IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12746 OF 2024

Indian Institute of Technology,
Bombay ***...Petitioner***

V/s.

1) Tanaji Babaji Lad
2) The Appellate Authority under Payment of Gratuity Act, 1972 & the Deputy Chief Labour Commissioner (Central), Mumbai.
3) The Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Mumbai ***...Respondents***

WITH

WRIT PETITION NO.12770 OF 2024

Indian Institute of Technology,
Bombay ***...Petitioner***

V/s.

1)Dadarao Tanaji Ingle

2) The Appellate Authority under Payment of Gratuity Act, 1972 & the Deputy Chief Labour Commissioner (Central), Mumbai.

3) The Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Mumbai ***...Respondents***

WITH

WRIT PETITION NO.12776 OF 2024

Indian Institute of Technology,
Bombay ***...Petitioner***

V/s.

1)Raman Sukar Garase

2) The Appellate Authority under Payment of Gratuity Act, 1972 & the Deputy Chief Labour Commissioner (Central), Mumbai.

3) The Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Mumbai. ***...Respondents***

Mr. Arsh Mishra *for Petitioners.*

Ms Gayatri Singh, Senior Advocate with Ms Sudha Bhardwaj i/b. Ms Shreya Mohapatra for Respondents.

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 26 September 2024.

Judgment pronounced on : 4 October 2024.

Judgment:

1) **Rule**. *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petitions are taken up for final disposal.

2) Indian Institute of Technology, Bombay (**IIT Bombay**) has filed these Petitions challenging the orders passed by the

Assistant Labour Commissioner (Central), Mumbai acting as Controlling Authority under the Payment of Gratuity Act, 1972,(**PG Act)** allowing the applications filed by Respondent-employees and directing payment of gratuity to them. The orders passed by the Controlling Authority have been upheld by the Appellate Authority and the Deputy Chief Labour Commissioner(Central), Mumbai by orders dated 3 April 2024, which are also subject matter of challenge in the present Petitions.

3) Petitioner IIT-Bombay is a premier research and educational institute in technology and engineering disciplines and established under the provisions of the Institute of Technology Act, 1961. It is recognized as institute of eminence by the Government of India. Petitioner has employed regular staff for conducting various study and academic programs. Its campus is spread over land admeasuring more than 500 acres. Various projects undertaken by Petitioner for different durations are implemented by itself or through collaboration of private or government organisations. With a view to maintain the infrastructure spread over vast tract of land as well as for execution of various projects, Petitioner needs manpower of skilled, semi- skilled and unskilled in nature. For provision of such manpower, Petitioner engages various contractors for supply of required labour force.

4) According to Petitioner, the Respondents-employees are few such contract labourers provided by various contractors engaged by it for execution of various works at the campus as well as on projects undertaken by IIT, Bombay. It is contended that Respondents are employees of the concerned contractors and that there has been no employer-employee relationship between Petitioner

and Respondents at any point of time. It appears that the last engagement of the Respondents was through the contractor M/s. Moosa Services Company. Respondents filed applications in Form 'N' before the Controlling Authority complaining about the non-payment of gratuity by the Petitioner. The Controlling Authority issued notices to the Petitioner in such applications. Petitioner appeared before the Controlling Authority and filed its reply denying existence of any employer-employee relationship as well as responsibility to pay gratuity to the Respondents. Petitioner also relied upon Clause 9 of the relevant Work Order, under which the contractor was under obligation to follow all labour laws. Petitioner prayed for dismissal of the applications.

5) Evidence was led before the Controlling Authority. After considering the rival contentions, the Controlling Authority held that Petitioner was liable to pay gratuity to Respondents and accordingly passed order dated 31 January 2022 directing it to pay following amounts to Respondents towards gratuity as under:

(i)	Tanaji Babaji Lad	1,89,945/-
(ii)	Dadarao Tanaji Ingale	2,35,170/-
(iii)	Raman Sukar Garase	4,28,805/-

The Controlling Authority has further directed Petitioner to pay simple interest @10% per annum on the amounts indicated above w.e.f. the dates of retirement of each of the Respondents, till the date of actual payment.

6) Petitioner filed Appeals before the Appellate Authority challenging the orders passed by the Controlling Authority. It appears that while filing the Appeals, Petitioner deposited the principal amount of gratuity with the Appellate Authority. Appellate Authority has however, dismissed Petitioner's appeal by order dated 3 April 2024. Petitioner has accordingly filed the present Petitions challenging the orders passed by the Controlling and the Appellate Authority.

7) Mr. Arsh Misra, the learned counsel appearing for the Petitioner would submit that the Controlling and the Appellate Authorities have failed to appreciate the factum of non-existence of employer-employee relationship between Petitioner and Respondents. That Respondents are employees of the Contractor, who alone is responsible for payment of gratuity as per the terms and conditions of the work orders. That Petitioner did not control or supervise the Respondents. He would rely upon judgment of this Court in ***Cummins (I) Ltd. V/s. Industrial Cleaning Services and Others,***[1] in support of his contention that obligations under the Contract Labour (Regulation and Abolition) Act 1970 cannot be superimposed under the PG Act. That in ***Cummins (I) Ltd.*** this Court has held that in case of workmen of a contractor, the responsibility of payment of gratuity is of the contractor and not of the principal employer.

8) Mr. Misra would further submit that the applications filed by Respondents were otherwise bad for non-joinder of necessary parties as the concerned contractor was not joined as party Respondent to the applications. He would submit that the Competent

1. 2017(3)Mh.L.J. 294

Authority has erred in holding that the Director of IIT, Bombay, has ultimate control over the affairs of the establishment and that therefore Petitioner is the employer of Respondents. He would submit that the Appellate Authority erroneously held Petitioner to be employer of Respondents by misinterpreting Section 2(f)(i) of the PG Act. He would take me through the evidence on record to demonstrate admissions on behalf of the Respondents about the payment of salary to them by the contractor. That under the Work Order executed with contractors, the obligation for following of labour legislations was put squarely on the contractor and that therefore the contractor alone was responsible for payment of gratuity. Mr. Misra prayed for setting aside the order passed by the Controlling Authority and the Appellate Authority.

9) Petitions are opposed by Ms. Gayatri Singh, the learned Senior Advocate appearing for the Respondents-employees. She would submit that this is not a case involving the employment of Respondents through a singular contractor. That Respondents have been working with Petitioner for considerable period of time through several contractors. She would submit that since 1999 there have been different contractors, under whom Respondents have worked. That therefore, the ratio of judgment of this Court in ***Cummins (I) Ltd.*** (supra) would have no application to the facts of the present cases. She would take me through the definition of the term 'employer' and would submit that the Petitioner is found to be in ultimate control of affairs relating to the services of Respondents. That the definition of the term 'employer' under the PG Act is broad and wide and the judgment in ***Cummins (I) Ltd.*** (supra) is delivered taking into consideration the narrow definition of the term **'**employee' in the unamended Act. She would further submit that the Controlling

Authority can determine the issue of existence of employer-employee relationship as PG Act is a complete code in itself. In support, she would rely upon judgment of the Apex Court in ***State of Punjab Vs. Labour Court, Jullundur and Ors.,***[2] in support of her contention that Controlling Authority can decide the issue of existence of employer-employee relationship, which is not binding outside the provisions of the PG Act. Ms Singh would rely upon judgment of Delhi High Court in ***Martin Burn, LTd. Vs. Moorjani (T.G.) and Others*** [3]

10) Ms. Singh would take me through one of the Work Orders issued in favour of M/s. Moosa Services Company, which was for tenure of only one year and that there was no condition imposed on the contractor for payment of gratuity. She would submit that if Respondents are made to run behind the contractors, they will have to file multiple claims against several contractors though they have rendered continuous services with IIT, Bombay, even after termination of contracts of such contractors. That Respondents cannot be punished for non-impleadment of contractors as specific application was filed for providing list of contractors and IIT, Bombay failed to provide such list. She would take me through evidence on record in support of her contention that the officials of IIT, Bombay, In-charge Junior Engineer at Central and Estate office used to give instructions for performance of work. That specific evidence was led about the change of employer during the course of service of Respondents. Ms. Singh would therefore submit that the Controlling Authority and Appellate Authority have rightly inferred that Petitioner is the real employer having complete control over the affairs of Respondents and

2. 1979 AIR 1981
3. 1973 II L.L.N. 447.

therefore Petitioner is rightly held liable for payment of gratuity to Respondents.

11) Ms. Singh would further submit that out of three Respondents, Dadarao Ingle and Tanaji Lad have already withdrawn the principal amount of gratuity from the Appellate Authority. That the third Respondent –Raman Garase unfortunately committed suicide on account of non-availability of funds to take care of medical expenditure, as he was suffering from paralysis. That his widow is in dire need of funds and that therefore she should be allowed to withdraw the amount deposited with the Appellate Authority. She would submit that since the amount of gratuity is already received by two Respondents, nothing survives in the Petitions. She would pray for dismissal of the Petitions.

12) Rival contentions of the parties now fall for my consideration.

13) There is no dispute to the position that Respondents are the contract employees of the Petitioner-IIT, Bombay. It is sought to be contended on behalf of the Respondents that Shri Raman Garase and Dadarao Ingle were initially engaged directly by the IIT, Bombay and were latter converted through a contractor. In the light of admitted position of the last engagements of Respondents being through contractor-M/s. Moosa Services Company at the time of their retirement, it is not necessary to delve deeper into the aspect as to the exact authority who appointed the Respondents initially. Though, Respondents were lastly engaged by Contractor, M/s. Moosa Services Company at the time of their retirements, the Controlling and

Appellate Authority have held Petitioner-IIT, Bombay liable for payment of gratuity to them.

14) It would be necessary to consider the nature of services rendered by Respondents. Brief details of their services, as indicated in the chart submitted by Ms. Singh, are as under:

	Name	Date of appointment	Initial Appointing Authority	Years of service	Date of retirement	Amount Awarded towards gratuity	Amount withdrawn
1	Raman Sukar Garase	1981	IIT Bombay	39	December 2019	4,28,805/-	-
2	Dadarao Tanaji Ingle	January 1994	IIT Bombay	26	December 2019	2,35,170/-	2,35,170/-
3	Tanaji Babaji Lad	1999	Contractor	20 Yrs 6 mths	December 2019	1,85,945/-	1,85,945/-

Thus, one of Respondents Raman Garase worked for over 39 long years in IIT, Bombay, initially as contract worker of IIT and latter through contractors. The other two Respondents have also rendered substantial years of service of 26 and 20 years respectively. Ms. Singh has also placed on record list of various contractors, through whom services are rendered by Respondents since the year 1999. The details of such contractors are as under:-

Contractors Name	**Tenure**
Moosa Services Co.	Julu-2013-Dece 2019 (continues till today)
Goodluck Multiservices and Hospitality Pvt. LTd.	Jan 2011-June 2013
Moosa Services Co.	April 2008-December 2010
All services Under One Roof	January 2006- March 2008
A-1 Enterprises	September 2002-December 2005

Shri- Krupa Services	August 2001-August 2002
All Services Under One Roof	1999 (may be from before)- July 2001

15) In evidence also, Respondents gave names of various contractors through whom they have rendered services. Thus, engagement of Respondents through multiple contractors is not under dispute in the present case. Respondents do not desire to establish employer-employee relationship by contending that contract was sham or bogus nor they claim the benefit of permanency in services of Petitioner-IIT, Bombay. Their claim is for payment of gratuity. Their last contractor has not paid gratuity. What must be appreciated in the present case is that Respondents have not travelled with their contractors to different organisations during the tenure of their long services. On the contrary, they have continued with IIT, Bombay for considerable period of time even though contractors kept on changing. Since there are multiple contractors and since services of Respondents are not terminated after end of contract, no occasion aroses for them to claim gratuity from various contemporaneous contractors. After the retirement in December -2019, if Respondents were to raise a demand for payment of gratuity from the last contractor-M/s. Moosa Services Company, in respect of entire services rendered by them, the request would have been rejected as the said contractor has no liability towards Respondents in respect of period when it did not have a valid contract. Therefore, even if Respondents were to file claims before the Controlling Authority against contractors for payment of gratuity, the gratuity would have been sanctioned only in respect of the last tenure of services with the concerned contractor. This would have led to loss of gratuity in respect of past services rendered under various contractors.

16) Under the PG Act, the term ‘employee’ is defined under Section 2(e) as under:-

> "2(e) employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;.

Section 2(f) defines the word ‘employer’ as under:-

> 2(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop –
>
> (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,
> (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive office of the local authority,
> (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

17) The Controlling and Appellate Authorities are swayed by definition of the term ‘employer’ for holding Petitioner –IIT, Bombay

as principal employer in respect of the Respondents. Thus, any person, who is employed for service for the performance of specified type of work in an establishment is covered by definition of the term 'employee'. The term 'employer' under Section 2(f) includes *inter alia* the authority, which has the ultimate control over the affairs of the establishment. In ordinary course, Respondents could have been held to be the employees of the contractor since their salaries are paid by the contractors. However, the present case involves a unique situation where the contractors cannot be held as employers of Respondents for limited purpose for determining their entitlement for gratuity.

18) Before proceeding further, it would be necessary to consider the issue as to whether the Controlling Authority can exercise jurisdiction under Section 7 of the PG Act for direction to pay gratuity when the establishment denies employer-employee relationship. In ***Martin Burn Ltd.***(supra) the Division Bench of Delhi High Court has held that since existence of employer-employee relationship is jurisdictional condition, the Controlling Authority cannot enquire into the said issue. The Division Bench in paragraph 2 held as under:-

> 2. …
> The jurisdiction of the Controlling Authority to determine the amount of gratuity **depends on the pre-existence of the relationship of employer and employee between the petitioner and the Respondents 2 and 3. These jurisdictional conditions cannot be finally determined by the Controlling Authority. But this only means that the conclusion which the Controlling Authority may arrive at on this issue is impeachable by the aggrieved party in a civil court. (Magiti Sasamal V. Pandab Bissoi(1962) 3 S.C.R. 673), . This does not mean, however, that the Controlling Authority cannot at all inquire into this issue or that the petitioner can disable the Controlling Authority from making an inquiry by merely denying that the Respondents 2 and 3 are its employees. On the contrary, the Legislature has intended that initially the Controlling Authority may find out whether the relationship of employer and employee exists. If he finds that it does not exist, then he would drop the proceedings.** If he finds that it exists, he

> would continue the proceedings to determine the amount of gratuity. This is subject to the right of the aggrieved party to go to the civil court for a final determination of this issue which goes to the jurisdiction of the Controlling Authority. The various administrative authorities and tribunals established by the Legislature and falling within the first class of tribunals referred to in Queen v. Special Commissioners of Income-tax [(1888)21 Q.B.D 313] (vide supra), function in this way. They make a **preliminary determination of the existence of the conditions on which their jurisdiction depends. They are not barred from doing so. They do not have to wait for the decision of a civil Court before undertaking any inquiry. This would defeat the object of the statutes under which they function and make them a dead letter.** For instance, under the Delhi Rent Control Act, 1958, the jurisdiction of the Controller to pass an order for eviction or to fix the standard rent depends on the pre-existence of the relationship of landlord and tenant between the parties. This does not mean that the Controller has to wait for a decision of the civil court as to the existence of such a relationship. A mere denial by the tenant of the existence of such relationship does not disable the Controller from holding the inquiry under that Act. (0m Prakash Gupta v. Rattan Singh,[(1964) 1 S.C.R. 259]). The same principle was applied to the proceedings before the Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956 by a Division Bench of this Court in C. R. Abrol v. Administrator under the Slums Act etc. (I.L.R. (1970) I Delhi 768 at 775. Similarly, under the Employees Provident Fund Act, 1952, the payment of contribution by the employer to the provident fund depends on the satisfaction of the jurisdictional condition that the factory of the employer is covered by the said Act. A mere denial by the employer as to the coverage of his factory under the Act does not, however, mean that the Central Provident Fund Commissioner is disabled from holding the inquiry. On the contrary, he must hold an inquiry though his finding regarding the coverage of the factory may be challengeable in a civil court. (Wire Netting Stores v. Regional Provident Fund Commissioner,(1970 38 F.J.R. 277 at 286].
>
> *(emphasis added)*

19) Thus, as held by the Division Bench of the Delhi High Court, Controlling Authority can go into the issue of relationship of employer-employee between the parties, which declaration can be challenged before Civil Court as determination is preliminary in nature. Similar view appears to have been adopted by Single Judge of this Court, Justice Gupte in ***Cummins (I) Ltd.*** (supra). In paragraph 8 of the judgment, this Court held that '*existence of a relationship of employer and employee is a matter to be determined by the Authority itself under the Gratuity Act*'.

20) In my view, therefore, while deciding the application of payment of gratuity, if the Controlling Authority encounters a dispute about existence of employer-employee relationship, it can conduct preliminary determination of the issue, though such determination may not bind outside the scope of PG Act. Therefore, the Controlling Authority and the Appellate Authority have rightly gone into the issue of existence of employer-employee relationship for deciding Respondent's entitlement for gratuity.

21) Mr. Misra heavily relied upon judgment of this Court in ***Cummins (I) Ltd.*** (supra), as according to him, the judgment squarely covers the issue involved in the present Petitions. In ***Cummins (I) Ltd.,*** Petitioner therein had originally engaged with one entity as contractor for providing cleaning services at its factory. The contract was terminated on 31 December 1984 and the cleaning services were continued by another contractor. The new contractor agreed to continue employment of all 74 employees, who were earlier employed by previous contractor. An agreement was executed between the two contractors to govern the terms and conditions of take over. Under the agreement, the new contractor undertook liability to pay gratuity to the employees. Petitioner sought to terminate the contract with the new contractor and the Union filed complaint of unfair labour practice, both against new contractor as well as the Company for payment of bonus and ex-gratia. The Industrial Court held that there was no employer-employee relationship between the workmen and the company, which order was confirmed by the Apex Court. The Union thereafter raised a demand for absorption in regular employment of the Company and for payment of equal wages. Memorandum of Settlement was reached between the Company and

the union, under which company agreed to take 73 workmen of the new contractor in its employment. Accordingly, the workmen tendered resignation to new contractor and joined the company's service. After tendering of resignations workmen submitted applications in Form I to the new contractor for payment of gratuity. Since the gratuity was not paid, workmen filed application in Form N before the Controlling Authority for payment of gratuity. In that application, the new contractor made application for its impleadment, which was allowed. The Controlling Authority thereafter determined the amount of gratuity payable to the workmen and directed the company to pay the same. This direction of the Labour Court was challenged before this Court in ***Cummins (I) Ltd.*** This Court held in paragraphs 5 and 6 as under:

> 5. The chief controversy between the parties concerns the liability of the Petitioner as the principal employer to pay gratuity to the employees of Respondent No.1, a contractor engaged by the Petitioner. What is at issue at the very outset is the jurisdiction of the Authority to determine the liability of the Petitioner as a principal employer. The submission of Mr.Pai is that the aspects with which the Authority is concerned in an application under Section 7(4) are (a) the admissibility of the claim of an employee and (b) the determination of the amount of gratuity. Learned Counsel submits that all that the Authority has to decide is whether the applicant is a person entitled to receive gratuity and what is the amount of such gratuity payable to him. The Authority, it is submitted, cannot embark upon an inquiry as to who is the employer whether it is the contractor who engages the workman or the principal employer who engages the contractor. Besides, it is submitted, the issue as to whether there is an employer employee relationship between the Petitioner and the concerned workmen has attained finality and is no more res integra before the Authority. Mr.Pai also submits that the application under Form 'I' for payment of gratuity was made by individual workmen to Respondent No.1. Individual applications in Form 'N' before the Authority were also filed by workmen against Respondent No.1. The Petitioner was joined to the applications at the behest of Respondent No.1. It is submitted that the Petitioner had opposed its impleadment. It is submitted that at the time of arguing the impleadment, Respondent No.1 had admitted that it was the immediate employer of the concerned workmen**.** What was alleged by it was that the gratuity amount due to the workmen was to be reimbursed by the Petitioner under the contract between the parties. It is submitted that the impleadment order made it clear that the liability to pay gratuity could be fastened upon the Petitioner only if Respondent No.1 succeeds in proving that the

> Petitioner had undertaken to reimburse the gratuity. In other words, the application for impleadment was not made or allowed on the basis that the Petitioner was the principal employer and liable to pay gratuity to the workmen but that under the contract between the parties, the Petitioner was liable to reimburse the amount of gratuity paid by Respondent No.1 to its workmen.
>
> 6. In the first place, it is rather odd that in an application for payment of gratuity under Section 7 of the Gratuity Act against the applicant's admitted employer, i.e. Respondent No.1, the Authority should have impleaded the Petitioner expressly on the footing that the liability of payment of gratuity can be fastened upon the Petitioner only on the basis of a contractual commitment as between the admitted employer and the Petitioner, and then decided on the Petitioner's liability as the 'employer' itself. That would be impermissible. Considering, however, the extensive arguments advanced at the Bar on the jurisdiction of the Authority to determine the identity of the employer and merits of such determination, I propose to consider the matter fully and on a wider footing.

22) Mr. Misra has relied upon ***Cummins (I) Ltd.*** (supra) in support of his contention that liability to pay gratuity would be on the contractor as held by this Court in ***Cummins (I) Ltd.*** In my view, however, the fact situation in the case before this Court in ***Cummins (I) Ltd.*** was entirely different where there was a specific agreement. The concerned workers had essentially filed the application for payment of gratuity against the contractor and the company was brought into picture by impleading it at the behest of application made by the contractor. Otherwise, the workers had never raised any claim for payment of gratuity by the company and the claim was made essentially against the contractor. The contractor however, sought to enforce the alleged agreement between it and the company and sought to shift the liability to pay gratuity on the company. This Court did not approve impleadment of the company to application filed against contractor for payment of gratuity. This Court thereafter went into the broader issue by ignoring the impropriety in impleadment of the company to the application before the Controlling Authority and held in paragraph 9 as under:-

> 9. Coming now to the merits, the person liable to pay gratuity must be an "employer" as defined in Clause (f) of Section 2. Just as the employee is a person employed for wages in, or in connection with the work of, an establishment, to which the Gratuity Act applies, the employer must be a person, who had the ultimate control over the affairs of the establishment. It is not disputed that the employees, with whom we are concerned in the present case, were employed in the firm of Respondent No.1. It is this firm, which is the establishment for the purposes of gratuity so far as these employees are concerned. It is Respondent No.1 or its partners who had the ultimate control over the affairs of this establishment and it is Respondent No.1 who alone could be termed as an employer in relation to the establishment. Respondent no.1 may be carrying on business at its own business premises or at the factory of the Petitioner. That is quite besides the point. The authority in its impugned order seems to have proceeded on the footing that in the present case, all Applicants were working inside the factory premises of the Petitioner and never on the premises of Respondent No.1 and that the employer in respect of these workmen was accordingly the Petitioner who had ultimate control over the affairs of the factory. This reasoning is essentially fallacious in that it disregards that as far as the Applicants are concerned, the establishment in which the Applicants were employed was the establishment of Respondent No.1, though they may be physically working at another establishment as part of their duties with the former establishment. The mere fact that they were designated to work inside the factory premises of the Petitioner does not make the factory premises an "establishment" as far as these employees are concerned. The Authority was not right in holding that for deciding the liability of gratuity under the provisions of the Gratuity Act, it was immaterial as to who was the immediate employer of the Applicants or that the employer in respect of any person, who works inside factory premises, is the occupier of the factory premises.

23) In the facts of that case, this Court held that the contractor had ultimate control over the affairs of the establishment and therefore the contractor alone could be termed as 'employer' in relation to the establishment. This Court further held that contractor carried on business at his own premises or at the factory of the company. In ***Cummins (I) Ltd.*** this Court thereafter went into the issue as to whether definition of the term 'principal employer' under the Contract Labour Court Act could be imported in Section 2(f) of the PG Act. Relying on judgment of the Apex Court in ***Ahmedabad Primary Teachers' Association vs. Administrative Officer,***[4] this Court held that the concept of 'principal employer' under the Contract

4. (2004) 1 Supreme Court Cases 755,

Act cannot be introduced in the definition of the term 'employer' under the PG Act. This Court held in paragraphs 10 and 11 as under:-

> 10 Mr.Naik for Respondent No.1 suggests that though Respondent No.1 was the contractor who had engaged the Applicants as employees, it is the Petitioner who was the principal employer. He refers in this connection to the definition of 'principal employer' under the Contract Labour Act. There is no reason to import the definition of 'principal employer' in Clause (f) of Section 2 of the Gratuity Act. The Supreme Court in the case of Ahmedabad Primary Teachers' Association vs. Administrative Officer considered the definition of "employee" in clause (e) of Section 2 of the Gratuity Act. Definitions of the word "employee" in diverse labour enactments including the Employees' Provident Funds Act, 1952 were cited before the Court and the Court was urged to construe the word "employee" in clause (e) of Section 2 of the Gratuity Act widely and include teachers within it. The Supreme Court rejected the wide construction suggested in that case, holding that the "legislature was alive to various kinds of definitions of the word "employee" contained in various previous labour enactments when the Act (i.e. the Gratuity Act) was passed in 1972. If it intended to cover in the definition of 'employee' all kinds of employees, it could have as well used such wide language as is contained in section 2(1) of the Employees' Provident Funds Act, 1952 which defines 'employee to mean 'any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment .....Nonuse of such wide language in definition of 'employee' in section 2(e) of the Act of l972 reinforces our conclusion that teachers are clearly not covered in the definition." Even here, the legislature whilst defining the word "employer" in the Gratuity act, had before it various templates of definitions of "employer" in different labour law legislations including the concept of "principal employer" under the Contract Labour Act. It advisedly did not use these templates or introduce the concept of "principal employer" in the definition of "employer" in clause (e) of Section 2. The Contract Labour Act envisages 'contract labour' as a workman employed in connection with the work of an establishment where he is hired in or in connection with the workh the work of an establishment where he is hired in or in connection with the work of an establishment by or through a contractor. The Contract Labour Act defines both "contractor" and "principal employer" in relation to the "establishment". An 'establishment' implies any place where any industry, trade, business, manufacture or occupation is carried on. A 'contractor' in relation to such establishment is a person who undertakes to produce a given result for the establishment through contract labour or who supplies contract labour for any work of the establishment, whereas a 'principal employer' in relation to the establishment is a person responsible for the supervision and control of the establishment. There is no reason why this dichotomy between a contractor and a principal employer should be imported into the definition of "employer" under the Gratuity Act. The Gratuity Act simply refers to an "establishment" and an "employee" as a person employed in or in connection with such establishment and an "employer" as a person having the ultimate control over the affairs of the

establishment. The 'establishment' contemplated under these definitions is any business establishment which employs the employee. That establishment is obviously the firm of Respondent No.1 here, and not the factory of the Petitioner.

11 Mr.Naik relies on Section 21 of the Contract Labour Act and submits that in any event, the responsibility to pay 'gratuity' as part of 'wages' is on the 'principal employer' as defined under the Contract Labour Act and the Petitioner as such principal employer is bound to pay the gratuity to the concerned workmen even if they be employed by the contractor. In other words, the argument is that, if not under the Gratuity Act, the liability to gratuity can certainly be fastened unto the Petitioner under the Contract Labour Act. That may be so. Still, this liability does not arise under the Gratuity Act and there is certainly no jurisdiction or authority in the Controlling Authority to determine whether any liability could be fastened unto the Petitioner under Section 21 of the Contract Labour Act as the principal employer under that Act. That would require the Authority to embark on an inquiry as to whether Respondent No.1 is a 'contractor' and the Petitioner is a 'principal employer' within the meaning of that Act and whether gratuity as 'wages' is payable and not paid by Respondent No.1 within the meaning of that Act. These inquiries are foreign to the Controlling Authority operating under the Gratuity Act and determining matters specified in Clause (a) of subsection (4) of Section 7 thereof. As I have noted above, the matters to be determined by the Authority are simply the following : (i) Whether the applicant is an “employee” as defined in clause (e) of Section 2 of the Gratuity Act, (ii) Whether the opponent is an “employer” as defined in clause (f) of Section 2, (iii) Whether the conditions for entitlement to receive gratuity under sub section (1) of Section 4 of the Gratuity Act are satisfied, and (iv) What is the quantum of such gratuity and interest thereon, if any, having regard to sub sections (3), (4) and (5) of Section 7 of the Gratuity Act. Nonpayment of wages, or of gratuity as part of wages, may invite an action under Section 15 of the Payment of Wages Act read with Section 21 of the Contract Labour Act or alternatively, under Section 33C of the Industrial Disputes Act. In either case, the Authority under the Gratuity Act is not the forum.

24) This Court summed up the conclusions in paragraph 14 as under:

14. … The infirmity in the impugned order found by me, however, is not about any finding of fact but a matter of law and jurisdiction where the Authority under the Gratuity Act has determined liability arising under another legislation (namely, the Contract Labour Act) and which is required to be enforced by recourse to the provisions of yet another legislation (namely, the Payment of Wages Act or the Industrial Disputes Act).

25) It appears that Special Leave Petition filed by Contractor challenging the judgment in ***Cummins (I) Ltd.*** (supra) has been dismissed by the Supreme Court by order dated 27 February 2017.

26) In my view the judgment rendered by this Court in ***Cummins (I) Ltd.*** (supra) is in unique facts and circumstances of that case and the same cannot be applied to the present case. In ***Cummin (I) Ltd.*** this Court held that the contractor therein had ultimate control over the affairs of its establishment and that the contractor could have posted the workers either at its own premises or in the factory of the company. Whether this could have been done by the contractor in the present case? The answer to my mind appears to be in negative. As observed above, the Respondents have continued to work at IIT, Bombay for several years despite change of multiple contractors. There is evidence on record to indicate that supervision and control over activities of Respondents used to be exercised by engineers and officials of IIT, Bombay. In fact, two out of the three Respondents were initially engaged by IIT, Bombay and subsequently converted as contract workers. Only their salaries were routed through the contractors. None of the contractors paid salaries to Respondents never made them work for a single day outside IIT, Bombay. It is therefore, difficult to hold that Respondents were working on the establishment of the contractors and not on the establishment of the IIT, Bombay. If, Petitioners were to work at various places where contracts are awarded to contractors, their services would be on the establishment of such contractors. In the present case, despite being total absence of any contract between contractors for continuation of services of same workers, Respondents have continued to serve at the campus of the IIT. Their services are thus rendered on the establishment of IIT, Bombay and not on the

establishment of the new contractors. In my view, therefore, the Controlling and Appellate Authorities have rightly held Petitioner-IIT, Bombay to be the employer liable to pay gratuity to the Respondents.

27) Reliance by Ms. Singh on judgment of Apex Court in ***State of Punjab Vs. Labour Court, Jullundur*** *(*Supra) also appears to be apposite. The Apex Court has held that PG Act is a complete Code in itself and therefore the entire enquiry about entitlement of a worker for gratuity must be conducted within the framework of PG Act. Worker is therefore not expected to first seek a declaration of employer-employee relationship by filing a reference under the ID Act and thereafter file application for payment of gratuity. Therefore, even preliminary enquiry about establishment of employer-employee relationship can be conducted by Controlling Authority within the framework of PG Act.

28) As observed above, if Respondents are made to run behind multiple contractors for securing gratuity from each of them, the same would not only result in multiplicity of proceedings but would also frustrate the very purpose of creating swift and speedy remedy before the Controlling Authority for payment of gratuity. Respondents have continuously worked at the campus of IIT, Bombay through multiple contractors. The common thread runs through different terms of service rendered by them is their connection with IIT, Bombay. It is difficult to hold that the terms and conditions of services of Respondents were determined by succeeding contractors and that IIT Bombay had absolutely no control or supervision over them in 39 years long services rendered by one of the Respondents. This clearly appears to be an arrangement of merely routing of salaries through the contractor.

29) Perusal of the work order issued to last contractor M/s. Moosa Services Company also indicates that there is no specific condition for payment of gratuity by the said contractor. However, so far as the provident fund contribution and ESI contribution is concerned, there are specific conditions in the work order for deposit of such contribution by the contractor. In this connection it would be apposite to reproduce clauses 14 and 28 of the work order dated 1 July 2019 issued to M/s. Moosa Services Company.

> 14) Contractor must deposit the ESIC and provident fund contribution to the concern office for those workers engaged in IIT Campus and the statement must submit along with each R.A. bill to the Estate Office. He should get Sub Code No. for IIT Bombay and the P.F. amount of workers should not be deposited in contractors common account.
>
> 15) Provident Fund contribution shall be given as per circular of commissioner of provident fund, Maharashtra & Goa as notified time to time.
>
> xxx
>
> 28) Details of P.F. contribution and ESIC contribution paid by the contractor with respect to the labourers are required to be submitted before the release of second R.A. bills and if contractor fails to do so, recovery of the PF and ESIC contribution will be done from their R.A. Bill amount and will be credited to the PF and ESIC accounts directly by the Institute.

30) Mr. Misra has relied upon Clauses 9 and 33 of the work order in support of his contention that the contractor was supposed to observe all the labour laws, which would also include the PG Act. Clauses 9 and 33 of the work order read thus:-

> 9)The Contractor has to follow all labour laws. Government of India & Govt. of Maharashtra LAbour Acts which are in force at present and introduced from time to tiem, such as Acts, enforced by Regional Provident Fund Commissioner, Directorate of E.S.I.C. and Enforcemnet

> Officer of Control Labour Act, and all necessary arrangement for labour security insurance will have to be made by the contractor at his own cost including paying minimum wages declared by competent authority from time to time.
>
> 33.All rules and regulations under the Labour Contract Act, 1970 and minimum wages act are required to be followed scrupulously while supplying labourers to the institute.

31) When IIT, Bombay is specific in directing deposit of ESIC and PF contribution, it is incomprehensible as to why liability for payment of gratuity was not specifically incorporated in the Work Order. It appears that in the description of work appended to the contract, there is a condition for continuous deployment of workmen for maximum 89 days excluding Sundays and holidays against various requisition issued by the Estate Office. Far from engaging different workers for maximum tenure of 89 days, the Respondents continued to work with IIT, Bombay notwithstanding replacement of various contractors. In fact, if the tests laid down by the Apex Court in ***Balwant Rai Saluja & Anr Etc.Etc vs Air India Ltd.& Ors***[5]**,** Respondent would be in a position to satisfy most of the said tests for the purpose of establishment of employer –employee relationship even under the ID Act. Since the enquiry into existence of employer-employee relationship in the context of PG Act is summary or preliminary in nature, which does not bind parties outside the framework of PG Act, it is not necessary to satisfy all the tests laid down *in* ***Balwant Rai Saluja*** (supra). Be that as it may. It is not necessary to delve deeper into the terms and conditions of Work Order to which Respondents are not parties. The present case involves peculiar facts and circumstances, under which some workmen have continued with IIT-Bombay through multiple contractors. I am therefore, convinced that for the limited purpose of payment of gratuity, Respondents are required to be treated as employee of IIT-

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Bombay. No interference is therefore warranted in the impugned orders.

32) After considering the overall conspectus of the case, I am of the view that no palpable error is committed by the Controlling Authority and the Appellate Authority in passing the impugned orders. Two out of the three Respondents are already paid principal amount of gratuity. Only interest remains to be paid to them. So far as the third employee is concerned, he has unfortunately passed away and his legal heirs are awaiting the payment of gratuity in respect of the deceased workmen.

33) Writ Petitions are accordingly rejected. Legal heirs of Respondent –Raman Garase are permitted to withdraw the entire deposited amount of gratuity before the Appellate Court. Petitioner shall pay the amount of interest awarded by the Controlling Authority to the Respondents/ their heirs within a period of two months.

34) With the above directions, Writ Petitions are dismissed. Rule is discharged. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]