

**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 254 of 2025

With

I.A. No.: CAN 1 of 2025

M/s Delta Ltd.

Versus

State of West Bengal & Ors.

With

MAT 2099 of 2024

Delta Ltd.

Versus

State of West Bengal & Ors.

For the appellant : Ms. Amrita Pandey
: Ms. Sayanwita Auddya

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

For the State : Mr. Susovan Sengupta
: Mr. Manas Kumar Sadhu

Heard on : **09/01/2026**

Judgment on : **19/01/2026**

Rai Chattopadhyay, J. :-

- 1) The present appeals are directed against the order dated **May 21, 2024**, of the Hon'ble Single Judge, in the writ petitions No. WPA 14251 of 2024 and WPA 14512 of 2024. Those have been heard analogously and are being disposed of by dint of this common judgment.
- 2) The issue involved and determinable is with regard to the amount of statutory deposit to be remitted by the present appellant, before the statutory appellate authority, in case and when the appellant seeks to prefer a statutory appeal before the statutory appellate authority. The relevant facts culminating in to the instant appeals may be discussed in a nut-shell, before going into the disputed question of law.
- 3) The respondent No.5 [herein after mentioned as 'the workman'], has been in employment with the appellant jute mill as budli workman, who were superannuated from the service on **January 1, 2014**. The respondent workmen say that they are entitled for payment of gratuity on their superannuation, though not paid by the appellant/jute mill. Therefore, they have approached the statutory authority for recovery of gratuity amount with interest, by filing applications under section 7 of

the Payment of Gratuity Act, 1972 in statutory form in the year 2018.

- 4) The '*controlling authority*' has passed its order on **June 3, 2022**, directing the appellant/jute mill to pay a total sum of Rs.3,92,932/-, including the gratuity and interest. Due to non-compliance of such direction by the present appellant, a certificate was issued against it under section 8 of the said Act of 1972, on **October 28, 2022**, to the tune of Rs.3,92,932/- and statutory interests. The same has been duly forwarded to the '*certificate officer*', being the designated statutory authority, for recovery of the amount.

- 5) The respondents/workmen thereafter have filed writ petitions challenging the inordinate delay and inaction on part of the said statutory authority, to execute the certificate. During hearing of the writ petitions the present appellant has submitted about pendency of a statutory appeal against the determination of the amount of gratuity and interest. Hence, the Court in its order dated **October 11, 2023**, has disposed of the writ petitions directing the appellate authority, Howrah to dispose of the appeal within 2 months.

6) The appellate authority's order is dated **March 20, 2024**, by dint of which the said appellate authority has dismissed the appeal, filed before it by the present appellant/jute mill on the ground inter alia that the present appellant/jute mill has not deposited the stipulated amount of money as per section 7(4) of the Act of 1972, at the time of filing the appeal. It is beneficial for discussion that the said order be quoted, as herein below:

“Order dated: 20.03.2024

The Appellant is present in today's hearing through their authorized representative after filing authorization letter which is accepted and filed. All the above-mentioned appeal petition is heard & considered. The instant appeal petition filed by the Appellant is not in conformity with the provisions of section 7 of the Payment of the Gratuity Act., 1972 which states inter alia –

" (7) Any Person aggrieved by an Order under Sub Section (4) may,

.....
.....

Provided further that no appeal by an Employer shall be admitted unless at the time of preferring the appeal, the appellant either procures a certificate of the Controlling Authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub Section (4) or deposits with the Appellate Authority such amount."

in the instant appeal case, the appellant did not deposit the amount as directed by the Controlling Authority. The Appellant made the appeal depositing an amount of Rs. 58,912.50 whereas direction amount of the Controlling Authority is Rs. 3,92,932.00

(Gratuity amount Rs. 2,14,365.60 plus Interest Rs.1,78,566. 40). The appellant was directed to deposit the balance amount for the admissibility of the appeal petition but he did not deposit the amount. So, the above-mentioned appeal petition filed by the appellant is rejected. The Controlling Authority (Respondent No. 1) is directed to proceed.”

- 7) Since even after dismissal of the appeal as above by the appellate authority, no steps were allegedly being taken for execution of the certificate issued earlier, the respondents/workmen filed the writ petitions WPA 14251 of 2024 and WPA 14512 of 2024. In the said writ petitions the Hon'ble Single Bench has passed the order dated **May 21, 2024**, which is challenged in the instant appeal.
- 8) The Hon'ble Single Bench has taken into consideration the *proviso* to section 7 of the Act of 1972 and found that the admitted amount of gratuity which has been said by the jute mill, to have been deposited by it at the time of filing the statutory appeal to the tune of Rs. 58,912/- is however relevant only for the purpose of proceedings before the '*controlling authority*' and not the '*appellate authority*'. The relevant portion of the order of the Hon'ble Single Judge is quoted as herein below:-

“5. This Court notes that a Co-ordinate Bench of this Court in the order dated 11th October, 2023 was completely misled by the respondent no.5/employer. The proviso to Section 7 of the said Act of 1972 has not been placed before the Court. The admitted amount of gratuity is relevant only for the purpose of proceedings before the Controlling Authority and not the Appellate Authority.

6. This Court is, therefore, of the view that that the defence advanced by the respondents is wholly baseless and devoid of merit.

7. For having misled the Co-ordinate Bench of this Court into believing and passing order in question the Company shall pay costs assessed at Rs.7,000/- (Rupees seven thousand only) to the High Court Legal Services Authority.

8. Having regard to the fact that the Controlling Authority has adjudicated the liability of the Company towards the petitioner for a total sum of Rs.3,92,932/-, the Certificate Officer shall expeditiously complete execution of the certificate dated 28th October, 2022 together with any further interest, preferably within a period of two months from the date of communication of a copy of this order.”

- 9)** Ms. Amrita Pandey, learned advocate for the appellant has submitted that the statutory appellate authority in its order dated **March 20, 2024**, and the Hon’ble Single Bench in that dated **May 21, 2024**, have erred and misconstrued the legal provisions to ultimately come to a decision which is not in

accordance with law. That, the mandates under the statute have been oversighted and violated in the said orders which have rendered the same as illegal and non-est in the eye of law. With reference to section 4(a) and section 7(7) 2nd proviso of the Act of 1972, it has been submitted that in case of grievance as regards the applicability or the quantum of gratuity determined the aggrieved person has a statutory right to prefer an appeal before the statutory appellate authority and in that case, it would be obliged to deposit the undisputed agreed amount of gratuity payable, before that appellate authority at the time of preferring the appeal. Learned advocate has submitted that the present appellant has done exactly in terms of the statutory provisions, and has preferred the appeal by depositing the undisputed amount of gratuity to the tune of Rs.58,912/-. She has further submitted that in the appeal filed before the statutory appellate authority, the present appellant had questioned firstly that if the respondents/workmen were entitled to gratuity at all; also that, in that case what should be the quantum of gratuity payable to them. Hence the entitlement as to or the quantum of gratuity being challenged by the present appellant in the said statutory appeal, the appellant is only required to deposit in accordance with law the amount of gratuity payable, to which it agrees, she submits. According to

the learned advocate, to this extent the present appellant has done no illegality or irregularity by depositing the agreed amount of gratuity payable, at the time of filing the statutory appeal and orders of the appellate authority dated **March 20, 2024**, and the Hon'ble Single Bench in that dated **May 21, 2024**, suffer from gross illegality being not in confirmation with the statutory provision.

10) The appellant in this case has referred to the following two judgments of this Court in support of the case made out by the same. Those are mentioned below:

(i) ***Auckland International Limited Unit-Auckland Jute Mill & Another vs the State of West Bengal & Others (2006) 3 CHN 299;***

“11. A perusal of the sub-section reveals the employer is required to deposit with the controlling authority the amount he admits to be payable as gratuity.

12. In the present case, the employer admits that a sum of Rs. 32,194/- is payable for the purpose of preferring the appeal and in terms of sub-section (4)(a) had forwarded the cheque. In my view, the appellate authority erred in passing the impugned order dated 31st August, 2004 in dismissing the appeal and the order dated 28th June, 2005 rejecting the review petition since the employer was ready to deposit 'such amount he admits'. Besides, I find this proposition is also covered by the judgment of this Court in *Gloster Jute Mills (supra)*. Moreover, sub-section (2) of section 7 lays down as soon as "gratuity becomes payable" it shall be

determined by the employer. Interest becomes payable under section 7(3A) of the Act if gratuity is not paid to an employee by the employer within the time specified in sub-section (3). Sub-section (4)(a) of the said section postulates in case of 'any dispute as to the amount of gratuity payable', the employer shall deposit with the 'controlling authority such amount as he admits to be payable by him'. Therefore, sub-section (4)(a) relates to a dispute regarding the quantum or amount of gratuity payable which is distinct and separate from the question of payment of interest under section 7(3A) for belated payment of gratuity. It is, thus, clear that 'interest' cannot form part of 'gratuity' payable. Sub-sections (3A) and (4)(a) have different applications in different spheres. Therefore, in view of the findings as above, in my view the appellate authority erred in passing the orders dated 31.8.2004 and 28.6.2005 and consequently, the memo dated 4.8.2005 is invalid and illegal."

(ii) *Gloster Jute Mills Limited vs Deputy Secretary Labour Department & Others 2003(1) L.L.N. 123;*

"2. In the present case the petitioner company as employer admits that only the gratuity amount of Rs. 63,218 is payable for the purpose of preferring this appeal and as such in terms of S. 4(a) the petitioner-company has deposited the requisite amount for the purpose of preferring appeal under Sub-sec. (7) of S. 7 of the said Payment of Gratuity Act. In my view, the appellate authority has committed an error by rejecting the appeal preferred by the appellant on the ground that appellant company has not deposited the entire amount of money as directed by the controlling authority although in terms of Sub-sec. 4(a) of S. 7 the employer is required to deposit with the controlling authority such amount as the said employer admits to be payable for the purpose of preferring this appeal as gratuity

and in the present case the employer has deposited the admitted amount of gratuity.”

- 11)** For the above reasons she has insisted that the impugned order of the Hon'ble Single Judge as well as the order of the appellate authority as stated above may be set aside and directions be issued upon the appellate authority to immediately proceed with the appeal.
- 12)** Mr. R. Guha Thakurta, learned advocate has represented the respondents/workmen. He has submitted that the statute has mandated for an aggrieved person to prefer a statutory appeal, to compulsorily deposit the amount as determined by the '*controlling officer*', to be payable. He submits that an appeal without compliance with the said statutory mandate is a bar in the eye of law. According to him since admittedly the present appellant has not deposited the amount of gratuity and interest so determined by the '*controlling officer*', at the time of filing of the appeal, the said appeal is not maintainable. He further submits that at the time of filing the appeal the present appellant has not deposited any money whatsoever, in complete derogation of the statutory provision. In support of his contention learned advocate has referred to the postal receipt annexed with the stay application and submits further that

according to the records, any money submitted before the appellate authority, if at all, cannot be said to have been done before 18.56 hours on October 11, 2023, whereas the order of the Court dated **October 11, 2023**, passed within the Court hours, would show that due to the misrepresentation of the present appellant before the Court, it has been recorded in the said order by the Court that, the admitted amount of gratuity has already been secured by deposit with the '*controlling authority*'. He submits further that the appellant jute mill has not only been unscrupulous for this time only but on each and every step, during the entire period. He says that the money determined by the '*controlling authority*' to the tune of Rs.3,92,932/- has been paid by the appellant to the respondents/workmen after about 2 years from the date of the order and only at a threat of contempt of Court. He says that the appellant has all along evaded its statutory responsibility and willfully has violated the order of the statutory authority.

- 13)** Regarding the '*appellate authority*'s' order dated **March 20, 2024**, it has been submitted that the same is just, legal and proper and in due observance of the statutory mandate. Regarding the impugned order of the Hon'ble Single Bench dated **May 21, 2024**, it has been submitted that the same

having duly upheld the order as stated above, cannot be termed as erroneous or illegal as alleged and no interference as to the same by this Appeal Court is warranted at all. A Division Bench judgment has been relied on by these respondents of Patna High Court in **General Manager (Region), FCI, Patna vs Union of India reported in 2019 I CLR 737** as follows:

“12. We are unable to agree to this submission inasmuch as the mandate of the second proviso to sub-section (7) of Section 7 of the Act is categorical that the amount of gratuity required to be deposited has to be tendered by the employer before the appellate authority which is an amount determined under subsection (4) of Section 7 of this Act on a dispute being raised before the controlling authority. The amount payable under subsection (4) of Section 7 is not only an admitted amount, but also includes the determined amount by the controlling authority. The provisions of Section 7(4) (a) of the Act are clearly relatable to a voluntary deposit of the admitted amount to be made by the employer when the dispute is raised by the employee. The adjudication that follows is for any balance of the amount which the employer denies to the employee. After adjudication an amount may be determined to be payable as per Section 7(4) (c). This amount is the amount referable to the second proviso to Section 7(7) of the Act where at the time of the filing of the appeal after adjudication the employer has to deposit the amount of gratuity which is required to be deposited under sub-section (4). The legislative intent is clear that this is the amount which has been adjudicated by the controlling authority and it nowhere relates to the amount deposited by the employer voluntarily which is admitted by the employer and about which there is no dispute. The contention of Sri Verma is, therefore, not in conformity with the aforesaid explicit statutory provisions which admits of no ambiguity. The judgement of the learned Single Judge of the Calcutta High

Court in the case of Gloster Jute Mills Ltd. (supra) therefore, does not lay down the law correctly in view of what has been stated by us hereinabove.

13. We, are therefore, not persuaded by the ratio of the said judgement and we, accordingly, hold that the appellant employer was liable to deposit the amount so determined under sub-section (4) of Section 7 of the Act before the appellate authority."

14) State has been represented by Mr. Susovan Sengupta, learned advocate.

15) Section 7(7) of the Payment of Gratuity Act 1972 has made provision for filing an appeal, in the following manner:

"7.-- Determination of the amount of gratuity.

*** ** ** ** ***

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount."

16) Therefore, at the time of preferring an appeal, the employer has to deposit either with the ‘controlling authority’ and procure a certificate or with the ‘appellate authority’, an amount equal to the amount of gratuity required to be deposited under sub-section (4) of section 7 of the said Act of 1972.

17) Section 7(4) of the said Act may be quoted as herein bellow:

“7.-- Determination of the amount of gratuity.

***** ** ** ** *****

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d)The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e)As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit –

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.”

- 18)** In the cases of ***Auckland Jute Mill (supra) and Gloster Jute Mills Limited (supra)***, the Courts have held that section-7(4)(a) relates to a dispute regarding the quantum or amount of gratuity payable which is distinct and separate than the question of payment of interest under section 7 (3-A) of the Act of 1972 for belated payment of gratuity. The Courts have held that sub-sections (3-A) and (4)(a) of section 7 of the said Act have different applications in different spheres.
- 19)** The second *proviso* to section 7(7) of the Act of 1972 refers to the whole of section 7(4) thereof and is not confined only to section 7(4)(a) of the same. Here, may the factual background of the case be revisited once again. This is not a case in which an application is to be adjudicated before the ‘*controlling authority*’ for deciding any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity.

Fact remains that the '*controlling authority*' has already determined the amount of gratuity payable with interest, which the appellant employer desires to challenge in a statutory appeal. According to the second *proviso* to section 7(7) of the Act of 1972, in that case the appellant/employer has to abide by the provisions under section 7(4) of the Act.

20) As stated above, section-7(4) of the Act mentioned in the second *proviso* of section 7(7) thereof means and includes section 7(4) in its entirety, instead of section 7(4)(a) only. The Legislature in its own wisdom has thus made separate and distinct statutory arrangement, in case against an order passed by the '*controlling authority*', the employer intends to prefer an appeal.

21) On a careful perusal of the provisions as laid down under Section 7 of the Payment of Gratuity Act, 1972, it appears that, upon adjudication as to the dispute raised before the '*controlling authority*' regarding amount of gratuity payable or admissibility of the claim of gratuity, an amount as determined by the said Authority becomes payable under his order. Similar order of the '*controlling authority*' in the instant case is that, dated **June 03, 2022**, by dint of which the '*controlling authority*' has directed for payment of Rs. 2,14,365.60/- as gratuity and Rs. 1,78,566.54/- as interest, totalling to the sum of Rs. 3,92,932/-

(rounded off). A direction has been issued to the employer/present appellant for payment of the said amount, in accordance with the statutory provision. The statute has provided that, after determination by the '*controlling authority*', the said amount becomes payable under the order of the '*controlling authority*' and a direction to that effect to be issued against the employer, for payment of such amount, with deductions of the amount already deposited as per Section 7 (4) (a) of the said Act.

22) The statutory provision further enjoins upon the '*controlling authority*' to pay the amount deposited including the excess amount, to the person entitled thereto. Hence, it can be stated that the deposit under Section 7 (4) (a) of the Act does not relate to the amount admitted by the employer, at a stage as provided under the second proviso to Section 7 (7) of the said Act, that is, at the stage of an appeal.

23) This provision in the statute is to enable the employer to deposit such amount about which there is no dispute. It is after adjudication that, final amount is determined and the amount already admitted by the employer and deposited, becomes deductible or adjustable upon final determination. In effect, therefore, in connection with second proviso to Section 7 (7) of

the Act of 1972 that is, in connection with an appeal which the employer seeks to prefer against an order of the '*controlling authority*', the provisions under Section 7 (4) as mentioned in the said proviso, should have to construe in a fashion to mean the amount so adjudicated by the '*controlling authority*'. This is in clear contrast to the amount required to be deposited by the employer as per the statutory terms, previous to any adjudication and determination of dispute by the '*controlling authority*'.

24) Amount to be secured with the '*appellate authority*' in terms of second proviso to Section 7 (7) of the Act has to be read within all the Clauses as has been provided under sub-section 4 of Section 7 of the said Act, which definitely indicates, means and includes the amount of money determined by the '*controlling authority*' as payable to the workman.

25) In the instant case, the said amount is Rs. 3,92,932/-, as mentioned above. Therefore, pursuant to the entire discussion made above, this Court is of the decision that, the employer should be held liable to deposit the entire amount as determined by the '*controlling authority*' as payable to the employee (in this case vide order of the '*controlling authority*' dated **June 03, 2022**). Therefore, this Court hardly finds any

irregularity or alleged illegality in the order of the Hon'ble Single Judge as impugned in the instant appeal.

26) The ratio decided in the cases of ***Auckland Jute Mill (supra)*** and ***Gloster Jute Mills Limited (supra)***, has been the outcome of different factual background as discussed therein, than the instant case. There was no occasion before the Hon'ble Courts in those cases to consider and interpret the provisions of law, when the '*controlling authority*' has already adjudicated and determined the amount of gratuity which becomes disburseable as per provision of Section 7(4) of the Act though which the employer desires to challenge in a statutory appeal. That being so, the ratio thereof are found not applicable in the instant case.

27) For the entire discussion as above, this Appeal Court finds no justified or cogent reason to interfere into the order of the Hon'ble Single Judge dated ***September 21, 2024*** in WPA No. 14512 of 2025. That leads this Appeal Court to dismiss the instant appeal and upheld the order of the Hon'ble Single Judge as above.

28) Since, the statutory '*appellate authority*' in its order dated ***March 20, 2025*** has dismissed the appellant's prayer before it

due to non-compliance of the provision under Section 7 (4) of the Payment of Gratuity Act, 1972, it is hereby directed in this appeal that, the said Authority shall take appropriate steps to recall its order as above in the event, within a period of 10 days from the date of this judgment, the present appellant/employer deposits the total amount as directed by the '*controlling authority*' with the said statutory '*appellate authority*', in terms of order of the Hon'ble Single Judge dated **September 21, 2024** in WPA No. 14512 of 2024.

- 29)** With the direction as above, the appeal stands dismissed.
- 30)** 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.)