

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Lanusungkum Jamir

And

The Hon'ble Justice Rai Chattopadhyay

FMA 959 of 2025

with

CAN 01 of 2025

arising out of

WPA 15908 of 2019

MSTC Limited

Vs.

Malay Sengupta and Ors.

For the Appellant

: Mr. Soumya Majumder, Id. Sr. Adv.

: Mr. Victor Chatterjee

: Ms. Jayeeta Sengupta

For the Respondent No. 1

: Mr. Biplab Ranjan Bose

Heard on

: 28/10/2025

Judgment on

: 10/12/2025

Rai Chattopadhyay, J. :-

- 1.** In this intra-Court appeal, the appellant/company has challenged a judgment of the Hon'ble Single Judge dated March 25, 2025, in WPA 15908 of 2019, raising question as to the legality and propriety thereof, on the ground that it has actually erroneously upheld the applicability of the provisions of the Payment of Gratuity Act, 1972 in case of the respondent No. 1, who does not fall within the definition of 'employee' as per the Act of 1972 and should be solely and exclusively subjected to the Conduct, Discipline and Appeals Rules, 1980 of the appellant/company

(MSTC CDA Rules), provisions of which are binding on the said respondent.

- 2.** Facts of the case are narrated in details in the judgment dated March 25, 2025, which need not again be gone into, in so much detail. Some dates are relevant, which may be mentioned. The respondent No. 1, who was a Presidential appointee to the Board of Directors of the appellant, was working as the Chairman and Managing Director (CMD) of the appellant/company. He has been issued with a memorandum of charge-sheet for initiation of major penalty proceedings, on April 20, 2009. On April 24, 2009, the Ministry, by letter directed the appellant/company to withhold gratuity of the respondent No. 1, pending completion of disciplinary proceeding. On April 30, 2009, the respondent retired. After conclusion of the disciplinary proceeding an order dated April 30, 2013, was issued, imposing upon the respondent, a penalty for recovery of Rs. 10 lakhs, payable to him on account of gratuity, as per provision under Rule 23 (d) read with Rule 30A(ii) of the MSTC CDA Rules, for the loss caused to the company by the respondent due to his negligence in conduct and breach of order. A review application dated October 28, 2013, filed by the said respondent against that order, has been rejected by the Ministry being the Disciplinary Authority vide its order dated March 20, 2014.
- 3.** On April 03, 2017, the respondent writes to the company for payment of gratuity and also lodges his claim of gratuity before the competent statutory authority. The Controlling Authority has rejected the respondent's claim as above, vide order dated February 20, 2018. In an appeal against the same, the Appellate Authority has reversed the order of the Controlling Authority and directed vide his order dated April 30, 2019, for payment of gratuity to the respondent with simple interest at the rate of 8 per cent, with effect from April 30, 2009.

4. The question remains if the provisions under the Payment of Gratuity Act, 1972 and those in MSTC CDA Rules are mutually exclusive or that in case of the respondent the MSTC CDA Rules, shall override provisions under the Act of 1972.
5. Mr. Soumya Majumder, learned senior counsel has argued that the respondent cannot be allowed any benefit otherwise and indirectly, to which he is not entitled to or rather is disqualified to be allowed with the same, directly. He mentions Rule 30A (ii) of the MSTC CDA Rules 1980 (as amended on April 30, 2014), which he says is an enabling provision to permit recovery from gratuity of the whole or part of any pecuniary loss caused to the company due to misconduct of negligence by the respondent, proved in a disciplinary proceeding. He says that the later part of Rule 30A (ii) of the MSTC CDA Rules has no link with misconduct enumerated in Section 4(6) of the Payment of Gratuity Act, 1972; that the later part of Rule 30A (ii) of the MSTC CDA Rules permits recovery from gratuity without reference to misconduct referred to in Section 4(6) of the Act of 1972.
6. According to the appellant, the said enabling provision under the MSTC CDA Rules confers an exclusive right to the employer, over which the jurisdiction under the Payment of Gratuity Act, 1972 cannot encroach. Mr. Majumder says that Rule 30A (ii) of the MSTC CDA Rules has never been challenged. According to him, therefore, the consequences flowing therefrom are immuned from any attack and have to be necessarily followed. In this regard, he has referred to a judgment of the Supreme Court in ***Karam Pal v. Union of India*** reported at **(1985) 2 SCC 457**.
7. The appellant has bestowed fair amount of reliance to the ratio decided in the judgment of Supreme Court in ***Mahanadi***

Coalfields Ltd. v. Rabindranath Choubey reported at **(2020) 18 SCC 1971**. This is a judgment on reference made to the larger Bench of the Hon'ble Supreme Court and the portions relied on by the appellant are as follows:-

"7. Indisputably, the respondent was governed by the CDA Rules. Therefore, Rules 34.2 and 34.3 of the CDA Rules shall be applicable and the respondent employee shall be governed by the said provisions. Rule 34 permits the management to withhold the gratuity during the pendency of the disciplinary proceedings. Rule 34.2 permits the disciplinary proceedings to be continued and concluded even after the employee has attained the age of superannuation, provided the disciplinary proceedings are instituted while the employee was in service. It also further provides that such disciplinary proceedings shall be deemed to be the proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. Therefore, as such, on a fair reading of Rule 34.2 of the CDA Rules, an employee shall be deemed to be continued in service, after he attains the age of superannuation/retired, for the limited purpose of continuing and concluding the disciplinary proceedings which were instituted while the employee was in service. Therefore, at the conclusion of such disciplinary proceedings any of the penalty provided under Rule 27 of the CDA Rules can be imposed by the authority including the order of dismissal. If the submission on behalf of the employee that after the employee has attained the age of superannuation and/or he has retired from service, despite Rule 34.2, no order of penalty of dismissal can be passed is accepted, in that case, it will be frustrating permitting the authority to continue and conclude the disciplinary proceedings after retirement. If the order of dismissal cannot be passed after the employee has retired and/or has attained the age of superannuation in the disciplinary proceedings which were instituted while the employee was in service, in that case, there shall not be any fruitful purpose to continue and conclude the disciplinary proceedings in the same manner as if the employee had continued in service.

32. Section 4(1) used the expression "termination of employment after five years by way of superannuation, retirement or resignation or on his death or disablement due to accident or disease" that is in a normal course. It does not deal with a situation where departmental enquiry is instituted and continued and completed after the age of superannuation and termination of employment had not taken place on completion of the age of superannuation as there is a deemed continuation of the employment for the purpose of holding an inquiry and passing the appropriate punishment order after the conclusion of the departmental enquiry on the basis of

misconduct if any found established. Provisions of Section 4(1) do not impinge upon the continuation of inquiry. Section 4(6) prevails on it. The Payment of Gratuity Act, 1972, can govern the conditions concerning payment of gratuity. It cannot control and provide with respect to an employer's right to hold a departmental enquiry after retirement, and there is no provision prescribing what kind of punishment can be imposed in the departmental enquiry if it is continued after attaining the age of superannuation. The relevant rules would govern such matters. In case the Payment of Gratuity Act, 1972, is interpreted to interdict the departmental enquiry after the age of superannuation and to deal with the nature of punishment to be imposed, it would be taken as a case of overinclusion in the Act which deals exclusively with the payment of gratuity.

33. In view of the various decisions of this Court and considering the provisions in the Rules in question, it is apparent that the punishment which is prescribed under Rule 27 of the CDA Rules, minor as well as major, both can be imposed. Apart from that, recovery can also be made of the pecuniary loss caused as provided in Rule 34.3 of the CDA Rules, which takes care of the provision under sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972. The recovery is in addition to a punishment that can be imposed after attaining the age of superannuation. The legal fiction provided in Rules 34.2 of the CDA Rules of deemed continuation in service has to be given full effect.

37. Section 4(1) deals with normal superannuation and does not cover the cases where the departmental enquiry is pending, or dismissal had been ordered. It did not interdict the departmental enquiry if it was initiated while the employee was in service and continued after superannuation as if the employee continued in service. Section 4 of the Payment of Gratuity Act, 1972 contains no bar, and purposive construction has to be made of the provisions contained in Section 4(1). Section 4(6) provides where particular misconduct is found established, how gratuity to be dealt with, but provisions cause no fetter on the power of an employer to impose a punishment of dismissal. It makes no provision in particular with respect to the departmental enquiry but rather buttresses the power of an employer to forfeit gratuity wholly or partially or to recover loss provided in Section 4(6). Neither the provisions in Section 4(1) nor Section 4(6) of the Payment of Gratuity Act create embargo on the departmental enquiry and its continuance after superannuation. Thus, provisions of Rule 34.2 of the CDA Rules would prevail. Even the executive instruction can hold the field in the absence of statutory rules and are equally binding as laid down in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] , State of A.P. v. Lavu Narendranath [State of A.P. v. Lavu Narendranath, (1971) 1 SCC 607 : AIR 1971 SC 2560] , District Registrar, Palghat v. M.B. Koyakutty [District Registrar, Palghat v. M.B. Koyakutty, (1979) 2 SCC 150 : 1979

SCC (L&S) 126] and Union of India v. Tulsiram Patel [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 : AIR 1985 SC 1416] . This Court held that only when statutory provision is otherwise, executive instructions cannot prevail. In our opinion, no dint is caused by the Payment of Gratuity Act, 1972, and the efficacy of the Rules is not adversely affected on the proper interpretation of Sections 4(1) and 4(6) of the 1972 Act.

40. We find it difficult to agree with the said decision in Jaswant Singh Gill [Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584] as Rules hold the field and are not repugnant to provisions of the Payment of Gratuity Act, 1972. This Court held that Rules could not hold the field as they were not statutory; thus, the effect of the rule providing of deeming legal fiction as if he had continued in the service notwithstanding crossing the age of superannuation was not considered. Apart from that, the validity of Rules 34.2 or 34.3 could not have been decided as it was not in question in the said case. The Controlling Authority and the Appellate Authority ordered the payment of gratuity. The main ground employed was that in the order passed by the departmental authority, the quantum of damage or loss caused was not indicated, and it was not the case covered by Sections 4(6)(a) and 4(6)(b). A writ petition filed by the employer was dismissed. However, the intra-court appeal was allowed, and it was opined that the Controlling Authority could not have gone into the validity of the dismissal order and forfeiture of the gratuity since it was not an appellate authority of disciplinary authority imposing the punishment of dismissal. Thus, the jurisdictional scope in Jaswant Singh Gill [Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584] was limited.

41.5. No fetter is caused on the efficacy of the Rules by Sections 4(1) and 4(6) of the Payment of Gratuity Act, 1972. The Rules need not be statutory to have efficacy as they are not repugnant to the Payment of Gratuity Act, 1972. This Court did not consider the scope of provisions of the Gratuity Act and provisions of Rule 34.2, providing legal fiction of employee deemed to be in service even after superannuation.

41.6. The Controlling Authority had no jurisdiction to deal with Rules 34.2 and 34.3 or to pronounce upon validity thereof or of dismissal. Thus, the observations made, travelling beyond the scope of the proceedings, cannot be said to be binding and cannot constitute the ratio with respect to continuance of departmental enquiry after superannuation and what kind of punishment can be imposed by an employer. The jurisdiction of authority was only to consider payment of gratuity under Section 4(6) of the Payment of Gratuity Act, 1972.

77. Taking note of the exposition of law which has been noticed and of the scheme of the 1978 Rules, which indubitably has a binding force and are not a subject-matter under challenge and are neither in derogation nor in contravention to the scheme of the Payment of Gratuity Act, 1972. I have no hesitation in holding that the substantive penalties provided under the Schedule of penalties referred to under Rule 27 could be inflicted on a delinquent employee while he is in service but in case where the delinquent employee stood retired or superannuated from service pending disciplinary inquiry, at least either of the substantive penalties provided under Rule 27 are not available to the disciplinary authority to be inflicted with retrospective effect but at the same time punishment of forfeiture of gratuity if held guilty for misconduct or negligence to the extent damage or pecuniary loss has been caused to the employer can be inflicted upon the delinquent in terms of Rule 34.3 of the 1978 Rules read with sub-section (6) of Section 4 of the 1972 Act and in case the delinquent employee stands exonerated he became entitled for gratuity for the delay in payment in terms of Sections 7(3) and 7(3-A) of the 1972 Act and as a matter of caution, it should not be presupposed that where the disciplinary inquiry remain pending and could not be concluded while the delinquent employee was in service in due course of time, he shall be held guilty and punished under the scheme of the 1978 Rules."

8. Mr. Majumder learned senior counsel has submitted that the Supreme Court in the judgment quoted above, has overruled the earlier judgment of **Jaswant Singh Gill vs Bharat Cocking Coal Limited and Others (2007) 1 SCC 663**. however, the Single Bench, in the impugned judgment, has erroneously placed reliance on the said overruled proposition made therein. It is submitted that the CDA Rules of Mahanadi Coalfields Company are pari materia the Rule 30A of the MSTC CDA Rules.
9. The appellant submits, if the primacy of CDA Rules is protected by way of application of the same separately vis-à-vis the Payment of Gratuity Act, 1972; therefore, the circuitous invocation of jurisdiction by an authority under the Payment of Gratuity Act, 1972 which has had the effect of upsetting the disciplinary action, and consequently, the unchallenged CDA Rules, will be clearly

affront to judicial discipline. That, it is elementary that Rules not challenged and not set aside have to be observed in toto;

- 10.** Mr. Soumya Majumder submits that the order of the Appellate Authority and the judgment of the Hon'ble Single Bench are against the ratio decided in ***Mahanadi Coalfields Ltd. (supra)***. He says that both have proceeded on the basis of decision making process in the disciplinary proceeding. That, in the anvil of a claim for gratuity under the Payment of Gratuity Act, 1972, such an exercise has been disapproved by the said three Judges' Bench decision in ***Mahanadi Coalfields Ltd. (supra)***.
- 11.** The appellant's further case is that the respondent No. 1, at the time of initiation of disciplinary proceeding against him and his superannuation was posted at the highest office of the company as the Chairman and Managing Director, and he therefore cannot be treated as an 'employee', within the purview of the Act of 1972; that the provisions thereof shall not be applicable in case of the respondent No. 1.
- 12.** On the grounds afore stated, the appellant seeks an order of this Court, setting aside the impugned judgment of the Single Bench dated March 25, 2025 and also the order of the Appellate Authority dated April 30, 2019.
- 13.** The respondent No. 1 is represented by Mr. Biplab Ranjan Bose, learned advocate in this appeal. His first submission is that in accordance with the provisions under the Payment of Gratuity Act, 1972, the said respondent is duly entitled to be paid with the amount of gratuity, after his superannuation. That since the same has first been withheld and thereafter forfeited by the appellant/company only arbitrarily, the respondent had moved his claim before the competent authority under law. That, his claim of

gratuity amount with interest has been rightly allowed by the Appellate Authority and the Hon'ble Single Bench has been properly and only in due adherence to the settled legal principles, has declined to interfere into the order of the Appellate Authority, as mentioned above. As regards the impugned judgment dated March 25, 2025 and the order of the Appellate Authority dated April 30, 2019, Mr. Bose, learned advocate, has submitted that these may not be interfered into by this Court, since the same are in accordance with law and settled legal principles.

- 14.** Mr. Bose has submitted that the respondent having been in the highest office of the appellant/company at the time of his retirement had no statutory authority available for him to file an appeal against the order dated April 30, 2013, forfeiting the gratuity amount payable to him, as a measure of punishment. That, he only had the option to seek review of the said order, before the disciplinary authority itself which he has done, thought unsuccessfully.
- 15.** It has further been submitted on behalf of the said respondent that the appellant/company and the disciplinary authority have acted mala fide, arbitrarily, vindictively and in colorable exercise of power. That the disciplinary proceeding was initiated against the respondent by issuance of charge-sheet on April 29, 2009 that is, one day prior to the date of his retirement, although the imputations of charge relate to incidents occurred back in the year 2002.
- 16.** While elaborating the background facts Mr. Bose learned advocate has submitted that the imputations of charge against the respondent no. 1 relate to incidents which were referred to the CBI for investigation, The CBI concluded its investigation by submitting its report, inter alia, stating that that no criminality

could be established with regard to the involvement of the officers of the MSTC Ltd. in the alleged transaction. The CBI did not find any infraction of the internal rules and procedures of the company in the particular transaction and, as such, it was recommended that the company might take such action as it might deem fit in order to strengthen or improve the internal system of the company so that its funds are not put to jeopardy in future. Even after acting on the basis of such recommendations and sending dissenting notes to the officers involved, the company initiated disciplinary proceedings against four officers after a lapse of seven years from the date of the alleged transaction, which is only vindictive, arbitrary and unlawful he says.

- 17.** Mr. Bose has further stated that the employer has from time to time obtained vigilance clearance in respect of the services rendered by the respondent no. 1 and has acted upon the said reports by recommending his appointment to the post of CMD firstly on 03.11.1997 and thereafter recommending his extension in the said post for a second term on 03.11.2002 and for a third term on 03.11.2007. The Chief Vigilance Officer [in short 'CVO'] was sought to be made the sole witness by the company against the respondent no. 1. A person holding the post of CVO in the company could not have deposed against the respondent no. 1, because his office has previously issued vigilance clearance in respect of the services rendered by the respondent no. 1. Under such circumstances, the veracity of the evidence of the CVO in the disciplinary proceeding ought to have been questioned. However, there is no such observation in the final order of the disciplinary authority.
- 18.** The respondent says that the competent authority of the company by a letter dated 24.04.2009 (i.e. even prior to the date of issuance of charge sheet) instructed one of the concerned officers of the company to withhold the gratuity payable to the respondent no. 1.

This suggests that the disciplinary authority of the company was proceeding with a foreclosed mind and was pre-determined to impose punishment upon the respondent no. 1, thereby forfeiting the entire gratuity payable to him.

19. The other aspect highlighted by Mr. Bose learned advocate in the instant appeal is with respect as to how the respondent has been subjected to discrimination and unequal vindictive and arbitrary treatment by the appellant. He has submitted that where the imputations of charge against the respondent no. 1 is in respect of a loss suffered by the company in a business transaction carried out on the basis of the collective decision of the purchase committee, the disciplinary authority seeks to impose the highest penalty upon the respondent no. 1 without ascertaining the accountability of each of the officers involved in the said decision making process and without coming to any finding that major quantum of such loss was attributable to the conduct of the concerned respondent. It has been submitted that Section 4(6)(a) of the Payment of Gratuity Act, 1972 permits the employer to forfeit the gratuity payable to an employee whose services have been terminated, in the case of wilful omission or negligence on his part causing damage or loss to the employer to the extent of damage or loss caused by him. In the present case neither the respondent no. 1 was terminated from service, nor did the purported authority quantify the extent of damage or loss caused by the purported omission or negligence of the respondent no. 1. Therefore, the disciplinary authority cannot impose a punishment upon him to forfeit the entire amount of gratuity payable.

20. Mr. Bose has further submitted that in a case where the imputations of charge against the respondent no. 1 is in respect of a loss suffered by the company in a business transaction carried out on the basis of the collective decision of the purchase

committee, the disciplinary authority seeks to impose the highest penalty upon the respondent no. 1 without ascertaining the accountability of each of the officers involved in the said decision making process and without coming to any finding that major quantum of such loss was attributable to the conduct of the concerned respondent, which according to the respondent, is an arbitrary action, not tenable under the law.

- 21.** That, discrimination exercised against the appellant is further apparent in so far as disproportionate punishments were sought to be imposed on different employees sailing on the same boat without any finding in respect of the accountability of each of the employees involved in the same transaction. Furthermore, the company in its own wisdom had later on disbursed the amount of forfeited gratuity to two other employees pursuant to their representations, but has sought to decline the representation made by the respondent no. 1. It has been further submitted that forfeiture of gratuity payable to an employee is not permissible unless the disciplinary proceeding initiated against him culminates in termination from service. Section 4(6) of the Payment of Gratuity Act, 1972 contains a non-obstante clause, which permits the employer to forfeit the gratuity payable to an employee.
- 22.** Mr. Bose learned advocate has submitted that the sanctity of the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the order passed by the Appellate Authority under the said Act can only be examined on the pedestal of validity of the punishment order passed by the Disciplinary Authority for the reason that a statutory right emerging in favour of the respondent No. 1 from the Act of 1972 was sought to be negated by the said punishment order. Therefore, according to the respondent, while exercising its power of judicial review, the mala fide and arbitrariness of the punishment order can also be looked

into separately and not as intertwined with the order of the Controlling Authority as well as the Appellate Authority, as the order of punishment has been passed bereft of the authority of law. The order dated April 30, 2013 has been challenged being a nullity in the eye of law and is liable to be interfered with and/or set aside in any collateral proceeding.

23. Before discussing the disputed legal questions, the factual background of the case is required to be mentioned in a nut shell, which is as follows. The respondent No.1 has been employed as the Chairman-cum-Managing Director in the appellant company, being a Presidential nominee on the Board of Directors. He has been appointed as the CMD of the company firstly on November 3, 1997 and thereafter on extension for a second term on November 3, 2002 and for a third term on November 3, 2007.

24. The said respondent has been issued with three chargesheets dated April 20, 27 and 29, 2009, respectively. Imputation of the charges levelled against him was about loss of the appellant company of several crores of rupees, owing to importing scrap at excess value and also causing loss by retention of stock without appropriate compensation payable to the company by the customers. The incidents alleged pertains to the years 1995, 2002 and 2008. Issuance of charge sheet against the respondent No.1 has been at the fag end of his career when immediately after the same, he retired on April 30, 2009. The respondent No.1 has been exonerated of the charges in the chargesheet dated April 20, 2009 and one of the charges in the charge sheet dated April 29, 2009. For the rest of the charges he has been found guilty.

25. In the meantime, the Director of the appellant company writes to the General Manager (F & A) thereof, in letter dated April 24, 2009, informing that charge sheet has been served to the respondent

No.1 for initiation of the major penalty proceedings and the question of withholding payment of gratuity to him under Rule 30A(ii) of the CDA Rules 1980 remains under consideration of the Competent Authority. It has been requested thereby that pending final decision of the Competent Authority in the matter, gratuity may not be released to the respondent No.1.

26. The Disciplinary Authority has passed an order of punishment against the respondent No.1 on April 30, 2013. His review petition has been rejected by the same, vide the order dated March 20, 2014. The Disciplinary Authority has imposed penalty for recovery of Rs.10 Lacs payable to the respondent No.1, on account of gratuity, which was earlier withheld at the time of his retirement vide the order dated April 24, 2009. Therefore, the respondent's request for payment of gratuity vide letter dated April 3, 2017 has been declined by the appellant company in its letter dated July 5, 2017. This has prompted the respondent No.1 to file his claim for gratuity before the Competent Authority. The Controlling Authority has passed an order dated February 20, 2018, holding that the respondent no.1 was not entitled to payment of gratuity. The Appellate Authority in its order dated April 30, 2019, has reversed the said order and directed for payment of gratuity amount to the respondent with interest. The said order of the Appellate Authority has been upheld by the Hon'ble Single Judge in judgment impugned dated March 25, 2025.

27. Interplay of the provisions of the MSTC CDA Rules 1980 and the Payment of Gratuity Act 1972 is the issue before the Court, requiring adjudication thereon. Precisely, the issue is whether it was permissible for the appellant company under the Rules to first withhold and thereafter forfeit the gratuity amount, after superannuation of the respondent No.1, for recovery of the pecuniary loss caused to the appellant due to misconduct,

committed by him during service period, which is now proved in the departmental proceeding; that, if in that case, on the question of application of provisions of the Payment of Gratuity Act, 1972, in case of the respondent No. 1, Section 4(6) thereof should come into operation or not.

- 28.** MSTC CDA Rules, 1980 is worth mentioning. Rule 30 A thereof as provided for “Continuation of disciplinary proceedings after retirement”.

Rule 30 A (i) says that a disciplinary proceeding, instituted during service period of the employee shall after the final retirement of the employee be deemed to be proceeding and shall be continued and concluded by the authority, in the same manner as if the employee had continued in service.

Rule 30 A (ii) has provided the during pendency of the disciplinary proceeding, the disciplinary Authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company, in case the employee is found in a disciplinary proceeding or a judicial proceeding to have been guilty of misconduct or offences respectively as mentioned in Section 4 (6) of the Payment of Gratuity Act, 1972.

- 29.** The said has further provided that rights of an employee under the Payment of Gratuity Act, 1972, particularly Sections 7 (iii) and Section 7 (iii) (a) shall not be affected in the event of delayed payment, in case the employee is fully exonerated from the charges.
- 30.** Therefore, it is evident and clear that the MSTC CDA Rules, 1980 has made provisions and granted authority and discretion to the management to withhold gratuity and recover any pecuniary loss

of company from the same, if the loss is proved to be attributable to the negligence of an employee.

31. Mr. Majumdar has argued that, Rule 30 A (ii) of the MSTC CDA Rules, 1980 can be disjuncted into two parts; firstly, recovery of pecuniary loss from gratuity for the employee is guilty of misconduct, as enumerated in Section 4(6) of the Payment of Gratuity Act. And secondly, recovery of pecuniary loss for misconduct or negligence. He has submitted that, by implying the word 'or', two incidents or situations have been made separately applicable. That is, withholding or full or part forfeiture of gratuity is allowable under the said Rules, if the employee is found guilty of offences in judicial proceeding or guilty of misconduct in disciplinary proceeding as mentioned in Section 4 (6) of the Act of 1972. Similar action may be taken against him if the disciplinary Authority comes to a finding of him having caused pecuniary loss to the company by misconduct or negligence during the service. Therefore, the appellant has submitted that, it is not necessary each time that, for withholding or forfeiture of gratuity of an employee compliance of Section 4(6) of the Act of 1972 is imperative. It is their case that, bereft of fulfillment of conditions of the statute as above, even if the employer is satisfied about occurrence of pecuniary loss in respect of company properties by the act of negligence of the employee, the Rules 30 A of the CDA Rules, 1980 could have been made applicable.
32. In this regard, the law has now been settled by the Supreme Court vide the judgment of **Mahanadi Coalfields (Supra)** the ratio thereof is found to be applicable in the context of the factual background of the instant case though there remains a slight difference between the two. In **Mahanadi Coalfields (Supra)**, the Supreme Court was considering the issues at a point when after superannuation of the employee the disciplinary proceeding was

continuing and no final order or punishment was still imposed, unlike the instant case where the disciplinary authority after conclusion of the proceedings, has imposed punishment of forfeiture of the entire gratuity amount payable to the respondent no. 1. However, the Court finds this factual disparity is unlikely to make any substantial difference in case of application of the ratio of the said judgment in the instant case.

33. In *Mahanadi Coalfields (Supra)*, the Court was considering the questions:-

i) Whether it was permissible for the appellant employer under the Rules concerned to withhold gratuity after superannuation of the respondent employee on grounds of pendency of disciplinary proceedings against him; and

ii) Where departmental enquiry is instituted against the employee while in service and continued after his attaining the age of superannuation, whether punishment or dismissal can be imposed finding him guilty of misconduct.

34. The Court has held that the relevant Rules governing service conditions of an employee are the determining factor as to whether or not a disciplinary proceeding can be held against an employee who stood retired after reaching the age of superannuation and what kind of punishment may be imposed on him thereafter. Upon consideration of the provisions of CDA Rules applicable in case of the employee in the said case, the Supreme Court has held that the same permits the disciplinary proceedings to be continued and concluded in the same manner as if the employee had continued in service even after the employee has attained the age of superannuation, provided the disciplinary proceedings are instituted while the employee was in service. The Court has held that therefore, the at the conclusion of such disciplinary

proceedings in all the penalty provided in the Rules can be imposed by the Authority including the order of dismissal. The Court has further held once it is held that a major penalty which includes dismissal from service can be imposed, even after the employee has attained the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, sub-section 6 of Section 4 of the Payment of Gratuity Act can be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded.

- 35.** The Court has further held that the CDA Rules in accordance with the CDA Rules which provide for withholding the Payment of Gratuity during the pendency of disciplinary proceeding and recovery from gratuity, the whole or part of any pecuniary loss caused to the employer in case of misconduct as provided in Section 4 (6) A of the Payment of Gratuity Act, 1972, the gratuity of an employee can be wholly or partially forfeited as per Section 4 (6) B of the Act of 1972 in case he is found guilty and services are terminated for disorderly misconduct etc. The Court has further found that no fetter is caused on the efficacy of the CDA Rules by Sections 4 (1) and 4 (6) of the Payment of Gratuity Act, 1972 this finding of the Court duly fortifies submissions made on part of the appellant that the disjunctive word 'or' appearing in Rule 30 A (ii) operates in two different situations for the purpose of recovery as stated above. Therefore, in case of recovery being made by the company for any pecuniary loss proved against the employee stands the test of the CDA Rules.
- 36.** The disciplinary Authority imposed punishment upon the respondent No. 1 vide an order dated April 24, 2009. It is worth noting that, neither against the proceeding or the punishment order any challenge has ever been put forth by the respondent No. 1. Only vide letter dated April 03, 2017 he first has raised his claim for payment of gratuity before the appellant company.

During the years in between, the respondent No. 1 has not agitated the order of punishment against him. By this way, he has accepted the same and the order of punishment, which is found to be in terms of the CDA Rules, 1980, thus becomes final and binding. The Rules allows delayed payment of gratuity only in case of an exonerated employee.

37. Another point raised on behalf of the respondent No. 1 is with regard to that the right to gratuity is a property-like right of the respondent No. 1 to be fettered only in terms of Section 4 of the Payment of Gratuity Act, 1972 which has a precondition for application thereof requires mandatorily that the employee should have been terminated from service. In case of the present respondent No. 1, the appellant has never terminated his service. Hence, according to the said respondent his claim could not have been rejected due to application of Section 4 of the Payment of Gratuity Act, 1972. However, the Court finds, as discussed above, that Rule 30 A (ii) of the CDA Rules, 1980 operates in two situations, either if the employee is found guilty of misconduct as enumerated in the Payment of Gratuity Act, 1972 or if he is found guilty of misconduct of negligence causing pecuniary loss to the company, for recovery of that loss. These two situations being considered in exclusion of each other, availability of any one of those in case of the respondent No. 1 renders him liable under the provisions of the CDA Rules. It is a matter worth mentioning that the relevant rules have not been challenged in the instant appeal by the respondent No. 1.
38. In this view of the matter, this Court finds the judgment of the Hon'ble Single Judge dated March 25, 2025 to be not in conformity with the law settled as on date, with regard to the issues involved in the instant appeal. The Hon'ble Single Judge has relied on extensively to the Supreme Court verdict in **Jaswant Singh Gill's case (Supra)** which stands as an overruled judgment after the

Mahanadi Coalfields case (Supra). It is further noted that, while dealing with the issue if the respondent No. 1, writ petitioner before it would be entitled for gratuity under the 1972 Act or not, the learned Single Judge has traversed to consider the propriety of the disciplinary proceeding against the respondent No. 1, which was however not an issue before the said Court in the said writ petition. As a matter of fact, it is now very well-settled that in a similar case, the Court is not to embark upon judging the legality and propriety of the disciplinary proceeding or the factual finding arrived at in the same by the disciplinary Authority. The judgment of the Hon'ble Single Judge is in contravention of this settled principles of law accordingly in view of the discussion as made above, the said judgment cannot be found to be sustainable. Hence, the same is liable to be set aside.

39. For all the reasons as discussed above, the instant appeal No. FMA 959 of 2025 is allowed by setting aside the judgment of the Hon'ble Single Judge dated March 25, 2025 in WPA No. 15908 of 2019. The order of the appellate authority under the Payment of Gratuity Act dated April 30, 2019 is also set aside. This Court does not interfere into the order of the controlling authority dated February 20, 2018 and the same is upheld.

40. Appeal No. FMA 959 of 2025 is disposed of.

41. Urgent certified copies of the judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)