2026 INSC 143

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2026
@ SPECIAL LEAVE PETITION (CIVIL) NOS. 22628 – 22637 OF 2024

N. MANOHARAN, ETC. ... APPELLANT(S)

VERSUS

THE ADMINISTRATIVE OFFICER AND ANOTHER ... RESPONDENT(S)

WITH

CIVIL APPEAL NOS. OF 2026
SPECIAL LEAVE PETITION (CIVIL) NOS. 22638 – 22669 OF 2024

G. AROCKIASAMAY, ETC. ... APPELLANT(S)

VERSUS

THE ADMINISTRATIVE OFFICER AND ANOTHER ... RESPONDENT(S)

WITH

CIVIL APPEAL NOS. OF 2026
SPECIAL LEAVE PETITION (CIVIL) NO. 22670 OF 2024

S. ALANGAR LR OF (U. SUNDARA RAJ) ... APPELLANT(S)

VERSUS

THE ADMINISTRATIVE OFFICER AND OTHERS ... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

Leave granted.

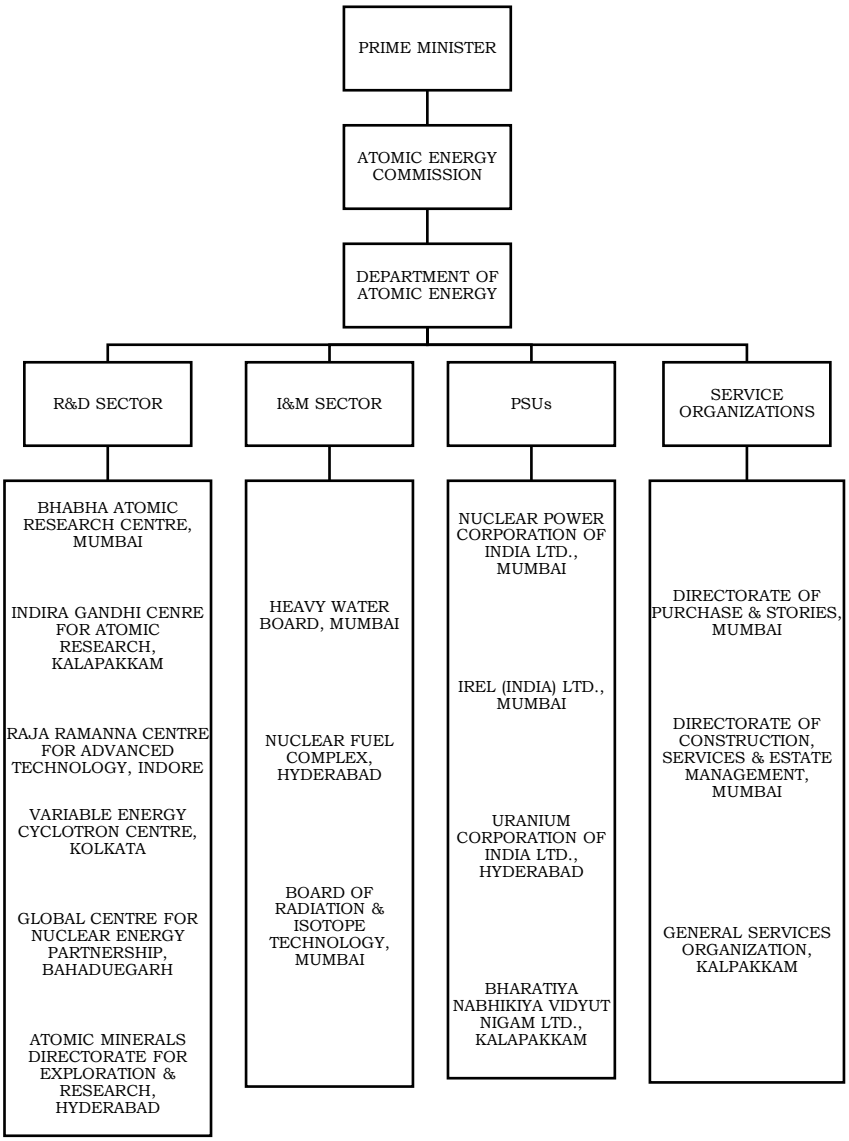
2. The point for consideration in the subject Civil Appeals is whether the employees of Heavy Water Plant, Department of Atomic Energy, Government

of India, Tuticorin ("HWP") are covered by the provisions of the Payment of Gratuity Act, 1972 ("PG Act").

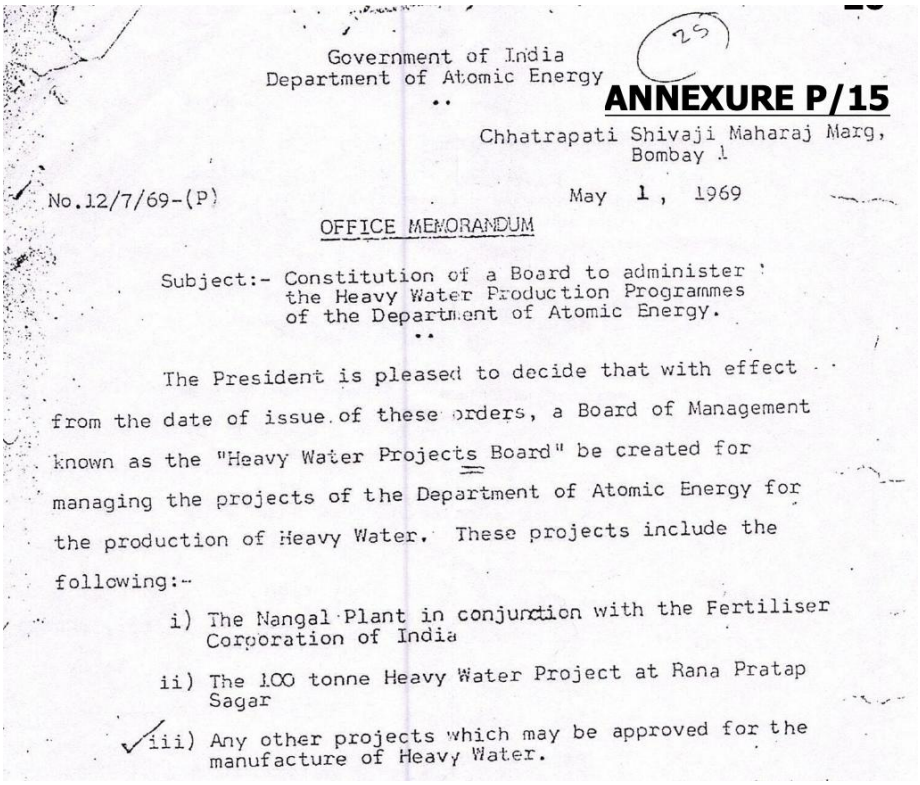
3. The Civil Appeals arise from a common Judgment dated 21.06.2023 in Writ Appeal No. 1687 of 2021, Writ Petition No. 19117 and batch. The impugned Judgment held and declared that the employees of HWP are not covered by the definition of Section 2(e) of the PG Act. Hence, the Civil Appeals are at the instance of the retired employees of HWP. The circumstances leading to the dispute between the parties are admitted and fall within a narrow compass.

4. The Atomic Energy Act, 1962 ("AE Act"), was enacted by the Parliament and is effective from 15.09.1962. The objective of the AE Act is to provide for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes. Section 3 of the AE Act deals with 'General Powers of the Central Government' to produce, develop, use and dispose of atomic energy, either by itself or through any Authority or Corporation established by it, or a Government Company; and carry out research into any materials connected therewith. Section 3 of the AE Act is comprehensive and encompasses all primary and ancillary activities undertaken by the Central Government relating to atomic energy. The Department of Atomic Energy, Government of India ("DAE"), is the Department through which the Central Government discharges the functions, duties, and responsibilities assigned to it under the AE Act. The parties admit

the following hierarchy of departments *vis-à-vis* atomic energy:



5. On 01.05.1969, the Government of India/DAE issued Office Memorandum No. 12/7/69-(P) for the constitution of a Board to administer the Heavy Water Production Projects of the DAE. The operative portion of the Office Memorandum reads as follows:



Government of India
Department of Atomic Energy

ANNEXURE P/15

Chhatrapati Shivaji Maharaj Marg,
Bombay 1

No.12/7/69-(P) May 1, 1969

OFFICE MEMORANDUM

Subject:- Constitution of a Board to administer the Heavy Water Production Programmes of the Department of Atomic Energy.

The President is pleased to decide that with effect from the date of issue of these orders, a Board of Management known as the "Heavy Water Projects Board" be created for managing the projects of the Department of Atomic Energy for the production of Heavy Water. These projects include the following:-

i) The Nangal Plant in conjunction with the Fertiliser Corporation of India

ii) The 100 tonne Heavy Water Project at Rana Pratap Sagar

iii) Any other projects which may be approved for the manufacture of Heavy Water.

6. The HWP in Tuticorin is one of the Heavy Water Boards established by the DAE. The circumstance precipitating a dispute between the retired employees and HWP can be traced to one of the pension payment orders issued by HWP. On 25.07.2014, the pension payment order in favour of retired employee, N. Manoharan, was issued under the CCS (Pension) Rules, 1972. The CCS (Pension) Rules, 1972 deal with comprehensively the retirement benefits to which a retired employee is entitled, including gratuity. The sum payable as gratuity under the PG Act and CCS (Pension) Rules, 1972, is less than the sum payable under the PG Act. This led to an employee of HWP filing an application before the Controlling Authority under the PG Act. The Controlling Authority held that the provisions of the PG Act are attracted to the employees of HWP, and a direction was ordered to pay the difference between the PG Act and CCS (Pensions) Rules, 1972. The Controlling

Authority, on jurisdictional fact and the applicability of the PG Act, held that HWP, constitutes an industry under the Industrial Disputes Act, 1947, making the applicant-employee eligible for coverage under Section 1(3)(b) of the PG Act. The Controlling Authority also relied on the Order dated 29.01.2016 of the High Court of Madras in WP Nos. 23577 to 23579 of 2015 and batch. HWP, Tuticorin, challenging the Order of the Controlling Authority, filed an appeal before the Deputy Chief Labour Commissioner, and the appeal filed was dismissed. The primacy of consideration of the appellate authority as well proceeds on the fact that HWP is an industry under the Industrial Disputes Act, 1947, and the employees are industrial employees covered by the first limb of Section 2(e) of the PG Act.

7. HWP assailed the orders before the High Court in Writ Petition No. 23127 of 2015 and batch, which were dismissed on 31.03.2016, resulting in the filing of Writ Appeal No. 1687 of 2021. The record discloses that HWP filed Writ Petition No. 13346 of 2023 and batch challenging the subsequent orders of the Controlling Authority directing payment of the difference of gratuity to the retired employees of HWP. The Division Bench of the High Court of Madras dealt with the Writ Appeals as lead cases and, by the Impugned Judgment, and allowed the Writ Appeals as well as Writ Petitions filed by HWP. The Impugned Judgment examined the issue under the following heads:

(i) On Interpretation of "Employee" (Section 2(e) of PG Act, 1972): The Appellants were appointed by the Government of India, DAE. Their appointment orders clearly stated they were governed by "Central Civil Services Rules." Since the Appellants held "civil posts under the Central Government" and were governed by the CCS (Pension) Rules, 1972, which

provide for gratuity, they fall squarely within the exclusion clause. Therefore, they do not come within the meaning of "employees" under Section 2(e) of the PG Act.

(ii) Inapplicability of Section 14 (Overriding Effect): Section 14 applies only to persons who first qualify as "employees" under the PG Act. Since the retired employees were excluded at the threshold definition stage (Section 2(e)), they never entered the ambit of the PG Act. Consequently, Section 14 cannot be invoked to override the CCS (Pension) Rules in their case. Hence, a specific exclusion in the definition clause cannot be defeated by a general overriding clause.

(iii) Status of the Heavy Water Board ("HWB"): It rejected the argument that the HWB is an industrial establishment/autonomous body, distinct from the Central Government. It treated HWB as a unit of the DAE of the Government of India. It was held that, unlike a Public Sector Undertaking like NPCIL, which is a separate corporate entity, HWB functions directly under the Ministry. The employees are, therefore, Central Government servants, not merely employees of an autonomous industrial unit.

(iv) The Principle of Estoppel: The Appellants had already received their retirement benefits, including pension and gratuity, under the CCS (Pension) Rules, 1972, without protest at the time of retirement. An employee cannot claim benefits under two different statutes for the same purpose. Having accepted the benefits under the specific rules applicable to government servants, *i.e.*, CCS Rules, they are estopped from turning around and claiming higher benefits under a general law, i.e., the PG Act, which expressly excludes them.

(v) Distinguishing Precedents (The MCD Case): Distinguishing this Court's judgment in *Municipal Corporation of Delhi v. Dharam Prakash Sharma*,[1] it was held that the employees were undeniably "employees" of the Corporation, and the Corporation had merely adopted CCS Rules. Whereas in the present case, the retired employees were originally Central Government servants holding civil posts, which is a specific statutory exclusion not present in the *MCD (supra).*

(vi) Regarding Refund: The High Court ordered that employees who had already withdrawn the differential gratuity amounts deposited by the Management "need not return the money" and the Management cannot demand a refund of these amounts. For those employees (like the retired employees in the present Civil Appeals) who had not yet withdrawn the money, the High Court ordered that the amounts lying in the deposit must be returned to the Management.

8. Learned Senior Counsel, Ms. Haripriya Padmanabhan, argues that HWP is an industrial establishment. The orders constituting HWP confer complete autonomy to HWP to decide on the appointment of employees, and service conditions by which the employees are governed. HWP, as an entity, has adopted and applied the CCS (Pension) Rules, 1972. From the above circumstances, it cannot be gainsaid that the employees of HWP fall within the exclusive definition of "employee" under Section 2(e) of the PG Act. The absence of an exemption notification under Section 5 is a crucial factor in determining the applicability of the PG Act to HWP's employees. The entities

[1] (1998) 7 SCC 22.

established as government companies/public sector undertakings have exemption notifications in their favour, or the public sector undertaking, as a corporate body, discharges the obligation under the PG Act. There is no exemption notification in the case at hand. The impugned judgment fell into a serious error by distinguishing the judgment in *MCD (supra)*. Assuming without admitting that the retirement benefits are paid as per CCS Rules/CCS Pension Rules, unless it is established on all fours that the employees of HWP squarely fall within Section 2(e) of the PG Act, denial of gratuity under the PG Act is illegal, and the impugned judgment is liable to be set aside.

9. Shree S.D. Sanjay, learned ASG appearing for HWP, argues that the standing of employees of HWP *vis-à-vis* HWP is, in more than one sense, a jurisdictional fact. The jurisdictional fact is appreciated and decided on all the circumstances which bring into existence HWP, whether as a Department of Atomic Energy or a separate corporate entity. The employees do not state that HWP is a separate public sector undertaking/government company with a certificate issued by the Registrar of Companies. HWP, as per the inception document, was constituted by the Office Memorandum dated 01.05.1969. The sequence is a Board of Management known as the Heavy Water Projects Board, created for managing the projects of DAE for the production of heavy water. HWP is a project of the DAE. To sieve out HWP from its constituent department is illegal and may go contrary to the AE Act. In response to the argument about the functional freedom granted to HWP, it is argued that this freedom is granted to accelerate the objectives sought through HWP projects. The appointment orders were issued in accordance with the CCS Rules. The department's service rules cannot be treated as indicia for deciding the

jurisdictional fact. The appointment orders speak in unison that CCS Rules govern the employees, and the resultant effect is that gratuity is payable under the CCS (Pension) Rules, 1972. The circumstances leading to the establishment of HWPs render the establishment subject to exclusion under Section 2(e) of the PG Act. The need for an exemption notification under Section 5 and the need to reply to overriding effect under Section 14 of the PG Act depend on the Act's applicability to the relationship between an employer and an employee. The impugned judgment, in his argument, has briefly summarised the position in fact and law, and no ground exists warranting interference in the impugned judgment. It is lastly argued that, considering the importance of the entities, the hierarchy of establishment, command and control is decided by the Central Government. The employees cannot claim to have the benefit of CCS Rules, status of a Central Government employee, while for gratuity, the benefits under the PG Act.

10. The applicability or inapplicability of the PG Act, to begin with, depends on whether the employee comes within the inclusive definition or the exclusive definition. The same is dependent on jurisdictional facts. In *Arun Kumar v. Union of India*,[2] it has been held that a jurisdictional fact is a fact which must exist before a court, tribunal, or authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on the existence or non-existence of which depends the jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such a fact, the order

[2] (2007) 1 SCC 732.

can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming the existence of such a jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

11. It is axiomatic that a decision is an authority for what it decides and not what can be logically deduced therefrom. In our view, the decision in *MCD (supra)* cannot be an authority for deciding the applicability of the PG Act to the employees of HWP. We cannot logically also deduce the similarity of circumstances in the corporate entity of Municipal Corporation of Delhi and an annexe of the DAE. Therefore, the applicability is determined by the facts of the case considered by the tribunal/court.

12. It is relevant to notice that the amended definition deals with the first limb of Section 2(e),[3] and the second exclusionary limb is the same in the pre- and post-amendment provisions. Construing Section 2(e), the second limb begins with the words "but does not include" any such person (i) who holds a post under the Central Government, (ii) a State Government, (iii) is governed by any other Act or (iv) by any Rules providing payment of gratuity. The exclusionary clause, if read by applying the golden rule without a further test,

---

[3]

Pre-Amendment	**Post-Amendment**
"employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway 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."	"employee" means any person (other than an apprentice) who is employed for wages, whether the term 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."

excludes employees of the Central and State Governments from the meaning of "employee" under the PG Act. Secondly, it also excludes a person who is governed by any other act. Thirdly, even if it is used as "or" but not as "and", it excludes any such person who is governed by any other Act or by any rules providing for payment of gratuity. The provision contains the words both "means" and "does not include". Under interpretation of statutes, this Court has repeatedly held that coupling the word "means" with "includes" denotes an exhaustive definition.[4] Conversely, the word "means" and "does not include" should be read as exclusionary language that strictly excludes the scope of the provision from certain classes. Consequently, a person who is governed by any other Act, or governed by any Rules providing for payment of gratuity, does not come within the ambit of the definition of "employee" under the PG Act.

12.1 The construction of Section 2(e), as above, leads us to the factual matrix of the case. The AE Act is not considered exhaustively for the present purpose. Still, it is sufficient to refer to Section 3 of the AE Act which *inter-alia* empowers the Central Government to produce, develop, use and dispose of Atomic Energy, either by itself or through any Authority or Corporation established by it or a Government Company, and carry out research into any matters connected therewith. Similarly, to manufacture or to produce any prescribed radioactive substance or the ancillary works connected therewith, the difference in language between Clauses (a) and (b) of Section 3 clearly demonstrate that a few of the functions/activities, the Central Government is

[4] Mahalakshmi Oil Mills v. State of A.P. (1989) 1 SCC 164; P. Kasilingam And Others v. P.S.G College Of Technology And Others (1995) supp SCC 2 348

empowered to do by itself or through any other authority or corporation established by it or a Government Company, and has power to manufacture or otherwise produce any prescribed or radioactive substance as per Clause (b). The chart in the above paragraph demonstrates the choice vested in the Central Government to undertake a particular act either directly or by establishing a company/PSU.

13. Since its inception, a board has been constituted to manage the HWPs of the DAE. The retired employees admit that HWP is not incorporated under the Companies Act, is not recognised as a PSU, or functions as a Government Company. In other words, the other attributes of a separate legal entity, incorporated association, artificial person, limited liability, common seal, perpetual succession, and transferability of shares are not present. In substance, without any ambiguity, the HWP is created to manage the projects of the DAE for the production of heavy water. HWP at Tuticorin is a project under the management of the Heavy Water Projects Board of the DAE, and cannot, by sieving, separate itself from being an ancillary or adjunct of the DAE. For the limited purpose of gratuity, the larger and comprehensive establishment of atomic energy facilities by the Central Government is not replaced with a very narrow construction of the functional freedom given to the Heavy Water Projects Board or individual Heavy Water Plants. The jurisdictional fact, on appreciation, leads us to the conclusion that HWP is an adjunct or ancillary operating through the Heavy Water Projects Board of the DAE. On examination of constitution, establishment, and continuation, we notice the character of HWP as an adjunct of the Department of Atomic Energy, and by choice, we are not adverting to the appointment orders or any

other circulars for deciding the jurisdictional fact of "employees". Therefore, the employees fall within the exclusionary clause of Section 2(e) of the PG Act. The result of such exclusion is that Sections 5 and 14 are not attracted in deciding on the applicability of the PG Act to the employees of HWP.

14. For the above reasons, we are in agreement with the order impugned, and the Civil Appeals fail and are dismissed. Pending applications, if any, stand disposed of.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

New Delhi;
February 11, 2026.