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## SUPREME COURT ON WAGES UNDER GRATUITY ACT

### **A. Introduction:**

Supreme Court (“SC”), in the *Fertilizer Corporation* case of April 2022,<sup>1</sup> held that any *ad hoc* payment made to employees, pursuant to an interim order of a court, will not form part of ‘wages’ for calculation of gratuity.

### **B. Brief Facts:**

1. The scales of pay of the employees of public sector undertakings were revised with effect from January 1, 1992.
2. In 1996, the employees of Fertiliser Corporation of India Limited (“FCIL”) and Hindustan Fertiliser Corporation Limited (“HFCL”) (collectively “PSUs” and collectively “Employees”) filed writ petitions in various high courts seeking for a revision of wages under the new pay scale.
3. All writ petitions were transferred to SC, and it passed an interim order granting an *ad hoc* monthly payment.
4. In 2002, the PSUs was closed. SC adjudged that the payments granted was purely *ad hoc* and was a limited relief given the financial status of the undertakings.
5. The Employees approached the Controlling Authority (“Authority”) of the undertakings seeking inclusion of the *ad hoc* payment as part of wages. The Authority ordered accordingly.
6. Aggrieved, the PSUs managements approached the Allahabad High Court (“HC”), which upheld the order of the Authority.
7. After filing a review before the HC, the PSUs approached the SC.

### **C. Judgment & Reasoning:**

1. The main question was if the *ad hoc* monthly payment made must be included as a part of ‘wages’ within Section 2(s)<sup>2</sup> of the Payment of Gratuity Act, 1972 (“PGA”).
2. SC interpreted the definition of wages and held that the *ad hoc* payments do not form a part of wages under the PGA by:

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<sup>1</sup>*Chairman-cum-Managing Director, The Fertilizer Corporation of India Ltd. and Ors. vs. Rajesh Chandra Shrivastava and Ors.* (07.04.2022 - SC): MANU/SC/0435/2022.

<sup>2</sup> “Wages’ means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

- a. Applying the fundamental principle “that a party who is in enjoyment of an interim order, is bound to lose the benefit of such interim order when the ultimate outcome of the case goes against him.”<sup>3</sup>
- b. Relying on the *Straw Board* case of 1977,<sup>4</sup> which clarified that wages under the PGA means and included basic wage and dearness allowance and nothing else.<sup>5</sup>

#### **D. Conclusion:**

The SC set aside the order of the Authority and observed that: “Whenever the State or instrumentalities of State come up with appeals challenging small benefits granted to individual litigants, this Court applies the test of proportionality to see whether the quantum of benefits granted to the individual concerned, justifies the examination of the question of law, at the cost of that little man from a far off place. The refusal of this Court to go into the question of law in such cases, cannot be treated as tantamounting to answering the question of law in a particular manner.”<sup>6</sup>

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<sup>3</sup> Paragraph 20 of the Judgement.

<sup>4</sup> *The Straw Board Manufacturing Co. Ltd. vs. Its Workmen* (01.03.1977 - SC): MANU/SC/0237/1977.

<sup>5</sup> Paragraph 21 of the Judgement.

<sup>6</sup> Paragraph 15 of the Judgement.

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