IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

MONDAY, THE 02ND DAY OF NOVEMBER 2020 / 11TH KARTHIKA, 1942

WP(C).No.2254 OF 2020(F)

PETITIONER:

IREL (INDIA) LIMITED
(FORMERLY INDIAN RARE EARTHS LIMITED), RARE EARTHS DIVISION, UDYOGAMANDAL, ERNAKULAM DISTRICT,
REPRESENTED BY ITS HEAD, RED MR. A. VEERAMANI.

BY ADVS.
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM

RESPONDENTS:

1 P. N. RAGHAVA PANICKER
CHINCHU NIVAS, KARRIKAD P. O., CHERTHALA - 688 527,
ALAPPUZHA.

2 THE CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT, (ASSISTANT LABOUR COMMISSIONER (CENTRAL)), KAKKANAD - 682 030,
ERNAKULAM.

3 THE APPELLATE AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT, (DY. CHIEF LABOUR COMMISSIONER (CENTRAL)), KAKKANAD - 682 030,
ERNAKULAM.

R1 BY ADV. SRI.C.S.AJITH PRAKASH
R1 BY ADV. SRI.T.K.DEVARAJAN
R1 BY ADV. SMT.T.N.SREEKALA
R1 BY ADV. SRI.PAUL C THOMAS
R1 BY ADV. SRI.M.B.SOORI
R1 BY ADV. SHRI.BABU M.
R1 BY ADV. SMT.ANCY THANKACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-10-2020, THE COURT ON 02-11-2020 DELIVERED THE FOLLOWING:

A.M.BADAR, J.

W.P.(C) No.2254 OF 2020

Dated this the 2nd day of November, 2020.

J U D G M E N T

By this writ petition, the petitioner, IREL (India) Limited/employer is challenging Ext.P6 order passed by the Controlling Authority on 13.06.2018, under the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Gratuity Act') determining the balance amount of gratuity payable to the 1st respondent herein as Rs.41,459/- which has been confirmed by the Appellate Authority under the said Act vide order dated 15.10.2019 (Ext.P8) in an appeal under Section 7(7) of the said Act filed by the petitioner-employer.

2. The facts in brief are thus:

a) The 1st respondent herein has undisputedly retired as Helper on attaining the age of superannuation on 30.04.2015 from the service of the petitioner. On or about 21.05.2015, he preferred an application under Section 7(4) of the Gratuity Act with an averment that he was in the employment of the petitioner from 16.07.1991 to 30.04.2015 and has rendered

continuous service of 23 years 8 months and 15 days. In the said application, the 1st respondent contended that the petitioner is liable to pay balance amount of gratuity of Rs.41,293/- to him. The said application is at Ext.P1.

b) The petitioner herein filed a counter statement before the Controlling Authority admitting the fact that the 1st respondent retired on attaining the age of superannuation on 30.04.2015. However, the petitioner herein set up a case that vide letter of offer dated 28.06.1991 (Ext.P3), the 1st respondent joined the petitioner as Helper Trainee with effect from 16.07.1991 and he was Trainee Helper for a period of two years i.e. upto 15.07.1993 on consolidated monthly stipend of Rs.800/- during that training period. He was not entitled to any other benefit. It is further averred in the counter statement (Ext.P2) by the petitioner that on successful completion of the training, the 1st respondent was offered regular employment and was appointed as Helper on 16.07.1993. This training period of two years cannot be counted as regular employment and the trainee cannot be treated as regular employee. In the said counter statement, the petitioner admitted that from the date of his engagement as Helper Trainee, the 1st respondent

was kept in different sections of the plant of the petitioner so as to enable the 1st respondent to become conversant with the general working of the plant where processing of the Monazite was being carried out for extraction of Rare Earths Chloride, Thorium Hydrozide and Trisodium Phosphate. Being a trainee who is akin to the apprentice, the 1st respondent was excluded from the term 'employee' as defined by Section 2(e) of the Gratuity Act and therefore, the 1st respondent cannot claim gratuity for this training period of two years. With this averment, the petitioner herein prayed for rejecting the application under Section 7(4) of the Gratuity Act for balance gratuity, filed by the 1st respondent.

(c) The 1st respondent then tendered proof affidavit (Ext.R1(a)) and has stated in his duly sworn testimony that as per the understanding between the management and the union, the training was in paper only but the employment was that of permanent nature with all benefits equivalent to other employees. The 1st respondent also stated in the proof affidavit that he was posted in shift duties independently and in combination of other trainees/employees as per the requirements in the plants. It was further stated in the affidavit

that he was granted all benefits (apart from consolidated monthly pay) like shift allowance, holiday wages, free milk coupon, medical reimbursement, employer's contribution to the Provident Fund etc. whichever were granted to other permanent employees of the employer. As per the version of the 1st respondent, there was no change in the nature of employment before or after 16.07.1993 and he continued to be in the same shift allocation in the plant until he was redeployed to the security section in the year 2004. There was an intention on the part of his employer not to impart training in any specified trade and the 1st respondent was not intended to receive any occupational training from the employer during the so called two years training period.

d) As against this version of the 1st respondent before the Controlling Authority, the petitioner herein (original opposite party) placed on record of the Controlling Authority the duly sworn testimony of one Sri.G.Balasubramanian, Deputy General Manager, by way of proof affidavit (Ext.R1(h)). The deponent in the said proof affidavit had stated that the offer letter categorically mentions that the 1st respondent will be on training for a period of two years and as a trainee, he was entitled only

for consolidated stipend. The statutory contribution towards Provident Fund was being made by the employer as trainees were included in the definition of 'employee' as per the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. So far as other facilities are concerned, the deponent stated that those were extended as a good gesture and on humanitarian grounds. It was denied that the 1st respondent was paid shift allowance, holiday wages etc. during the training period. The witness for the petitioner in his proof affidavit had further accepted the fact that the 1st respondent was kept in different sections in the plant so as to enable him to become conversant with the general working of the plant and stated that the 1st respondent joined services only on 16.07.1993 after completion of his training period from 16.07.1991 to 16.07.1993. Therefore, according to the employer, there is no basis to the claim for gratuity for two years training period.

e) After hearing the parties, the Controlling Authority under the Gratuity Act, vide order dated 13.06.2018 (Ext.P6), was pleased to allow the gratuity application by directing the petitioner herein to pay the difference of gratuity amounting to

Rs.41,459/- to the 1st respondent. After going through the evidence adduced by the parties so also the documentary evidence placed on record, the Controlling Authority has been pleased to give the following finding.

> *"On scrutiny of Ext.P2, it is observed that the Applicant was appointed as Trainee Helper and clause No.2 of the Ext.P2 speaks about placing him in the grade after successful completion of the training period and performance, which indicates that this engagement was with an intention to regularize him against the sanctioned post. During the cross-examination, Opposite Party's witness has accepted that Ext.P2 is posting order against a permanent vacancy of helper. The Applicant along with nine others was appointed vide Ext.P3 and on scrutiny of this document, it is seen that this was in continuation to the training period. Section 2(e) of the Payment of Gratuity Act, 1972 defines an "employee" which excludes only apprentice. The Act says "employee means any person (other than an apprentice)...". The trainee comes under the scope of any person and therefore is an employee. Further in the instant case, although the Applicant has joined as trainee, he was a regular employee at the time of superannuation. The argument of the Opposite Party that the Applicant cannot claim gratuity for the training period is not found justified.*

f) It is further held by the Controlling Authority that the opposite party (petitioner herein) has not produced any

document to prove that the initial appointment of the applicant (1st respondent herein) was as apprentice under the Apprentices Act, 1961 and therefore, he is entitled to get gratuity for the entire period of service including the training period of two years. The Controlling Authority was pleased to hold that the 1st respondent herein is an employee and the stipend earned by him is an emolument amounting to wages.

g) Feeling aggrieved by the order of the Controlling Authority, the petitioner herein preferred an appeal under Section 7(7) of the Gratuity Act and the Appellate Authority, vide impugned order dated 15.10.2019 (Ext.P8), was pleased to dismiss that appeal by confirming the order passed by the Controlling Authority. The Appellate Authority, relying on the judgment of the Hon'ble Supreme Court in the matter of ***Employees State Insurance Corporation and another*** *vs.* **Tata Engineering & Co., Locomotive Co. Ltd and another (AIR 1976 SC 66)** has held that apprentice who are undergoing apprenticeship training as trade apprentice with specific contract involving Director under the Apprentices Act are not entitled for gratuity under the Gratuity Act. It was further held that the 1st respondent herein is not a Trade Apprentice

Trainee and therefore, there is no exemption to the employer from the liability under the Gratuity Act so far as the 1st respondent is concerned. The Appellate Authority further held that during the training period, the 1st respondent was assigned to various sections and was doing shift duty like other regular employees. The employer had not maintained any separate training Department and the employee was not assigned to any Training Manager.

3. Heard the learned Senior Counsel appearing for the petitioner/employer at sufficient length of time. He argued that the order of the Controlling Authority is without any finding about the issue involved and the 1st respondent has not pleaded and proved that he was not an apprentice/trainee. It is further argued that the trainee or learner is in fact an apprentice and therefore, not an employee as defined by Section 2(e) of the Gratuity Act. The 1st respondent is therefore not an employee nor he was employed on wages so far as his training period ranging from 16.07.1991 to 15.07.1993 is concerned. Therefore, according to the submission of the learned Senior Counsel, the 1st respondent is not entitled for gratuity for this period. There is no finding that this period of training was a

camouflage for avoiding payment of gratuity. To buttress this contention, learned Senior Counsel relied on the following judgments:

i) Regional Provident Fund Commissioner vs. Lord Krishna Bank Ltd (1983 KLT 647).

ii) Regional Provident Fund Commissioner, Mangalore vs. Central Arecanut & Coca Marketing and Processing Coop. Ltd., Mangalore ((2006) 2 SCC 381).

iii) The Employees' State Insurance Corporation and Another vs. The Tata Engineering & Co. Locomotive Co. Ltd & another (AIR 1976 SC 66)

iv) General Manager, Yellamma Cotton, Woollen & Silk Mills, Tolahunse, Davanagere vs. Regional Labour Commissioner (Central) and Appellate Authority under Payment of Gratuity Act, 1972, Bangalore & Others.(2006 LLR 1029)

4. As against this, learned counsel appearing for the 1st respondent strenuously urged that the order at Ext.P3 shows that the post of Helper was available with the employer and the 1st respondent was appointed in the said post though the order at Ext.P3 is stating that he was appointed as a Trainee Helper. By taking me through the provisions of Section 2(aa) of the Apprentices Act, 1961, learned counsel for the 1st respondent argued that there is no contract of apprenticeship as per the

provisions of this Act and therefore the 1st respondent cannot be treated as apprentice. He cannot be excluded from the beneficial provisions of the Gratuity Act for the so called training period. The employee is therefore entitled for the gratuity during this period as the Gratuity Act is a welfare legislation. Learned counsel for the 1st respondent relied on the following judgments:

i) *Chairman-Cum-Managing Director, Orissa Mining Corporation Ltd vs. Controlling Authority, Payment of Gratuity Act and Others (Manu/OR/0090/1994)*

ii) *Arunachalam S. vs. M.D. Southern Structurals, Madras and others (2001-II-LLJ 1457)*

iii) *Essen Deinki vs. Rajiv Kumar (2002 KHC 1391)*

5. I have considered the submissions advanced and perused the materials placed before me. Section 2(e) of the Gratuity Act defines the term 'employee' and any person who is employed for wages other than an apprentice is covered by the said definition provided the establishment in which such person is working is covered by the provisions of the said Act.

Section 2(e) of the Act reads thus:

> "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, oil field, 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".

6. The employee on termination of his employment from the specified establishment becomes entitled for payment of gratuity from his employer provided he has rendered continuous service of not less than five years. The gratuity is payable on superannuation or retirement as well as on resignation of the employee. It is also payable on death or disablement of the employee due to accident or disease. Case of the petitioner herein/employer is to the effect that the 1st respondent/employee is not entitled for payment of gratuity for the initial period of two years when he was appointed as a trainee which is equivalent to his appointment as apprentice.

7. The finding of fact has been recorded by both the authorities below to the effect that the 1st respondent was not an apprentice even though his engagement from 16.07.1991 to 15.07.1993 under order dated 28.06.1991 (Ext.P3) was shown as Trainee Helper. The Controlling Authority, after considering the materials placed on record including the evidence adduced by the parties, concluded that a trainee is different from an apprentice and the 1st respondent herein was an employee and stipend earned by him during the training period of 16.07.1991 to 15.07.1993 was nothing but wages. The Appellate Authority confirmed this finding and at the cost of repetition, it needs to be put on record that the Appellate Authority, after going through the evidence, recorded a finding of fact that the 1st respondent was not an apprentice as during training period he was assigned to various sections and was doing shift work like other regular employees. The fact that the employer had not maintained any separate training department and the 1st respondent was not assigned to any Training Manager weighed in favour of the employee and that is how the Appellate Authority dismissed the appeal by confirming the finding of fact recorded by the Controlling

Authority. The scope of jurisdiction of this Court while disturbing the finding of fact is very limited. This Court cannot interfere in any finding of fact unless and until the same is totally perverse. The evidence cannot be reviewed, re-appreciated or re-weighed in the writ jurisdiction by this Court for substituting its own decision. It can only be done when it is pointed out that the decision of the subordinate Tribunal is based on no evidence. The decision of the Tribunal can be interfered only when the same is based on some inadmissible evidence or when the Tribunal excludes some admissible evidence for arriving at a conclusion. Similarly, the decision of the Tribunal can be interfered with when the same suffers from grave error of law. Learned counsel for the 1st respondent rightly relied on the judgment of the Hon'ble Apex Court in the matter of **Essen Deinki** (supra) on this proposition regarding jurisdiction of this Court in dealing with the decision of the Appellate Authority under the Gratuity Act.

8. Let us therefore examine whether the finding of the authorities below is based on legally admissible evidence or whether the same is perverse. The evidence adduced by the

1st respondent/ employee is clear and categorically stating that no training was imparted to him during the so called training period in any specified trade nor there was such intention on the part of the employer while engaging him as Helper Trainee. The employee has stated in his affidavit that he was posted in shift duties and that too independently with combination of other trainees/employees as per the requirements of the plant. The employee further stated in his evidence adduced on affidavit before the Controlling Authority that there was no change in the nature of his employment after completion of the training period i.e after 16.07.1993. His evidence shows that before completion of training and after completion of training, his nature of work was same and he continued to work in same shift allocation. Evidence adduced on affidavit by the opposite party is conspicuously silent on the aspect as to how the employee was being trained during his training period as per the order at Ext.P3. Who was imparting training to the employee is not stated in the evidence on affidavit by the employer. The employer had admitted in the proof affidavit that the employee was deputed in different sections of the plant during the training period. But the employer has

chosen to keep silence on the issue as to how he was being imparted training in those sections. This implies that even during the so called training period from 16.07.1991 to 15.07.1993, the 1st respondent/ employee was in fact doing regular work of the employer. It was attempted to demonstrate that the 1st respondent/ employee has failed to plead the fact that the nomenclature of the post on which he was first appointed by the employer is wrong or erroneous. This submission is not carrying any weight because the gratuity application at Ext.P1 filed by the 1st respondent categorically mentions the fact that he was in employment of the petitioner herein from 16.07.1991 to 30.04.2015 meaning thereby that the 1st respondent has categorically pleaded that he was a regular employee and not a trainee. Similar is his proof affidavit. These facts placed on record coupled with the silence on the part of the employer regarding the mode and manner of imparting training, if any, to the 1st respondent during the initial period of his two years employment does not allow him to hold that the finding of fact arrived at by the Controlling Authority and affirmed by the Appellate Authority that the 1st respondent was not an

apprentice for the period from 16.07.1991 to 15.07.1993 is without any evidence and warrants interference. Thus I hold that the authorities below have rightly concluded that the 1st respondent was not an apprentice during the period of his initial engagement with the petitioner from 16.07.1991.

9. In the matter of **Regional Provident Fund Commissioner** vs. **Lord Krishna Bank Ltd.** (supra), the Hon'ble Division Bench of this Court was dealing with a petition relating to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Paragraphs 5 and 6 of that judgment reads thus:

> "5. An apprentice is engaged mainly for learning work. It may or may not be that in the process he works in connection with the work of the person who had engaged him as an apprentice. He may contribute his labour during training towards the work of the person who engages him for training. This is incidental. The main or predominant objective is that he should learn his work during the period of training.
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> 6. Learned counsel refers to the case of a trainee who may not be an apprentice. According to him where training is not the main objective but that is only incidental it would be employment as for instance, an Articled Clerk in

> an Auditor's firm. We do not want to pronounce on whether that case would be a case of training or apprenticeship. But we can certainly envisage a case where though apparently a person is styled as a trainee or apparently he is under training the predominant object of his training is that he should contribute to the work for which he is engaged. In other words, there may be instances where despite the fact that a person is undergoing training he also is an employee. But such a case will have to be pleaded and more than that established".

10. It is thus clear that the main or predominant object of training is that the person should learn his work during the period of training when such person is engaged as apprentice. The Hon'ble Division Bench has also noted that there can be instances that despite a person undergoing training, he can be an employee. The case in hand is such a case where in the guise of appointing him as a Trainee Helper, the 1st respondent was in fact employed to do all work like regular employee of the petitioner in the so called period of training during which he was not imparted any training by the employer. The 1st respondent was in fact supplementing the work of regular staff as seen from his evidence and therefore, was an employee even during his so called training period. In the

matter of **Tata Engineering & Co., Locomotive Co. Ltd** (supra), the Hon'ble Supreme Court was dealing with the matter under the Employees' State Insurance Act, 1948. When that matter was being decided, the definition of the term 'employee' found in Section 2(9) of the said Act was not including any person engaged as apprentice as an employee under the said Act. However, with effect from 20.10.1989, that definition has undergone change and any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, becomes an employee. The said judgment is explaining the term 'apprentice' as a person who is not an employee but mere trainee for a particular period and therefore, the employer is not bound to employ him after the training period is over. Thus this judgment is not relevant for the case in hand.

11. In the matter of **Central Arecanut & Coca Marketing and Processing Coop Ltd** (supra), the Hon'ble Supreme Court was dealing with the matter under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and had considered the definition of the term 'employee'

given under Section 2(f) of the Act. On fact it was held that the trainees were apprentice under the model standing order and therefore, not employees. The definition of the term 'employee' under the said Act includes apprentice but excludes apprentice engaged under the Apprentices Act, 1961. The last judgment relied by the petitioner is in the matter of **General Manager, Yellamma Cotton, Woollen & Silk Mills** (supra). In that case, the learned Single Judge of the Karnataka High Court was pleased to hold thus in paragraph 10:

> "On these rival contentions, there is ample authority to support the proposition that a trainee cannot be held to be entitled to gratuity. A trainee could, at the best be, considered as a "workman" in terms of the definition under Section 2(s) of the Industrial Disputes Act, 1947, but in the absance of any statutory provision under the Payment of Gratuity Act which could be pressed into service a trainee cannot be held entitled to gratuity. It is not possible to subcribe to the view in S. Arunachalam's case. On the other hand, the several decided cases under the Apprentices Act, 1961, where apprentices are held to be "trainees" and hence not entitled to wages like regular employees-would render the tenor of Section 2(e) of the Payment of Gratuity Act, entirely un-favourable to the respondents".

It was observed by the said court that in the absence of any statutory provision under the Gratuity Act which could be pressed into service, a trainee cannot be entitled to gratuity.

12. I am unable to concur with the views expressed by the learned Single Judge of the Karnataka High Court for the reason that a trainee is not excluded from the definition of the term 'employee' under the Gratuity Act. What is excluded is an 'apprentice'. On this aspect, the judgment of the Hon'ble Madras High Court in the matter of **Arunachalam S** (supra) is very clear. Paragraphs 6 and 7 of the said judgment reads thus:

> 6. The controversy arose when the petitioner demanded the payment of gratuity even for the period from 2.6.84 to 7.6.86, the period when the petitioner was appointed as trainee. The question to be resolved is whether the petitioner could be considered as an employee under Section 2(e) of "the Act" for the purpose of payment of gratuity for the period from 2.6.84 to 7.6.86. Section 2(e) of "the Act" reads as under.
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> "Employee" means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railways, company or shop, to do any skilled, semi-skilled, or unskilled,

manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, 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.

A plain reading of the said Act shows that it excludes an apprentice from the application of the provisions of "the Act". In order to find out whether the word "apprentice" includes the trainee also, and in the absence of any definition of an apprentice under "the Act", this Court has to consider the same with reference to the dictionary meaning as well as the interpretation of the said Section with reference to the object of "the Act" coupled with the definition of apprentice or training in any other statute.

In the Concise Oxford Dictionary the word "apprentice" means, "a person learning a trade from a skilled employer". In Black's Law Dictionary the word "apprentice" means, "a person bound by an indenture to work for an employer for a specific period to learn a craft, trade or profession and a learner in any field of employment or business." As per P. Ramanatha Aiyar's Law of Lexicons the word "apprentice" means, "a learner is one who is taken to learn a trade, a person under a contract of apprenticeship, to a master to learn from him his trade or business and to serve him during his time of the apprenticeship".

Correspondingly, as per Concise Oxford Dictionary the word "trainee" means, "a person undergoing training for a particular job or profession". As per P. Ramanatha Aiyars Law of Lexicons, the word "training" means "systematic instruction". From the above expression from various dictionaries, it is seen that both the words "apprentice" and "trainee" are not either similar, identical or same as both the words have been distinctly defined with reference to the nature of job. As referred to in Black's Law Dictionary, "apprentice" means, "a person must be either a learner in any field of employment or business or a person was bound by indenture to work for an employer for specific period to learn a craft, trade or profession". With the above definitions on the background, it is to be now considered as to the nature of the duties that were performed by the petitioner. According to the petitioner, the petitioner was treated as a full member of the department and he was allotted duties equivalent to other staff of personnel department and he was also asked to do the following works:

"(i) Correspondence, follow up and submission for orders in the matters relating to training, absorption and confirmation of employees.

(ii) Tamil notices.

(iii) Reimbursement of conveyance expenses to officers/fuel allowance [o workmen.

(iv) Provision of furniture.

(v) Issuance of transfer orders.

(vi) National and festival holidays.

(vii) Salary advance/court matters and insurance claims.

(viii) Any other work that may be assigned by A.M. (A&P) then and there."

In the course of cross-examination of the management witness, he has clearly stated as follows.

In fact, the Bombay High Court in the judgment reported in Khanderan P. Rajopadhye v. United Western Bank Ltd., and others, 1984 LAB I.C.1910 has also considered that mere nomenclature of post is not of much consequence and what is to be seen is the nature of the duties performed by the employee concerned so as to arrive at a conclusion as to whether he is an employee within the meaning of Section 2(e) of "the Act". On the above facts, it is seen that the petitioner was appointed not for learning a trade from a skilled employer, was appointed as a trainee not to learn any designated trade alone and therefore cannot be considered as apprentice.

7. Further, while the provisions of any Act is interpreted, the Court has to read the provisions literally in its ordinary, natural and grammatical meaning as used by the legislature. The Supreme Court in the judgment reported in Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd., 1955 SC 376 has held that when any of the provisions of Statute is interpreted, the provision has to be read in its ordinary, natural and grammatical meaning. I had an occasion to consider the said judgment of the Supreme Court as to the interpretation of the Statute in W.P.No. 17927 of 1994

dated 14.8.2001. After considering the said judgment, I had also taken the view that while interpreting a statute, the object of the Act also has to be kept in mind. The object of Payment of Gratuity Act is to provide a scheme for payment of gratuity to the employees engaged in factory, mine, oilfield, port, railway company or shop, or other establishments. The Act is mainly intended to the provisions for payment of gratuity. As per the definition of Section 2(e) of "the Act", all employees arc entitled to the payment of gratuity except an apprentice which would necessarily mean that the Legislature intended to exclude the applicability of the provisions of the Act only in case of apprentice. They have done it so in clear terms by excluding only an apprentice from the applicability of the provisions of the said Act. As laid down by the Supreme Court in the judgment referred to supra, if the literal meaning of apprenticeship is considered along with the meanings given in the various dictionaries, it would be clear that the petitioner who has been appointed for a definite period and who has been assigned various duties and not only to a particular designated trade cannot be called as apprentice. In support of the above conclusion, the judgment of the Orissa High Court reported in Orissa Mining Corporation Ltd. rep. by Chairman-cum-Managing Director v. Controlling Authority under Payment of Gratuity Act -cum -Assistant Labour Commissioner and others, 1994 (2) LLN 1130 may be also referred to wherein the Orissa High Court while considering the applicability of the provisions of Payment of Gratuity Act, 1972, held that a trainee employee under a

contract of employment is not an apprentice under the Apprentices Act unless he is undergoing apprentice training in designated trade in pursuance to a contract of apprentice. The Orissa High Court had in fact considered the definition of "apprentice" under the provisions of Apprentices Act, 1961 wherein the apprentice has been defined in Section 2(a) of the Apprentices Act, 1961 as follows:

"Apprentice" means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship."

13. Trainees give various duties during the course of the so called training and who is not deputed in a particular designated trade cannot be called as an apprentice or learner. The nomenclature of the post is not of much consequence while interpreting the beneficial provisions of the welfare statute. The Gratuity Act is undoubtedly a welfare statute which only bars an apprentice from the benefit of payment of gratuity during such training period. However, designating an employee as trainee, extracting regular work from him and then denying him the benefit of Gratuity Act under the pretext of such employee being a trainee would certainly defeat the object of the welfare statute. The Hon'ble Orissa High Court

has also considered similar case in the matter of **Chairman-cum-Managing Director, Orissa Mining Corpn. Ltd** (supra) and following are the observations found in paragraph 4.

> "... A trainee employed under a contract of employment is not an apprentice, under the Apprentices Act, unless he is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship...".

In the light of the foregoing discussions, neither error of fact nor error of law can be found in the impugned orders passed by the authorities below while holding that the 1st respondent is entitled for gratuity for the period from 16.07.1991 to 15.07.1993 in the wake of proven fact that during the said period, he was not undergoing any training and as such was not an apprentice so as to exclude his case from the beneficial legislation i.e. Payment of Gratuity Act, 1972.

In the result, this writ petition is dismissed.

Sd/-

A.M.BADAR
JUDGE

smp

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE APPLICATION FOR GRATUITY AND ITS ANNEXURE FILED BY THE 1ST RESPONDENT DATED 21.5.2015 BEFORE THE 2ND RESPONDENT.**
EXHIBIT P2	**TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 15.7.2015.**
EXHIBIT P3	**TRUE COPY OF THE OFFER LETTER DATED 28.6.1991 TO THE 1ST RESPONDENT FROM THE PETITIONER.**
EXHIBIT P4	**TRUE COPY OF THE ORDER DATED 29.7.1993 ISSUED TO THE 1ST RESPONDENT.**
EXHIBIT P5	**TRUE COPY OF THE ORDER NO.313 DATED 10.6.2004 ISSUED TO THE 1ST RESPONDENT BY THE PETITIONER.**
EXHIBIT P6	**TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 13.6.2018 IN APPLICATION NO.48(12)/2015/02.**
EXHIBIT P7	**TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 7.9.2018 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT IN APPLICATION NO.48(12)/2015/02.**
EXHIBIT P8	**TRUE COPY OF THE ORDER DATED 15.10.2019 PASSED BY THE 3RD RESPONDENT IN GA NO.39/26/2018/B6.**
EXHIBIT P9	**TRUE COPY OF THE JUDGMENT PASSED BY THE HON'BLE HIGH COURT DATED 14.8.2014 IN WA NO.1777/2013.**

RESPONDENT'S EXHIBITS:

EXHIBIT R1(a) in I.A 1 of 2020	**A TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE PETITIONER COMPANY TO MR. AMEENSHA K.B DATED 30.06.2015.**

I.A No.3 of 2020

EXT. R1(a)	**A TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE APPLICANT IN G.A No.48(12)/2015/D1**
EXT. R1(b)	**A TRUE COPY OF THE OFFICE ORDER DTD.16.7.1991, THE LETTER OF APPOINTMENT IS MARKED IN EVIDENCE AS EXT.P1 BEFORE THE AUTHORITY FROM THE SIDE OF THE APPLICANT IN G.A., DTD.16.7.1991.**
EXT.R1(c)	**A TRUE COPY OF THE MEMO DTD.28.6.1991 MARKED IN EVIDENCE AS EXT.P2 FROM THE SIDE OF THE APPLICANT IN G.A.**
EXT.R1(d)	**A TRUE COPY OF THE LETTER DTD.29.7.1993 ISSUED BY IREL WHICH IS MARKED IN EVIDENCE AS EXT.P3 FROM THE SIDE OF THE APPLICANT IN G.A.**
EXT.R1(e)	**A TRUE COPY OF THE REQUEST LETTER SUBMITTED BY THE APPLICANT BEFORE THE IREL MARKED AS EXT.P4 FROM THE SIDE OF THE APPLICANT IN G.A.**
EXT.R1(f)	**A TRUE COPY OF THE LETTER DTD.28.6.1991 MARKED IN EVIDENCE AS EXT.P5 FROM THE SIDE OF THE APPLICANT IN G.A.**
EXT.R1(h)	**A TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE MANAGEMENT.**
EXT.R1(i)	**A TRUE COPY OF THE LETTER DTD.22.7.1991 ISSUED BY THE GENERAL MANAGER, IREL WHICH IS MARKED IN EVIDENCE AS EXHIBIT O2 FROM THE SIDE OF THE MANAGEMENT.**
EXT.R1(j)	**A TRUE COPY OF THE OFFICE ORDER No.W-552/93 DTD.13.7.1993 ISSUED BY THE SENIOR GENERAL MANAGER MARKED IN EVIDENCE AS EXHIBIT O3 FROM THE SIDE OF THE MANAGEMENT.**
EXT.R1(k)	**A TRUE COPY OF THE BANK STATEMENT VOUCHER DTD.28.4.2015 WHICH IS MARKED IN EVIDENCE AS EXHIBIT O4 FROM THE SIDE OF THE MANAGEMENT.**

True Copy

P.S to Judge

smp