IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 22035 of 2026

Sri Jain Swetambar Terapanthy Vidyalaya
Versus
The State of West Bengal & Ors.

For the Petitioner	:	Mr. Ranjay De, ld. Sr. Adv. Mr. B. Banerjee, Ms. A.A. Bose.
For the Respondent/ Workman	:	Mr. Rananeesh Guha Thakurta, Ms. Senjuti Sengupta, Mr. Rijuan Mandal.
For the State	:	Mr. Amit Chakraborti, ld. AGP Ms. Soma Chakraborty, Mr. Subhendu Bandyopadhyay.
Judgment reserved on	:	03.09.2026
Judgment delivered on	:	05.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an order dated 21.10.2024 and 08.07.2026, passed by the Controlling Authority and the Appellate Authority respectively.

2. The contention of Mr. De learned senior counsel appearing for the petitioner is that the authority concerned have wrongly calculated gratuity on and from 1985 that is from the date of joining.

3. It is their contention that the said employees being teachers of an educational institution were covered under the Payment of Gratuity Act, 1972, by way of an amendment in the year 2009 with retrospective effect from 3rd April, 1997.

4. It is further submitted that when the teachers were not covered under the Act prior to April, 1997, the question of calculating gratuity from the date of joining it prior to April, 1997 does not arise.

5. Mr. De also raises the issue of basic pay of the employees/teachers concerned which it is submitted has been erroneously calculated by the authorities.

6. Learned counsel for the State has placed a report as submitted by the authority concerned.

7. Learned counsel appearing for the private respondent relies upon **paragraph 15, 22 and 25** of the judgment of the Hon'ble Supreme Court **Independent Schools Federation of India 2022 (175) FLR** and submits that there is no error in the order of the Controlling Authority because the Controlling Authority has rightly calculated the gratuity from the date of joining that is 1985.

8. Admittedly, the payment of gratuity Act 1972 was made applicable to teachers in educational institutions with retrospective effect from April 1997, vide an amendment in the year 2009.

9. Parties have filed their respective written notes and relied upon the judgments in support of their case.

10. The petitioner's further case is that the determination of gratuity by the authority is concerned it is stated that before the period of 03.04.1997 both authorities have wrongly calculated, as the notification dated 03.04.1997 without having any retrospective operation of the same and in this connection this Hon'ble Court already decided in the writ petition being ***W.P.A. 9438 of 2025 - St. Thomas High School -vs-Basabi Chowdhury & Ors. with W.P.A. 12300 of 2025 St. Thomas high School -Vs- Minakshi Roy & Ors.*** whereas this Court already decided that before 3rd April, 1997, the private respondent are not entitle to gratuity.

11. In the orders impugned, both the authorities have decided and calculated the gratuity amount on the basis of DA which are being paid separately by the Government of West Bengal directly to the bank account of the private respondent, and being a minority and philanthropic organisation, the petitioner should not be made to take burden of gratuity on DA which is not at all paid by the petitioner, and if the huge burden is bear out by the petition, it would be injustice on their part, since the D.A. is not by the petitioner they are not obliged to pay gratuity D.A. Amount.

12. It is further stated that the learned advocate on behalf of the private respondent cited judgments which not applicable in the present case, since this Hon'ble Court has already passed an order in **W.P.A. 9438 of 2025 with W.P.A. 12300 of 2025**

considering the said judgment while dealing with a similar case.

13. The petitioner thus submits that considering the law, the orders impugned passed by the learned controlling & appellate authority are without jurisdiction and beyond the law, which ought to be set aside and matter may be remanded back to the appellate authority to pass a fresh order after taking into considering the law and facts which has been mentioned herein above and pass a reasoned order.

14. The respondent no. 4 being the private respondent on filing written notes has prayed for dismissal of the writ application.

15. The authorities who have passed the impugned order have filed their **reports** and stated therein as follows:-

> *"**Basic wages used to be paid by the petitioner-school but D.A. is paid by the Government of West Bengal as the petitioner is D.A. getting.***
> *In this instant case the DA part of the wages was directly transferred by the Government of West Bengal to the bank account of the employee. Hence the Appellant prayed that the school shall pay the gratuity calculated only on the basic pay. As per section 4(2) of PAG Act, gratuity shall be paid by the employer to an employee at the rate fifteen days wages based on the wages last drawn by that employee. **And section 2(s) provides that "wages" means basic emoluments along with Dearness Allowance.** Hence the argument of the school is not tenable because DA is a part of the wage and gratuity shall be paid upon the last drawn wages. The payment of gratuity to an employee after*

his full service tenure cannot be bifurcated in an arbitrary way based on the fact that source of the DA and source of basic wages are different. As the employer rendered his uninterrupted service under the school authority, the school is the sole authority to pay him gratuity as per the provision of the PAG Act. Moreover, ***Exhibit-P-7 by the school proves that the calculation for payment of DA was made as per established norms of the Government by the school authority and the employee signed the acquaintance roll which was maintained by the school on behalf of the Government.***

Controlling Authority and Appellate Authority has taken into consideration ex-gratia amount while determining gratuity.

The C.A. has accepted the Basic Wage of the employee to be Rs. 26900/- per month. He has come to this conclusion from the Pension Payment Order. *The Appellant claimed that the C.A. has included ex-gratia payment with the basic wages. As per their claim the Basic Wages of the employee was Rs. 10,075/- per month (Exhibit-P2) and ex-gratia was paid to the tune of Rs. 17,500/- per month (Exhibit -P-3). As per the school's claim gratuity have to be calculated the amount claimed to be basic wages. By them*

Now the School has submitted exhbit-P7, in which the institution calculated D.A. amount (Rs. 22194/- per month) for the employee which is stated to be 85% of the Pay Band (Rs. 21310/- per month) and Grade Pay (Rs. 4800/- per month) taken together. Here the addition of Pay Band and Grade Pay is Rs. 26110/- per month is the equivalent to the Basic Pay concept and

such method of calculation is accepted and endorsed by the Government. Here the school calculated D.A. payable to employee on full amount of Rs. 26110/-, not on the reduced amount of "so called basic pay".

In this respect, it is observed that, every month the equivalent amount of Pay Band and Grade Pay is divided by the school authority into two components that is Basic Pay and Ex-gratia. The said authority failed to show any reason why every month an ex-gratia has to be paid to the employee. It is evident that by doing such exercise, the authority purposefully kept the amount of Basic Wages at a lower level than it actually is, diverting the bigger share under the ex-gratia head. Hence, the basic pay claimed by the school is not accepted by the undersigned. Though the PPO is showing the last basic wages of the applicant in an unambiguous term, the undersigned thinks that the amount of Pay Band and Grade Pay taken together, which is Rs. 26110/- per month as per the exhibit-P-7 submitted by the school, will be accepted as the basic wages of the applicant because this particular document has been prepared by the school itself and ***both the parties accepted the amount of DA payable to the employee.***

In view of the above observation, it is held that the basic wages of the employee for the purpose of calculating gratuity is Rs. 26110/- per month.

Section 4 of the Repealing and Amendment Act states that the repeal shall not affect any of the enactment in which the repealed enactment has been applied, incorporated or referred to. It also states that the Repealing Act shall not affect the validity, invalidity, effect or consequences of anything already done or

suffered, or any right, title, obligation or liability already acquired, accrued or incurred etc. Here emphasis has been made on the fact that where the repealing act states that the enactment thereof shall not affect any act in which the enactment has been applied, incorporated or referred to, means that there is an independent existence of the two acts and, therefore, even on the death of the amending act, its offspring survives incorporating act.

In light of the above judgement, it is held that, even after the enactment Repealing and Amendment Act, 2016, the amendment made in section 2(e) of the PAG Act by the power of the Amendment Act, 2009, stands intact enabling the Respondent employee to be entitled for gratuity under the Act."

16. On perusal of the said report of the Controlling Authority, it appears that the authorities concerned have applied the benefit of the Act to the institution even prior to the Amendment of 2009 which applied the Payment of Gratuity Act, 1972 in respect of teachers under the education institution on and from 1997, **on holding the petitioners continuous service as computed for the purpose of pension and applied the same for the purpose of calculating gratuity** even though the same became applicable only in 1997, failing to consider that the entitlement to pension and gratuity in the present case could not be similar herein, because of the fact that benefit of pension was available to the employee since joining whereas the benefit of gratuity was extended only from 1997.

17. The petitioners further state that the interpretation of the authorities concerned are entirely erroneous and bad in law. Though the Payment of Gratuity Act is of the year 1972, the same was applicable to only institution under which it was made applicable. When an establishment is covered from a specific period, it is only from that period that the employees of the said institution get the benefit and cannot get any benefit prior to the date since when it is implemented the only exception being to consider a certain period only to consider the eligibility under the Payment of Gratuity Act and for no other purpose.

18. It is stated that the service imparted prior to 03.04.1997 may be taken into consideration for the purpose of determining the qualifying service/ period of the employees under the Act only. The same cannot be a constrain to their entitlement of gratuity from the date of their appointment prior to 03.04.1997.

19. The controlling authority's order allowing the said prayer is based on his finding as follows:-

> *"Moreover there are no non-contributory payment days as shown in the **Pension order of EPFO** that means no service break up has been happened in his EPFO membership spanning 30 years from 11.02.1985 to 14.07.2016. Under Govt. of West Bengal Service Rules, he was superannuated on 14.07.2018 after attaining the age of 60 years that means two years after the cessation of membership under EPFO. Thus, combining all such tenure, it is well established that the applicant employee rendered continues service from 11.02.1985 to 14.07.2018 and thus the length of continues service of the applicant is 33 years 5 months i.e. 33 years."*

20. The authority has come to the said conclusion relying upon Section 2A of the PAG Act.

21. The Supreme Court in the case of ***Independent Schools' Federation of India (supra).*** Paragraphs 11, 18, 19 and 24 held:-

> ***"11. On 26-11-2007, the Payment of Gratuity (Amendment) Bill, 2007, was introduced in Parliament seeking to amend the definition of the word "employee" and thereby rectify the error or lacuna identified by this Court in Ahmedabad Pvt. Primary Teachers' Assn.*** *[Ahmedabad Pvt. Primary Teachers' Assn. v. Ahmedabad Municipal Corpn., (2004) 1 SCC 755 : 2004 SCC (L&S) 306] The Object and Reasons, as stated and obvious, were to extend the benefit of gratuity to teachers of private educational institutions. The Bill was referred to the Standing Committee on 10-12-2007. After due deliberations and in-depth consideration, the Standing Committee deemed it appropriate to suggest changes vide the 26th Standing Committee Report. The report, on the aspect of grant of gratuity to teachers with effect from 3-4-1997* ***states:***
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> *"****36.*** *... **The Committee feel that implementing the law from the year 2004 will cause irreparable loss to a large number of teachers of the country, particularly to those who have already retired.** The Committee, therefore, called upon the Government to make the law applicable with retrospective effect i.e. **from the date of notification in the year 1997**. This will provide the needed succour as well as justice to all those affected persons who were denied their rightful benefits due to some technical flaw/legal lacuna in the definition of the term "employee" as contained in Section 2(e) of the Payment of Gratuity Act, 1972."*
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> ***24. The provisions of the PAG Act, even post the retrospective amendments, will apply only to***

those teachers who were in service as on 3-4-1997, and at the time of termination have rendered service of not less than 5 years. The period of 5 years may be partly before 3-4-1997, as the date on which the person was employed does not determine the applicability of the PAG Act. The date of termination of service, in the form of superannuation, retirement, or resignation, or death or disablement due to accident or disease, should be post the enforcement date, which in the present case is 3-4-1997. The entire length of service, including the service period prior to 3-4-1997, is to be counted for the purpose of computing the entitlement condition of 5 years of service. This is the correct effect of the ratio and decision in Goodyear [Goodyear (India) Ltd. v. K.G. Devessar, (1985) 4 SCC 45 : 1985 SCC (L&S) 936] and the decisions explaining retroactive effect of a statute. This legal position would be equally true and correct when the PAG Act was first enforced with effect from 16-9-1972, and when Notification No. S-42013/1/95-SS.(II) under Section 1(3)(c) of the PAG Act was issued and enforced with effect from 3-4-1997. It would be the position in case of all notifications issued under Section 1(3)(c) of the PAG Act, unless a contrary intention is expressed, which is not the situation in the present case and thus need not be examined."

22. Finally the learned counsel for the State and the respondent herein have also relied upon the judgment in the case of ***Independent Schools' Federation of India (supra).***

23. The petitioner has further relied upon the following judgments:-

(i) The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Lt. Vs. The Management & Ors., (1973) 1 SCC 813, (Paragraphs 55 and 63).

(ii) Property Company Private Limited Vs. Rohinten Daddy Mazda, (2026) 4 SCC 1, (Paragraphs 145 & 147).

24. By way of an amendment to Section 2(e) of the Payment of Gratuity (Amendment) Act, **2009** and insertion of Section 13A, the payment of gratuity act was made applicable with effect **from 3rd April, 1997** to the **teachers** of educational institution.

25. The petitioner relies upon the judgment in:-

(i) The Supreme Court in ***Independent Schools' Federation of India (supra), (Para 24).***

(ii) In ***The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. Vs The Management and Ors. (Supra),*** the Supreme Court held:-

> ***"55.*** *Miss Indra Jai Singh, learned Counsel for the appellant workmen, in Civil Appeal No. 1461 of 1972, advanced the main arguments in this regard. Mr Deshmukh appearing for the workmen in the other appeals, adopted her arguments. According to the learned Counsel, Section 11-A applies not only to references, which are made on or after December 15, 1971, but also to all references already made and which were pending adjudication on that date. It is pointed out that Section 11-A has been incorporated in Chapter IV of the Act dealing with procedure, powers and duties of authorities. According to them, Section 11-A deals with matters of procedure. Applying the well known canon of interpretation, procedural laws apply to pending proceedings also. No right, much less any vested*

right, of the employers has been taken away or affected by Section 11-A. Considerable stress has been laid on the use of the expressions "has been referred" occur in Section 11-A, as conclusively indicating the applicability of the section even to disputes already referred. It was stressed that even assuming that an employer has a right to adduce evidence for the first time before the Tribunal, that right enures to him only after the Tribunal had adjudicated upon the validity of the domestic enquiry. It cannot be characterised even as a right, much less a vested right, because it is contingent or dependent upon the Tribunal's adjudication on the domestic enquiry. The Tribunal, when it adjudicates a dispute on or after December 15, 1971, has to exercise the powers conferred on it by Section 11-A, even though the dispute may have been referred prior to that date. Hence it is clear that the section applies even to all proceedings pending adjudication on December 15, 1971.

63. *It must be stated at this stage that procedural law has always been held to operate even retrospectively, as no party has a vested right in procedure. In our opinion, the principle stated in In re: Athlumney Ex parte Wilson [(1898) 2 QB 547] are more apposite to the case on hand. The question arose regarding the construction to be placed upon Section 23 of the Bankruptcy Act, 1890. The said section was as follows:*

"Where a debt has been proved upon a debtor's estate under the principal Act, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.""

(iii) In ***Property Company Private Limited vs Rohinten Daddy Mazda (Supra),*** the Supreme Court held:-

> *"**145.** Moreover, one another significant aspect in B.K. Educational Services [B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528 : (2019) 212 Comp Cas 1] was that, as on 1-6-2016, NCLT was already empowered under Section 433 of the 2013 Act to apply the provisions of the 1963 Act. This power of NCLT was said to apply even when NCLT decided applications under Sections 7 and 9 of the IBC, 2016, respectively. The same is evident from the observation in B.K. Educational Services [B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528 : (2019) 212 Comp Cas 1] that : (SCC p. 649, para 21)*
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> *"21. Given the fact that the "procedure" that would apply to NCLT would be the procedure contained inter alia in the Limitation Act, it is clear that NCLT would have to decide applications made to it under the Code in the same manner as it exercises its other jurisdiction under the Companies Act."*
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> ***147.** This issue may be viewed at from one another angle. It is no more res integra that limitation being a procedural law, a change in law in that regard applies retrospectively. However, this general principle has certain exceptions : (a) the new law of limitation providing for a longer period cannot revive a dead remedy; and (b) the new law of limitation cannot suddenly extinguish a vested right of action by providing for a shorter period of limitation."*

26. **Admittedly the amendment of 2009**, made the act applicable to teachers from 1997. As such prior to 1997, the teachers were not covered under the Act and as such could not paid gratuity as per the Act prior to 1997.

27. The judgment in ***Independent Schools' Federation of India (Supra)*** is also relied upon by the respondents, to the extent that the Apex Court upheld the constitutional validity of the amendment to

Section 2(e) of the PGA Act 2009 (Amendment Act) and also to the extent of Section 13A, upholding the amendment with retrospective effect to make the benevolent provisions equally applicable to teachers and to bring equality and give fair treatment to the teachers. The legislature in it's wisdom, gave it retrospective effect from April, 1997 and not earlier. And computing service prior to date of effect (1997) is only for the purpose of entitlement for gratuity.

28. The said judgment is thus very clear that any period prior to 1997, can be counted only for computing the entitlement condition and nothing else.

29. Thus considering the view of the Supreme Court in ***Independent Schools' Federation of India (Supra),*** the impugned orders dated 21.10.2024 and 08.07.2026, passed by the Controlling Authority and the Appellate Authority are **modified** to the extent, that the calculation of gratuity shall be from the date of applicability of the act to the employee herein that is from 1997. **The decision of the authorities herein in the orders impugned, as to what is to be taken as basic pay in this case, being in accordance with law requires no interference.**

30. WPA 22035 of 2026 is disposed of.

31. Applications, if any, connected thereto stand disposed of consequently.

32. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)