory authorities. Hence, the present appeal No. FMA 1661 of 2025 is allowed. The judgment of the Hon'ble Single Judge dated August 28, 2025, passed in writ petition No. WPA 4620 of 2025 as well as the orders of the Controlling Authority dated February 09, 2024 and the Appellate Authority dated December 30, 2024 stands set aside by this judgment.

24. Appeal is disposed along with applications pending, if any.

25. 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.)

Later:-

After pronouncement of the judgment Mr. De, learned Senior Advocate for the appellant has mentioned that the money deposited with the Appellate Authority to the tune of Rs. 1,56,759/- deposited vide Cheque No. 592009 dated 08.03.2024 may be permitted to be returned back.

Hence, it is directed that in view of the judgment as above the money to the tune of Rs. 1,56,759/- deposited with the Appellate Authority under the Payment of Gratuity Act, 1972 be immediately returned to the appellant.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)