

## Pioneer Cooperative Car Parking Servicing & Construction Society Ltd Vs State Of West Bengal & Ors

**Court:** Calcutta High Court (Appellate Side)

**Date of Decision:** Jan. 30, 2025

**Acts Referred:** Payment of Gratuity Act, 1972 " Section 5  
West Bengal Payment of Gratuity Rules, 1973 " Rule 7(5), 10(1)

**Hon'ble Judges:** Shampa Dutt (Paul), J

**Bench:** Single Bench

**Advocate:** Milan Chandra Bhattacharyya, Sulagna Bhattacharyya, Nirmalya Biswas, Md. Ziaur Rahaman, Balaram Patra, Suvadip Bhattacharjee

**Final Decision:** Dismissed

### Judgement

Shampa Dutt (Paul), J

1. The present writ petition has been preferred praying for direction upon the respondents not to proceed with the impugned proceeding being case no.

G-40/24 pending before the Controlling Authority under Payment of Gratuity Act, 1972 and further directing the respondents to reject the application

Ã¢â¬Ï filed under rule 10(1) of the West Bengal Payment of Gratuity Rules, 1973 as not maintainable both in law and on facts and further prayed

for quashing of the proceeding in G-40/24 pending before the Controlling Authority under Payment of Gratuity Act 1972 and to set aside the order

dated 07.01.2025 with direction upon the respondents to reject the application for gratuity claimed in annexure P in form Ã¢â¬Ï.

2. The petitioner herein is a cooperative society and the members are the workers, workers are salaried, they get bonus, incentive, pension etc. They

get gratuity age of worker is 60, membership is conterminous with the retirement or extended period.

3. The petitionerÃ¢â¬Ïs further case is that the respondent no. 4 was a worker and he reached the age of superannuation on 31.03.2021. He was

allowed to continue with his job even the completion of 60 years. He also applied for further extension on 01.09.2023 to avail lucrative salary hike, he

continued till November, 2023. Society wrote a letter to him on 17.02.2024 to deposit the amount enjoyed by him through defalcation within a week,

failing which BOD will have to adjust all his funds payable to him.

4. Several allegations have been made by the petitionerÃ¢â¬Ïs society against the respondent no. 4.

mere exercise of option by an employee, to avail the benefit of extension of age of retirement to 60 years, could not have operated against his entitlement to

gratuity; and exercising of such an option will not deprive the private respondents to gratuity unless and until the establishment i.e., the petitioner-University,

was exempted in strict compliance of Section 5 of the Payment of Gratuity Act, 1972, after prior approval of the State Government. There being no such exemption

availed by the petitioner-University, the High Court has rightly not interfered with the principal part of the orders passed by the Controlling Authority and the

Appellate Authority. On the other hand, the High Court has been rather considerate to the petitioner in reducing the rate of interest awarded to the private

respondents from 10% to 6% p.a. In view of the above, no case for interference is made out.

Hence, these special leave petitions stand dismissed. All the pending applications stand disposed of.

14. Thus the exercise of option by the respondent herein, having availed the benefit of extension age does not operate against his entitlement to

gratuity.

15. The respondent herein superannuated on 31.03.2021 and continued on extension till November, 2023.

16. The proceeding in this case has been initiated in 2024 being G-40/24.

17. The order challenged though not argued on merit is as follows:-

"On perusal of oral and written averments and the judgments cited by both the parties, the undersigned holds the following decisions:

I) In terms of Rule 7(5), an application for payment of gratuity filed even after the expiry of the stipulated time-period and if the applicant adduces the sufficient

cause for the delay in preferring his claim before this forum; no claim for gratuity under the Act concerned shall be invalid merely because the claimant failed to

present his application within the specified time-period as per statute.

II) Besides, the employer is duty-bound to issue Form L/M to the employee concerned in terms of Rule 8; whereas the intent applicant sent Form- on

22.03.2024. But the employer did not do the same.

III) Last but not the least, that non payment of gratuity is a continuing offence and there is no question of any delay in approaching the Appropriate Authority

under the Act concerned.

Hence, the Form L/M is maintainable before this forum and the said appl. is taken on merit and the op Co. is directed to submit W/S on 20/01/25

at 1.00 p.m.

18. Rule 7(5) of the act permits the controlling authority to condone any delay in preferring an application for payment of gratuity and the rule also

provides that any dispute in respect of limitation shall be referred to the controlling authority, whose decision shall be final.

19. On perusal of the order dated 07.01.2025 this Court finds no illegality in the order, and being in accordance with law requires no interference.

20. WPA 1574 of 2025 stands dismissed with cost of Rs. 50,000 (fifty thousand) to be paid to the State Legal Services Authority.

21. All connected application, if any, stands disposed of.

22. Interim order, if any, stands vacated.

23. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal

formalities.