

04.02.2026
Item No.8
Ct. No. 30
Aloke

WPA 1907 of 2026

MSTC Ltd.

Vs.

**The Appellate Authority under Payment of
Gratuity Act, 1972 and Deputy Chief Labour
Commissioner (Central), Kolkata**

Mr. Soumya Majumder, Id. Sr. Adv.
Mr. Kamal Kr. Chattopadhyay
Ms. Rimi Chatterjee
..for the petitioner

Ms. Aparna Banerjee
...for the P.F. Authority

1. Affidavit-of-service filed be kept with the record.
2. The writ application has been preferred challenging the orders dated 23rd May, 2025 and 26th November, 2025 passed by the learned Controlling Authority and the appellate authority in the present case.
3. Vide the impugned order dated 23rd May, 2025, the Controlling Authority passed an order granting payment of gratuity in favour of the respondent workman.
4. The following paragraph of the order of the Controlling Authority being relevant and the same having been upheld by the appellate authority is being reproduced herein :

“15.9. On the above dispute regarding the applicability of the 190/240 days threshold, I am of the considered opinion that it is a well-settled

*principle that the actual working pattern must be assessed on a practical and factual basis, rather than being confined to theoretical or administrative classifications of the work week. In the present case, since the issue pertains to the determination of continuous service for one year, the actual work schedule over the entire 52-week period must be examined. The establishment in question follows an alternating work schedule, where employees are required to work six days in one week and five days in the succeeding week, with alternate Saturdays being designated as non-working days. **Over a 52-week year, this results in 26 weeks of six working days and 26 weeks of five working days. The total number of working days in a year, therefore, isan average of approximately 5.5. working days per week (286/52 =5.5), which is clearly and definitely theoretically, practically and mathematically anyway less than six days a week.***

5. It appears that the Controlling Authority was of the view that there is an average of approximately 5.5. working days per week ($286/52=5.5$), which is clearly and definitely, theoretically, practically and mathematically anyway less than six days a week.

6. The principles of mathematics is clear on this point that **when an average is worked out to '.5', the same is to be taken as the next higher digit.** In this case, it was prima facie to be taken as six days a week and not less than six days a week. More so, when there can be no counting of working days as 5.5.

7. The said calculation as directed by the Controlling Authority being an issue to be decided by this Court, is to be heard and the petitioner has made out a prima facie case against the said orders.

8. As none appears for the P.F. Authorities, Ms. Aparna Banerjee, an empanelled lawyer of the EPF Organization, present in Court, is appointed to represent the P.F. Authorities in this case. Let her appointment be regularized by the appropriate authority.

9. Matter be listed in the monthly list of March, 2026.

10. Petitioner to serve afresh upon the private respondents.

(Shampa Dutt (Paul), J.)