



## 119. Should contract labour with breaks in service, but several years under different contractors for the same principal employer, be eligible for gratuity?

The answer to this question is **Yes**. The judgment pronounced on **October 4, 2024**, in the case of **IIT Bombay vs. Contract Workers** (Writ Petition No. 12746 of 2024) by the **High Court of Judicature at Bombay, Civil Appellate Jurisdiction**, provides clear guidance on this matter. A detailed analysis of the judgment is provided below:

### Background:

The **Writ Petition No. 12746 of 2024**, filed by **IIT Bombay** against three employees and labour authorities, revolves around the dispute over the payment of gratuity under the **Payment of Gratuity Act, 1972**. The petition challenges the orders of the **Controlling Authority** and **Appellate Authority**, which had directed IIT Bombay to pay gratuity to the employees.

### Key Facts:

#### 1. Petitioner's Argument (IIT Bombay):

- The employees (respondents) were hired by **contractors** and not directly employed by IIT Bombay.
- Hence, there was **no employer-employee relationship** between IIT Bombay and the respondents.
- The contractors were responsible for complying with labour laws, including gratuity payments, as per the **work orders**.

#### 2. Respondents' Argument (Employees):

- The respondents had been working continuously at IIT Bombay for several years, though through various contractors.
- They argued that the control and supervision over their work were exercised by IIT Bombay's officials, making IIT their **real employer**.

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- Two of the respondents had worked for over 20 years, and one had worked for 39 years at IIT Bombay.

### 3. **Orders by Authorities:**

- The **Controlling Authority** held IIT Bombay liable to pay gratuity, as the respondents had continuously worked at the institution, despite the change in contractors.
- The **Appellate Authority** upheld this decision, emphasizing that IIT had **ultimate control** over the respondents' work.

## Legal Issues:

### 1. **Employer-Employee Relationship:**

- The primary issue was whether IIT Bombay could be considered the **real employer** under the Payment of Gratuity Act, 1972, despite the workers being hired through contractors.
- IIT Bombay contended that as per the **Contract Labour (Regulation and Abolition) Act, 1970**, the contractor was the real employer, and hence, responsible for gratuity payments.

### 2. **Applicability of the Gratuity Act:**

- The court considered whether the **Payment of Gratuity Act** could apply when IIT Bombay denied any direct employment relationship with the respondents.
- The **Controlling Authority** had the jurisdiction to determine this relationship for gratuity claims.

## Court's Decision:

1. The court upheld the findings of both the **Controlling Authority** and **Appellate Authority**, holding IIT Bombay responsible for paying the gratuity.
2. The court found that the respondents had been **working at IIT Bombay continuously**, and IIT Bombay exercised control over their work.

3. The change of contractors did not affect the **continuity of employment**, and the employees should not be forced to claim gratuity from multiple contractors for different periods of their employment.
4. **IIT Bombay's argument** that the contractors were responsible for labour law compliance was rejected, as the contractors only facilitated payment routing while the real control over work was with IIT.

### Conclusion:

- The court dismissed the writ petition and directed IIT Bombay to pay the **remaining gratuity** along with interest to the respondents.
- It allowed the **legal heirs** of one of the deceased respondents to withdraw the gratuity amount deposited in the Appellate Court.

### Key Takeaways:

#### 1. Principal Employer's Responsibility for Gratuity:

- Even if workers are engaged through contractors, the **principal employer** (IIT Bombay in this case) may be held liable for gratuity if it exercises **ultimate control** over the workers' employment.
- IIT Bombay was held responsible despite the employees being hired through various contractors because they worked continuously at the institution for several years.

#### 2. Continuous Employment Under Different Contractors:

- The court emphasized that workers serving continuously at an organization, even through different contractors, should not be forced to seek gratuity from each contractor separately.
- The **continuity of employment** at the principal employer's site makes the principal employer liable, as seen in this case where workers had been engaged for over 20 years.

#### 3. Jurisdiction of the Controlling Authority:

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- The **Controlling Authority** under the Payment of Gratuity Act has the jurisdiction to determine whether an **employer-employee relationship** exists for the purpose of gratuity claims.
  - IIT Bombay's argument that it was not the direct employer was rejected, as the Controlling Authority can make a **preliminary determination** on this matter.
- 4. Gratuity as a Right of Long-Term Workers:**
- The judgment protects the rights of long-term contract workers to receive gratuity, recognizing their years of service with the principal employer, irrespective of their contractors.
  - The court ruled that forcing employees to chase after multiple contractors for gratuity would defeat the purpose of the **swift and efficient remedy** intended by the Payment of Gratuity Act.
- 5. Contractual Terms Do Not Override Statutory Obligations:**
- IIT Bombay's reliance on work orders and contractor agreements was insufficient to absolve it of the gratuity liability.
  - The court noted that while IIT had directed contractors to comply with other labour laws (e.g., provident fund and ESIC contributions), it did not specifically address gratuity obligations in its work orders.
- 6. Broad Definition of 'Employer':**
- The court upheld the broad definition of **'employer'** under the Payment of Gratuity Act, which includes entities that have **ultimate control over the affairs** of workers, even if they are employed through contractors.
- 7. Legal Precedents:**
- The court referred to earlier judgments, such as **Cummins (I) Ltd. vs. Industrial Cleaning Services** but distinguished them based on the unique facts of this case. Here, the **continuous employment and control** by IIT Bombay made it the employer for the purpose of gratuity.
- 8. Impact on Contract Labour Practices:**

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- This case highlights the **potential risks** for organizations relying heavily on contract labour. It underscores the need for clear, enforceable contracts that comply with labour laws to avoid unforeseen liabilities.

### Compliance checklist based upon this case for HR Professionals:

Action Steps	Details
<b>Gratuity Obligations</b>	
Ensure gratuity payment for long-term contract workers	Verify eligibility for workers serving over 5 years, even with breaks under different contractors.
Document gratuity provisions in contracts	Include gratuity obligations in work orders with contractors, ensuring compliance with the Payment of Gratuity Act.
Ensure Compulsory Gratuity Insurance Policy	Verify the availability of active compulsory gratuity insurance policy with contractors, similar to PF & ESI registration.
Make Gratuity monthly provisions	Calculate the gratuity for each contract worker on monthly basis and make the financial provisions as part of manpower cost.
<b>Labour Laws Compliance</b>	
Ensure contractors comply with all labor laws	Monitor compliance with PF, ESI, minimum wages, and gratuity obligations.
Conduct audits of contractor practices	Perform regular audits to ensure contractors are fulfilling their labor law obligations.
<b>Documentation of Employment Terms</b>	
Maintain accurate records of contract workers' service	Keep detailed records of each worker's service duration and breaks.

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Define breaks in service clearly	Ensure breaks do not affect gratuity eligibility if the worker continues under different contractors.
<b>Control and Supervision of Workers</b>	
Evaluate the degree of control over contract workers	Avoid the Principal Employer control and supervision on the contract labour. Ensure that the contractor has the dedicated supervisor to manage the contract labour.
<b>Preventive Legal Measures</b>	
Seek legal professionals to review work contracts	Regularly review contracts with legal experts to ensure compliance with gratuity laws and avoid ambiguities.
<b>Gratuity Payment Policy</b>	
Establish a gratuity payment policy	Develop an SOP for processing gratuity claims, ensuring compliance with legal requirements.
<b>Training and Awareness</b>	
Conduct training on gratuity and labour laws	Train HR and contractors on labour laws and their responsibilities under the Payment of Gratuity Act.
<b>Continuous Review of Practices</b>	
Periodic review of employment contracts and policies	Regularly update employment contracts and gratuity policies based on recent legal rulings and best practices.

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