

Form No.J(2)
Sayandeep

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 2570 of 2025

The Deputy General Manager (B&O), SBI
Vs.
Union of India & ors.

For the petitioner : *Mr. M. Paul*, Advocate
Mr. Nabankur Paul, Advocate
Mr. Sutapa Sen Paul, Advocate
Mrs. Bedashruti Bose, Advocate
Mr. Subham Das, Advocate
Mr. Aditya Seal, Advocate
Mr. Subham Chanda, Advocate

For the respondent
Nos. 1-4 : *Mr. Sudipto Kr. Majumdar*, Ld. DSGI
Mr. Tridip Saha, Advocate

For the respondent No. 4: *Mr. Kamal Krishna Banerjee*, advocate
Mr. Satyaki Basu, advocate

Heard on : 16.04.2026

Judgment on : 16.04.2026.

Raja Basu Chowdhury, J. (Oral):

1. The present writ petition has been filed inter alia, challenging the determination made by the appellate authority in an appeal filed under Section 7(7) of the Payment of Gratuity Act, 1972

(hereinafter referred to as the said Act) dated 17th March, 2025 whereby the appellate authority while reversing the order passed by the controlling authority, has made the principal employer liable for payment of gratuity.

2. The petitioner claims to have entered into an agreement with the respondent No. 5 (hereinafter referred to as the contractor) for carrying out housekeeping and maintenance services in the year 2012 on the terms and conditions appearing in the agreement. The respondent No. 4 had been employed by the contractor as a contract worker (hereinafter referred to as the contract worker). Records would reveal that the contract worker had later approached the office of the respondent No. 3 being the controlling authority within the meaning of the said act against the non-payment of gratuity both by the contractor as also other contractors including the petitioner as principal employer. Records would reveal that the contract worker in his application filed in form 'N' had claimed to have been appointed by the contractor on 1st May, 2012 and then by other contractors on the dates noted therein. The said proceedings came to be adjudicated on contest by the controlling authority. In the said cause, the following three issues fell for consideration which are extracted herein below:

ISSUES TO BE DECIDED

- “1. Whether the application made is within the ambit of Payment of Gratuity Act, 1972?

2. Whether the applicant is entitled to Gratuity, inter-alia, whether the entitlement of Applicant for Gratuity can be denied on account of tussle between OP-2 (5.8.1.) and O.P.-3 (M/s. MSE Management Services Pvt. Limited). If so, who is liable to pay Gratuity amount to the Applicant?

3. Whether the Applicant is entitled for interest for delay in making payment of gratuity und Section 7 (3A) of the Payment of Gratuity Act, 1972?”

3. Based on the materials on record, the controlling authority returned the finding that the payment of gratuity must be paid to an employee when he/she as put in minimum period of five years as mandated by the Act and accordingly, it was held that the contract worker was entitled to receive full gratuity along with simple interest at the rate of 10% from the date when the same became payable till actual payment in terms of Section 7(3A) of the said Act from the opposite party No. 3, therein that is the contractor herein who was directed to make payment of the gratuity. The relevant portion of the above order is extracted herein below:

DECISION

Keeping in view the documentary & oral evidence presented before me, as brought out above and by virtue of powers conferred upon me as the Controlling Authority under the Payment of Gratuity Act, 1972, I hold that the applicant Shri Mahadeb Das is entitled to receive the gratuity including interest amounting to Rs. 41,940/- + Rs.20,621/- respectively which comes total amount of Rs. 62,561/- (Rupees: Sixty two thousand five hundred sixty one only). The O.P.-3 (M/s. MSE Management Services Pvt. Limited) is directed to pay the said amount to the Applicant (Shri Mahadeb Das) within thirty days from receipt of this order with an intimation to this office. The Applicant (Shri Mahadeb Das) is directed to intimate the receipt of payment from the O.P.-3 (M/s. MSE Management Services Pvt. Limited). The interest amount determined above is upto September, 2023 and if further delayed by O.P.-3 (M/s. MSE Management Services Pvt. Limited) necessary calculations should be made accordingly.

This disposes the case No. 48(24)/2023-ALC-S

Given under my hand and seal, on the 25th day of October, 2023



4. Record would reveal that the contractor had, however, challenged the said order by filing an appeal under Section 7(7) of the said Act. Such appeal was filed upon statutory compliance of deposit of entire amount of gratuity with the controlling authority. In the said appeal, the contractor had admitted that it had entered into an agreement for housekeeping and maintenance service sometimes in April, 2012 with the petitioner herein. It was the specific case of the contractor that the contract worker was engaged by the contractor and he was employed at the premises of the petitioner and worked under its guidance and instruction. According to the case made out, it was the petitioner as principal employer who was liable to make payment of gratuity and not the contractor. Incidentally, the appellate authority at the instance of the contractor had reversed the determination made by the controlling authority and held not only the principal employer to be liable to make payment but also enhanced the amount of gratuity. Challenging the aforesaid direction, the present writ petition has been filed.
5. The learned advocate for the petitioner by drawing attention of this Court to the provisions of said Act would submit that in absence of employee and employer relationship, there is no scope for the controlling authority to thrust the liability of payment of gratuity on the principal employer. According to him, the said Act is a self contained Code where both the employer and

employee have been defined. There is no scope to borrow the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the 1970 Act) and import the provisions thereof, so as to make the principal employer liable towards payment of gratuity. in support of his contention, he has placed reliance on the following judgments:

- i) The Joint Secretary, Central Board of Secondary Education & anr. vs. Raj Kumar Mishra** reported in **2025 SCC Online SC 2048.**
- ii) Hindustan Steel Works Construction Ltd. vs. Commissioner of Labour & Ors.** reported in **(1996)10 SCC 599.**
- iii) Sailen Seth vs. Deputy Labour Commissioner & ors.** reported in **(2010)3 CHN 899 (Cal).**
- iv) FIS Payment Solutions and Services India Pvt. Ltd. vs. Assistant Labour Commissioner Central Siliguri & ors.** reported in **2023 SCC Online Cal 1500.**
- v) FIS Payment Solutions and Services India Pvt. Ltd. vs. Tapan Roy & ors.** in **WPA 10495 of 2022** delivered on **12th September, 2023.**
- vi) Kajal Bouri vs. The Appellate Authority & anr.** in **WPA 13641 of 2018** delivered on **20th December, 2023.**

6. Per contra, Mr. Banerjee, learned advocate representing the respondent No. 4 would submit that the issue as to whether the

gratuity forms part of wages has already been decided by the Hon'ble Madras High Court in the case of **The Superintending Engineer Purchase and Administration Mettur Thermal Power Station Mettur Dam vs. Appellate authority Joint Commissioner of Labour Coimbatore & anr.** in **WP No. 26031 of 2007** delivered on **23rd June, 2011**. He also places reliance on two several judgments delivered by the co-ordinate Bench of this Court in the case of **Sail Growth Works vs. Sri Shirajul Khan & ors.** in **WPA 25366 of 2023**, and the Judgment delivered in the case of **Hindustan Petroleum Corporation Limited vs. The Appellate Authority under the Payment of Gratuity Act, 1972 & ors.** in **WPA 25774 of 2024** delivered on **12th March, 2025**. He has also relied on judgment delivered in the case of **Shibaprasad Sutradhar vs. The State of West Bengal & ors.** in **WPA 3503 of 2025** delivered on **30th June, 2025** to drive home the point that wages includes gratuity. According to him, there is no scope to interfere with the order..

7. Having heard the learned advocates appearing for the respective parties, I find that it is admitted position that the contract worker was never in employment of the petitioner herein. It not the case of the contract worker that he was appointed by the petitioner rather, it is the admitted position that the contract worker had worked as a contract labourer under the contractor. Records would further reveal that the contract worker had

proceeded to file the application in form 'N' as regards nonpayment of gratuity against the contractors under whom he had worked and in the process as aforesaid had robed in the principal employer as well. It is also a matter of record that the proceedings were contested by the petitioner upon receipt of notice in form 'O' and thereafter the controlling authority on the basis of the issues recorded as noted above, decided the cause in favour of the contract worker and directed the contractor to make payment. The contract worker is not aggrieved by such order. It is rather the contractor who filed an appeal before the appellate authority under Section 7(7) of said Act. The contractor while preferring the appeal, also admitted that it had employed the contract worker. Facts in this regard are not in dispute. Notwithstanding the aforesaid at the instance of the contractor, the appellate authority appears to have not only reversed the order by directing the principal employer to make payment of the gratuity but has also enhanced the amount.

8. Having regard to the above, what falls for consideration before this Court is whether in absence of any employee and employer relationship, can a principal employer be made liable for payment of gratuity by borrowing the provisions of Section 21 (4) of the 1970 Act. In this contest, it may be noted that the Hon'ble Supreme Court in the case of **Hindustan Steel Works Construction Ltd.(supra)** in paragraph 13 in no uncertain terms

has returned the finding that the definition of wages under the Act of 1970, are contractual wages, and would cover within its scope, inter alia, wages, which are subject matter of Section 21 are specified sums, which are payable in *paraesenti* by the contractor under the terms of the contract of employment with each other as well as under any existing award, settlement or order of the Court. Section 21 of the Act of 1970 does not deal with nor does it cover other obligations which are imposed upon the contractor under the provisions such as Andhra Pradesh Contract Labour (Regulation and Abolition) Rules 1971. Hence Section 21(4) of the Act of 1970 will not apply to such obligation of the contractor which may be subject matter of dispute between the contractor and his workers at the time of disbursement of wages and which do not fall within the definition of wages under the said Act of 1970.

9. It may also be noted that the co-ordinate Bench of this Court in the case of **Sailen Seth (supra)** on identical terms had observed that is futile to compare the provisions of Payment of Gratuity Act, 1972 with those of the Contract Labour (Regulation and Abolition) Act, 1970. The former Act was enacted with an object to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantation, ports, railway companies, shops or other establishments and for that matters connected therewith or identical thereto, whereas the latter Act

was enacted with an object to “Regulate the employment of contract”.

10. I also notice that the co-ordinate Bench of this Court in the case of **FIS Payment Solutions and Services India Pvt. Ltd. (supra)** as also this Court in the case of **Kajal Barui (supra)**, by noting the scope and ambit of the said Act had refused to saddle the principal employer with the liability towards payment of gratuity. Though, Mr. Banerjee, learned advocate has relied on the judgment delivered by the co-ordinate Bench in the case of **Shibaprasad Sutradhar (supra)**, **Sail Growth Works(supra)** and **Hindustan Petroleum Corporation Limited(supra)**, I find that all the aforesaid judgments have been delivered by the same Co-ordinate Bench although a different view as noted above was taken in prior judgments delivered on this issue in the case of **Sailen Seth (supra)**, **FIS Payment Solution and Services India Pvt. Ltd (supra)** and the case of **Kajal Barui (supra)**. It may also be noted that the Co-ordinate Bench by relying on the judgment delivered by the Hon’ble High Court of Madras in the case of **The Superintending Engineer Purchase and Administration Mettur Thermal Power Station Mettur Dam(supra)**, had held the principal employer to be liable based on Section 21(4) of the Act of 1970 which has not been accepted both by the Hon’ble Supreme Court in **Hindustan Steel**

Works Construction Ltd.(supra) and the other judgments delivered by the Co-ordinate Bench as noted above.

11. In the light of above and the observations of the Hon'ble Supreme Court in **Hindustan Steel Works Construction Ltd.(supra)** with respect, I am unable to accept the above finding returned in the case of **The Superintending Engineer Purchase and Administration Mettur Thermal Power Station Mettur Dam(supra)** by importing the provisions of the 1970 Act to that of the said Act, so as to saddle the principal employer with the liability of payment of gratuity. The order impugned thus appears to be perverse.
12. This apart the contractor has not come forward to contest the proceedings. The contract worker at the first instance, was not aggrieved by the determination made by the controlling authority. For the reasons as aforesaid, the order passed by the appellate authority dated 17th March, 2025, cannot be sustained. The same is accordingly set aside. Since in the instant case, I find that the entire amount has already been deposited with the controlling authority in terms of the determination made by the controlling authority, I am of the view that the contract worker shall be entitled to the aforesaid amount and accordingly, I direct the controlling authority to disburse the same in favour of the contract worker as expeditiously as possible preferably within a

period of three weeks from the date of communication of this order.

13. With the above observations and directions, the writ petition is disposed of.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)