IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 3503 of 2025
Shibaprasad Sutradhar
Vs.
The State of West Bengal & Ors.

For the Petitioner : Mr. Bikash Shaw,
Mr. Sk. Saad Islam.

For the Respondent No. 4 : Mr. Bhaskar Prasad Vaisya, ld. AGP
Mr. Nilay Baran Mandal.

For the Respondent No. 5 : Ms. Soni Ojha.

Hearing concluded on : 19.06.2025

Judgment on : 30.06.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred against an order dated 28.02.2024 passed in Appeal Case No. GA-92/2022 by the respondent no. 3 herein being the Appellate Authority, under the Payment of Gratuity Act, 1972, Serampore, Hooghly, with a prayer for withdrawal of the order dated 16.11.2022 passed in Gratuity Case No. G-02/20 by the respondent no. 2 being the Controlling Authority, under the Payment of Gratuity Act, 1972, Serampore, Hooghly.

2. The petitioner's case is that he joined the unit of respondent no. 4 on 1st January 1997 as a security guard and since then he has worked continuously through several contractors at the said unit and ultimately he superannuated from his service w.e.f. 1st August 2019.

3. It is stated that as per Section 7(2) of the Payment of Gratuity Act, 1972, it was the statutory duty upon the respondent no. 4 and respondent no. 5 to pay the gratuity amount to petitioner. Since the gratuity amount was not paid to the petitioner, the petitioner on 30.11.2019 submitted an application in Form No. I of the West Bengal Payment of Gratuity Rules, 1973, thereby claiming the Gratuity from his employer.

4. As the employer still did not pay gratuity, the petitioner applied to the controlling authority and a gratuity case was initiated being G-02/2020.

5. The company/respondent's contention is that they neither issued any appointment letter nor any superannuation letter as they were appointed by the respondent no. 5 company/contractor and as such there was no employer-employee relation and they have had no liability towards the workers appointed through contractors and thus also not towards the petitioner.

6. The respondent no. 5, the last contractor denied his liability on the ground that the petitioner has worked through them only for 2 years 1 month and has thus not worked continuously for 5 years under them and so were not liable.

7. Vide an order dated 16.11.2022, the respondent no. 2 being the Controlling Authority under the Payment of Gratuity Act, 1972, Serampore, Hooghly disposed of the application of the petitioner, thereby holding that the petitioner is not entitled to the gratuity from the respondent no. 4 & 5 because he failed to complete 5 years continuous service as per section 4 (1) of the Payment of Gratuity Act, 1972.

8. The petitioner then preferred an appeal, which was disposed of, by dismissing the appeal on merit.

9. Hence the writ application.

10. Admittedly, the petitioner was working with the respondent/company mother diary through several contractors since 01.01.1997. The contractors changed but the same workers continued to work for 'mother diary' on a remuneration.

11. The controlling authority vide his order dated 16.11.2022 in G-02/2020, came to the following findings:–

".....Coming to the conclusion, it seemed clear that the petitioner applicant is not an employee of Mother Dairy

Calcutta but was the employee of the contractor OP2 at the time of his superannuation.

Now the OP 2 i.e. General Security Services Pvt. Ltd. entered into an agreement with Mother Dairy Calcutta for providing security guards at their Dankuni unit and started functioning at Mother Dairy Calcutta, Dankuni unit w.e.f. 01.07.2017 as per work order no PUR/WO/042/E&S/SECURITY/2723 dated 26.06.2017 and they stopped providing service at the Dairy unit w.e.f. 01.03.2020 after completion of the tender work and termination of the contract between the Principal employer. (Mother Dairy Calcutta) and the Contractor (General Security Services Pvt. Ltd.).

In this case the petitioner applicant has performed his duty as security guard at the Dairy unit as an employee of General Security Services Pvt. Ltd. only for 2 years and 1 month from 01.07.2017 (the first day of contract performance) to 31.07.2019 (date of superannuation of the applicant).

And Section 4 of The Payment of gratuity Act, 1972 states that Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, - (a) on his

superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease.

Thus completing 5 years of continuous service with one employer being a precondition for becoming eligible for gratuity the applicant is not entitled to Gratuity from O.P. 2 since he has not completed uninterrupted service of 5 years under General Security Services Pvt. Ltd.....”

12. The appellate authority vide order dated 28.02.2024 in GA 92 of 2022 held:-

“…….*Coming to the conclusion, it seemed clear that the petitioner applicant is not an employee of Mother Dairy Calcutta but was the employee of the contractor OP2 at the time of his superannuation...".*

Now within the ambit of the said act following is also observed:

The appellant employee has worked in the premises of Mother Dairy Calcutta under various establishments of contractors. All the relevant documents in connection to service of the employee are lying with the contractors.

- *No notification was issued as per section 10 (1) prohibiting engagement of contract labour in Mother*

Dairy Calcutta, hence they can engage contract labour in security service in their premises.

- *Providing security service in Mother Dairy Calcutta was not declared as a perennial nature of job by the appropriate government.*
- *There was an agreement between Mother Dairy Calcutta and the contractor General Security & Information Services Pvt. Ltd regarding their terms of contract and the liability of the employee lies with the contractor as mentioned.*
- *Mother Dairy Calcutta submitted a copy of agreement between him and the contractor. Now based on the facts available with this case it will be unwise to conclude the contract as sham or a paper contract within the ambit of the Payment of Gratuity Act and to hold Mother Dairy Calcutta as the employer under the said act,*
- *Unless the contract is proved to be a sham one it will not be proper to hold the principal employer liable to pay gratuity considering the full period of service in absence of fulfillment of required entitlement criteria for payment of gratuity of rendering continuous service*

from 5 years or more under the immediate employer i.e. the contractor.

Hence, in view of above, I am unable to differ with the findings of the controlling authority and order of the controlling authority is confirmed. A copy of the order is to be sent to the controlling authority for taking necessary action.

Sd/
Appellate Authority
Under the Payment of Gratuity Act, 1972
Serampore, Hooghly
&
Deputy Labour Commissioner, Serampore"

13. From the materials on record, it is evident that the petitioner:-

(1) Joined the unit of the O.P.1 on 01.01.1997 as a security guard and worked through different contractors and since then he worked continuously, till he superannuated on 01.08.2019.

(2) The OP 1 (mother diary) is the principal employer, and the petitioner discharged his duties for the benefit of the OP1 (mother diary) only through different contractors engaged by the OP1 from time to time.

(3) He served the company (mother diary) for 22 years without any interruption.

(4) The contractors kept changing but he continued to provide his service to the OP1 till his superannuation.

(5) The last wages drawn by the petitioner was Rs.761.19/- (Rupees Seven Hundred Sixty one and Nineteen paise) only per day.

(6) In the subscriber's annual statement of account under The Employees Provident Fund Scheme, 1952 issued by the Regional Provident Fund Commissioner in FORM - 23 the name of the employer of the petitioner is written as Mother dairy Calcutta.

14. Admittedly, Mother diary, Calcutta did not issue the petitioner's appointment letter but his services though were admittedly availed through contractors.

15. The company/mother diary has taken the defence that:-

"*…….There is no employer-employee relationship between them and the petitioner/applicant and therefore they are not liable to make payment of any gratuity.*

The clause 3.1 of the terms of settlement of a tripartite settlement signed on 14.05.2010 between the union of Contractor workers (Hooghly zilla Thika Shramik Union Mother Dairy Calcutta Unit) and OP 1 states that "there will be no retirement benefits at this stage." Being a party to the said tripartite agreement the petitioner

applicant has already reaped the benefit of the said settlement. Thus now the applicant cannot claim the gratuity from his principal employer.

They are only client of the contractor O.P. 2 (The General Security Services Pvt Ltd.) and has no obligation to pay the Gratuity amount to the petitioner applicant since he is an employee of the O.P. 2 and merely because the client (Mother Dairy Calcutta) pays money under a contract to the contactor i.e. O.P.2 and in turn the contractor pays the wages of such security guards from such contractual amount received by it does not make the client the employer of the security guards nor do the security guards constitute employees of the client.…"

16. The petitioner has relied upon the following judgments:-

a) *Madras Fertilisers, Ltd. vs Controlling Authority under Payment of Gratuity Act and others, 2003(1) L.L.N. 358, decided on 1st November, 2002.*

b) *Suryakand D. Lad & Ors. vs Oil and Natural Gas Corporation Ltd. and Another., 2023 SCC OnLine Bom 1734.*

17. The company/respondent/mother diary has relied upon on a judgment of the Supreme court in ***Panther security services Pvt. Ltd Vs Employees Provident fund Organisation and***

Ors., in Civil Appeal No. 4434-4435 of 2010, decided on December 02, 2020, wherein the Court clarified that private security agencies are indeed subject to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) if they meet the criteria of being an employer under the Act.

The Supreme Court dismissed Panther Security's appeal, upholding the High Court's order that mandated compliance with the EPF Act and the deposit of statutory dues.

18. This Court relies upon a judgment passed in WPA 6006 of 2009 on 21.05.2025 by this Court, wherein the Court held as follows:-

> ***"4.*** *The Supreme Court in* ***Steel Authority of India Limited vs. Workmen of Steel Authority of India Limited & Anr., Civil Appeal Nos. 902-903 of 2023 (arising out of SLP (C) Nos. 26634-26635 of 2019), decided on February 07, 2023,*** *held:-*
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> *"**13.** .....it is not necessary to regularize the services of the workmen who have died, retired or still in employment and* ***even in the absence of such a status, they shall be entitled to the following service benefits:***
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> *(i) Pay-scale at par with the employees who are on the roll of the appellant – Authority;*
> *(ii) The benefit of provident fund;*
> *(iii)* ***The benefit under the Gratuity Act;***
> *(iv) The other service benefits including the medical allowance which the appellant – Authority has granted to its employees under the Service Regulations or through administrative decisions from time to time. Such benefits will be admissible from the cut-off date determined by the Tribunal."*

5. ***The case of the workmen is that they were appointed in between 30.01.1980 to 27.07.1988 on different dates, initially through contractors.*** *The Tribunal vide order dated 22.12.2008, directed to regularize the services of the concerned workmen.*
6. *In* ***Steel Authority of India Limited (supra),*** *the Supreme Court further held:-*

*"**12.** The issue whether the workmen were employed by IISCO or they were contractual employees is essentially a question of fact which has been examined in depth by the Tribunal, learned Single Judge as well as the Division Bench of the High Court, holding concurrently that the workmen were actually the employees of the appellant – Authority. Such a finding of fact does not warrant for any interference by this Court.*

***14.** Let the arrears of these benefits be released to the respondent – workmen within four months from the date of receipt of bank account details of the individual employees/their legal heirs. In case the service benefits are released within four months, no interest shall be paid to the respondent – workmen. In case the payments are delayed, the workmen will be entitled for interest at the rate of 7% p.a."*

7. *Accordingly, the writ application stands disposed of with the direction that the workmen/represented by the respondent no. 3 (except the workmen) excluded by the tribunal, even in the absence of regular status shall be entitled to -*
   - *(i) Pay-scale at par with the employees who are on the roll of the appellant – Authority;*
   - *(ii) The benefit of provident fund;*
   - *(iii) The benefit under the Gratuity Act;*
   - *(iv) The other service benefits including the medical allowance which the appellant – Authority has granted to its employees under the Service Regulations or through administrative decisions from time to time. Such benefits will be admissible from the cut-off date determined by the Tribunal.* ***(Steel Authority of India Limited (supra))"***

19. In ***Bharat Heavy Electricals Ltd. Vs. Mahendra Prasad Jakhmola and Ors., (2019) 13 SCC 82,*** the Supreme Court held:-

> ***"24.*** *We may hasten to add that this view of the law has been reiterated in Balwant Rai Saluja v. Air India Ltd. [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] , as follows : (SCC pp. 437-38, para 65)*
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> *"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:*
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> *(i) who appoints the workers;*
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> *(ii) who pays the salary/remuneration;*
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> *(iii) who has the authority to dismiss;*
>
> *(iv) who can take disciplinary action;*
>
> *(v) whether there is continuity of service; and*
>
> *(vi) extent of control and supervision i.e. whether there exists complete control and supervision.*
>
> *As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] and Nalco case [NALCO Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] ."*

20. In ***Hussainbhai, Calicut vs The Alath Factory Thezhilali Union, Kozhikode & Ors., (1978) 4 SCC 257,*** the Supreme Court held:-

"Held:

The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner.

(Para 2)

The true test is where a worker or group of workers labour to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relation-ship ex contractu is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by manage-ments to avoid the responsibility when labour legislation casts welfare obligations on the real employer based on Arts. 38, 32, 42, 43 and 43A. If livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and the aggrieved workmen, the employer is in substance and in real life-terms, by another.

(Paras 5 to 7)

Mangalore Ganesh Beedi Works v. Union of India, (1974) 4 SCC 43: 1974 SCC (L & S) 205, followed."

21. In ***Subramaniam S. Arjun & 15 Ors. vs Oil & Natural Gas Corporation Ltd. And……., decided on 23 August, 2023,*** the Bombay High Court held:-

"59. Having dealt with the rival submissions, this Court in exercise of plenary writ jurisdiction must look at the substance of the matter and where justice of the case lies. The petitioners rendered services as contract workmen to ONGC in excess of 15 years, on an average. ***The petitioners services were so utilized through different contractors. The contractors changed but the principal employer remained constant.*** *ONGC had entered into a MoU to make a provision to extend the gratuity benefit to the contract-workmen. In this setting of the matter, if the submission on behalf of ONGC is to be accepted, the contractor through whom the services of the petitioner were being used on the date of the cessation of employment, would alone be the person liable to pay the gratuity for the entire service tenure and that would bring in the element of the liability of the last contractor to pay gratuity even in respect of the past service for which the contract employees were not employed by him. Such liability can only be fastened either under a statutory obligation or contractual stipulation. No statutory prescription to cover such liability could be pressed into service by the ONGC. Nor the Court finds any such contract between last contractor and the predecessor contractors, or for that matter, between the last contractor and ONGC. In contrast, in the case of Cummins (supra), the successor contractor had incurred an obligation pursuant to a contract with the predecessor contractor, to pay gratuity.*

60. The conspectus of aforesaid consideration is that the Appellate Authority was in error in setting aside

the order passed by the Controlling Authority fastening the liability on ONGC to pay gratuity. Petitions thus deserve to be allowed."

22. In ***Indian Institute of Technology Bombay vs Tanaji Babaji Lad & Ors., in Writ Petition No. 12746 of 2024,*** the Bombay High Court held:-

"31) When IIT, Bombay is specific in directing deposit of ESIC and PF contribution, it is incomprehensible as to why liability for payment of gratuity was not specifically incorporated in the Work Order. It appears that in the description of work appended to the contract, there is a condition for continuous deployment of workmen for maximum 89 days excluding Sundays and holidays against various requisition issued by the Estate Office. Far from engaging different workers for maximum tenure of 89 days, the Respondents continued to work with IIT, Bombay notwithstanding replacement of various contractors. In fact, if the tests laid down by the Apex Court in ***Balwant Rai Saluja & Anr Etc.Etc vs Air India Ltd.& Ors, AIRONLINE 2013 SC 652,*** *Respondent would be in a position to satisfy most of the said tests for the purpose of establishment of employer –employee relationship even under the ID Act. Since the enquiry into existence of employeremployee relationship in the context of PG Act is summary or preliminary in nature, which does not bind parties outside the framework of PG Act, it is not necessary to satisfy all the tests laid down in* ***Balwant Rai Saluja*** *(supra). Be that as it may. It is not necessary to delve deeper into the terms and conditions of Work Order to which Respondents are not parties. The present case involves peculiar facts and circumstances,* ***under which some workmen have continued with IIT-Bombay through multiple contractors. I am therefore, convinced that for the limited purpose of payment of gratuity, Respondents are required to be treated as employee of IIT Bombay. No interference is therefore warranted in the impugned orders."***

23. In ***Balwant Rai Saluja & Anr. Etc. Etc vs Air India Ltd. & Ors., 2014 (9) SCC 407, on decided on 25 August, 2014,*** the Supreme Court held:-

> *"1. In view of the difference of opinion by two learned Judges, and by referral order dated 13.11.2013 of this Court, these Civil Appeals are placed before us for our consideration and decision. The question before this bench is whether the workmen engaged in statutory canteens, through a contractor, could be treated as employees of the principal establishment.*
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> *2. At the outset, it requires to be noticed that the learned Judges differed in their opinion regarding the liability of the principal employer running statutory canteens and further regarding the status of the workmen engaged thereof. The learned Judges differed on the aspect of supervision and control which was exercised by the Air India Ltd. (for short, "the Air India")- respondent No. 1, and the Hotel Corporations of India Ltd. (for short, "the HCI")- respondent No. 2, over the said workmen employed in these canteens. The learned Judges also had varying interpretations regarding the status of the HCI as a sham and camouflage subsidiary by the Air India created mainly to deprive the legitimate statutory and fundamental rights of the concerned workmen and the necessity to pierce the veil to ascertain their relation with the principal employer.*
>
> *84. In our considered view, and in light of the principles applied in the Haldia case (supra), such control would have nothing to do with either the appointment, dismissal or removal from service, or the taking of disciplinary action against the workmen working in the canteen. The mere fact that the Air India has a certain degree of control over the HCI, does not mean that the employees working in the canteen are the Air India's employees. The Air India exercises control that is in the nature of supervision. Being the primary shareholder in the HCI and shouldering certain financial burdens such as providing with the subsidies as required by law, the Air India would be entitled to have an opinion or a say in ensuring effective utilization of resources, monetary*

or otherwise. The said supervision or control would appear to be merely to ensure due maintenance of standards and quality in the said canteen.

85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularization of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers."

24. In the present case:-

a) The worker was appointed through contractors.

b) Wages was paid by the contractor.

c) The worker though working under one contractor after another, worked with the same principal employer, the respondent no.4/mother diary herein.

25. The orders of a Co-ordinate Bench in WP 2221(W) of 2015 and the order in Appeal in MAT 1858 of 2018 are relevant here:-

The Courts held as follows:-

"Single Bench:-

".....Under the 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 the principal employer is to pay the wages of the contractor. Under Section 2(h) of the said Act wages have been assigned the same meaning as given to it by Clause (vi) of Section 2 of the Payment of Wages Act, 1936. Wages includes gratuity under Section 2(vi)(d) of the said Act....."

"Division Bench:-

"Under the 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 the principal employer is to pay the wages of the contractor. Under Section 2(h) of the said Act wages have been assigned the same meaning as given to it by Clause (vi) of Section 2 of the Payment of Wages Act, 1936. Wages includes gratuity under Section 2(vi)(d) of the said Act.

In those circumstances, the respondent no. 5 is directed to pay the gratuity claim of the petitioners by 16th August, 2016. In default, the respondent no. 1 will have to pay this claim to the petitioners by 29th September, 2016.

All the papers are before this Court. 1 Affidavits were not invited. The allegations contained in the petition are deemed not to have been admitted.

This writ application is accordingly disposed of."

Therefore, ***we are of the view that the appellant can be directed to pay the gratuity amount to the widow of the deceased employee within 60 days from the date of receipt of the copy of this order and upon payment of the same to the widow of the deceased employee, the appellants are granted liberty to recover the said amount from the said contractor who is impleaded as the fifth respondent in the writ petition namely, M/s. Radha Mohan Singh having its office at Chasnala main road, P.O. Chasnala, Dist. Dhanbad, Jharkhand, Pin 828835."***

26. Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970, lays down:-

"Section 21(4) *In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."*

27. Section 2 Payment of wages Act, 1936, lays down:-

"Section 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 the [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).”

28. Gratuity, payable under the Payment of Gratuity Act, 1972, is a gratuitous payment required to be made by an employer to his employee at the time of termination of services of the employee or upon such employee's death.

Section 21 (4) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), mandates that a principal employer is responsible for the payment of 'wages' to a contract employee in the event of a contractor's failure to pay within the stipulated timelines or in the event of a contractor making a short payment. The principal employer then has the ability to recover the amount paid as 'wages', from the contractor. Section 2(h) of the CLRA defines the term 'wages' as all remuneration (whether by salary, allowances or otherwise) expressed in terms of money or capable of being so expressed, which would if the terms of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes, among others, "(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...". However, it excludes "(6) any gratuity payable on the termination of employees in cases other than those specified in (d)." In ***Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr, 2012 LLR 1160***, it has been held that gratuity payable under the Payment of Gratuity Act, 1972 falls within this definition of 'wages'.

29. The principal employer or the contractor may be liable to pay gratuity to contract employees, depending on the circumstances.

Principal employer

- The principal employer is liable to pay gratuity to contract employees if the contractor fails to pay.
- The principal employer is liable to pay gratuity if the contractor makes a short payment.
- The principal employer is liable to pay gratuity if the contractor terminates the services of the contract employee.
- The principal employer is liable to pay gratuity if the contract employee works for multiple contractors.

Contractor

- The contractor is liable to pay gratuity to contract employees if they have worked for at least five years and the contract is separate from the company.
- The contractor is liable to pay gratuity to contract employees who have rendered continuous service.

The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) and the Payment of Gratuity Act, 1972 govern the payment of gratuity to contract employees.

30. Therefore the order of the Appellate Authority dated 28.02.2024 which is under challenge and the order dated 16.11.2022 of the Controlling Authority are set aside being not in accordance with law.

31. The respondent no. 4/mother diary is directed to make the payment of gratuity as due to the petitioner within 30 days from the date of this order along with statutory interest till payment and the company (respondent no. 4)/mother diary shall be at liberty to recover the said amount, from the contractors including the respondent no. 5, proportionately, in accordance with law.

32. WPA 3503 of 2025 is allowed.

33. All connected applications, if any, stand disposed of.

34. Interim order, if any, stands vacated.

35. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]