

**(2010) 03 CAL CK 0049**

**Calcutta High Court**

**Case No:** Writ Petition No. 3944 (W) of 2009

Nagendra Nath Maji

APPELLANT

Vs

West Bengal Power  
Development Corporation Ltd.  
and Others

RESPONDENT

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**Date of Decision:** March 30, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2010) 127 FLR 153 : (2011) 3 LLJ 347

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** Sukumar Ghosh II and Sandip Ghosh, for the Appellant; Dipak K. Ghosh, G.L. Ghosh and Ranjay De Bhaskar Mitra, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Jayanta Kumar Biswas, J.

Counsel for the Petitioner in this Article 226 petition dated February 25, 2009 submits that the only question that requires decision in the petition is whether the Petitioner was paid gratuity to which he was entitled under the Payment of Gratuity Act, 1972.

2. counsel submits that the Petitioner was paid Rs. 34,000 less than the amount to which the Petitioner was entitled. In support of his submission he refers me to para. 34(vi), which is:

(vi). The Petitioner received a sum of ` 55,064-00 as Gratuity but according his calculation the Final dues of Rs. 45,000-00 (Rupees Forty five thousand only) was not decided by the authority as yet and no balance sheet was supplied to the Petitioner.

3. Mr Ghosh, counsel for the employer, submits that in the opposition the employer has specifically said that the whole of the gratuity amount payable to the Petitioner was duly paid.
4. It is evident from the case stated in para. 34(vi) that counsel has argued a case different from the one stated by the Petitioner in his petition. Even if it is assumed that the Petitioner was paid an amount, less than the amount to which he was entitled, on the facts I am unable to hold that he was paid Rs. 34,000 less.
5. The Petitioner has not given the calculation showing the amount to which he was entitled. Under the Payment of Gratuity Act, 1972 he was to approach the controller of gratuity for determination and recovery of the unpaid amount, if any. I find no reason to assume the role of the controller.
6. For these reasons, I dismiss the petition making it clear that the Petitioner is at liberty to approach the controller of gratuity according to law. No costs. Certified Xerox.