



GAHC010004272013

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/857/2013**

AGRICULTURAL AND PROCESSED FOOD PRODUCTS EXPORTS  
DEVELOPMENT AUTHORITY APEDA and ANR.  
MINISTRY OF COMMERCE AND INDUSTRIES, GOVT. OF INDIA, 3RD  
FLOOR, NCUI BUILDING, 3, SIRI INDUSTRIAL AREA, AUGUST KRANTI  
MARG, NEW DELHI-16, REPRESENTED BY ITS DIRECTOR, SRI R.K. BOYAL

2: BIDYUT KR. BARUAH  
ASSTT. GENERAL MANAGER  
AGRICULTURAL AND PROCESSED FOOD PRODUCTS EXPORT  
DEVELOPMENT AUTHORITY APEDA  
MINISTRY OF COMMERCE AND INDUSTRIES  
JAIN COMPLEX  
3RD FLOOR  
G.S. ROAD  
GHY-

VERSUS

THE UNION OF INDIA and 2 ORS  
MINISTRY OF LABOUR AND EMPLOYMENT, NEW DELHI

2: BINOD CH. BARMAN  
C/O SRI JOGENDRA NATHBORAH  
HOUSE NO.598  
ANANDA NAGAR  
CHRISTIAN BASTI  
NEAR SANI MANDIR  
GHY-5

3: THE ASSTT. LABOUR COMMISSIONER CENTRAL  
CUM CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY  
ACT  
1972  
KENDRIYA SHRAM SADAN



RK MISSION ROAD  
BIRUBARI  
GHY-1

**Advocates :**

Petitioners : Mr. K.R. Borooah, Advocate

Respondent nos. 1 & 3 : Mr. C.K.S. Baruah, Central Government Counsel

Date of Hearing, Judgment & Order : 07.09.2023

**BEFORE**  
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT & ORDER [ORAL]**

The instant writ petition under Article 226 of the Constitution of India is preferred to assail an Order dated 12.11.2012 passed in Application no. PG/48[01]/2012-G/A by the Assistant Labour Commissioner [Central], Ministry of Labour, Government of India, Guwahati as the Controlling Authority under the Payment of Gratuity Act, 1972. In the Order dated 12.11.2012 passed in Application no. PG/48[01]/2012-G/A, the Controlling Authority has held that the applicant therein i.e. the respondent no. 2 herein is entitled to get gratuity and by holding so, has directed the opposite party therein i.e. the writ petitioner herein to pay an amount of Rs. 68,250/- to the respondent no. 2-applicant as gratuity [Rs. 63,000/-] *plus* interest [Rs. 5,250/-] within a period of 30 [thirty] days from the date of receipt of the order/direction. Copies of the order/direction dated 12.11.2012 were forwarded to the parties by the office of the Assistant Labour Commissioner [Central], Guwahati vide a Communication bearing no. PG/48[01]/2012-G/A dated 14.11.2012.

2. The proceedings of Application no. PG/48[01]/2012-G/A was initiated by the Assistant Labour Commissioner [Central], Guwahati, Ministry of Labour, Government of India as the Controlling Authority appointed under Section 3 of the Payment of Gratuity Act, 1972, on

submission of an application dated 31.08.2012 in Form 'N' by the respondent no. 2-applicant under Rule 10[1][i] of the Payment of Gratuity Rules, 1972 before the Controlling Authority. In the application submitted in Form 'N', the applicant mentioned that he was an employee under the employer, 'the Agriculture and Processed Food Products Exports Development Authority' [the writ petitioner] at its Guwahati Office from 06.10.1998 till 31.12.2011. The applicant in his application, had mentioned that he was terminated by the Management of the Agriculture and Processed Food Products Exports Development Authority after rendering services under the employer for a period of 13 years 3 months. Contending that he is entitled to be paid gratuity under the Payment of Gratuity Act, 1972, the applicant made a claim for gratuity for a sum of Rs. 63,000/- in the said application.

3. It may be stated that prior to submission of the application before the Assistant Labour Commissioner [Central], Guwahati, the respondent no. 2-applicant submitted an application before the employer, that is, the Agriculture and Processed Food Products Exports Development Authority [hereafter referred to as 'the APFPEDA' and/or 'the employer', at places, for the purpose of easy reference] claiming gratuity. It was thereafter the respondent no. 2-applicant filed the application in Form 'N' under Rule 10[1][i] of the Payment of Gratuity Rules, 1972 before the Assistant Labour Commissioner [Central], Guwahati as the Controlling Authority [hereinafter referred to as 'the Controlling Authority', for easy reference] for issuing a direction under sub-section [4] of Section 7 of the Payment of Gratuity Act, 1972. On receipt of the application from the respondent no. 2-applicant in Form 'N', the Controlling Authority, as already mentioned above, registered the said application as Application no. PG/48[01]/2012-G/A for determination of a dispute under sub-section [4] of Section 7 of the Payment of Gratuity Act, 1972.

4. The Controlling Authority admitted/accepted the application for hearing, after condoning the delay in submission of the application on the ground that the Payment of Gratuity Act, 1972 being a social welfare legislation, is meant for working class people and for ends of justice and fairness. Notices in Form 'O', as required under sub-rule [1] of Rule 11 of the Payment of Gratuity [Central] Rules, 1972, were issued to the parties for their appearances before the Controlling Authority to decide the matter of dispute under Section 7[4] of the



Payment of Gratuity Act, 1972. On receipt of notices, both the parties appeared before the Controlling Authority. In the proceedings before the Controlling Authority, the writ petitioner was represented by an Assistant General Manager, APFPEDA as its Authorized Representative and the respondent no. 2-applicant had appeared in person and made their submissions. The hearing on the application was concluded on 05.11.2012 and thereafter, the impugned order/direction, mentioned above, was passed on 12.11.2012 by the Controlling Authority.

5. Aggrieved by the order/direction dated 12.11.2012, the employer i.e. the APFPEDA has instituted the instant writ petition seeking setting aside of the order/direction dated 12.11.2012 passed by the Controlling Authority in Application no. PG/48[01]/2012-G/A.

6. I have heard Mr. K.R. Borooah, learned counsel for the petitioner and Mr. C.K.S. Baruah, learned Central Government Counsel [CGC] for the respondent nos. 1 & 3.

7. Mr. Borooah, learned counsel for the petitioner has submitted that the APFPEDA is an authority under the Ministry of Commerce and Industries, Government of India and it is established under the provisions of a Contract Act viz. the Agricultural and Processed Food Products Export Development Authority Act, 1985. After referring to the aims and objects of the Agricultural and Processed Food Products Export Development Authority Act, 1985 [‘the APFPEDA Act, 1985’, for short], Mr. Borooah has contended that at the relevant time, the APFPEDA had a small office at Guwahati where only two officers, appointed on regular basis, were deployed. He has contended that the respondent no. 2 was engaged as a peon on contract basis on 06.10.1998 and in the engagement letter, it was clearly stated that once the contract period would be over, his service would come to end. He has submitted that the respondent no. 2 was periodically engaged on contract basis on consolidated pay with a break in between. Initially, the break period was for one or two days but subsequently the break period became longer. The last contractual engagement of the respondent no. 2 was with effect from 08.07.2011 to 31.12.2011. Thereafter, the competent authority in the APFPEDA decided not to have any contractually engaged employee and as a result, the contractual period of the respondent no. 2 was neither extended nor renewed after 31.12.2011. He has contended that the respondent no. 2 does not come within the ambit and

scope of the definition of 'employee' provided in Section 2[e] of the Payment of Gratuity Act, 1972. His further contention is to the effect that since only two regular employees were serving in the Guwahati Office of the APFPEDA at the relevant point of time, the provisions contained in Section 1[3][c] of the Payment of Gratuity Act, 1972 could not have been made applicable. In support of his above submissions, Mr. Borooah has relied on the decision in **Bharat Sanchar Nigam Limited, Jammu vs. Teja Singh**, reported in [2020] 19 SCC 811.

8. Mr. Baruah, learned Central Government Counsel [CGC] representing the respondent nos. 1 & 3 has objected to the submissions made on behalf of the petitioner. He has contended that admittedly, the respondent no. 2 was engaged by the APFPEDA on contractual basis, may be with intermittent breaks, during the period from 06.10.1998 to 31.12.2011. It is, thus, clearly indicative of a situation that there was requirement of an employee in the post of peon perennially at the Guwahati Office of the petitioner organisation. It was found that the respondent no. 2 had initially rendered continuous service of more than 3 years, that is, mandatory 240 days of service each year to accrue benefits under the provisions of the Payment of Gratuity Act, 1972 and thereafter, he had rendered further 10 [ten] years of service under the APFPEDA. During the course of hearing before the Controlling Authority, the Authorized Representative of the APFPEDA had submitted that the service of the respondent no. 2 was terminated due to unsatisfactory performances and stealing of vital documents from its office. But, the said allegations could not be substantiated by the employer of the respondent no. 2. Thus, such projection was made clearly with a view to deprive the respondent no. 2 from getting the benefits under the Payment of Gratuity Act, 1972. He has submitted that the APFPEDA has 16 [sixteen] branches in India.

9. I have given consideration of the submissions advanced by the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

10. The act named 'the Agricultural and Processed Food Products Export Development Authority Act, 1985 [the APFPEDA Act, 1985', for short] has been enacted by the Parliament to provide for the establishment of an Authority for the development and promotion of

exports of certain agricultural and processed food products and for matters connected therewith. The provisions of the APFPEDA Act have come into force w.e.f. 13.02.1986 vide a Notification of even date published in the Gazette of India. Section 4 of the APFPEDA Act, 1985 has provided for establishment and constitution of the Authority. As per sub-section [1] of Section 4 of the APFPEDA Act, 1985, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of the Act, an Authority to be called the Agricultural and Processed Food Products Export Development Authority. As per sub-section [2] of Section 4, the Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued. Sub-section [3] of Section 4 has stated that the Head Office of the Authority shall be at Delhi and the Authority may, with the previous approval of the Central Government, establish offices or agencies at other places in or outside India.

11. Since the APFPEDA is an authority established under the Act viz. the Agricultural and Processed Food Products Export Development Authority Act, 1985, it is a statutory body with its Head Office at Delhi and is an instrumentality of the State under Article 12 of the Constitution of India. The APFPEDA can establish offices or agencies at other places in or outside India with the previous approval of the Central Government. As in the writ petition it is averred that it has an office at Guwahati, it can be readily inferred that the establishment of the office of the APFPEDA at Guwahati is in conformity with the provisions contained in sub-section [3] of Section 4 of the APFPEDA Act, 1985.

12. At this stage, it is found necessary to refer to few of the provisions of the Payment of Gratuity Act, 1972, which are found of relevance for the purpose of considering the issue involved herein. It is *inter alia* provided in Section 2[a] that 'Appropriate Government' means in relation to an establishment belonging to, or under the control of, the Central Government or having branches in more than one State, the Central Government. 'Completed years of Service', as per Section 2[b], means continuous service for one year and 'continuous service', as per Section 2[c], means continuous service as defined in Section 2A.

12.1. Section 2[e] has provided for the definition of 'employee' as follows :-

'Employee' means any person [other than an apprentice] who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

12.2. Section 2[f] has provided for the definition 'employer' as follows :-

'employer' means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop –

- [i] belonging to, or under the control of, the Central Government or a State Government a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or Department concerned,
- [ii] belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,
- [iii] in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

12.3. Section 2[s] has defined 'wages' as under :

'Wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are

paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

12.4. Section 3 [Controlling Authority] has provided that the Appropriate Government may, by notification, appoint any officer to be a Controlling Authority, who shall be responsible for the administration of the Payment of Gratuity Act and different authorities may be appointed for different areas.

12.5. Section 4 has provided for Payment of Gratuity. The provisions contained in Section 4 are quoted hereinbelow for ready reference :-

[1] Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years :-

[a] on his superannuation, or

[b] on his retirement or resignation, or

[c] on his death or disablement due to accident or disease :

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

*Explanation* : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.



[2] 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 :

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account :

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

*Explanation:* In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

[3] The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

[4] For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

[5] Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

[6] Notwithstanding anything contained in sub-section [1] :-

[a] the gratuity of an employee, whose services have been terminated for any

act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

[b] the gratuity payable to an employee may be wholly or partially forfeited :-

[i] if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

[ii] if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

12.6. Section 7 of the Payment of Gratuity Act, 1972 has provided for the procedure for determination of the amount of gratuity. As per Section 7[1], a person who is eligible for payment of gratuity under the Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity. Section 7[2] has stipulated that as soon as the gratuity becomes payable, the employer shall, whether an application referred to in sub-section [1] has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined. Section 7[3] has made it obligatory for the employer to arrange to pay the amount of gratuity within 30 [thirty] days from the date it becomes payable to the person to whom the gratuity is payable. As per sub-section [4] of Section 7, if there is any dispute as to the amount of gratuity payable to an employee under the 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. Where there is a dispute with regard to any matter or matters specified, the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. Clause [c] of sub-section [4] of Section 7 has provided that 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.

12.7. Sub-section [7] of Section 7 has provided for preferring an appeal by providing that any person aggrieved by an order passed by the Controlling Authority deciding a dispute may, within 60 [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 or such other authority, as may be prescribed by the Appropriate Government in that behalf. The first proviso to Section 7[7] has 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 60 [sixty] days, extend the said period by a further period of 60 [sixty] days. The second proviso to Section 7[7] has 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 as decided by the Controlling Authority, or deposits with the Appellate Authority such amount. As per Section 7[8], the Appropriate Government or the Appellate Authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the Controlling Authority.

13. The Payment of Gratuity [Central] Rules, 1972 has been framed in exercise of the powers conferred by sub-section [1] of Section 15 of the Payment of Gratuity Act, 1972. It has *inter alia* stated in Rule 10 of the Payment of Gratuity Rules, 1972 that if an employer refuses to make payment of the gratuity, the claimant employee can apply in Form 'N' to the Controlling Authority for issuing a direction under sub-section [4] of Section 7 of the Payment of Gratuity Act, 1972 to decide the dispute as the Controlling Authority has been empowered to direct the employer to pay an amount of gratuity, if the claimant employee is found eligible to receive the gratuity, after due enquiry and after giving the parties to the dispute a reasonable opportunity of being heard. Under the proviso to sub-rule [1] of Rule 10 of the Payment of Gratuity [Central] Rules, 1972, the Controlling Authority, in an appropriate case,

may accept any application under Rule 10[1] on sufficient cause being shown by the applicant, after the expiry of the specified period.

14. In the case in hand, as has been mentioned above, the respondent no. 2 as the claimant employee submitted an application in Form 'N' before the Controlling Authority, that is, the Assistant Labour Commissioner [Central], Guwahati. The Assistant Labour Commissioner [Central], Guwahati acting as the Controlling Authority on receipt of the application, registered the same as Application no. PG/48[01]/2012-G/A and issued notices to the parties in Form 'O' as required under Rule 11 of the Payment of Gratuity Rules, 1972 calling upon the applicant as well as the employer to appear before him. On receipt of the notice in Form 'O', both the parties appeared before the Controlling Authority and represented their cases. It was after hearing the parties, the Controlling Authority had passed the impugned Order dated 12.11.2012 determining *inter alia* that the respondent no. 2 as an employee of the petitioner, is eligible to get gratuity and calculated the amount of gratuity as Rs. 63,000/- payable by the petitioner. A further sum of Rs. 5,250/- had been awarded towards interest.

15. As already noted above, sub-section [7] of Section 7 of the Payment of Gratuity Act, 1972 has provided for a statutory remedy of appeal. If an employer is aggrieved by the decision of the Controlling Authority deciding a dispute, it is open for the employer to prefer the statutory appeal by depositing the amount required as per the second proviso to sub-section [7] of Section 7 of the Payment of Gratuity Act, 1972. It is settled position of law that an appeal, if provided by the governing statute, is continuation of the original proceedings and the power of the Appellate Authority to re-appreciate and evaluate the evidence and materials placed before the Controlling Authority is co-extensive in order to confirm, modify or reverse the decision of the Controlling Authority. Conspicuously, the petitioner herein has chosen not to avail the remedy of appeal provided by the statute and instead, it has chosen to assail the order/direction passed/taken by the Controlling Authority by preferring the instant writ petition under Article 226 of the Constitution of India, which is an extra-ordinary and discretionary jurisdiction.

16. The Controlling Authority, before passing the order/direction, has arrived at the finding that the respondent no. 2-applicant was employed with the petitioner organization for a considerable period of 13 years and the said finding, according to the Controlling Authority, has been reached on the basis of records available and on merits. The Controlling Authority has also recorded the finding that at the time of retrenchment of the respondent no. 2-applicant by the petitioner, that is, the APFPEDA, the respondent no. 2-applicant was drawing monthly wages @ Rs. 8,400/- and the petitioner as the employer did not contradict the particulars and the date of engagement/intermittent employment and the last wages drawn by the respondent no. 2-applicant on the premise that the documents in relation to those matters were matters of proof on records. The Controlling Authority has also observed that the petitioner as the employer had deliberately engaged the respondent no. 2-applicant on intermittent basis with a short break-in-service in between two contract periods with a view to deprive the respondent no. 2-applicant from the various benefits accrued from the social welfare legislations like the Payment of Gratuity Act, 1972. The Controlling Authority has also observed that the employer could not submit any documents during the proceedings before him as regards the allegations of unsatisfactory performances on the part of the respondent no. 2-applicant or as regards stealing of any official documents by the respondent no. 2-applicant. The Controlling Authority has further observed that taking a photo copy of the attendance register maintained by the APFPEDA without their knowledge could not be considered as a major offence on the part of the respondent no. 2-applicant as the same were as regards his proof of employment with the APFPEDA.

17. In the course of the proceedings before the Controlling Authority, the respondent no. 2-applicant submitted his letter of appointment/engagement dated 28.09.1998 and a letter dated 08.07.2011 issued from the end of the APFPEDA to substantiate his claim regarding his employment under the APFPEDA. It was represented that his employment during the period from 28.09.1998 to 31.12.2011 was continuous and/or with some intermittent breaks. It was contended that at the time of his retrenchment by his employer, the respondent no. 2-applicant was drawing wages @ Rs. 8,400/- per month. It was represented before the Controlling Authority by the respondent no. 2-applicant that his employer deliberately engaged him with a short break-in-service in between two contract periods with a view to

deprive him from various benefits accrued under the social legislations like the Payment of Gratuity Act, 1972 though the works performed by him was perennial in nature. It was contended that as he had rendered about 13 years 3 months of service under the APFPEDA, it was clearly evident that the nature of work was perennial in nature and the employer had unjustly denied him from regular employment. The contentions of the respondent no. 2-applicant were sought to be refuted by the authorized representative of the APFPEDA before the Controlling Authority with the contention that the respondent no. 2-applicant was terminated due to unsatisfactory performances and stealing of documents from the Regional Office of the APFPEDA at Guwahati. It was contended that on examination of the application, submitted by the respondent no. 2-applicant, for eligibility of gratuity, the respondent no. 2-applicant was found ineligible to receive gratuity under the extant law, rules and regulations for the reason that a contractual worker who was engaged on six monthly basis and whose contract was terminated due to unsatisfactory services, was not eligible for payment of gratuity.

18. The Controlling Authority, to decide the dispute, had framed the following questions for decision :-

- [i] Whether Agricultural and Processed Food Products Exports Development Authority [APFPEDA] is an establishment & whether the application made is within the ambit of Payment of Gratuity Act, 1972 ?
- [ii] Whether the applicant is an employee under the provisions of the Payment of Gratuity Act, 1972 ?
- [iii] Whether the applicant is entitled to get Gratuity ?
- [iv] What amount is entitled to get Gratuity by the applicant ?

19. As regards first question, the Controlling Authority had reached a finding that the APFPEDA is an establishment under belonging to, or under the control of the Central Government, having branches in more than one State and is covered under the provision of Section 1[3][c] of the Payment of Gratuity Act, 1972. As the APFPEDA did not have any other scheme of payment of gratuity or pensionary benefit not less favourable than the benefits

payable under the Payment of Gratuity Act, 1972, it had been held by the Controlling Authority that the provisions of Payment of Gratuity Act, 1972 would be applicable in the case of the respondent no. 2-applicant. So far as the second question is concerned, the Controlling Authority had referred to the provision of Section 2[e] of the Payment of Gratuity Act, 1972 to hold that the respondent no. 2-applicant being a person employed on wages, was eligible as to receive the benefits of gratuity under the Payment of Gratuity Act, 1972. This Court is of the clear view that though the APFPEDA may be an authority under the control of the Central Government, the officers or employees employed in the APFPEDA cannot be regarded as employees holding any post under the Central Government, to be exempted from the definition of 'employee', as defined under Section 2[e] of the Payment of Gratuity Act, 1972. The Controlling Authority had also reached a finding that the respondent no. 2-applicant had rendered more than 5 [five] years of service in terms of the provisions of Section 4 of the Act. By answering third question in that manner, the Controlling Authority had proceeded to calculate the amount of gratuity for answering the fourth question. The Controlling Authority had mentioned in its Order that the applicant submitted his Letter of Appointment dated 28.09.1998 and Letter dated 08.07.2011 issued by the employer in proof of his employment and continuous/intermittent engagement. The Controlling Authority had also recorded that the applicant had submitted that at the time of retrenchment by the employer, the applicant was drawing monthly wage @ Rs. 8,400/- per month and the employer did not contradict the particulars of the date of appointment/intermittent employment and last wages drawn by the applicant since those are matters of proof on records. The Controlling Authority took the length of service of the respondent no. 2-applicant as 13 years for the period from 06.10.1998 to 31.12.2011 and accepted Rs. 8,400/- per month as the last wages drawn by the respondent no. 2-applicant. With such figures, the Controlling Authority had found the total entitlement of gratuity of the respondent no. 2-applicant as Rs. 63,000/- [= Rs. 8,400/- x 15 x 3 divided by 26]. The Controlling Authority found that an amount of Rs. 63,000/- was payable on 31.01.2012 as gratuity on termination of service of the respondent no. 2-applicant by the employer and as the said amount of gratuity was not paid, thereby delaying payment by 10 [ten] months from 31.01.2012, that is, the date when it became due, it was held that the employer would be liable to pay simple interest @ 10% as per the provisions of Section 7[3] of the Payment of Gratuity Act, 1972. Thus, adding the interest component of Rs.

5,250/- with the amount of Rs. 63,000/-, the Controlling Authority had made the order/direction to the employer, that is, the APFPEDA to pay an amount of Rs. 68,250/- to the respondent no. 2-applicant as gratuity *plus* the interest amount within 30 [thirty] days from the date of the order/direction.

20. From the documents appended to the affidavit-in-opposition of the respondent nos. 1 – 3, it is noticed that by an engagement letter dated 28.09.1998, the respondent no. 2 was engaged in the post of Peon issued under the hand of the Deputy Director, APFPEDA for the period from 06.10.1998 to 05.01.1999 at a consolidated amount per month as service wages. It was mentioned therein that the association with the APFPEDA would not constitute an employee-employer relationship and the APFPEDA would be liable only to make payment for services rendered. The said engagement letter was followed by a number of other letters of engagement, dated 01.01.1999, dated 08.04.1999, dated 20.07.1999, dated 09.09.1999 & dated 06.08.2001. From the said letters of engagement, it is noticed that the respondent no. 2 was in continuous engagement with APFPEDA from 06.10.1998 to 06.08.2001. While answering Question no. 1, the Controlling Authority had observed that at the time of retrenchment of the respondent no. 2 by APFPEDA, the respondent no. 2 was drawing monthly wages of Rs. 8,400/- per month. It needs reiteration that the Controlling Authority had recorded that the APFPEDA did not contradict the date of appointment/engagement and last wages drawn by the respondent no. 2-applicant during the proceedings before him. The Controlling Authority had reached a finding that the APFPEDA had deliberately engaged the respondent no. 2-applicant on intermittent basis with a short break-in-service in between two contract periods with a view to deprive the respondent no. 2-applicant from various benefits accrued from the social welfare legislation like the Payment of Gratuity Act, 1972 though the works performed by the respondent no. 2-applicant was of perennial nature. The Controlling Authority had also recorded a finding that there was sufficient nature of work in the establishment of the APFPEDA to engage the respondent no. 2-applicant on regular basis as the respondent no. 2-applicant was employed with the APFPEDA for a considerable period of 13 years as per records available on merit. The contention of the employer that the respondent no. 2-applicant was terminated due to unsatisfactory performances and stealing of documents from the office of the APFPEDA was discarded by the Controlling Authority as



the APFPEDA as an employer, could not submit any documents regarding unsatisfactory performances of the respondent no. 2-applicant nor any proof regarding stealing of any official documents. The contention of the employer, the APFPEDA as regards ineligibility of the respondent no. 2-applicant to receive gratuity was also discarded with a finding that the APFPEDA under the Ministry of Commerce and Industry, Government of India is an establishment belonging to, or under the control of, the Central Government having branches in more than one State and covered under the provisions of Section 1[3][c] of the Payment of Gratuity Act, 1972. As the APFPEDA did not have any other scheme more beneficial than the provisions of the Payment of Gratuity Act, 1972, the Controlling Authority had found that the provisions of the Payment of Gratuity Act, 1972 would be applicable for an establishment like the APFPEDA.

21. It is noticed that during the proceedings before the Controlling Authority, the petitioner, that is, the employer was represented by the Assistant General Manager of the APFPEDA. It is worthwhile to mention that sub-rule [3] of Rule 11 of the Payment of Gratuity Rules, 1972 has provided that a party appearing by an Authorized Representative shall be bound by the acts of the Representative. The contention made by the petitioner that as it maintains a Branch office at Guwahati with two employees it would not come under the provisions of Section 1[3][b] of the Payment of Gratuity Act, 1972 does not deserve acceptance in view of the findings of the Controlling Authority that it would come under Section 1[3][c]. As per Section 1[3][b], the provisions of the Payment of Gratuity Act, 1972 are applicable to every establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more employees are employed, or were employee, or any day of the preceding twelve months.

22. The Controlling Authority in the Order dated 12.11.2012, has recorded that the APFPEDA does not have any other scheme for payment of gratuity or pensionary benefits not less favourable than the benefit under the Payment of Gratuity Act, 1972. It is not in doubt that for the petitioner, that is, the APFPEDA, the appropriate Government, as per Section 2[a] [i], is the Central Government and the Assistant Labour Commissioner [Central], is the Controlling Authority. Section 5[1] of the Payment of Gratuity Act, 1972 has provided power

to exempt. As per Section 5[1], the appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which the Act applies from the operation of the provisions of the Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Section 5[2] has stipulated that the appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which the Act applies from the operation of the provisions of the Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. The said finding of the Controlling Authority that the APFPEDA does not have any other scheme for payment of the gratuity not less favourable than the benefit under the Payment of Gratuity Act, 1972 is not controverted in any manner in this writ petition.

23. In the present writ petition, the petitioner has contended that there was no provision of gratuity in the APFPEDA and as such, the claim of the respondent no. 2 is not maintainable. It is further contended that the provisions of the Industrial Disputes Act, 1947 and other labour laws are not applicable in the APFPEDA. It has also been contended that the Controlling Authority has erroneously recorded a finding that APFPEDA is an establishment covered under the provisions of Section 1[3][c] of the Payment of Gratuity Act, 1972.

24. The gratuity is, in its essence, a payment in consideration of past services paid at the end of the said service when the employment terminates. The Controlling Authority in the case in hand, had reached a finding that the respondent no. 2 is eligible to be paid gratuity under the provisions of the Payment of Gratuity Act after reaching findings on the basis of the materials placed before it, that the APFPEDA being the employer, comes under the purview of the provisions contained in Section 1[3][c] of the Payment of Gratuity Act, 1972 and it does not have any other scheme of gratuity not less favourable than the benefit provided under

the Payment of Gratuity Act, 1972. It is relevant, at this stage, to mention that the petitioner as the employer, had chosen not to prefer a statutory appeal under sub-section [7] of Section 7 of the Payment of Gratuity Act, 1972 against the impugned Order dated 12.11.2012 passed by the Controlling Authority recording the above findings of fact.

25. An appeal is essentially a continuation of the original proceedings and the power of the appellate authority to re-appreciate of the fact is co-extensive. An appellate authority on re-appreciation on facts, is empowered to reverse the finding. On the other hand, the jurisdiction of this Court under Article 226 of the Constitution is limited in the sense that a writ of certiorari is issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends to cases where orders are passed by tribunals or authorities in excess of their conferred jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by a tribunal or an authority, a writ of certiorari can be issued if in recording such a finding, the tribunal or the authority has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. As it is settled that the jurisdiction to issue the writ of certiorari is supervisory and not appellate, the writ court does not ordinarily appreciate evidence. The writ of certiorari is intended to correct jurisdictional excesses which are clearly established. As far as the finding of fact which is one within the jurisdiction of the tribunal or the authority is concerned, it is ordinarily a matter not for the writ court to interfere for the reason that the tribunal or the authority which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too, an error of fact.

26. It has been held in **B.K. Muniraju vs. State of Karnataka**, reported in [2008] 4 SCC 451, that whether it is a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : [i] the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law; and [ii] a grave injustice or gross

failure of justice has occasioned thereby. The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. Though the power of judicial review is there yet its exercise is discretionary. It has been held in **Rengali Hydro Electric Project vs. Giridhari Sahu**, reported in [2019] 10 SCC 695, even a gross error of fact does not amount to an error of law. An error of law which become vulnerable to judicious scrutiny by way of certiorari must be one which is apparent on the face of the record. As to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of its case. A finding of fact which is not supported by any evidence would be perverse and such a finding of fact would constitute an error of law enabling the writ court to interfere. The writ court does not go into the question about the adequacy of evidence or its sufficiency or satisfactory character as those are within the ambit and scope of the tribunal or the authority exercising its original jurisdiction or of the appellate court which is entitled to re-appreciate the findings of fact reached by such tribunal or authority. On the basis of such parameters laid down for the test of perversity when the findings of facts reached by the Controlling Authority in the case in hand are considered it is found that those findings were reached by the Controlling Authority on the basis of the materials placed before it by the contesting parties. With the petitioner not preferring any statutory appeal seeking reversal of such findings of fact recorded by the Controlling Authority in the case in hand, this Court in its certiorari jurisdiction does not embark upon a process of appreciation of the materials again for considering its adequacy of sufficiency as it does not appear on the face of the record that the findings recorded by the Controlling Authority were perverse.

27. The decision in **Teja Singh** [supra] is primarily on the matter of regularization of the respondent therein and the decision was rendered in view of the decision of the Constitution Bench in **Secretary, State of Karnataka and others vs. Uma Devi and others**, reported in [2006] 4 SCC 1. The main issue in **Teja Singh** [supra] did not arise in respect of gratuity and is, therefore, found not applicable to the case in hand.

28. In the case of **M.C. Chamaraju vs. Hind Nipon Rural Industrial [P] Ltd.**, reported in [2007]

**8 SCC 501**, the question which arose before the Authorities under the Payment of Gratuity Act, 1972 was whether the workman therein had completed five years' continuous service so as to be eligible to claim gratuity under the Act. The Authorities considered the said question and on the basis of the evidence adduced before them, held that various units where the workman had worked were one and the same and hence the entire service of the workman ought to be considered and taken into account for the purpose of computation of benefit of gratuity. On the basis of the above reasoning, the Controlling Authority as well as the Appellate Authority under the Payment of Gratuity Act, 1972 held that the appellant was qualified and entitled to gratuity under the Act.

28.1. The Hon'ble Supreme Court in the above obtaining fact situation, has gone on to observe as under :-

13. To us, the learned Single Judge was wholly right in dismissing the writ petition on the basis of the findings recorded by the authorities under the Act and in not interfering with the said orders. The Division Bench, surprisingly, went into the questions of fact and came to the conclusion that it was not established by the appellant workman that he had worked for more than five years continuously in the Company so as to be eligible to claim gratuity. The Division Bench also perused certain documents and observed that certain letters said to have been written were not on the letterhead of the Company and it could not be said that the appellant had worked for a period of five years continuously which was an essential requirement to claim gratuity. On that reasoning, the Division Bench held that the case was of 'no evidence'. The Bench also held that the onus to establish eligibility was on the employee and since it was not discharged by him, he should fail. Accordingly, the orders were set aside.

14. In our considered opinion, the Division Bench ought not to have undertaken the above exercise which had been done by the controlling authority as also by the appellate authority. The High Court was exercising power of 'judicial review' which, in its inherent nature, has limitations. This is particularly true since the learned Single Judge also did not think it fit to interfere. We are, therefore, of the

view that the Division Bench was wrong in setting aside all the orders and in allowing the appeal of the management and in dismissing the application filed by the workman.

15. There is another aspect also which is relevant. The Act has been enacted with a view to grant benefit to workers, a 'weaker section' in industrial adjudicatory process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken. A benefit has been extended by the authorities under the Act to the workman by recording a finding that the applicant [the appellant herein] had completed requisite service of five years to be eligible to get gratuity. In that case, even if another view was possible, the Division Bench should not have set aside the findings recorded by the authorities under the Act and confirmed by a Single Judge by allowing the appeal of the employer.

16. Finally, we are of the view that on the facts and in the circumstances of the case also, the Division Bench was not justified in setting aside the orders passed by the authorities and confirmed by the learned Single Judge considering comparatively a small amount involved in the appeal. As already noted in the earlier part of the judgment, the appellant was held entitled to Rs 16,785 along with interest @ 10% p.a. To us, therefore, even on that ground, the Division Bench should have refrained from quashing the orders.

17. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order passed by the Division Bench of the High Court is hereby set aside and the orders passed by the controlling authority and the appellate authority under the Payment of Gratuity Act, 1972 as confirmed by the learned Single Judge is hereby restored. In the facts and circumstances of the case, however, there shall be no order as to costs.

18. The payment to which the appellant workman is held entitled shall be made within a period of twelve weeks from today.



29. In view of the fact situation obtaining in the case, as discussed above, and for the reasons assign therein, including for the reason that the involvement herein only in respect of a sum of Rs. 68,250/-, this Court does not find any good and sufficient reason to interfere with the order/direction passed/taken by the Controlling Authority in exercise of the statutory powers conferred under Section 7[4] of the Payment of Gratuity Act, 1972. Consequently, the writ petition is found bereft of any merit and is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

30. The payment to which the respondent no. 2 is held entitled shall be made within a period of twelve weeks from today, if not already paid.

**JUDGE**

**Comparing Assistant**