IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Shampa Dutt (Paul)

WPA 28770 of 2024

Hooghly Infrastructure Pvt. Ltd.
Vs.
Sk. Alam Ismail & Ors.

For the Petitioner	:	Mr. S. K. Singh, Mr. R. K. Dubey.
For the State	:	Mr. Srinath Singha Roy.
For the Respondent No. 1	:	Mr. Uddipan Banerjee, Mr. Subhra Kanti Samanta.
For the Sr. Govt. Adv.	:	Mr. Soumitra Bandyopadhyay.
Hearing concluded on	:	07.03.2025
Judgment on	:	18.03.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred praying for direction upon the respondents to cancel and set aside the orders dated 21.11.2023 and 18.09.2024, passed by the Controlling Authority and the Appellate Authority respectively under the Payment of Gratuity Act, 1972.

2. The petitioner's case is that the respondent no. 1 was engaged in petitioner's company as a Badli worker on 24.05.1978. The respondent no. 1 got his provident fund membership only in

the year 1981. The respondent no. 1 attained the age of superannuation on 01.07.2015 as a Badli. Throughout this period i.e., 24.05.1978 to 30.06.2015 the respondent no. 1 worked as 'badli' employee i.e., in place and stead of permanent employees, who were absent for any reason whatsoever. The certified standing orders of the company authorises the company to engage 'badli' workman as substitute of a permanent workman who used to be on leave or absent i.e., during temporary vacancy caused by absenteeism.

3. It is further submitted that the certified standing orders of the company authorities permits the company to engage **badli workman as substitute of a permanent workman** who used to be on leave or absent i.e., during temporary vacancy caused by such absenteeism.

4. On reaching the age of superannuation, the respondent no. 1 applied for gratuity in Form "N" on 29.04.2016, before the Controlling Authority for computation as well as direction for payment gratuity alleging non-payment of gratuity and claimed a sum to the tune of Rs. 2,41,452/- along with simple interest. The said form "N" was forwarded to the petitioner under Form "O" dated 9.6.2016 issued by the Controlling Authority.

5. It is submitted that the respondent no. 1 had not completed qualifying service of 5 years continuous service for 240 days,

each year, to be eligible for gratuity under the Act. It is further pointed out that the respondent no. 1 has not produced any document to prove his stand of entitlement of gratuity or having worked for 240 days for a continuous period of 5 years.

6. Ultimately the Controlling Authority passed an order dated 21.11.2023, inter alia, directing the petitioner to pay gratuity for the total period of continuous **service for 37 years** amounting to Rs. 2,15,520/- along with interest amounting to Rs. 1,79,600/-, totaling to Rs. 3,93,120/-.

7. Being aggrieved by and dissatisfied with the order passed by the Controlling Authority, the petitioner preferred an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972, Barrackpore, North 24-Parganas on 25.01.2024.

8. At the time of filing of appeal, the petitioner duly deposited the principal amount amounting to Rs. 2,15,520/- vide Demand Draft No. 002390, dated 17.1.2024 drawn at ICICI Bank, Kalyani Branch.

9. While passing the order dated 18.09.2024, the appellate authority upheld the order passed by the Controlling Authority and directed the petitioner to make payment of the amount of Rs. 1,79,600/- i.e., the balance amount in respect of interest.

10. The said order has been challenged in the present writ application.

11. On hearing the learned counsel for both parties and on perusal of the order passed by the Controlling Authority, it appears that **the Controlling Authority held as follows:-**

> *"..... In this instant case, there exists no dispute regarding joining date, superannuation date or the last wages drawn by the applicant-employee. The only dispute lies on the question of eligibility of the employee to get the gratuity. The O. P. Co. submitted that, the applicant was a badli-worker throughout the period of his employment i.e. for 38 years and hence is not entitled to gratuity. This submission on behalf of the O. P. Co. does not hold good because the badli worker is also an employee in terms of definition of employee given in Sec.2(e) of the Gratuity Act, 1972 provided he works for 240 days in a year. A badli worker is engaged against leave vacancy of a permanent employee only and hence cannot be employed throughout such a long service period, moreover the O. P. Co. did not submit any such evidence in support of their claim that the employee never worked for 240 days in every year till his retirement. Hence, the submission of the O. P. Co. is rejected and the claim of the employee is admitted for determination of amount of gratuity.*
>
> *In his evidence the applicant claimed that he had joined the O.P. Co. in 1978 (he exhibited photocopy of E.S.I. Card which is marked as A-Ex-A) and was superannuated on 30/06/2015 after serving the O.P. Co. continuously for 37 years (Nothing is exhibited). The applicant had exhibited photocopy of wage slip dated 30.06.2015 issued by the O.P. Co. in support of his last drawn wages which is marked as A-Ex-B.*
>
> *During cross examination the applicant had stated that he became P.F. member on 12.08.1981 and his last drawn wages was ₹423/- for 8 hours.*
>
> *OP Co. in their written statement had agreed with the fact that applicant had joined the Mill or 24.05 1978 and became P.F. member on 12.08.1981.*
>
> *From the 'date of joining' into service and 'date of retirement' in this case it is clear that he had served the company for 37 years. But he became P.F. member on*

12.08.1981. So, I consider 12.08.1981 to 30.06.2015 as his continuous period of service. i.e. 34 years.

The applicant further claimed in his evidence ₹423/- for 8 hours as his last drawn wages during cross examination; which is accepted.

Therefore, the applicant Sk Alam Ismail is entitled to get gratuity of ₹2,15,520/- (₹423/-x 15 x 34) only along with interest from the date retirement year i.e. from 30/06/2015 in terms of Sec.7 (3A) read with Notification No. S.O.874 (E) dated 01.10.1987 @10% upon ₹2,15,520/-for 08 years and 04 months; which amounts to ₹1,79,600/-.

Hence in view of the entire findings as recorded in the foregoing paragraphs, it is

ORDERED

That the employer M/s. Hooghly Infrastructure Pvt. Ltd. (Unit-Hukumchand Jute Mill) will make payment of ₹3, 95,120/- only (Rupees three lakhs ninety-five thousand one hundred and twenty) to Sk Alam Ismail within 30 days from the date of receipt of the direction in Form-R sent together with this finding.

Sd/-
Controlling Authority,
Under the Payment of Gratuity Act, 1972
Barrackpur, 24 Parganas (N)"

12. The Appellate Authority in disposing of the appeal held as follows :-

".....In disposing of another writ petition the Hon'ble High Court at Calcutta held the following:

'Generally, it is the duty of the party to lead the best evidence in his possession which could throw light on the issue in controversy and in case such material evidence is withheld, the court may draw adverse presumption u/s 114(g) of the Evidence Act, notwithstanding the onus of proof did not lie on such party and it was not called upon to produce the said evidence (Union of India vs Ibrahim Uddin, 2012(8) SCC 148)'.

In Sriram Industrial Enterprises Ltd. Vs Mahak Singh and Others reported in AIR 2007 SC 1370; 2007(4) SCC 94, the Hon'ble Supreme Court on review of all earlier decisions held that the best evidence having been withheld by the employer and the High Court was entitled to draw such an adverse inference against the employer. The Hon'ble Supreme Court had also noticed that the views expressed by the Apex Court on the question of burden of proof in Range Forest Officer (supra) were watered down by subsequent decision R.M.Yellatty Vs Assistant Executive Engineer reported in 2006(1) SCC 106. It was held that the workmen had discharged their initial onus by production of the documents in their possession.

In the instant case, the respondent workman had discharged his initial onus by producing whatever documents available with him and in his custody to establish that he was on employment for 240 days in a year. The appellant was in possession of the best evidence which he could not produce. So, an adverse inference may be drawn in view of the failure on the part of the appellant to produce the original service record even on being ordered by the Ld. Controlling Authority (vide Mahant Shri Srinivas Ramanuj Das Vs Surjanarayan Das & Anr; AIR 1967 SC 256). While the appellant who is statutorily bound to maintain the attendance registers of his employees fails to produce the same, the respondent, being a jute mill worker and placed in a weaker position to his employer is hardly expected to preserve the details of his service records after expiry of a long period of time from his retirement.

Given above, drawing an adverse inference, I am left with no other option but to hold that the appellant employer failed to establish that the respondent workman had not rendered continuous service from 12/08/1981 to 30/06/2015 in his company. Hence, I found no reason to differ with the views of the Ld. Controlling Authority (respondent no. 1). The instant appeal is thus decided against the appellant and disposed of herewith.

Sd/-
Appellate Authority
Under the Payment of Gratuity Act, 1972
Barrackpore, North 24 Parganas"

13. From the materials on record the following is evident:-

(i) The respondent no. 1 was employed with the petitioner company as a 'badli worker' from 24.05.1978 till 01.07.2015 **(37 years).**

(ii) The respondent no. 1 became a member under the Provident Fund Scheme in the year 1981.

(iii) The job for **37 long years** involved working in place of permanent workman/employee in their absence on leave or otherwise.

(iv) In support of his case of the period of employment, the employee has produced a copy of his ESI Card (Exbt. A) along with his wage slip dated 30.06.2015 (Exbt. B).

(v) The petitioner company did not produce any documents inspite of the fact that it is the duty of the employer to maintain all documents relating to its employee and other matters, to be maintained and preserved as per law.

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

i. Calcutta Jute Manufacturing Company vs The State of West Bengal and Anr., in WP 12342(W) of 2015, decided on 15.05.2018, Calcutta High Court.

ii. Sk. Ekbal @ Ekbal Sk. vs The State of West Bengal & Ors., in WPA 23514 of 2023, decided on 03.04.2024, Calcutta High Court.

iii. The Ganges Manufacturing Company Limited vs State of West Bengal & Ors., in FMA 882 of 2024, decided on 21.11.2024, Calcutta High Court.

Wherein the courts held that duty to produce documents to show continuous service lies on the writ petitioner.

15. Section 25D of the Industrial Disputes Act, lays down:-

> ***"25D. Duty of an employer to maintain muster-rolls of workmen.-*** *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."*

16. In ***Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022,*** the Supreme Court held:-

> *".....25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that* ***initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however***

this Tribunal cannot ignore the fact that UC has not filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable." *22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable.* ***The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act,*** *particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. ***It is worthwhile to mention here that Section 25-D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment.*** *This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991,* ***the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference***

against the management." *23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.*

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary

> ***appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.***
>
> ***Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.***
>
> ***The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."……."***

17. In the present case, the respondent no. 1 has served continuously as a badli/casual worker for **37 years** in permanent posts and **has produced documents in support. The petitioner/company was bound to produce the documents as required to be maintained under Section 25D of the Act.** ***(Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra))***

18. The employee has now superannuated after 37 years and if such conduct of the employer is ignored, there shall be clear abuse of the process of law.

19. The benefit is under a beneficial legislation and an employee who has **admittedly worked for 37 years** and has rendered his service towards the work to be carried out by a regular employee thus **will have definitely put in work for the**

number of days required to make him entitled to such benefits. He even is a member of the PF scheme.

20. The facts as seen proves that **the employee has provided selfless service towards permanent posts and as such has carried out work of a regular employee for the period required each year to entitle him to the said benefits, which led to his employment for 37 years.**

21. Having done so, the least that he is entitled to, are the retiral dues (social security) which includes gratuity and such benefits should be made to the employee without any hindrance as the employee has **given his whole life to serve the company.**

22. Thus the order under challenge being in accordance with law requires no interference by this Court.

23. WPA 28770 of 2024 stands dismissed.

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

25. Interim order, if any, stands vacated.

26. 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.)