



2026:CHC-AS:609

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 19771 of 2022

Calcutta Jute Manufacturing Company Limited

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Mr. S.K. Singh,
Mr. Ravi Kumar Dubey.

For the Respondent : Mr. R. Guha Thakurta,
Ms. S. Sengupta.

Judgment reserved on : 19.03.2026

Judgment delivered on : 17.04.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for setting aside and/or quashing the orders dated 25.09.2017 and 08.12.2021 passed by the Controlling Authority and the Appellate Authority respectively.
2. Learned counsels for the parties have relied upon documents, which are part of the writ application.
3. The petitioner's case herein is that the Respondent No.4 is an ex-employee of the petitioner. The Respondent no. 4 was a Casual Badli



employee of the petitioner between 29th November 1973 to 28th October 1989 and had been employed on and off in the Jute Mill establishment of the petitioner, whenever the requirement arose. The respondent no. 4 never qualified for Gratuity in terms of the provisions contained U/s 4 (1) of the Payment of Gratuity Act, 1972, during the period of his engagement as badli employee. The Respondent no.4 was made permanent w.e.f. 29th October 1989.

4. In the month of September, 2006 the service of the Respondent no.4 was transferred to a different department but he refused to join there and thereby “abandoned his service”. Thereafter the respondent no.4 challenged the order of transfer before the Learned Second Labour Court, West Bengal. The Learned Labour Court passed an order dated 31.01.2012, directing the petitioner to pay full back wages.
5. The Order passed by learned Second Labour Court was challenged by the petitioner in Writ Petition being W.P.No. 28293 (W) of 2012. While admitting the said Writ Petition, the High Court by an order dated 06.02.13, directed the present petitioner to pay all legal dues to the Respondent No. 4, which the petitioner paid.
6. The said writ petition was disposed of by an order dated 21.08.2015, inter alia, by setting aside the order dated 31.01.2012 and remanding the matter back for reconsideration.
7. Pursuant to the order passed in W.P. No. 28293 (W) of 2012, the present petitioner paid the due Gratuity of the Respondent No. 4 amounting to Rs. 80,400/- (Rupees Eighty Thousand Four Hundred.



8. The respondent no.4 filed claim for Gratuity before the Controlling Authority for Rs. 1,99,882.66p, by treating his period of service to be continuous from 29.11.1973.
9. The Controlling Authority after recording evidence of the parties, disposed of the matter, vide its Order dated 25th September 2017, communicated to the petitioner vide memo dated 14th March 2018, wherein the petitioner was directed to pay a sum of Rs. 1,18,985/- (Rupees one Lac eighteen thousand nine hundred and eighty five only) to the respondent no.4 towards Gratuity and Rs. 92,059/- (Rupees ninety two thousand and fifty nine only) as interest.
10. It is submitted by the petitioner that while disposing of the matter, the Controlling Authority failed to consider that the concerned employee on his own had **“abandoned” his employment in September 2006** and was erroneously granted gratuity for the period from September 2006 to 31st December 2009 also. While arriving at such finding the Controlling Authority completely overlooked the fact of **abandonment of service by the employee which was duly held/confirmed in the Award of Learned Second Labour Court dated 30th May, 2016.**
11. The petitioner further states that the calculation of gratuity by the Controlling Authority in the impugned order is erroneous and needs to be calculated afresh.
12. Being aggrieved by and dissatisfied with the order dated 25.09.2017 passed by the Controlling authority, the petitioner preferred an appeal before the Statutory Appellate authority.



13. By an order dated 08.12.2021, the appeal was disposed of by the appellate authority, inter alia, directing the petitioner to make payment of Rs. 2,25,250/- which the petitioner submits was in a most illegal and arbitrary manner, without any application of mind. The said order was communicated to your petitioner under covering letter dated 13.05.2022, received by the petitioner on 26.05.2022.
14. Hence, the writ application.
15. It appears from the materials on record including the documents filed and relied upon by the petitioner herein that, admittedly **the Second Labour Court, West Bengal, Kolkata passed an** award dated 30th of May, 2016 in Case No. 40 of 2007 under Section 10(1B)(d) of the Industrial Disputes Act, 1947.
16. **The petitioner's case before the Learned Labour Court was as follows:-**

“The main point of dispute as raised by the company is that the applicant was never been terminated from service by the company. It is the applicant on his own did not joint the duty w.e.f. 12.09.2006 because as per the standing orders/bipartite agreement, the management had every right to transfer the applicant from one department to the other department of the factory.....

It is the specific case of the Opposite Party Company that the employment of the applicant was never refused by the Opposite Party Company but he was transferred from one department to another department. It is the case of the Opposite Party Company that by a notice dated 01.09.2006 the applicant was transferred from Finishing Department to Winding and Batch Department but he did not report in the said department in spite of several opportunities were given. So the question of refusal of employment does not arise.”



- 17.** The Learned Judge while dismissing the application decided the case on the following issues:-

“Issue(s)”

1. *Whether the application filed by the applicant workman under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable in law and facts?*
2. *Whether the applicant workman was refused to join his duty which is tantamount to dismissal from service within the meaning of Section 2A of the Industrial Disputes Act, 1947?*
3. *To what relief or reliefs, if any, is the applicant entitled to as per law and equity?*

Additional Issue

4. *Whether the transfer of the service of the applicant by the management of the opposite party from one department to another department is justified or not?”*

18. The Labour Court held:-

“In this context I am of the view that when the transfer order was in force which was within the knowledge of the applicant the refusal from the earlier post cannot be assumed because the termination service has to be made from the existing post.

So, it is admitted that prior to 12.09.2006 it was within the knowledge of the applicant that he was transferred but he did not join.

In this situation since admittedly the applicant is unable to read and write I am of the opinion that verbal order of transfer was sufficient for him to make him understand about the existence of transfer order from one department to another department.

In that situation I am of the opinion that when the transfer order is in force the question of



termination or refusal from the earlier post does not arise because the applicant was no longer attached with the previous post.

Considering all materials on record, I am of the view that the question of refusal as claimed by the applicant does not stand in a strong footing and this cannot be termed tantamount to refusal of service.

In this context I am of the view that since the existence of transfer order and reason of non-joining in the new post both are admitted by the workman such type of argument on behalf of the workman has no force at all and cannot be taken into consideration.”

19. Finally, the Court held as follows:-

*“In the context of above all discussion I am of the view that it has already been proved that by denying to join in the new post after knowing the order of transfer without raising any grievance, **the applicant himself has refused his employment.**”*

20. In course of hearing, both parties have filed their respective calculation sheets before this Court. On perusal of the same, as placed by the private **respondent** herein, it appears that his claim of **wages is Rs.198.63/- per day**, whereas the Appellate Authority in the impugned order dated 08.12.2021 has taken the said amount as **Rs.216.69/- per day, which prima facie is thus erroneous.**

21. It appears from the order of the Controlling Authority that the said Authority was **not aware that Case No. 40 of 2007** under Section 10(1B) (d) of the Industrial Disputes Act, 1947 in its award dated 30th May, 2016, was dismissed by the labour Court.



22. The Controlling Authority has **erroneously** held that the Labour Court in the said case had passed an award granting full back wages till the date of superannuation, **which admittedly was the content of an order passed on 31.01.2012 by the Labour Court**, later set aside by the High Court. The Controlling Authority then erroneously proceeded to grant gratuity by accepting the case of the respondent/workman as to his wages in December, 2009, **when actually at that stage the petitioner was not in service.**
23. The Controlling Authority also erroneously considered the period of length of service for the period **from 29.11.1973 to 31.12.2009. The said error was rectified by the Appellate Authority who in its order at page 4 held, that the Second Labour Court vide its order dated 30.05.2016 held that the respondent is entitled to gratuity from 29.11.1973 to 12.09.2006**, but the Appellate Authority wrongly calculated the gratuity by taking the last drawn wages at Rs. 216.69/- instead of Rs.198.63/- per day.
24. Admittedly, the last drawn wages of the applicant was **Rs.5959/- per month**, whereas the Controlling Authority erroneously held the same to Rs. 9600/- per month. As such prima facie it appears that both the impugned orders passed by the Authorities concerned suffer from inherent defects/illegality being erroneous, and are thus **set aside.**
25. Accordingly, the matter is remanded back to the Controlling Authority, who shall make a fresh calculation **as per the observations of this Court in the present judgement**, on hearing the parties and shall calculate the dues of the respondent/workman **on deducting the**



payments received earlier. The total period shall be from 29.11.2023 to 12.09.2006 and the last drawn wages be taken as 198.63 per day. Interest on **balance amount** of gratuity be calculated on deduction of the amount of Rs. 80,400 received in the year 2013 by the respondent no. 4 herein and shall be calculated proportionately till the date, the matter was first filed before the Controlling Authority.

- 26.** The controlling authority shall calculate the said dues, on hearing the parties and make all endeavour to decide the same finally within 60 days from the date of this order/judgment.
- 27. The writ application stands disposed of.**
- 28.** All connected application, if any, stands disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties after completion of all necessary formalities.

(Shampa Dutt (Paul), J.)