IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 24176 of 2023

Sk. Yeasin Ali
Vs
The State of West Bengal & Ors.

For the petitioner : Mr. Rananeesh Guha Thakurta,
Mr. Dona Ghosh,
Mr. Pulin Chandra Maity.

For the State : Mr. Rajarshi Basu,
Mr. S.T. Mina.

Judgment reserved on : 22.04.2026

Judgment delivered on : 07.05.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondent no. 2 being the appellate authority to set aside and quash the impugned order passed on June 9, 2023, in Case No. GA-06/2022 and direct the 2nd respondent to hear and dispose of the said case in accordance with law within a specified time frame.

2. The petitioner's case in short is that the petitioner is an ex-employee of the respondent no. 4 who after 42 years of continuous unblemished service was not paid his due gratuity forcing him to

file an application for direction before the 3rd respondent which was disposed of on contest on December 27, 2021 which was appealed by the private respondent before the 2nd respondent who passed the impugned order dated June 09, 2023 in violation of the Act, 1972 which leads to the petitioner to approach before this Court.

3. Vide the impugned order, the respondent no. 2 being the appellate authority under Payment of Gratuity Act, 1972 wherein it is stated that :-

> *"After hearing the appellant and the opposite party and after going through availabordssed frulings the Controlling Authority, I am recording my decision here under :*
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> *The date of Joining of Sk. Yeasin Ali (Respondent 1) is 16/03/1973, as a badli worker.*
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> *There is also no dispute regarding his superannuation on 01.07.2012. The entire period from 1973 to 2012 he was a Budli worker. The contemion of the appellant is that the Controlling Authority has considered this entire 39 years into the realm of continuous service, whereas, Sk Yeasin All actually rendered continuous service for only 04 years during this period.*
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> *The contention of the appellant is that the burden of proof of rendering continuous service lies on the employee. On the other hand, the employee and Respondent number! refutes and says that the burden in on the employer, being custodian of the records.*
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> *In this context, it is pertinent to refer to the observation of the Hon'ble Supronic Court of India in pars 12, in the case of Sita Ram & Ors vs Mati Lal Nehru Farmers Training Institute (AIR 2008 SC 1955) which goes as under-"12. Although at one point of time the burden of proof used to be placed on the employer, in view of a catena of recent decisions, it must be held that the burden of proof on the workman to show that he has completed 240 days in a year".*

Reference is also drawn to the observation of Hon'ble High Court Calcutta in WP 12342(W) of 2015 Calcutta Jute Manufacturing Company vs The State of West Bengal & Ors. Whereas the Court says," I1 appears that the Tribunal has ignored the basic principle that the onus of proof of having worked for 240 days continuously is initially on a workman".

Hence, it is now a settled position of law that the workman, is initially required to prove that he rendered the continuous service.

In the instant case the opposite party (Respondent 1) has failed to come up with documentary evidence to prove that Sk. Yeasin Ali rendered continuous service from 1973 to 2012. The appellant on the other hand, substantiated their claim with documentary evidence. The Controlling Authority has erred in ignoring the evidentiary value of documents produced by the appellant. There is no statutory obligation on the part of the employer to preserve records beyond three years and hence no adverse reference can be drawn against the appellant, for non-production of original attendance sheet or service book, especially when the appellant has produced the abstracts as evidence (signed by the Respondent 1 On 30.08,2015 also and the opposite party has failed to rebut such evidence.

The period of lock-out from 18/03/1989 to 30/11/1994, should not be considered for calculating continuous service period because the workman was Budli workman during the period and has not, Gujrat High Court in the case of Mafatlal Fine Spinning and Mfg. Company Ltd. vs Ramachhar actually worked during this period. In this regard reference may be drawn to observation of the Hon'ble Benimadha v Mishra, which says, "It is necessary for the Budli employees to have completed 240 days of service in a given year prior to his becoming permanent so as to be entitled for gratuity for that period".

There is no available records from both parties for the period 16/03/1973 to 1981, but it can be assumed that the workman worked for more than 240 days in 1981, which has made him eligible for PF membership in 11/07/ 1982, (as per prevalent rule at that time). Hence, the workman is deemed to have rendered continuous service in 1981.

On scrutinising records produced by the appellant, it is found that the workman rendered more than 240 days of service in 06 years, during entire service period, whereas the appellant

has considered 04 years for calculating gratuity. Hence, the workman is entitled to get gratuity for additional 02 years.

The respondent (1) disputed the amount of Last Drawn Wages but did not come up with documentary evidence. Hence, the Last Drawn Wages as reflected in the evidence of the appellant employer is accepted.

Therefore, in exercise of the provisions laid under section 7(8) of The Payment of Gratuity act, 1972, I am reverting the instant case to the Ld. Controlling Authority to re calculate of the admissible amount of the gratuity, considering 06 years of continuous service and last drawn wages of the workman (as per available document) along with applicable interest and give necessary direction in this regard."

4. The petitioner herein is aggrieved that the period from 18.03.1989 to 30.11.1994 was not taken into account for continuous service. It appears that admittedly during the said period the establishment company was under lock out (suspension of work).

5. The respondent company's case before the appellate authority is that as per Memorandum of Settlement dated 30.08.1994 under clause 25 the petitioner is not entitled to gratuity for the period when the company was under lock out. In fact the suspension of work declared by the company was from 18.03.1989 to 30.11.1994. The said factor was taken into consideration by the appellate authority. As such, the said period when there was suspension of work was taken while computing the gratuity as there was also a memorandum of settlement to that effect.

6. Parties have filed their respective written notes.

7. The petitioner claiming that the period of suspension of work from 1989 to 1994 was wrongly deducted from the total period of continuous service has claimed gratuity for the total period from March 1973 to

July, 2012, including the period from 18.03.1989 to 30.11.1994, even though the workman retired in 2012, but continued to be employed.

8. The following judgments have been relied upon by the petitioner:-

i. ***Bank of India vs Central Government Industrial Tribunal & Ors., 2010 SCC Online Cal 1718.***

ii. ***Phoenix Mills Ltd. vs Balasaheb Dagdoo Hinge and ors. Writ Petition No. 491 of 1996, decided on June 17, 1996.***

iii. ***Netram Sahu vs State of Chhattisgarh and another, Civil Appeal No. 1254 of 2018, decided on March 23, 2018.***

iv. ***Murlidhar Ratanlal Exports Ltd. vs State of West Bengal & Ors., 2014-II-LLJ-74 (Cal).***

v. ***Hooghly Infrastructure Pvt. Ltd. vs Sk. Alam Ismail & Ors., in WPA 28770 of 2024, decided on 18.03.2025.***

9. The respondent no. 4 being the establishment in the case in their written notes have stated that **the petitioner on superannuation was paid all his retiral benefits including gratuity treating his service as continuous for the period of suspension of work which was received by him without objection, on treating his service to be continuous for his dues.** It is stated that the period of suspension work is to be treated for the purpose of continuous service only but no amount for the said period is to be paid to the petitioner. As such, the admitted amount of gratuity has already been received by the petitioner. The petitioner then prayed for gratuity for the period which was left out due to suspension of work during such period, inspite of the memorandum of settlement to that effect.

10. The definition of the word "Continuous service" in the payment of gratuity act lays down:-

> ***"2A. [Continuous service.***- *For the purposes of this Act,-*
>
> *(1)An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order] [* * *] treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or* ***a lock-out or cessation of work*** *not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act."*

11. The following judgment is relied upon by the Respondent no. 4:-

i) ***Tushar Kanti Roy vs. Eighth Industrial Tribunal, Kolkata 2013(1) CHN CAL 504***.

12. The respondent no. 4 relies upon in ***Tushar Kanti Roy (supra)*** in support of his contention that **once a person accepts an amount in full and final settlement he loses his right to challenge the said award.**

13. Considering the said dispute, the only issue to be decided is as to whether the period from18.03.1989 to 30.11.1994, during which there was suspension of work, and also a Memorandum of Settlement, whether the petitioner is entitled to gratuity for the said period. And also for the period from 2012 (superannuated) till 2015 (continued to work).

14. The petitioner further relies upon the following judgments:-

i. Sk. Ekbal @ Ekbal Sk. vs State of West Bengal & Ors. (WPA 23514 of 2023) order dated 03.04.2024 (Calcutta High Court page 12(C)).

ii. M/s. Budge Budge Company Limited vs The State of West Bengal & Ors., in WPA 19017 of 2023, order dated 11th October, 2023.

iii. M/s. Budge Budge Company Limited vs The State of West Bengal & Ors. in WPA 19020 of 2023, order dated 01.04.2024.

15. Herein the Court decided in favour of workman on the finding that the suspension of work in that case was not for the fault of the workman.

16. The Court held:-

> *The main ground of challenge is that the employer was not liable to pay any gratuity for the period when work remained suspended between 18th March, 1989 to 30th November, 1994. This point has been specifically dealt with by the appellate authority by holding that lock out was beyond the control of the workman and as such workman is entitled to gratuity amount by treating him as in continuous service under the provision of Section 2A(1) of the Payment of Gratuity Act, 1972. The petitioner wants to reopen this issue. The scope of judicial review is limited. The writ court is not a fact finding court. The competent authority and the appellate authority have arrived at the factual appreciation of the matter after considering the evidence laid.*
>
> *So far as the issue of suspension of work between 18th March, 1989 and 30th November, 1994 is concerned, I am in agreement with the finding of the appellate authority. Simply declaring lock out a*

permanent workman cannot be deprived of the gratuity as he continues to remain in service during the lock out period which is declared by the employer and is beyond the control of the employee. The other issues raised as to the maintainability of the claim before the Controlling Authority are not of any substance and are rejected.

In the aforesaid facts, I do not find any merit in the writ petition. The same is, accordingly, dismissed.

17. The respondent herein has also relied upon the following judgments:-

i. Sk. Ekbal @ Ekbal Sk. vs The State of West Bengal & Ors., in WPA 23514 of 2023, order dated 03.04.2024.

> *".....After hearing the parties and considering the materials on record, I have no hesitance to accept that the burden of proof to produce evidence to show that the petitioner was in continuous service in the years between 1968 to 1973 lies on the writ petitioner, particularly when it has been alleged that the petitioner was a Badli worker during that period and did not have the qualifying period of service entitling him to receive gratuity. Even though it has been argued on behalf of the petitioner that the requirement of 240 days is no more germane after the amendment to the 1972 Act on 11th February, 1981 with the introduction of Section 2A in 1972 Act but the fact remains that the petitioner, as the employee, is required to adduce evidence to show that he was in continuous service during those years. This is more so on a conjoint reading of the provisions of Section 4(2), Section 2(b), Section 2(c) and Section 2A of the 1972 Act wherefrom the qualifying service and the entitlement is explicit. Without the evidence it is not possible for the Controlling Authority also to decide*

the issue. Only on the employee discharging his primary burden, the burden of proof may shift on the employer……"

ii. The Ganges Manufacturing Company Limited vs State of West Bengal & Ors. in FMA 882 of 2024, order dated 21.11.2024.

"8. *The status of a Badli workman appears to have been completely ignored by the Appellate Authority as well as the Single Bench. In the case of* ***Lalappa Lingappa & Ors. Vs. Laxmi Vishnu Textile Mills Ltd.*** *reported in* ***(1981) 2 SCC 238,*** *the position of a Badli workman specially has been discussed in Paragraphs 16 and 18, which is set out hereinbelow.*

16. As regards badli employees, there can be no doubt that they are not in uninterrupted service and, therefore, they do not fall within the substantive part of the definition "continuous service" in Section 2(c), but are covered by Explanation I. In Delhi Cloth & General Mills Co. v. Workmen [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] the court, while dealing with a gratuity scheme, repelled the contention urged on behalf of the badli employees that since they had to register themselves with the management of the textile mills and were required every day to attend the mills for ascertaining whether work would be provided to them or not, the condition requiring that they should have worked for not less than 240 days in a year to qualify for gratuity was unjust and observed:

"If gratuity is to be paid for service rendered, it is difficult to appreciate the grounds on which it can be said that because for maintaining his name on the record of the badli workmen, a workman is required to attend the mills he may be deemed to have rendered service and would on that account be entitled also to claim gratuity."

18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt

shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the Delhi Cloth Mills case [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] . The badli employees are nothing but substitutes. They are like "spare men" who are not "employed" while waiting for a job: Conlon v. Glasgow [36 Scottish LR 652] . Vallabadas Kanji (P) Ltd. v. Esmail Koya [1978 Lab IC 809 : ILR (1978) 1 Ker 405 : 52 FJR 470] taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in Section 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty.

10. *If, however, such Badli workman is allotted duties for continuously 240 days in year, it could be deemed that he was in continuous service within the meaning of Section 2A (1) and (2) read with Section 2(c) which defines "employee", and would be entitled to gratuity provided he fulfills the criteria under Section 4. There is no dispute to the fact that the workman for the aforesaid 4 years did not render 240 days service in a year. Having said that, it is equally true that the Company was in lockout for the aforesaid 4 years.*

15. *Casual workmen do not normally remain on any payroll on record of a Company. It is only permanent workman who are on the muster roll of the Company. To make a Badli workman entitled to gratuity for the aforesaid 4 years where admittedly he has not been engaged for 240 days in a year whether it is the fault of the workman or otherwise, would be completely fallacious in view of the succinct explanation of the status of the Badli workman in the* ***Lalappa Lingappa case (supra).***

> ***21.*** *The workman has admittedly been paid gratuity for a period of 8 years of the Badli period when he actually rendered service of 240 days for the entire period in which he was made permanent employee. Gratuity cannot be computed for the aforesaid 4 years i.e. 1981, 1982, 1988 and 1993."*

iii. Lalappa Lingappa and Ors. vs Laxmi Vishnu Textile Mills Ltd. and Mahadu Sitaram and Ors. vs Laxmi Vishnu Textile Mills Ltd., 1981 2 SCC 238.

> ***"4.*** *Two questions arise in these appeals. The first is as to whether permanent employees are entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave for a number of days in a year and had actually worked for less than 240 days, due to absence without leave. The second is as to whether the badli employees are entitled to such gratuity on becoming permanent employees, for the badli period in respect of the years in which there was no work allotted to them due to their failure to report to duty. These questions relate to the years in which these employees were not actually employed for 240 days in a year, due to their absence without leave.*
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> ***12.*** *The expression "continuous service" in the context of a gratuity scheme was interpreted by this Court in Jeewanlal (1929) Ltd., Calcutta v. Workmen [AIR 1961 SC 1567 : (1962) 1 SCR 717, 722-23 : (1961) 1 LLJ 513] as follows:*
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> *"'Continuous service' in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If the employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought*

to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service. Similarly, participation in an illegal strike which may incur the punishment of dismissal may not by itself bring to an end the relationship of master and servant. It may be a good cause for the termination of service provided of course the relevant provisions in the standing orders in that behalf are complied with; but mere participation in an illegal strike cannot be said to cause breach in continuity for the purposes of gratuity."

(emphasis added)

The legislature has departed from the meaning given by this Court in the above case to the expression "continuous service" by incorporating the words "not due to any fault on the part of the employee concerned", to give that expression a restricted legal connotation.

15. *In our judgment, the High Court rightly observed: "It is important to bear in mind that in Explanation I the legislature has used the words 'actually employed'. If it was contemplated by Explanation I that it was sufficient that there should be a subsisting contract of employment, then it was not necessary for the legislature to use the words 'actually employed'." It is not permissible to attribute redundancy to the legislature to defeat the purpose of enacting the Explanation. The expression "actually employed" in Explanation I to Section 2(c) of the Act must, in the context in which it appears, mean "actually worked". It must accordingly be held that the High Court was right in holding that the permanent employees were not entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave*

and had actually worked for less than 240 days in a year.

16. As regards badli employees, there can be no doubt that they are not in uninterrupted service and, therefore, they do not fall within the substantive part of the definition "continuous service" in Section 2(c), but are covered by Explanation I. In Delhi Cloth & General Mills Co. v. Workmen [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] the court, while dealing with a gratuity scheme, repelled the contention urged on behalf of the badli employees that since they had to register themselves with the management of the textile mills and were required every day to attend the mills for ascertaining whether work would be provided to them or not, the condition requiring that they should have worked for not less than 240 days in a year to qualify for gratuity was unjust and observed:

"If gratuity is to be paid for service rendered, it is difficult to appreciate the grounds on which it can be said that because for maintaining his name on the record of the badli workmen, a workman is required to attend the mills he may be deemed to have rendered service and would on that account be entitled also to claim gratuity."

18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the Delhi Cloth Mills case [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] . The badli employees are nothing but substitutes. They are like "spare men" who

> ***are not "employed" while waiting for a job: Conlon v. Glasgow [36 Scottish LR 652] . Vallabadas Kanji (P) Ltd. v. Esmail Koya [1978 Lab IC 809 : ILR (1978) 1 Ker 405 : 52 FJR 470] taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in Section 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty."***

18. In the present case, admittedly, the date of joining of Sk. Yeasin Ali (Respondent 1) is 16.03.1973 as Badli worker, superannuated on 01.07.2012.

19. The workman in this case has already received gratuity for the period from 16.03.1973 to 01.07.2012, except the period when the establishment was under "lockout" (suspension of work) being 18.03.1989 to 30.11.1994.

20. The claim is for the period from 18.03.1989 to 30.11.1994 by treating the period as in 'continuous service'.

21. Admittedly the petitioner was a 'badli worker' during the said period.

22. Thus relying upon para 16 and 18 in the judgment in ***Lalappa Lingappa (Supra),*** the principle of 240 days remaining the same, (though a pre-amendment judgment), it is clear that as the petitioner during the said period that is 18.03.1989 to 30.11.1994, **was admittedly a badli worker,** and had **actually not worked** during the

said period, when there was suspension of work (lock out), **he is not entitled to gratuity for the said period.**

23. Regarding his prayer for his dues from 2012 to 2015, for being re-employed after superannuation, to treat the total period as continuous service, it seems that the petitioner has gone to the extent of making allegations of 'refusal of work' after 2015, even though he superannuated in 2012.

24. The private respondent is a public company incorporated on 10 December 1973. It is classified as **Non-govt company** and is registered at Registrar of companies, RoC-Kolkata.

25. The period of re-employment is included for gratuity, if it constitutes a new, separate period of continuous service (typically 5+ years) with the same employer, but it is not added to a previous tenure for which gratuity was already paid. Each distinct, qualifying period is calculated independently, often resulting in separate payouts.

26. If an employee leaves, receives gratuity, and later rejoins, they must complete a fresh, minimum 5-year continuous service period in the new role to be eligible for further gratuity.

27. Both the authorities have not considered his prayer for gratuity for the period from 2012 to 2015.

28. The private respondent being a public company and the petitioner on receiving his dues including gratuity on superannuation, being re-employed, admittedly has **not put in a fresh period of 5 years continuous service** and is thus not entitled to gratuity for the said period.

29. The order of the appellate authority which suffers from inherent illegality is **hereby set aside, on the findings of this Court in this judgment.**

30. WPA 24176 of 2023 stands dismissed.

31. Connected application, if any, stands disposed of.

32. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)