IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 9438 of 2025

St. Thomas High School
Vs
Basabi Chowdhury & Ors.

With

WPA 12300 of 2025
St. Thomas High School
Vs
Minakshey Roy & Ors.

For the Petitioner : Mr. Soumya Majumder, Ld. Sr. Adv.
Mr. S.K. Singh,
Mr. Ravi Kumar Dubey.

For the Respondent No.1 : Mr. Banibrata Roy,
Ms. Ishita Chakraborty.

Judgment reserved on : 13.07.2026

Judgment delivered on : 03.08.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the impugned orders dated 20.07.2023 and 21.02.2025 passed by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972.

2. The Controlling Authority held that on perusal of oral and written affirmation made by parties and documentary evidences associated with the parties, the undersigned holds the decision that the applicant, Smt. Basabi Chowdhury joined the O.P. company on **20.06.1990** and rendered continuous service under the O.P. company **till 28.02.2020**, which was the date of her superannuation and her last drawn wage was Rs. 49,939.00 (Basic-Rs. 36452 + D.A-Rs.13 187) per month. Thus the applicant is entitled to gratuity for rendering 30 years of continuous service and her entitled amount of gratuity as per Sec 4(2) of the said Act would be as follows Rs. 49,939/26 x 15 x 30 Rs. 8,64,329.00 (Rupees Eight Lakh Sixty Four Thousand Three Hundred and Twenty Nine) only.

As the aforesaid amount was not paid within stipulated time after superannuation on 28.02.2021, the applicant is further entitled to get simple interest @ 10% upon the said amount W.E.F. 01.04.2021 till the date of Order i.e. 20.07.2023 as per section 7(3) of the said Act.

3. The Appellate Authority vide its impugned order, during hearing of two appeals of both the parties i.e. the Appellant school and the Respondent on giving ample opportunity of being heard, and perusal of records, documents and evidence adduced by both parties and also from averments of both parties **held:-**

> *"Smt. Basabi Chowdhury was an employee of the Appellant St. Thomas' High School and served there as Assistant Teacher from 20.06.2090 to 28.02.2021 continuously without any break in service. So, the reckonable period of service rendered by Smt. Basabi Chowdhury is 30 years 8 months 8 days i.e. 31 years. Her last drawn gross salary/ total emoluments were Rs. 58,430.00. The appellant school did not contest these. Now only one point is to be decided In the instant appeal petition whether Smt. Basabi Chowdhury is entitled to get gratuity under Section 4(5) of the Payment of Gratuity Act, 1972 or not."*

4. **It is stated that:-**

> ***"Section 4(5) of the Payment of Gratuity Act, 1972*** *states inter alia –"Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."*

5. Moreover, the division bench of the Supreme Court of India, comprising of Hon'ble Mr. Justice Uday Umesh Lalit and Hon'ble Mr. Justice Sanjiv Khanna, vide judgment dated 29th April 2020 in the matter of ***BCH electric Limited vs Pradeep Mehra,*** dealt with applicability of Section 4(5) of the Payment of Gratuity Act, 1972, held that Section 4(5) of the Act will only apply if there are alternate options for the employee under the Act and under the terms of the contract with the employee and that the employee is entitled to receive higher available benefit amongst the two available options.

6. It is further stated by the petitioners that from the above judgment/observation of the Supreme Court of India, it is clear that Section 4(5) of the Payment of Gratuity Act, 1972 is applicable to the petitioners and they are entitled get gratuity as per this Section.

7. During hearing, the appellant **school** stated that they had **discontinued the scheme with effect from 01.04.2018** but they could not produce any authenticated document to substantiate their claim. The produced documents showing that the scheme is still existing. So, the Management's statement is not maintainable in this regard.

So, in partial modification of the order of the Learned Controlling Authority, Smt. Basabi Chowdhury is found eligible to get gratuity as per the provisions laid down in "St. Thomas' High School Staff Welfare Scheme".

8. The petitioner's case in short is that it received an application in form N filed by the Respondent no.1 being dated 14.01.2022, forwarded under Form "O" dated 26.04.2022, issued by the Controlling Authority, under the Payment of Gratuity Act, 1972, Howrah. The petitioner duly submitted its written statement against the same on 14.06.2022, inter alia, denying all the material allegations levelled against the petitioner. The Respondent no.1 filed rejoinder on 12.07.2022 against the Written Statement filed by the petitioner.

9. The parties duly produced witnesses who were duly examined and cross examined. During the course of its evidence, the petitioner duly produced the **minutes of meeting dated 09.09.2017, whereby it was, inter alia, decided by the Committee of the Society that the Group Gratuity Scheme with Life Insurance Corporation of India (LICI) should be discontinued with immediate effect.**

10. The petitioner further states that:-

i. It was apparent that **the respondent no.1 was never denied gratuity payable under the Payment of Gratuity Act, 1972;**

ii. The respondent no.1 has admitted that the statement made in paragraph 3 of her affidavit, i.e., "I say that after the acceptance of my resignation letter dated 17th December 2020 and releasing me from the duties with effect from 1st March 2021, the Opposite party remained absolutely silent about the disbursal of the benefits namely Provident fund amount, Gratuity and Leave Encashment amount, in my favour" are not true;

iii. Her years of service is 30 years as mentioned in Form – 1;

iv. Respondent no.1 admitted that the school authority did not tell her that they will not pay gratuity;

v. The respondent no.1 resigned while the pandemic situation was going on;

vi. The gross salary of the respondent no.1 are composed of basic salary, DA, Transport allowance, Medical allowance, HRA and ISC allowance;

vii. The last basic and DA of the applicant comes to Rs.49,939/-;

viii. The respondent no.1 claimed gratuity based on his gross salary i.e.' on Rs.58,430/-;

ix. The respondent no.1 was informed over telephone about the gratuity payment and the financial crisis of the school.

11. On completion of hearing the Controlling Authority passed its impugned order. In appeal the Appellate Authority also passed its impugned order which has been challenged in the present writ application. The Appellate Authority disposed of two appeals one by the petitioner and one by the respondent no.1 by the common impugned order.

12. It the case of the petitioner herein that the Appellate Authority **granted relief on basis of a non-existent scheme,** which was neither relied upon by the respondent no.1, nor the gratuity was prayed in terms thereof.

13. It is further stated that the Appellate Authority adopted a strange calculation process and made **calculation on basis of a scheme, which is not in existence, and no claim has been made by the respondent no.1 on the basis of the same.**

14. The Appellate Authority enhanced the amount of gratuity by erring in law and in fact in vaguely observing that the respondent no.1 has produced document to substantiate that the welfare scheme of the company is still in existence without even bothering to mention the alleged document.

15. It is further stated that the respondent authorities under the Act miserably failed to appreciate that the petitioner institute was not covered from the date when the Payment of Gratuity Act was enacted and enforced. Rather the educational institutes were brought under coverage of the Payment of Gratuity Act in the year 1997 by virtue of the notification dated 03.04.1997 with retrospective operation from 1997, and as such calculation being made from the year 1990 makes the entire process bad in law and not tenable in the eye of law.

16. It is further stated that by virtue of the notification dated 03.04.1997, the employees working in the Educational institute including the respondent no.1 are entitled to gratuity under the provisions of the Payment of Gratuity Act 1972 from the date i.e. 03.04.1997.

17. Hence, the prayer for setting aside of the impugned orders.

18. **The petitioner has also filed a supplementary affidavit annexing a copy of the scheme relating to gratuity rules. The petitioner has also annexed a copy of the resolution that is extract from minutes of the meeting dated 10th of August, 2007.**

19. **In the said minutes that, it was resolved as follows:-**

> *"the St. Thomas' High School, resolved, that a fund called St. Thomas' High School employees gratuity fund pursuant to a group gratuity scheme under a deed of trust and rules made thereunder a copy whereof authenticated by the chairman was placed at the meeting held and is hereby approved and that the following persons in perspective positional hierarchy of St. Thomas Educational Society and St. Thomas' High School be the first Trustees of the aforementioned fund."*

20. In course of hearing the learned counsels for the parties have filed affidavits and their respective written notes.

21. The respondent no.1/employee in her affidavit-in-opposition has stated that she had tendered her resignation letter on 17th December 2020 and she continued to serve the period of notice for the subsequent three months which was by conducting the classes online, but the Plaintiff had requested her that they wanted to release her from her duties with effect from 1st March 2021 instead of 17th March 2021, to which she had agreed and hence she was released from her duties with effect from 1st March 2021. But thereafter the Plaintiff remained absolutely silent about the disbursement of Gratuity in her favour.

22. The respondent no.1 further states that in terms of Sec 7(2) of Payment of Gratuity Act 1972 as, it is the duty of the Employer to calculate the gratuity amount payable to the Employee as and when gratuity becomes payable and give notice to the Employer and in terms of Section and as per Sec 7(3) of the said Act, payment has to be made within 30 days from the date it becomes payable but the petitioner has not shown the slightest willingness to pay the Gratuity amount to the Deponent.

23. It is further stated that the resolution passed in the purported meeting dated 09.09.2017 was never communicated to the employees of the school and even assuming such resolution has been passed, it is contrary to the Trust deed annexed by the petitioner in the supplementary affidavit to the instant writ application and the resolution dated 09.09.2017 cannot be given retrospective effect by the petitioner.

24. The petitioner made another application for seeking information under RTI Act, 2005 before the LIC, Kolkata Metropolitan Division Office-1, CRM Dept., Jeevan Prakash, 16, C.R.Avenue, Kolkata 700 072 and in their reply the LIC informed vide their Ref. No. KMDO-

1/CRM/RTI/APPLICATION dated 26.09.2024 that the Master Policy No. 212500 exists till date and no letter and documents regarding withdrawal of the Gratuity Scheme received by the LICI.

25. The document has been filed before this Court dated 06.04.2025 wherein it appears that the Secretary of the petitioner's school has informed the LICI as follows:-

> ***"As per decision in St. Thomas' Educational Society I am hereby directed to request you to surrender and or cancel policy numbher:212500 with immediate effect. Please e-mail us latest statement indicating current balance in our account."***

26. It is further stated by the respondent no.1 that the impugned order of the Appellate Authority is in accordance with law and requires no interference.

27. The respondent no.1 herein further submits that the Notification no. S-42013/1/95-SS(II) under Section 1(3)(C) of the Payment of Gratuity Act, 1972 was issued and enforced with effect from 3rd April, 1997 without retrospective effect. But subsequently it was amended by the Appropriate Authority with retrospective effect.

28. The said respondent relied upon the judgement of the Hon'ble Supreme Court in the case of ***Independent School' Federation of India -Vs- Union of India & another, in Civil Appeal No. 8162 of 2012, on 29.08.2022,*** wherein the Apex Court upheld the constitutional validity of the amendment to Section 2(e) of the Payment of Gratuity (Amendment) Act, 2009 and insertion of Section 13A, upholding the amendment with retrospective effect (from 3rd April, 1997) to make the benevolent provisions equally applicable to teachers and to bring equality and give fair treatment to the teachers.

29. In the case of ***Associated Management of Government Recognized English Medium School in Karnataka (Regd.) and Ors. -vs- Union of India & Ors.*****, Hon'ble High Court of Karnataka at Bangaluru in W.P.No.26263 of 2011 (L-PF), on 13.02.2024,** after referring to Paragraph 19,20,25 and 26 of the Civil Appeal No. 8162 of 2012 in the case of ***Independent School' Federation of India -vs- Union of India & another (Supra), on 29.08.2022,*** the Supreme Court held:-

> *"The constitutional validity of the amendment to Section 2(e) of PG (Amendment) Act, 2009, having been upheld by the Apex Court with retrospective effect, the petitioner - management to make payment to the employees/teachers as is available under the provisions of the Payment of Gratuity Act, 1972, in accordance with Law, within a period of four weeks from the date of receipt of this order."*

30. Finally the respondent no.1 submits that the St. Thomas High School Staff Welfare Scheme which was formulated in the year 1993 is in force till date. The document annexed by the petitioner is a Trust Deed drawn up in the year 2007, when admittedly the notification dated 3-4-1997 had been published and the document has been drawn up keeping in mind the said notification but no where in the Scheme or the Agreement, it is mentioned that the calculation of gratuity will be made with effect from 3-4-1997 and the rule followed by the petitioner in disbursing Gratuity to other Employees in the past should be applicable in the case of the Deponent and there is no scope for the petitioner to discriminate between the members of the Scheme.

31. The petitioner in the affidavit-in-reply to the said affidavit-in-opposition has reiterated their case as stated in the writ application.

32. The petitioner's further case in the affidavit-in-reply is that the authority concerned failed to appreciate that the petitioner institute was not covered from the date when the Payment of Gratuity Act was enacted and enforced rather the educational institutes were brought under coverage of the Payment of Gratuity Act in the year 1997 by virtue of the notification dated 03.04.1997 without any retrospective operation, and as such calculation being made from the year 1990 makes the entire process bad in law and not tenable in the eye of law.

33. It is that by virtue of the notification dated 03.04.1997, the employees working in the Educational institute including the respondent no.1 are entitled to gratuity under the provisions of the Payment of Gratuity Act, 1972 from the date i.e. 03.04.1997, without having any retrospective operation of the notification, so question of calculation from 1990 cannot and/or does not arise at all.

34. The petitioner on affidavit has denied that the resolution passed in the meeting dated 09.09.2017 was never communicated to the employees of the school. It is stated that the said resolution was duly put up on the notice board of the school for information of all.

35. It is further stated that the LIC authorities, in respect of query as to the current status of Master Policy being no. 212500, replied that the current status of policy is "**Paid Up**". A paid-up policy refers to a situation in which the policy holder no longer pays further premiums but retains certain reduced coverage or benefits. Thus, it is evident that the said policy is not continued and/or renewed by the petitioner school, as opposed to the claims made by the respondent no.1.

36. The petitioner denies that the respondent's gratuity has not been calculated.

37. It is further stated that the petitioner was brought under coverage of the Act in the year 1997 by virtue of the notification dated 03.04.1997 without any retrospective effect, and as such the calculations being made from 1990 is bad, illegal and unlawful. The amendment brought in the Act was misinterpreted and the applicability of the Act was imposed upon the petitioner from 1990 in a stereotype and mechanical manner.

38. It is the case of the petitioner that the respondent no.1 having refused to receive gratuity as per the Act is not entitled to get gratuity on and from 01.04.2021.

39. On filing written notes it is argued on behalf of the petitioner that the petitioner is a School i.e., an Educational Institution and as such was out of the purview of Payment of Gratuity Act till 01.04.1997. Educational establishments as a class were brought under the coverage of the Act from that day.

40. It is submitted that the respondent no. 1 joined the service on 20.06.1990 and resigned from the post on 07.12.2020, but was released by the petitioner on 01.03.2021. On release, the respondent no.1 she was offered gratuity in terms of the Act but she refused to accept the same claiming higher amount.

41. The petitioner initially had a scheme in the name of "St. Thomas High School Staff Welfare Scheme" for payment of higher amount of gratuity, **which was made effective from 01.11.2007.** The said scheme prescribed for payment of 20 days salary for each completed year of service subject to maximum of 24 months salary.

42. The aforesaid scheme had been withdrawn by the petitioner by a resolution dated 09.09.2017, w.e.f. 01.04.2018.

The reason for such withdrawal was financial stringency by reason of larger number of employees (teachers) coming within the fold of coverage under the Act of 1972; and thus increasing the gratuity liability of the establishments.

43. The Controlling Authority vide order dated 20.07.2023 disposed of the matter by directing the petitioner to make payment of gratuity for 30 years, amounting to Rs. 8,64,329/- plus simple interest @10%.

44. Both petitioner as well as respondent no. I preferred statutory appeal before the Appellate Authority. (Pg.76-114 of WPA). The School preferred appeal on the ground that the period of service prior to 01.04.97 ought not to be counted for the purpose of considering the length of service of the employee.

The appeal preferred by the employee was on the ground that the scheme of the school (which had been withdrawn) ought to be applied.

45. The Appellate Authority vide order dated 21.02.2025 modified the order of the Controlling Authority by keeping the period of applicability of Act from the date of appointment of the respondent no.1 as well as computing the gratuity in terms of the non existing scheme, thereby enhancing the rate of wage and calculating the same on basis of 20 days wages instead of 15 days wages.

46. 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 construed to their entitlement of gratuity from the date of their appointment prior to 03.04.1997.

Reliance is placed on ***(2024) 14 SCC 667 (Para 24) Independent Schools Federation of India-Vs-Union of India and Another.***

47. The appellate authority failed to appreciate that **on the date of superannuation of the employee, the scheme of the school had ceased to exist,** and a dead scheme could not have seen as revived by the Appellate Authority.

48. The petitioner also relies upon the judgement of the Supreme Court in the case of ***Independent Schools' Federation of India (supra).*** Paragraphs 11, 18, 19 and 24 are quoted below:-

> ***"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:***

*"**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."*

18. *The second ground is again devoid of any merit and substance. The legislature, vide the Amendment Act, 2009, has given retrospective effect to the amended provision of Section 2(e) and the newly inserted Section 13-A with effect from 3-4-1997, which is also the date of the notification issued by the Government under Section 1(3)(c), making the PAG Act applicable to the educational institutions with ten or more employees. The amendment enforces and gives effect to what was intended by the notification, but could not be achieved on account of the technical and legal defect. The lacuna, a distortion in the language that had the unwitting effect of leaving out teachers, has been rectified so as to achieve the object and purpose behind the issuance of the notification, making the PAG Act applicable to all educational institutions. The argument of the educational institutions that they have been taken by surprise is incorrect and unacceptable as the legislation had cured the inadvertent defect in a statute, as pointed out by this Court, through legislative repair. Private schools, when they claim a vested right arising from the reason of defect, should not succeed, for acceptance would be at the expense of teachers who were denied and deprived of the intended* *benefit. Marginal inconvenience in the form of financial outgo or difficulty is of little weight, when curing of an inadvertent defect is made retrospectively in greater public interest, which consideration will overrule the interest of one or some institutions. [See para 69 in Ujagar Prints (2) v. Union of India, (1989) 3 SCC 488 : (1989) 179 ITR 317 : (1989) 74 STC 401.] We find little merit in this argument also for the reason, that the observations of 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] in para 26 were sufficient to indicate that a legislation should intervene to grant the benefit of gratuity to teachers. The contention that the private schools were sure to succeed as to deny the teachers the benefit of Notification No. S-42013/1/95-SS.(II) dated 3-4-1997, is questionable and farfetched to be accepted. The challenge was contested and had remained pending before the High Courts and then this Court. The private schools had relied on some judgments of this Court, but these judgments have interpreted the word "employee" under other enactments. The law is subject to uncertainty ex-ante when two or more views are possible, but there may be certainty ex-post litigation in view of the law of precedents, which reduces uncertainty.*

19. *A secondary argument on behalf of the private educational institutions that they would be liable to pay gratuity for a period of service prior to 3-4-1997, and, therefore, the amendments are unconscionable and tyrannous, is equally fallacious for several reasons. A somewhat similar controversy had arisen in Goodyear (India) Ltd. v. K.G. Devessar [Goodyear (India) Ltd. v. K.G. Devessar, (1985) 4 SCC 45 : 1985 SCC (L&S) 936] , wherein the employee was in service from 24-1-1961 to 31-12-1974. On 16-9-1972, the date when the PAG Act came into effect, he was drawing a salary of more than Rs 1000 per month and hence, in terms of the then definition of the word "employee" under the PAG Act, which excluded those drawing salary of more than Rs 1000 per month, as per the employer management, the employee was not entitled to gratuity. Rejecting the contention, this Court held that the gratuity is payable to an employee as* *per the mandate of Section 4 ["**4. Payment of gratuity**.—(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years—(a) on his superannuation, or(b) on his retirement or resignation, or(c) on his death or disablement due to accident or disease:Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.(4)*

*For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.(6) Notwithstanding anything contained in sub-section (1),—(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;(b) the gratuity payable to an employee may be wholly or partially forfeited—(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."(7) ***] of the PAG Act, after he has rendered continuous service for not less than 5 years on his superannuation, retirement or resignation or on his death or disablement due to accident or disease, when such event has occurred post the enforcement of the PAG Act. The Court rejected the submission on behalf of the employer, management that an employee is entitled to gratuity only when, both on the date when the PAG Act came into force, and on the date when the employee retired, he/she was drawing wages not exceeding Rs 1000 per month. The Court observed that to approve the submission of the employer, management would render a whole class of workers, who were during the course of their employment drawing salary less than Rs 1000 per month but on the eve of their retirement were getting wages of Rs 1000 per month, without the benefit of gratuity. This could not have been the intention of Parliament. The reasonable way to construe Section 4 in the light of Section 2(e) of the PAG Act would be to hold that when the employees' services are terminated for any* *reason mentioned in Section 4 after coming into force of the PAG Act, the employee would be entitled to the payment of gratuity if he has rendered continuous service for not less than 5 years and for that period during which he satisfied the definition of "employee" under Section 2(e). It does not matter whether that period comes before the commencement of the PAG Act. Once that condition is satisfied, the next and only question would be regarding the amount of gratuity payable.*

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."

49. In her written notes the respondent no.1 has argued on the points as stated in the affidavit-in-opposition. The respondent no.1 has relied upon the following judgments:-

i) Beed District Central Co-operative......Vs. State of Maharashtra & Ors., AIRONLINE 2006 SC 238, on 29th September, 2006 (Paragraphs 4 and 5).

ii) Bch Electric Limited Vs. Pradeep Mehra, on 29th April, 2020. The said judgment has been relied upon by the Appellate Authority (Paragraphs 23, 24 & 25).

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

51. 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).

52. From the materials on record, it appears that the petitioner school's staff welfare scheme came into effect on 01.11.2007 by way of a deed of trust dated 20.11.2007.

53. The said scheme was withdrawn by a resolution dated 09.09.2017 of the petitioner's educational society, made effective 01.04.2018.

54. In between 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.

55. Section III, under "benefits" in the trust deed, a member was entitled to:-

> *"Upon retirement of a member on or after Normal Retirement date or upon death whilst in service after Normal Retirement Date or upon retirement owing to ill-health or incapacitation, the benefits payable will be equal to twenty days salary for each completed year of service subject to a maximum of 24 months' salary or such higher amount to be prescribed from time to time through amendment in the payment of Gratuity act, 1972."*

56. The respondent **Basabi Chowdhury** joined the institution on 20.06.1990 and was released from duties on **1st March, 2021.**

57. The respondent in WPA 12300 of 2025, **Minakshey Roy** joined the institution on 15.06.1987 and retired on **30.06.2020.**

58. The Controlling Authority vide an order dated 20.07.2023 disposed of the matter by directing the petitioner to make payment of gratuity for 30 years, amounting to Rs. 8,64,329/- plus simple interest @10%.

59. The Appellate Authority vide order dated 21.02.2025 modified the order of the Controlling Authority by keeping the period of applicability of Act from the date of appointment of the respondent no.1 as well as computing the gratuity in terms of the non existing scheme, thereby enhancing the rate of wage and calculating the same on basis of 20 days wages instead of 15 days wages (Pg. 128 to 130 of WPA).

60. The petitioner states 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 construed to their entitlement of gratuity from the date of their appointment even before 03.04.1997.

61. The appellate authorities order is challenged on the ground that on the date of superannuation of the employee, the scheme of the school had ceased to exist, and a dead scheme could not have seen revived by the Appellate Authority. Law is well settled that a decision has to be taken on the basis of the law existing as on the date decision.

62. The petitioner relies upon the judgment in:-

(i) The Supreme Court in ***Independent Schools' Federation of India (supra),*** held:-

> ***"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."

(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)*

"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."

***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."*

63. The respondents rely upon:-

a) Beed District Central Co-operative……Vs. State of Maharashtra & Ors.(Supra), the Court held:-

*"…………Applying the `Golden Rule of Interpretation of Statute', to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. **When better terms are offered, a workman takes it as a part of the package.** He may volunteer therefor, he may not. Sub-Section (5) of Section 4 of the 1972 Act provides for a right in favour of the workman. Such a right may be exercised by the workman concerned. He need not necessarily do it. **It is the right of individual workman and not all the workmen.** When the expression "terms" has been used, ordinarily it must mean "**all the terms of the contract".** While interpreting even a beneficent statute, like, Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute. **The provisions of the Act envisage for one scheme. It could not be segregated. Sub-Section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute**. While-reserving his right to opt for the*

beneficent provisions of the statute or the ***agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both.*** *If such an interpretation is given, the spirit of the Act shall be lost. Even in Shin Satellite (supra), this Court stated :*

"The proper test for deciding validity or otherwise of an agreement or order is "substantial severability" and not "textual divisibility". It is the duty of the court to sever and separate trivial or technical parts by retaining the main or substantial part and by giving effect to the atter if it is legal, lawful and otherwise enforceable. In such cases, the court must consider the question whether the parties could have agreed on the valid terms of the agreement had they known that the other terms were invalid or unlawful. If the answer to the said question is in the affirmative, the doctrine of severability would apply and the valid terms of the agreement could be enforced, ignoring invalid terms. To hold otherwise would be "to expose the covenanter to the almost inevitable risk of litigation which in nine cases out of ten he is very ill-able to afford, should he venture to act upon his own opinion as to how far the restraint upon him would be held by the court to be reasonable, while it may give the covenantee the full benefit of unreasonable provisions if the covenanter is unable to face litigation."

It is significant that in the event the amount of gratuity is calculated at the rate of 26 days' salary for every completed year of service, vis-a-vis, 15 days5 salary therefor, the tenure of an employee similarly situate will vary. Whereas in the former case an employee may receive the entire amount of gratuity while working for a lesser period, in the latter case an employee drawing the same salary will have to work for a longer period.

We are, therefore, of the opinion that the workman cannot opt for both the terms. Such a construction would defeat the purpose for which Sub-Section (5) of Section 4 has been enacted………….”

b) In ***Bch Electric Limited Vs. Pradeep Mehra (Supra),*** the Supreme Court held:-

*“**23. In Beed District Central Cooperative Bank Ltd. 4,** the gratuity scheme provided by the employer had better rate for computing gratuity but the ceiling limit was lower; whereas the entitlement under the provisions of the Act was at a lesser rate but the ceiling prescribed by the Act was higher than what was provided by the employer. **This Court laid down that an employee must take complete package as offered by the employer or that which is available under the Act and he could not have synthesis or combination of some of the terms under the scheme provided by the employer while retaining the other terms offered by the Act. That was a situation where two alternatives were available to the employee.** The High Court in the present case, however, distinguished said decision on the ground that the Scheme of the appellant “itself provided for the rates as per Section 4(2) of the Act but without upper limit under Section 4(3) of the Act”. In our view, the High Court failed to consider the effect and impact of Rule 6(b) of the scheme. The Single Judge did refer to said Rule 6(b) but found that the Rule was so broadly drafted that it could not be construed to contemplate the ceiling limit under Section 4(3) of the Act. In our view, the true import of Rule 6(b) which gets further emphasized by Civil Appeal No.2379 of 2020 (arising out of SLP (C) NO.5269 of 2019) BCH Electric Limited Vs. Pradeep Mehra stipulation in the Appendix to the Scheme was lost sight of by the authorities under the Act and by the High Court. If an employee is covered by the provisions of the Act, according to said Rule 6(b), the amount of gratuity has to be calculated in accordance with the provisions of the Act. The Appendix to the Scheme reiterates the same principle. Thus, in case of such an employee the gratuity has to be calculated in accordance with the provisions of the Act and while so calculating, not only the basic principle available in Section 4(2) as to how the gratuity is to be calculated must be applied but also the ceiling which is part of Section 4(3) must also apply. The rates and the modalities of calculations of gratuity as available under the Scheme of the Rules are to apply only to those employees who are not covered by the provisions of the Act.”*

c) In ***Jagat Taran Education Society vs State of U.P. and Ors., in Writ C No. 35662, 35624, 36878 of 2022, decided on 17 February, 2023,*** the Allahabad High Court held:-

> ***"8. The Controlling Authority vide his impugned order held that the teachers were "employees' as defined under Section 2(e) of the Act, 1972 and that the gratuity payable to the teachers had to be computed on their entire length of service, i.e., their service from the date of their initial appointment till the date of their retirement which included the extended period of service. ...."***

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. The help of the now **non-existent scheme** cannot be taken into consideration, for the period prior to 1997 as in view of ***Beed District (Supra)*** and ***Bch Electric (Supra),*** gratuity benefit could only be taken under any one of the provisions, being either the/a scheme or the PGA Act. In this case, the scheme having been withdrawn, only the PGA Act will apply.

d) 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.

e) The Jabalpur Bench of Madhya Pradesh in ***Shri Umesh Kumar Rahangdale & Ors. Vs M.P. State Cooperative Bank Ltd. & Ors., in Writ Petition No. 3459 of 2021, decided on 19th February, 2024,*** the Court held:-

> *"4. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of Punjab State Cooperative Agricultural Development Bank Limited Vs. Registrar, Cooperative Societies and others, Civil Appeals Nos.297-98 of 2022 (Arising out of SLP(C) No.1940-1941 of 2020 reported in (2022) 4 SCC 363 wherein the ratio of the judgment is culled out in para-47, Hon'ble Supreme Court has held that "the exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution."*
>
> *5. In this backdrop, Hon'ble Supreme Court has held that amendment will be prospective and not retrospective.*
>
> *13. Petitioners had opted for continuation of their payment of gratuity as per the Service Rules and now by the impugned order (Annexure-P/9), that benefit which had already accrued in favour of the petitioners is sought to be withdrawn. Law in this behalf is crystal clear as laid down in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others (supra), (1997) 6 SCC 623 and Bank of Baroda and another Vs. G. Palani and others, (2023) 5 SCC 612 wherein it is held that "once the benefit has accrued, it cannot be withdrawn retrospectively"."*

f) The Punjab State Cooperative Agricultural Development Bank Ltd. Vs The Registrar, Cooperative Societies & Ors., in Civil Appeal No(s). 297-298 of 2022, (arising out of SLP (Civil) No(s). 1940-1941 of 2020), decided on January 11, 2022, the Supreme Court held:-

> *"**47.** The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.*
> ***50.** For the sake of illustration, if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service or with the age of retirement which is being prescribed under the scheme of rules but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service such scheme of rules operates in futuro. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, if that is being taken away by the impugned scheme of rules retrospectively, that certainly will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Article 14 and 16 of the Constitution.*
> ***55.** In our view, nonavailability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socioeconomic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour."*

64. Thus in the present case:-

(i) The "St Thomas High School Staff Welfare Scheme" was made effective from 01.11.2007.

(ii) It was withdrawn w.e.f. 01.04.2018.

(iii) The PGA Act became applicable to the teachers from 03.04.1997 by way of amendment of the Act of 2009.

65. Thus in view of the observation in ***Beed District Central Co-operative……Vs. State of Maharashtra & Ors.(Supra),*** the respondents are entitled to only one of the options being under the PGA Act, as it cannot be segregated, more so when admittedly the (trust) scheme provided by the school was no more in existent on the respective dates, the respondents retired.

66. Herein **two alternatives were not available** to the employee, as the school scheme, however more beneficial, was **no more in existence** when the respondents retired, when only the PGA was applicable to them, since 1997. Thus the question of option, in the present, does not arise.

67. In ***Independent Schools' Federation of India (supra),*** the Court held:-

> ***"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."*

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

69. Thus considering the view of the Supreme Court in ***Independent Schools' Federation of India (Supra), Beed District Central Co-operative......Vs. State of Maharashtra & Ors.(Supra) and Bch Electric Limited Vs. Pradeep Mehra (Supra),*** the judgment of Madhya Pradesh High Court in ***Shri Umesh Kumar Rahangdale & Ors. (Supra)*** with all humility does not apply in the present case.

70. Accordingly the respondents:-

(a) **Basabi Chowdhury** is entitled to gratuity from 3rd April, 1997 to 1st March, 2021.

(b) **Minakshey Roy** is entitled to gratuity from 3rd April, 1997 to 30.06.2020 along with interest @ 6% till payment, as per the provisions of Payment of Gratuity Act, 1972 and it's amendments dated 2009.

71. The impugned orders dated 20.07.2023 and 01.04.2024 and 21.02.2025 and 21.03.2025 passed by the controlling authority and the appellate authority respectively are modified accordingly.

72. **WPA 9438 of 2025 with WPA 12300 of 2025 are disposed of.**

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

74. Interim order, if any, stands vacated.

75. 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.)