

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Lanusungkum Jamir

And

The Hon'ble Justice Rai Chattopadhyay

MAT 614 of 2025

Calcutta Jute Manufacturing Company

Vs.

Dwarika Yadav and Ors.

For the appellant	: Mr. Soumya Majumder, ld. Sr. Adv.
	: Mr. S.K. Singh
	: Mr. R.K. Dubey

For the respondent No. 1	: Mr. R. Guha Thakurta
	: Ms. S. Sengupta

Heard on	: 28/10/2025
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Judgment on	: 04/12/2025
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Rai Chattopadhyay, J. :-

1. A judgment of the Hon'ble Single Judge dated March 28, 2025 in WPA 28594 of 2022 is under challenge in the instant appeal. The subject matter of the lis concerns with the period of continuous service of the respondent No. 1/the workman, with the appellant/company and the amount of gratuity actually payable to him. The judgment of the Hon'ble Single Bench as above is that of reversal of the order of the Appellate Authority under the Payment

Of Gratuity Act, 1972 and affirming the order of the Controlling Authority in this regard.

2. The instant appeal deals with the issues inter alia that, whether the Writ Court is justified to put the appellant to a worse off position even though the order which the appellant has challenged before the Writ Court was accepted by the beneficiary thereof (the respondent/workman in this case), by not preferring an appeal against the same;

Whether finding of the Writ Court of the total span of 'continuous service' of the respondent/workman is just, legal and proper;

Whether the Writ Court has duly and lawfully imposed the adverse inference on the appellant as regards proof of 'continuous service' of the respondent/workman in spite of the appellant having produced 'some evidence' in the form of leave records and the respondent having evidently not been able to prove his claim of continuous service with any evidence.

Whether the Appellate Authority and the Hon'ble Single Bench is justified and proper to come to the finding about the last drawn per day wages of the respondent/workman, for the purpose of calculation of the gratuity amount.

3. Before coming into the judgment under challenge in this appeal, the relevant factual background of the case is required to be narrated, which is as follows:-
4. The respondent No. 1/workman joined the appellant company on March 31, 1980 as a daily rated Badli workman. His service was regularized with effect from December 10, 1995. He has been superannuated from the appellant company with effect from July 23, 2013.
5. According to the respondent No. 1/workman, immediately after his superannuation, he stood eligible and entitled for payment of gratuity by the appellant. However, the appellant/company has failed to duly perform its statutory duty and obligation by disbursing the gratuity amount in favour of the respondent/workman. Such alleged inaction of the appellant/company prompted the respondent/workman to file his application dated July 21, 2014 before the Controlling Authority under the Payment of Gratuity Act, 1972 in statutory form "N". The Controlling Authority by dint of his order dated October 27, 2016 has disposed of the respondent/workman's prayer as above with the direction that for rendering 10 years of continuous service with the last drawn wages to the tune of Rs. 363.92/- per day, the respondent is entitled to an amount of gratuity of Rs. 5,45,88/-

along with admissible interests on the principal amount, for the period from July 24, 2013 that is the subsequent day of the date of his superannuation, till the date of actual payment. The Controlling Authority has further held that date of joining of the respondent/workman that is, March 31, 1980 is undisputed. Also that, the workman has failed to adduce adequate evidence to prove his performance for 240 days and more, in the years of service till he was made regular.

6. The order of the Controlling Authority dated October 27, 2016 though stood acceptable for the appellant/company, however, was challenged by the respondent/workman before the statutory Appellate Authority.
7. The Appellate Authority by dint of its order dated August 25, 2022 has reversed the order of the controlling authority as above. The order of the Appellate Authority is as follows:-

"In this instant case, the appellant had failed to adduce adequate evidences before the Ld. Controlling Authority to proof that he performed 240 days or more in the years of service from 31.03.1980 (date of joining as claimed by the appellant which was shown in ESI identity Card)

On the other hand, according to Sec 2A(1) under the Payment of Gratuity Act, 1972, the Respondent Company has failed to adduce any evidence regarding issuance of an order from the Respondent Company on break in service of the Appellant workman on 2000, 2002 and 2004-2008.

Under this circumstances, the Appellate Authority is modifying the point mentioned by the Ld. Controlling Authority in his order dated 27.10.2016 regarding this instant case that the appellant workman has not rendered continuous service to the Respondent Company from 10.12.1995 to 23.07.2013 i.e 18 years of continuous service.

In accordance with fortnight pay slip (Exhibit-C) the wages (Basic+DA) of Sri Dwarika Yadav was Rs.7142.7 for 13 days [since there are 13 working days in a fortnight]. Hence, his last drawn wages was Rs.549.41 per day.

Now the Principal Amount of Gratuity admissible to Sri Dwarika Yadav for rendering 18 years of continuous service to Respondent Company from 10.12.1995 to 23.07.2013 is Rs.549.41 x 15 x 18 = Rs. 148340.70/-

Again Sri Dwarika Yadav, Appellant is entitled to receive interest in terms of Section 7(3A) of the Payment of Gratuity Act, 1972, at the rate of 10% on the Principal Amount of Rs 148340.70/- for the period from 24.07.2013 to 24.08.2022 i.e 9 years 1 month.

Therefore, Interest = 148340.70 x 10/100 x 109/12 = Rs. 134742.81/-“

- 8.** The Appellate Authority took into consideration two aspects, firstly, that the respondent/workman has not been able to prove his continuous service for 240 days or more in a year from the date of his appointment; and also that the appellant/company has failed to adduce evidence regarding issuance of any order in accordance with Section 2A (1) under the Payment of Gratuity Act, 1972, concerning break in service of the workman in the years 2000, 2002 and 2004 to 2008. The Appellate Authority has founded its decision on the reason that since the appellant/company has not issued any order for break in service of the workman, the finding of the Controlling Authority that he has not rendered continuous service for part of

his entire service period, was not sustainable. The Appellate Authority has further held the last drawn wages of the respondent/workman to be Rs. 549.41/- per day instead of the amount of per day wages as was held by the Controlling Authority. Thus, in effect, the order of the Controlling Authority dated October 27, 2016 was reversed by the Appellate Authority by holding inter alia that the respondent/workman served in the company for 18 years continuously and he would be entitled to the amount of gratuity for rendering 18 years continuous service to the tune of Rs. 1,48,340.70/- and interests to the tune of Rs. 1,34,742.81/-.

- 9.** This order of the Appellate Authority dated August 25, 2022 has been challenged by the appellant/company before this Court in the said writ petition No. WPA 28594 of 2022, which has been disposed of by the Hon'ble Hon'ble Single Judge, by dint of the said impugned judgment.
- 10.** The Hon'ble Single Judge has founded decision on the two factors that is, firstly, no steps have been taken by the appellant/company in accordance with the statutory provisions, in spite of allegations have been made that the workman has failed to attend duty for 240 days or more in a year, for the years 1995, 2000, 2002 to 2005 and also that the employer/appellant has failed to maintain the master role and duty registers as envisaged under Section 25D of the

Industrial Disputes Act, 1947. The Court has held that adverse inference is to be drawn against the appellant/employer company so far as the period of continuous service of the workman is concerned. The Court holds that the respondent No. 1/workman has served the employer continuously from the date of his appointment for a period of 33 years and shall be entitled for an amount of gratuity as per law for the entire period of 33 years. Thus, even while upholding the order of the Appellate Authority the Hon'ble Single Judge has made modifications therein by holding the period of continuous service of the workman to be 33 years instead of 18 years as was found by the Appellate Authority.

- 11.** Mr. Soumya Majumder, learned senior counsel has represented the appellant/company in the instant appeal. He has submitted that the Hon'ble Single Judge in the impugned judgment has made out a third case which was not espoused by any of the parties before the previous two fora. Mr. Majumder has submitted that the Controlling Authority held the eligible period of service for payment of gratuity to the respondent No. 1 to be 10 years which was reversed by the Appellate Authority holding his service period, for the purpose of payment of gratuity, to be 18 years. It has been pointed out that, the Hon'ble Single Judge without considering the findings of the statutory authorities as above has abruptly and without any basis has come to a finding about the eligible period of service of the

respondent No. 1/workman, to be for 33 years for the purpose of payment of gratuity. According to Mr. Majumder, when the workman himself has submitted his length of service eligible for being considered for payment of gratuity to be 18 years, by not challenging the order passed by the Appellate Authority (which was impugned in the writ petition), no third case ought to have been made out by the Hon'ble Single Judge to enhance the length of service or otherwise the said decision shall be rendered as baseless and perverse not being based on any cogent and sufficient materials.

- 12.** He has further submitted that the appellant could not have been put to a worse off position by preferring an appeal. He says that the appellant/employer company had never preferred any appeal but accepted the order of the Controlling Authority. On the other hand, the Appellate Authority's order had not been challenged by the workman. Therefore, the period of continuous service of the workman, as held by the Appellate Authority, has been accepted and never challenged by him. In such circumstances the Court ought not to have interfered into the finding of the Appellate Authority as regards the period of 'continuous service' of the respondent/workman. In this regard, he has referred to the two following Supreme Court judgments:-

- i) ***Bhagubhai Danabhai Kalasi and Anr. Vs. State of Gujarat and Others*** reported at ***(2007) 4 SCC 241***
- ii) ***Ashok Kumar Nigam Vs. State of Uttar Pradesh and Anr.*** reported at ***(2016) 12 SCC 797***

13. Mr. Soumya Majumder, learned senior counsel has submitted that the test of entitlement of continuous service is that of “actually worked” and it cannot be given any notional effect. He says that admittedly, from the date of induction that is, March 31, 1980 to December 10, 1995, the appellant was a Badli worker in the jute mill. That, in accordance with the Certified Standing Orders, a Badli worker is classified as to have no claim of permanency or regularization in employment, but to be given job on the date when permanent workman might not have attended their duties; a job of a Badli worker is not a time-bound or tenure based job; it is purely contingent in nature. With reference to a Supreme Court judgment in ***Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh*** reported in ***1986 (53) FLR 310***, the appellant says that a badly worker has no guaranteed service, but his engagement is purely contingent in nature. He submits that, since from the date of his regularization in service on and from December 10, 1995, the respondent/workman has not discharged duties for 240 days or more in the years 2000, 2002 to 2005. In support thereof, the employer company/appellant has submitted relevant leave registers

before the fact finding authority. According to the appellant, the same amounts to “some evidence” presented by the appellant/company in support of its contentions before the said Authority. By referring to a judgment of the Supreme Court in **S.R. Tewari Vs. Union of India and Anr.** reported in **(2013) 6 SCC 602**, Mr. Majumder has submitted that availability of “some evidence” as mentioned above, which has been produced by the employer before the quasi-judicial Authority, should render the finding of such Authority on the basis of the same and to be immuned from being interfered with in exercise of power of judicial review by this Court under Article 226 of the Constitution of India. He says that, the employer had produced “some evidence” before the Controlling Authority in the form of leave records to show that the respondent/workman had not rendered minimum 240 days of service in each year from 1995 to 2013. Placing reliance on those records and believing that to be true the Controlling Authority had passed its order dated October 27, 2016. In absence of any mention of the particular nature of documents required to be maintained by the employer in the Payment of Gratuity Act, 1972 for the purpose of showing the number of days of work of the employee, the said leave records already produced by the employer could not have been ignored to come to any other conclusion other than what is deductible from the entries made in the said leave records.

14. Mr. Majumder has submitted that both the Appellate Authority and the Hon'ble Single Judge has erred in law in drawing adverse inference against the appellant/company, in view of the fact that the appellant has not made any order of break of service of the said workman, in spite of alleging his absence beyond permissible period. He submits that, the leave records produced should be construed to be "some evidence" produced on the part of the appellant/employer company. He has further submitted that, onus of proof should lie on the person who asserts the fact. It is submitted that, the elementary principle of law and rule of evidence is that, one who asserts/claims, must prove his claim. Since the respondent/workman has claimed that he has worked continuously with the employer for all those period, the initial burden is on him to substantiate his claim with sufficient evidence. Mr. Majumder has submitted that in the instant case, both the Appellate Authority as well as the Hon'ble Single Judge has not been hesitant to unequivocally say that the respondent has not come up with any piece of evidence whatsoever in support of his claim of continuous service. In such circumstances, the respondent has not discharged his initial burden to prove his case. Mr. Majumder has submitted that, the Appellate Authority as well as the Hon'ble Single Bench by not taking into consideration this aspect, has completely disregarded the above elementary principles of law. And instead, has granted relief to the respondent on the basis of the so-called

weakness in defence, though according to him, the appellant/company having already produced some evidence in the form of leave register, even such so-called weakness in defence is also not available as against the appellant/company. In this regard, Mr. Majumder has referred to the judgment of the Hon'ble Supreme Court in ***Ratnagiri Nagar Parishad Vs. Gangaram Narayan Ambekar and Ors.*** reported in ***(2020) Vol 7 SCC 275***. To buttress his submissions that onus to prove that the employee worked for 240 days in a year lies on him.

15. To elaborate on this, Mr. Majumder has referred to Section 2A of the Payment of Gratuity Act, 1972 which provides for “continuous service”. He submits that the definition which underwent an amendment with effect from February 11, 1981, does not come to the aid of the respondent/workman since his case does not fall within the deemed continuous service in Section 2A(1) of the said Act. He says that, it is nobody's case here that the service of the workman was continuous which got interrupted on account of the incidence mentioned in Section 2A(1) of the said Act. According to the appellant therefore, the provisions of Section 2A(2) of the Payment of Gratuity Act, 1972 have to be considered in this case, for reckoning the continuous service in each period of one year for counting the period of continuous service in accordance with law.

16. Mr. Soumya Majumder, learned Senior Advocate has submitted, with reference to Section 13A of the Payment of Wages Act, 1936 and Rule 83(6) of the West Bengal Factories Rule, 1948 that according to the same and in absence of any specific provision enumerated in this regard in the Payment of Gratuity Act, 1872, the employer/appellant shall only be obliged to maintain records for a period of three years and not more than that. In such circumstances, he says that, reliance placed on the provision under Section 25D of the Industrial Disputes Act by the Hon'ble Single Judge is only a misplaced reliance and the said provision of the Industrial Disputes Act, 1947 shall have no manner of application concerning the instant dispute between the parties.

17. Finally, according to Mr. Majumder, the calculation of the amount of gratuity made by the Appellate Authority in his order dated August 25, 2022 is erroneous being based on erroneous appreciation of the data in the wage slip of the respondent. He says that, the days of work and corresponding wages as mentioned in the wage slip, has been considered in totality by the said Appellate Authority without reducing the amount from there which the respondent has already accepted as leave encashment amount. According to him, the amount mentioned in the wage slip was not to be reckoned as the daily rate of wages of the respondent in so far as from the same, the days for which leave encashment amount has

been withdrawn, were required to be deducted, while calculating the wage earned by the respondent/workman per day, for the purpose of calculation of gratuity payable to him. For all the reasons as mentioned above, the appellant has prayed for an order setting aside the impugned judgment of the Hon'ble Single Bench dated March 28, 2025 and the order of the Appellate Authority dated August 25, 2022 and upholding the order of the Controlling Authority dated October 27, 2016.

- 18.** Mr. R. Guha Thakurta, learned advocate, has represented the respondent No. 1/workman in the instant appeal. With reference to the fortnightly pay slip, he has submitted that the Appellate Authority in his order dated August 25, 2022 has duly and appropriately considered the same and come to a finding as regards the daily wages earned by the respondent during his service. He has supported the way as to how on the basis of the daily wages so arrived at, the Appellate Authority has quantified the amount of gratuity payable to the workman.
- 19.** Mr. Guha Thakurta has on the contrary raised objection as regards the order of the Controlling Authority passed in this regard dated October 27, 2016. He submits that the same manifests non-consideration of the record and erroneous calculation of gratuity amount.

- 20.** The respondent/workman has raised no serious objection as regards the span of 'continuous service' of him as held by the Appellate Authority that is, for 18 years. Similarly, last drawn wages as calculated by the Appellate Authority to the tune of Rs. 549.41/- per day has not been challenged by the respondent/workman.
- 21.** Mr. Guha Thakurta has further contended that an amount of Rs. 99,000/- have already been disbursed to the respondent/workman as gratuity vide a cheque dated January 30, 2023 and a further amount of Rs. 83,752/- has been deposited with the Registrar General of this Court by the appellant/company, in terms of the Court's order, on account of gratuity of the respondent/workman.
- 22.** As a matter of fact, the crux of the dispute between the parties are now centralized as to what would be the period of 'continuous service' of the respondent No. 1/workman for his entitlement as to the amount of gratuity.
- 23.** Mr. R. Guha Thakurta has relied on the following judgments in support of his argument:-
- i) ***Bank of India Vs. Central Government Industrial Tribunal & Ors.*** reported at ***(2010) 4 LLJ 337: 2010 SCC OnLine Cal 1718***

ii) **Phoenix Mills Ltd. Vs. Balasaheb Dagdoo Hinge and Others** reported at **1996 (74) FLR 2086:1996 SCC OnLine Bom 213.**

iii) **M/s. Kothari Industrial Corporation Vs. Appellate Authority and Others** reported at **1198 LIC 1149: 1997 SCC OnLine AP 1158.**

iv) **Murlidhar Ratanlal Exports Ltd. Vs. State of West Bengal and Others** reported at **2014 (II) LLJ 74: 2014 SCC OnLine Cal 4758.**

v) **The KCP Employees' Association, Madras Vs. The Management of KCP Ltd, Madras and Others** reported at **1978 (36) FLR 217: 1978 SCC OnLine SC 23.**

24. As per section 2A (1) of the Payment of Gratuity Act, 1972, 'continuous service' is the uninterrupted service period of an employee, which includes service which may be interrupted on account of 'leave' or 'absence from duty without leave'. It is important in this case to note the intentions of the lawmakers expressed through the words appearing in section 2A(1) of the Payment of Gratuity Act, 1972 as follows :- **"....not due to any fault of the employee, whether such interrupted or uninterrupted service what is rendered before or after the commencement of this Act."**

- 25.** Hence service interrupted by absence has not been outright excluded from within the purview and scope of the statute, so far as determination of the period eligible to be considered for payment of gratuity to an employee, is concerned. Section 4(2) of the said Act has provided that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned. Section 2(b) of the Act states that “completed year of service” means continuous service for one year.
- 26.** For the purpose of payment of gratuity under provisions of the said Act of 1972, the mandatory, actual physical attendance or performance of duty has sometimes been relaxed as seen from the provisions of section 2A of the said Act. While section 2A(1) of the Act includes the interrupted period of service within the purview of the ‘continuous service’, on fulfillment of certain conditions, section 2A(2) thereof has contemplated for deemed ‘continuous service’ period, when the number of days of performance of duty by the specified employee, falls short of the minimum required days of work within a year.
- 27.** Under Section 2A of the Payment of Gratuity Act, 1972, the interpretation of words "employment" and "continuous service"

emphasize that service includes periods of authorized or unauthorized absence that do not indicate an intention to abandon employment, provided the relationship of employer and employee remains unbroken. The continuity of service is recognized when there is no termination or clear intention to sever the employment, even if there are interruptions such as sickness, leave, lay-offs, strikes, or lockouts, unless these are deemed to constitute a termination or abandonment. "Continuous service" is defined as uninterrupted service, including interruptions due to sickness, leave, lay-off, strike, or lockout, unless such interruptions are deemed to break the employment relationship.

- 28.** So far as continuity in service or as to what should be construed as a 'continuous service', the Supreme Court has held in the cases in (i) ***Budge Budge Municipality vs P.R.Mukherjee [AIR 1953 SC 58]*** and (ii) ***M/s. Jeewanlal (1929) Ltd., Calcutta vs Its Workmen [1961 AIR(SC) 1567]***, that the words "continuous service" in the award meant service not broken or interrupted by the termination of the contract of employment by either the employer or the employee or by operation of law. The Court found that the employee's unauthorized absence from work for a period of 8 and 1/2 months did not amount to a break in service, as it did not indicate an intention to abandon his employment. The Court held that the continuity of service is disrupted when the

relationship of master and servant is terminated by resignation, termination by the employer, or by operation of law. However, mere participation in an illegal strike (not concerned in this appeal) or unauthorized absence from work does not necessarily cause a break in continuity, unless it is of such a long duration that it can be reasonably inferred that the employee intended to abandon their service.

- 29.** The 'employment' or 'being employed' has to be interpreted as comprising subsistence of master-servant relationship between the employer and the employee and not necessarily compulsorily dependent on rendering of actual work or being on duty or performing the work. The interpretation of "employment" and "continuous service" should be contextually examined, considering whether the employee's relationship with the employer was effectively maintained or terminated. Unauthorized absence, if any, does not automatically constitute a break unless there is evidence of any fault on part of the employee himself, resulting into such absence or an intent to abandon employment. The law is well settled that an interruption in the period of service not attributable to the employee concerned, or which may not reasonably lead to any inference of abandonment of service by him, his service remains continuous for all the legal and statutory purposes.

30. The appellant's contention is that both the Appellate Authority and the Hon'ble Single Judge has erred in holding in favour of the respondent No.1/workman, on the basis of so called weakness in defence of the appellant rather than any sufficient proof produced by the respondent himself. In this case, the respondent has not produced any evidence or proof of number of completed days of work by him in a year. What the respondent has pleaded on affidavit is his entitlement to the gratuity amount, implying therein that he has been in 'continuous service' with the appellant company, within the scope of the law. Keeping in mind as to what the 'continuous service' would mean and imply in terms of the statutory provision, as discussed above, the Court finds that even in case of interrupted service due to the reason of alleged unauthorised absence (as it has been pleaded by the appellant in the instant appeal), such service shall not be considered to be beyond the scope of the statutory provision as regards 'continuous service'. The relationship between the parties as the employer and the employee has not been severed till the date of superannuation of the said respondent/workman. This fact is fortified from the conduct of the appellant itself as it is seen to have allowed the respondent/workman to be engaged in the appellant/company, till the date of his superannuation.

31. The respondent's proof of his contention as regards the period of his 'continuous service', appears to have been discharged, he having pleaded and shown that he has been in employment with the appellant/company till July 23, 2013 and no counter, having been brought on record by the present appellant, to suggest that the master-servant relationship between them has severed anywhere in the meantime. The law now is well settled that the burden of proof rests upon the person who claims, can hardly be ignored. The proposition is upheld by the Supreme Court, in the judgments of ***Ratnagiri Nagar Parishad (supra)***, ***S.T.Harimani (supra)*** and the ***Ganges Manufacturing Company (supra)***, as referred to by the appellant. However, in the particular factual background of the instant case those are not found to be applicable for the reasons that the workman's contentions have emerged as proved only incontrovertibly, due to the reasons as discussed above. The Court finds that the Appellate Authority as well as the Hon'ble Single Judge has thus come to the findings that the respondent/workman has been in 'continuous service' with the appellant/company not erroneously but only applying the right proposition of the law. It has been rightly noted that there is no contrary fact proved to dislodge the claim of the respondent, rather the same has been admitted by the appellant by admission of the fact that he has been indeed allowed to be engaged with the appellant/company, till the date of his superannuation.

32. Rest is with regard to the period to be considered as continuous service period of the respondent/workman, in the appellant/company, for the purpose of calculation of gratuity payable to him. Admittedly the respondent/workman has been regularized on and from December 10, 1995 and his service ended on July 23, 2013. The Appellate Authority thus has found the eligible period of 'continuous service' of the respondent for the purpose of payment of gratuity to be for 18 years in total, reversing the decision of the Competent Authority in this regard, who earlier found the period to be 10 years. Though regarding the finding of the Competent Authority the respondent had grievance, the order of the Appellate Authority dated August 25, 2022 has not been challenged by him.

33. Though the order of the Appellate Authority dated August 25, 2022 was never challenged by the respondent, the Hon'ble Single Judge found it proper to reverse the same in order to include the undisputed span of service of the respondent as the budli worker in the appellant company, in to the total period of 'continuous service', that is from the date of his joining till the date of his being regularized in service, for which the respondent/workman was said to be eligible for gratuity. Generally, Appellate Authorities' factual determinations are binding on the Court unless those are

shown to be patently unreasonable or perverse being unsupported by the evidence. The Courts do not have inherent jurisdiction to reappreciate factual findings in such cases. In cases under the Payment of Gratuity Act, 1972, the determination of the period of service qualified as “continuous service” is a question of fact. Factual findings by Appellate Authority is generally binding on the Court under the doctrine of finality unless shown to be unreasonable or unsupported by evidence. The workman’s failure to challenge or contest a particular factual finding typically precludes the High Court from suo motu reversing it. The High Court, in its appellate jurisdiction, generally does not reappreciate facts but reviews only for legal errors or manifest perversity. The Supreme Court in the case of ***Bakshish Singh vs M/s. Darshan Engineering Works and others reported at (1994) 1 SCC 9***, has held that the High Court's power under Article 226 is primarily supervisory and extraordinary; it can interfere with factual findings only if they are perverse, based on no evidence, or if the authority has failed to consider the material evidence. The Court has held that the principle of finality of factual findings by Appellate Authority is well-established. Courts do not have a roving power to reappreciate evidence in such matters. That the High Court can only interfere if the findings are vitiated by illegality, perversity, or lack of evidence.

- 34.** There is no such plea in this case. At no point of time the factual finding of the Appellate Authority as regards the period of 'continuous service' of the respondent/workman for the purpose of payment of gratuity has been challenged by the respondent, rather he has accepted such finding of the Appellate Authority. The respondent has not pleaded his grievance before the Court of such finding of the Appellate Authority to be vitiated being unreasonable or unsupported by evidence. Therefore, in absence of any challenge as to the same, the High Court ought not to have interfered to reverse the same with its own view or opinion.
- 35.** The appellant's right to access to justice has caused him to suffer worse consequences, than the appellant has been subjected to, pursuant to the order which it has been aggrieved about and challenged. The Supreme Court in ***Bhagubhai Dhnabhai Khalasi (supra)*** has held that a party having a grievance must have a remedy; that access to justice is a human right; that when there exists such a right a disputant must have a remedy in terms of the doctrine *ubi jus ibi remedium* (where there is right there is remedy); that the appellant could not have been placed in a worse position. Similarly, in the case of ***Ashok Kumar Nigam (supra)*** the 3 Judges Bench of the Supreme Court has held that in appeal the High Court cannot put the appellant in a worse-off position. The said judgments relied on behalf of the appellant should squarely

apply to the instant appeal too. The appellant challenges an order before the Court which has been unequivocally accepted by the respondent who put forth no grievance whatsoever against it. Even then by reversing the same, the appellant has been put in a worse-off position, which is however, forbidden under the law.

- 36.** The other grievance of the appellant/company is with regard to the quantum of per day remuneration of the respondent No. 1/workman as arrived at by the Appellate Authority for the purpose of calculation of gratuity of the said person. It is submitted that the Appellate Authority by modifying the finding of the Controlling Authority in this regard, has found the last drawn wages of the respondent/workman to be Rs. 549.41/- per day, on the basis of pay slip (Exhibit C) of the respondent. It is submitted that though apparently, from the said pay slip it appears that the workman has earned wages to the tune of Rs. 7142.7/- for 13 days, on which the Appellate Authority has founded its calculation as regards the per day wages of the workman, the same is only erroneous in so far as the leave salary already received by the workman is included in the amount of pay, as transpires from the said pay slip, whereas the Authority ought to have deducted in appropriate rate the amount of earned leave encashment by the concerned workman. According to the appellant, calculation of per day wages of the respondent as done by the Controlling Authority

ought to have been found to be right and appropriate in this regard. However, erroneously the Appellate Authority has modified the same taking into account the erroneous figures.

- 37.** By relying on the similar proposition of law as discussed above, this Court is not willing to interfere into the factual finding of the Appellate Authority made with respect to the per day wages quantified for the respondent No. 1/workman, for the purpose of payment of gratuity.
- 38.** On the basis of the discussion as above, this Court is constrained to find that the decision of the Hon'ble Single Judge for payment of gratuity to the respondent No. 1/workman for a period of 33 years of his 'continuous service' with the appellant/company stands to be erroneous, baseless and unreasonable. Hence, the said decision is liable to be set aside. The Court finds this not to be a fit case to interfere into the order of the Appellate Authority dated August 25, 2022 in which the Appellate Authority has quantified the amount of gratuity and interest payable to the respondent No. 1/workman to the tune of Rs. 1,48,340.70/- and Rs. 1,34,742.81/- respectively. It is taken into account that a sum of Rs. 99,000/- has already been paid by the appellant in favour of the respondent/workman on account of his gratuity amount. It is also

noted that a sum of Rs. 83, 752/- stands deposited with the Registrar General of this Court.

39. Hence, this appeal is partially allowed and disposed of with the following directions:-

i) The period of continuous service of the respondent/workman for the purpose of payment of gratuity is 18 years.

ii) The last drawn salary of the respondent/workman for the purpose of payment of gratuity is Rs. 549.41/-.

iii) Therefore, in consideration of Nos. (i) and (ii) as mentioned above, the respondent/workman shall be entitled to an amount of gratuity to the tune of Rs. 1,48,340.70/- and interest for the period from July 24, 2013 to August 24, 2022 to the tune of Rs. 1,34,742.81/-, totaling thereby to a sum of Rs. 2,83,083.51/-.

iv) Since Rs. 99,000/- has already been disbursed to the respondent/workman on account of part payment of his gratuity entitlement, let the rest of the amount of total of gratuity and interest be immediately disbursed by the appellant in favour of the respondent/workman, excepting the sum of money of Rs. 83,752/- deposited with the Registrar General of this Court.

v) The Registrar General of this Court shall immediately release the amount of money (to the tune of Rs. 83,752/-) in favour of the respondent/workman upon production of valid identity proof.

vi) The exercise as mentioned in (v) and (vi) should be concluded by the respective persons within a period of four (04) weeks from the date of communication of copy of this judgment.

40. Appeal No. **MAT 614 of 2025** is partially allowed and disposed of.

41. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)