

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19452 of 2018

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Raj Kumar Gupta S/o Late Prabhu Kumar Gupta, R/o Maripur Power house
Chowk, P.S.- Kazimohammadpur, Distt- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Labour Commissioner cum Appellate Authority, M.W. Act, 1948, Bihar,
Patna.
3. The Deputy Labour Commissioner cum Controlling Authority under
Payment of Gratuity Act, 1972, Muzaffarpur, Pin Code No. 84002
4. The District Certificate Officer, Near Registry Office, Court Compound,
Muzaffarpur, Pin Code No. 842001
5. Sri Akhilesh Mandal, S/o Late Jarmany Mandal, R/o Village- Baritha, P.O.-
Katra, Distt- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Krishna Kant Singh
For the Respondent/s : Mr.Ajay Kr.Rastogi -AAG10
: Mr. Parijat Saurav, AC to AAG10

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 19-12-2025

1. The petitioner has filed the present writ application for quashing the order, dated 17.01.2015, passed by the Deputy Labour Commissioner -cum- Controlling Authority, Muzaffarpur, in Case No. G.A. 06/2008, whereby the petitioner has been directed to deposit the gratuity amount of Rs. 41,538/- along with interest within thirty days. It is further prayer of the petitioner for quashing the appellate order, dated 23.01.2018/05.02.2018, passed in Appeal No. 03 of 2017 by the Labour Commissioner -cum- Appellate Authority. It is further prayed for quashing of the entire certificate proceeding initiated



vide Certificate Case No. 211/2015-16, including the Distress Warrant, dated 13.06.2018/17.07.2018, issued against the petitioner.

2. The brief facts, as per the case of the petitioner, is that the petitioner was running a hotel business under the name of “Purana Bhagirath Hotel”, located at Court Compound, Muzaffarpur, on Stall No. 3. The said hotel, due to operational losses and financial instability, was closed on 26.07.2008. After closure of the hotel, respondent no. 5, Shri Akhilesh Mandal, claiming to be an employee, filed an application on 06.09.2008 under the Payment of Gratuity Act, 1972, (hereinafter referred to as the ‘Gratuity Act’) before the Controlling Authority, Muzaffarpur, seeking relief for determining the amount of gratuity and payment of the same to him. The petitioner appeared and filed a detailed show-cause on 12.11.2008, asserting that respondent no. 5 was never a continuous employee and had not rendered five years of uninterrupted service as required under Section 4 of the Gratuity Act to qualify for gratuity.

3. The Deputy Labour Commissioner -cum- Controlling Authority passed an order on 17.01.2015 directing the petitioner to deposit Rs.41,538/- along with interest towards gratuity,



failing which recovery through certificate proceeding was directed.

4. Thereafter, Certificate Case No. 211 of 2015-16 was initiated for recovery of Rs.85,153/-, being double the amount along with interest and thereafter, Distress Warrant (D/W) was issued against the petitioner without serving mandatory notice under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914, depriving the petitioner of an opportunity to file objection.

5. Aggrieved by the initiation of certificate case and issuance of distress warrant, the petitioner filed C.W.J.C. No. 8449 of 2017, wherein this Court, on 26.07.2017, while disposing the writ petition, granted interim protection directing that if the petitioner deposits 50% of the total amount in the office of the Controlling Officer and files appeal against the order passed by Deputy Labour Commissioner -cum- Controlling Authority, no coercive action would be taken till disposal of appeal. In compliance, the petitioner deposited the said amount through a bank draft, dated 10.08.2017, and intimated the authorities as well as the police.

6. The petitioner, subsequently, preferred Appeal No. 03 of 2017 before the Labour Commissioner i.e., Appellate



Authority. However, vide order, dated 23.01.2018/05.02.2018, the appeal was dismissed and the impugned order, dated 17.01.2015, was affirmed.

7. Learned counsel for the petitioner submits that the impugned order is non-speaking, cryptic and passed without considering material documents such as service record, inquiry report and closure status of the hotel.

8. Learned counsel further submits that the provisions contained in the Gratuity Act, particularly Section 1(3)(b), have no application to the establishment of the petitioner as the hotel of the petitioner was a small unit, employing less than ten employees and the same stood permanently closed on 26.07.2008. Therefore, the pre-requisite condition for coverage under the Gratuity Act is absent and the Controlling Authority lacked jurisdiction to entertain the claim of gratuity. Accordingly, his submission is that all proceedings initiated under the Gratuity Act against the petitioner are without jurisdiction and illegal.

9. It has further been submitted that respondent no. 5 has never worked continuously in the establishment and the conclusion arrived at by the Controlling Authority that the respondent no. 5 had rendered 20 years of continuous service is



wholly incorrect, perverse and contrary to record. The inquiry report, dated 19.12.1999, prepared by the Labour Superintendent -cum- Inspector, which has been annexed as Annexure-1 to the present writ petition does not contain the name of respondent no. 5 as an employee of the establishment. The service card of respondent no. 5 also does not demonstrate continuous service, rather, shows that after initial appointment, he remained absent and never completed even five years of uninterrupted service, which is a statutory requirement under Section 4 of the Gratuity Act.

10. The onus lies on the employee to establish continuous service of five years and respondent no. 5 has failed to produce a single document to demonstrate continuity of service. A mere assertion or mention of joining the establishment in the year 1988 does not, in any manner, prove completion of five years continuous service. Thus, the very foundation of the claim is doubtful.

11. The appellate authority relied upon the order, dated 03.02.2011, passed in ATA No.14(3)/2009 of the EPF Appellate Tribunal, New Delhi, wherein it was mentioned that 24 employees were working in the establishment. However, the said order was challenged by the petitioner and was



subsequently set aside by this Hon'ble Court vide judgment, dated 14.08.2018, making such reliance wholly untenable.

12. Assailing the initiation of certificate proceedings, learned counsel submits that the petitioner was never granted an opportunity to file objection under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914, and no notice under Section 7 was ever served upon the petitioner before issuance of the Distress Warrant. Without deciding the objections and without providing reasonable opportunity of hearing, the Certificate Officer could not have issued distress warrant and, therefore, any coercive step taken pursuant thereto is illegal and liable to be set aside.

13. The Appellate Authority passed a cryptic and non-speaking order, based only on conjectures and surmises, without appreciation of documentary evidence and without assigning any reason. It has been wrongly assumed that respondent no. 5 worked till the date of closure of the hotel, although no document exists on record to establish such fact.

14. It is further submitted that the hotel was sealed by the Government much prior to the date of claim, which is clearly evident from Letter No. 293, dated 05.02.2014, issued by the Land Reforms Deputy Collector (DCLR), East Muzaffarpur,



and further the father of the petitioner, who was the original proprietor, died on 12.04.2006, thereby resulting in closure of business operations due to financial and personal hardship. The claim for gratuity was filed on 06.09.2008, i.e., at the time when the establishment had already ceased to exist, and therefore, the attendance register or payment register was no longer available, which fact has not been considered by the respondents.

15. On the other hand, learned counsel for the respondent argued that respondent no. 5 duly filed gratuity claim before the Deputy Labour Commissioner -cum- Controlling Authority, Muzaffarpur, under the Gratuity Act stating therein that he was working as a cook in the hotel of the petitioner at the monthly salary of Rs. 3,600/-, and he had worked continuously from 02.04.1988 till 27.07.2008, i.e., for more than 20 years, but no gratuity amount was paid to him. Accordingly, Gratuity Case No. 06 of 2008, later registered as GA Case No. 01/2016, was instituted.

16. It is submitted that upon issuance of notice, both the parties appeared before the Controlling Authority and were afforded full opportunity to place their respective cases. The petitioner admitted that respondent no. 5 was employed in his hotel in the year 1988. However, the petitioner failed to produce



any attendance register, payment register or any such register of the establishment which could controvert the claim of continuous service made by the workman. The Controlling Authority rightly drew an adverse inference against the petitioner and came to the conclusion that the relationship of employer and employee stood established and the workman had worked continuously till the date of closure of the hotel. Accordingly, the Deputy Labour Commissioner -cum- Controlling Authority passed a reasoned order, dated 17.01.2015, allowing the gratuity claim of respondent no. 5 and directing the petitioner to pay a sum of Rs. 41,538/- along with interest to him within a period of thirty days.

17. He further submits that the Appellate Authority, after hearing both the parties and upon due consideration of the documents on record, found that the workman had worked continuously till the date of closure of the hotel and the employer had failed to produce any documentary evidence to disprove such claim. The Appellate Authority, therefore, found no substance in the appeal and disposed the same by order, dated 05.02.2018, affirming the order of the Controlling Authority.

18. He lastly submits that the contention of the petitioner



that he does not want to pay the lawful gratuity amount is wholly untenable. The petitioner has deliberately withheld payment for a long period without any valid reason and has approached this Hon'ble Court only to delay and frustrate the legitimate claim of the workman. The respondent no. 5, i.e., the workman, could not appear despite notice.

19. I have heard learned counsel for the parties and have gone through the materials on record, including the impugned orders.

20. From perusal of the impugned order passed by the Deputy Labour Commissioner, it is evident that several dates were fixed for hearing, during which the petitioner–employer remained absent and repeatedly sought adjournments. The Controlling Authority, thereafter, proceeded to record the statement of respondent no. 5, who categorically stated that he had been working as a cook in the hotel of the petitioner since 1988, and about 21 workers were working in the establishment.

21. It is further evident from the record that respondent no. 5 produced a service card issued by the Labour Superintendent, which clearly reflected that he was working in the establishment since 1988. In addition thereto, the Controlling Authority took note of Letter No. 2865 dated



06.12.1999, filed by the claimant, which disclosed that 24 employees were working in the establishment, thereby, bringing the hotel of the petitioner within the ambit of the Gratuity Act.

22. The principal contention raised by the petitioner before this Court is that respondent no. 5 did not render continuous service of five years and, therefore, was not entitled to gratuity under the Gratuity Act. This Court finds no merit in the said submission.

23. It is evident from the record that the petitioner himself admitted before the Deputy Labour Commissioner that respondent no. 5 was employed in his establishment from 02.04.1988, and further admitted his engagement during different periods including 1995 and 2004. Despite such admission, the petitioner failed to produce any attendance register, payment register, or any such register of the establishment to substantiate the plea that the employee had worked for less than five years. The burden to maintain and produce statutory employment records lies squarely upon the employer. In absence of such records, the Controlling Authority was justified in drawing an adverse inference against the petitioner.

24. The petitioner has placed reliance on an Inquiry



Report, dated 19.12.1999 issued by the Labour Superintendent -cum- Inspector to contend that the name of respondent no. 5 did not appear in the list of employees working in the establishment. However, on careful examination, it is evident that the said inquiry report only contains a list of employees who were being paid wages below the prescribed minimum wages under Section 12(1) of the Minimum Wages Act, 1948. The said report does not purport to be a complete list of all employees working in the establishment. Hence, the reliance placed upon the said inquiry report by the petitioner is misconceived.

25. The Appellate Authority has duly considered all these aspects and upon appreciation of the evidence on record, has upheld the order of the Deputy Labour Commissioner. Both the authorities have concurrently recorded findings of fact that respondent no. 5 had rendered continuous service exceeding five years and the petitioner's establishment was covered under the Gratuity Act.

26. This Court finds that concurrent findings so recorded are pure findings of fact, based on appreciation of evidence, and no perversity, arbitrariness, or jurisdictional error has been demonstrated so as to warrant interference under Article 226 of



the Constitution of India.

27. It is also relevant to note that the Gratuity Act is a beneficial legislation, enacted to protect the interest of employees, who form the weaker section in industrial adjudication.

28. The Hon'ble Supreme Court in the case of **M.C. Chamaraju v. Hind Nippon Rural Industrial (P) Ltd.**, reported in **(2007) 8 SCC 501**, has held that while interpreting provisions of such welfare legislation, a liberal and purposive interpretation must be adopted so as to advance the object of the Act.

29. In the present case, the petitioner is seeking to re-agitate factual issues already decided by two statutory authorities after due consideration of documentary as well as oral evidences. This Court, in exercising jurisdiction under Article 226 of the Constitution of India, cannot act like a Super Appellate Authority and such exercise is impermissible in writ jurisdiction.

30. In view of the aforesaid discussion, this Court finds no infirmity in the order passed by the Deputy Labour Commissioner -cum- Controlling Authority or in the appellate order passed by the Labour Commissioner -cum- Appellate



Authority.

31. Further, this Court finds that once the order passed by the Deputy Labour Commissioner -cum- Controlling Authority, as affirmed by the Labour Commissioner -cum- Appellate Authority, is not being interfered with, the consequential certificate proceedings initiated for recovery of the gratuity amount cannot be faulted. The certificate proceedings are merely in the nature of execution of order passed under the Gratuity Act. However, the petitioner shall be at liberty to file objection if the same has not already been filed before the Certificate Officer who shall decide the objection under Section 9 filed by the petitioner within a period of one month from the date of order.

32. The writ petition, being devoid of merit, is accordingly, dismissed.

33. There shall be no order as to costs.

(Anil Kumar Sinha, J)

HarshPandey/-

AFR/NAFR	AFR
CAV DATE	18.11.2025
Uploading Date	19.12.2025
Transmission Date	N/A

