



GOVERNMENT OF INDIA
 MINISTRY OF LABOUR & EMPLOYMENT
 OFFICE OF THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL)
 A.T.I. CAMPUS, VIDYANAGAR, HYDERABAD – 500 007.

No. 48/188/2019-E3

Dated 14.02.2020

FORM 'R'(See rule 17)NOTICE FOR PAYMENT OF GRATUITY

To

The Assistant General Manager,
 M/s State Bank of India, PPG Department,
 Amaravati Circle, Gunfoundry, Hyderabad Telangana – 500001

..... Respondent / Non Applicant

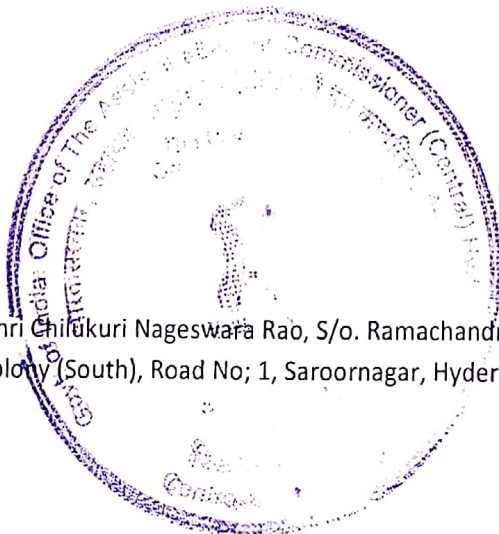
WHEREAS Shri Chilukuri Nageswara Rao filed an application under section 7 of the Payment of Gratuity Act, 1972 before me;

AND WHEREAS the application was heard in your presence and after the hearing I have come to the finding that the said Shri Chilukuri Nageswara Rao, is entitled to receive as follows:-

1. Remaining principal amount of gratuity= Rs. 5,37,893/-
- +
2. Interest from 30.04.2017 till the actual date of payment at the rate of 10% per annum on above amount.

NOW, THEREFORE, I hereby direct you to pay the above said amount to the Applicant under intimation to this Authority within thirty days of the receipt of this notice.

GIVEN UNDER MY HAND AND SEAL, ON THIS 14th DAY OF February, 2020.



(A.K. CHATURVEDI) CLS

Controlling Authority under Payment of Gratuity Act, 1972 &
 Asst. Labour Commissioner (Central), Hyderabad.

Copy to: Shri Chilukuri Nageswara Rao, S/o. Ramachandraiah, H.No: 11-15-15/2, S.S. Ajay Arcade, Flat No: 203, Doctors Colony (South), Road No; 1, Saroornagar, Hyderabad – 35 is advised to contact the employer for collecting payment.

Controlling Authority under Payment of Gratuity Act, 1972 &
 Asst. Labour Commissioner (Central), Hyderabad.

ORDER

Therefore, in view of the legal position I hereby order the Respondents/ Management is directed to pay amount of gratuity to the Applicant, as per the Form-R, enclosed to this Order within 30 days from the date of receipt of this order.

Name of the Applicant	Shri Chilukuri Nageswara Rao
Date of Joining	29.09.1983
Date of Superannuation /VRS / Resignation/ Retirement etc.	30.04.2017
Total period of service	33 years 7 Months 1 day = 33 years and 211 days
Pay/Wages last drawn	Basic Pay + Special Allowance + PQP + DA on (Basic Pay + Special Allowance + PQP) + FPP (Increment component) = Rs. 90,050.66/-
Amount of Gratuity Payable as per Section 4 of the Act	Rs. 10,00,000/-
Amount of Gratuity Payable as per Regulation 49(2) of the Regulations	Rs. 15,37,893/-
Gratuity Amount Payable (Higher of above 2 rows)	Rs. 15,37,893/-
Amount of Gratuity Paid within time	Rs. 10,00,000/-
Amount of remaining principal amount of Gratuity + Interest to be paid	Principal amount of gratuity= Rs. 5,37,893/- + Interest from 30.04.2017 till the actual date of payment at the rate of 10% per annum.

DICTATED TO PERSONAL ASSISTANT / STENOGRAPHER, TRANSCRIBED BY HIM, CORRECTED AND PRONOUNCED BY
ME ON THIS OF 14th DAY OF February, 2020.



(A.K. CHATURVEDI) CLS
Controlling Authority under P.G. Act, 1972 &
Asst. Labour Commissioner (Central), Hyderabad



GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
OFFICE OF THE ASSISTANT LABOUR COMMISSIONER (C) AND
CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972
ATI CAMPUS, VIDYANAGAR, HYDERABAD – 500 007.

BEFORE THE CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972
AND THE ASST. LABOUR COMMISSIONER (CENTRAL), HYDERABAD

Dated this the 14th day of February, 2020

Present

SHRI A.K. CHATURVEDI

Controlling Authority under Payment of Gratuity Act, 1972 &
The Asst. Labour Commissioner (Central), Hyderabad

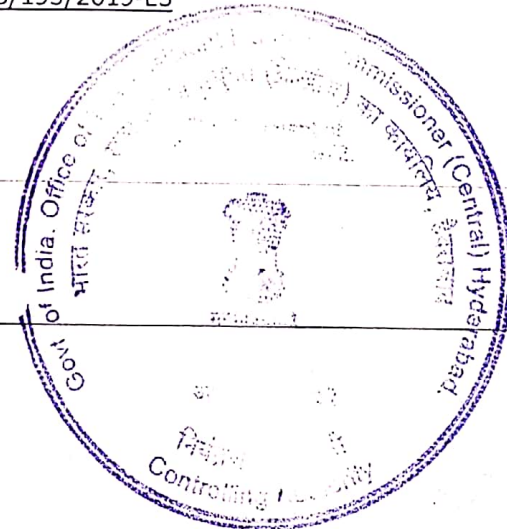
<u>P.G. Application No.</u>	<u>48/174/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/175/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/176/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/177/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/178/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/179/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/181/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/182/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/183/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/184/2019-E3</u>
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<u>P.G. Application No.</u>	<u>48/186/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/187/2019-E3</u>
<u>✓ P.G. Application No.</u>	<u>48/188/2019-E3</u>
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<u>P.G. Application No.</u>	<u>48/191/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/192/2019-E3</u>
<u>P.G. Application No.</u>	<u>48/193/2019-E3</u>

BETWEEN

Respondents/Non Applicants:

The Assistant General Manager,
M/s State Bank of India,
PPG Department,
Amaravati Circle, Gunfoundry, Hyderabad Telangana – 500001

AND



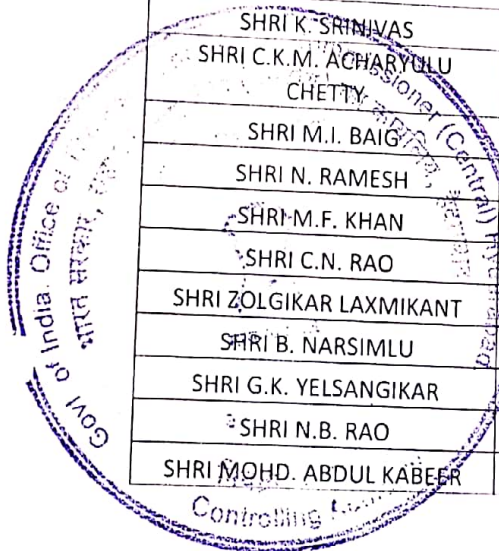
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Applicants:

1. Shri Ravinder Damera, Plot No; 7, H.No: 6-39-037, Temple Rock Enclave, Tadbund X. Road, Secunderabad – 500 009	2. Shri U.R. Krishna, S/o. U.S.Raghunath Rao, Flat No: 307, Ganga Golden Towers, No: 2-2-64 A&B, Amberpet Main Road, Hyderabad – 500 013020	3. Shri Nagubandi Nageswara Rao, Flat No: 302, Hanuman's Srinivasam, New Cyber Valley, Near World One School, New Hafeezpet, Hyderabad- 500049	4. Shri Durga Nageswara Rao, Plot No; 33, Road No: 3, H.No: 11-13-81G, Green Hills Colony, R.K.Puram Post, Hydeabad – 500102	5. Shri Parasaram, Lakshmi Rajyam, S/o. Parasaram Krishnarma Charyulu, Flat No; 20A, Magnum Heights, Opp: Aparna Sarovar, Nallagandla, Hyderabad -500 019
6. Shri C.V.N. Ramesh, Plot No: 21 & 22, Flat No: 102, Padma Elite, Gautami Enclave, Kondapur, Hyderabad – 500084	7. Shri Dharendra Kulkarni, H.No: 7-7-113, Savitri Colony, Opp: Garden, Raichur – 584 103	8. Shri Venugopal Naik, S/o. Laxman Naik, H.No: 8-11-182/38, Panchamukhi Nagar, Bolamdoddi Road, Raichur – 584 103	9. Shri Kurugar Srinivas, S/o. K. Thimmayya, H.No: 1-3-384/10, Vijaya Nagar Colony, Ashapur Road, Raichur – 584 101	10. Shri C.K.M. Acharyulu Chetty, S/o. C. Bheema Sena Acharyulu, H.No: 1-4-896, IDSMT Layout, Raichur – 584103
11. Shri Mirza Inamulla Baig, Flat No: 102, Reliance Kohinoor Apartment, Humayun Nagar, Mehdiapatnam, Hyderabad-28	12. Shri Neelakati Ramesh, No: 6-30, Bhavanipuram, NSL Col. Road, Ameenpur (M), Patancheru, Medak Dit - 502032	13. Shri Mohammed Fiazuddin Khan, S/o. M.A. Hameed Khan, H.No: 16-1-26/22, Saidabad Colony, Hyderabad -500 059	14. Shri Chilukuri Nageswara Rao, S/o. Ramachandraiah, H.No: 11-15-15/2, S.S. Ajay Arcade, Flat No: 203, Doctors Colony (South), Road No; 1, Saroornagar, Hyderabad – 35	15. Shri Zolgiar Laxmikant S/o. Sriram Rao, No: 15-3-133, Shambhavi Rampure Colony, Kumberwada Bidar – 585403
16. Shri Batchu Narsimlu, H.No: 11-13-892, Road No.2, Green Hills Colony, Hyderabad – 500 035	17. Shri Gururaj Yelsangikar, Flat No: E-103, Mantri Alpyne, Vishnuvardhan Road, Uttarhalli, Benagaluru- 560061	18. Shri Nedunuri Bhaskar Rao, S/o. Ramalingam, H.No: 8-7-12, Hastinapuram Central, Hyderabad -500 079	19. Shri Mohd Abdul Kabeer, Plot No: 154, D.No:3-2-345, S.B.H. Colony-2, L.B. Nagar, Hyderabad – 500 074	

APPEARANCE For Applicants:

SHRI D. RAVINDER	P.G. Application No.	48/174/2019-E3
SHRI U.R. KRISHNA	P.G. Application No.	48/175/2019-E3
SHRI N.N. RAO	P.G. Application No.	48/176/2019-E3
SHRI D.N. RAO	P.G. Application No.	48/177/2019-E3
SHRI P.L. RAJYAM	P.G. Application No.	48/178/2019-E3
SHRI C.V.N. RAMESH	P.G. Application No.	48/179/2019-E3
SHRI DHIRENDRA KULKARNI	P.G. Application No.	48/181/2019-E3
SHRI VENUGOPALNAIK	P.G. Application No.	48/182/2019-E3
SHRI K. SRINIVAS	P.G. Application No.	48/183/2019-E3
SHRI C.K.M. ACHARYULU CHETTY	P.G. Application No.	48/184/2019-E3
SHRI M.I. BAIG	P.G. Application No.	48/185/2019-E3
SHRI N. RAMESH	P.G. Application No.	48/186/2019-E3
SHRI M.F. KHAN	P.G. Application No.	48/187/2019-E3
SHRI C.N. RAO	P.G. Application No.	48/188/2019-E3
SHRI ZOLGIKAR LAXMIKANT	P.G. Application No.	48/189/2019-E3
SHRI B. NARSIMLU	P.G. Application No.	48/190/2019-E3
SHRI G.K. YELSANGIKAR	P.G. Application No.	48/191/2019-E3
SHRI N.B. RAO	P.G. Application No.	48/192/2019-E3
SHRI MOHD. ABDUL KABEER	P.G. Application No.	48/193/2019-E3



Contd...3.

For Respondents: 1. Shri Y. Ranjeeth Reddy, Advocate
2. Shri N Ashok Reddy, Manager, PPF & G dept

The above Ex-employees of M/s. State Bank of India, Hyderabad filed the Applications (Hereinafter called as Applicants) in Form-'N' under Section 7 of the Payment of Gratuity Act, 1972 read with Rule 10(1) of the Payment of Gratuity (central) Rules requesting the Controlling Authority and Asst. Labour Commissioner (Central), Hyderabad (HEREINAFTER REFERRED TO AS 'CONTROLLING AUTHORITY') to determine the amount of gratuity as per the eligibility, due to the applicants and to issue directions to release the gratuity amount and stating that the management of M/s State Bank of India, Hyderabad (hereinafter called as Respondent) failed to pay the full amount of gratuity to them as per the provisions of the Payment of Gratuity Act, 1972 (herein after referred to as 'the Act').

On receipt of the applications the Controlling Authority has issued notices to the Applicants and the Respondents/Non-Applicant vide Form-O to appear before the Controlling Authority along with all the witnesses upon whose evidence and the documents upon which they intend to rely in support of their allegations/defend as the case may be. The Controlling Authority held the hearings on various dates and finally on 01.10.2019.

The Applications in Form N filed in this office beyond 90 days from the date of occurrence of the cause for the application. However, the delay has been condoned to meet the end of social justice and proceeded with the merits of the case.

Also there are several judgments of Hon'ble High Court and Supreme Court, which enables the applicants to get the delay condoned as Payment of Gratuity Act is a social legislation.

The Delhi High Court in case of TEXMACO LIMITED Vs. RAM DHAN has observed:

"Payment of Gratuity Act being social welfare legislation, workman cannot be deprived gratuity on account of late filing of application by workman and exercise of discretion in condoning delay is just and proper."

The Rajasthan High Court in case of Madar Union Sanatorium and Hospital Vs. M.B. Sathe and ors. has observed:

"A person who is not technical and who are not legal minded are generally entitled for the benefit of condonation of delay specially under the beneficial legislation enacted for the welfare of the people."

The Madras High Court in case of Rajamani, Wife And Nominee Of S. Rajagopalan(since deceased) and 8 others Vs The Deputy Commissioner Of Labour has observed:

"The question is whether it is open to any authority either for the management or the appellate authority to give any amount lesser than the amount to which the workmen is legally entitled to on the ground of waiving their entitlement. There is no possibility or scope for obtaining a receipt for a lesser amount even assuming that it is voluntarily given. The court has to take judicial notice of the fact, that the petitioners are said to be illiterate and they could not have been in a position to raise their voice at the time of retirement and they had to receive some amount or other as retirement benefit. Probably if they had raised their voice that the amount was not correct, they would not have been given even that amount immediately. In any event, the receipt issued for lesser amount cannot be construed that they have given up their claim for remaining amount. The management is duty bound to pay the remaining gratuity amount under Section 7 of the Act and if there is any deficiency in their calculation it is always open to the employee to claim for payment of the balance amount."

Contd...4.

Further, it should always be the Endeavour of the Controlling Authority and other quasi judicial as well as statutory authority to decide the case on merit instead of dismissing the same on account of delay or other technicalities. Let nobody go home with a grouse that he /she was not granted the due opportunity to put up his case on Merits.

The brief facts of the case are that applicants were appointed by the respondent/ Non Applicant and they worked in various capacities in various branches and retired/Superannuated from the service.

The Applicants claimed that they have not been paid amount of Gratuity (after their superannuation / retirement) by the Respondent/Non Applicant as per the entitlement/ eligibility. Applicants contended that respondent/Non Applicant has ignored Section 4(5) of the Act, while ensuring the payment of Gratuity Amount. It is also submitted that the provisions of the State bank Of Hyderabad (Officers) Service Regulations 1979 are not in line with the Act. They further submitted that all the provisions of the State bank Of Hyderabad (Officers) Service Regulations 1979 must be consistent with the provisions of the Act.

Another contention of Applicants is that for more the 30 years of service the word "one half" given in the Regulation 49(2) of the State bank Of Hyderabad (Officers) Service Regulations 1979, should be read as "one and half" and gratuity amount should be calculated accordingly for more the 30 years of service. They further submitted that in the State bank Of Hyderabad (Officers) Service Regulations 1979, for calculation of eligible amount of gratuity, the number days in a month is taken as 30 days instead of 26 days which is inconsistent with the Act.

The case of the Respondent/Non Applicant is that the Applicants were admittedly appointed by the respondents and they have worked in various capacities in various branches and retired/Superannuated from the service. Respondent/Non applicant submitted that gratuity amount payable in respect of applicants calculated under the provisions of Act as well as State Bank of Hyderabad (Payment of Gratuity to Employees) regulations 1960 and the beneficial one of the both is allowed to the applicants.

After careful examination of the submissions, documents, evidence and case laws and other material placed before me by both the parties the Following Issues are framed for consideration:

1. Whether the Controlling Authority under Payment of Gratuity Act, 1972 & Assistant Labour Commissioner (Central), Hyderabad has got the jurisdiction to entertain the application invoking the provisions of Section 4(5) of the Payment of Gratuity Act, 1972?
2. What components should be taken as wages for the calculation of Gratuity amount?
3. Whether the Applicants are justified in claiming the method of calculation of gratuity as :-
 - A. For first 30 years of service at the rate of 15 days pay for each completed year of service after taking 1 Month as 26 days as per the Act.
 - B. For more than 30 years of service at the rate of one and half pay for each completed year of service.
 - C. Gratuity amount should be calculated without any ceiling as there is no such ceiling in the State bank Of Hyderabad (Officers) Service Regulations 1979.
4. Whether the Applicants are entitled for payment of interest on delay in payment of gratuity?

Contd...5.

Point No.1

Controlling authority is defined under Section 3 of the Gratuity Act as:-

“The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.”

For the enforcement of its provisions, the Act provides for the appointment of a Controlling Authority, who is entrusted with the task of administering the Act. The fulfillment of the rights and obligations of the parties are made his responsibility, and has been invested with amplitude of power for the full discharge of that responsibility.

There is no corresponding definition of Controlling Authority under the State bank Of Hyderabad (Officers) Service Regulations 1979. Though methodology has been provided for quantifying gratuity under the Regulations, the machinery has not been provided. Since it is a question of payment of gratuity, even in case of a claim under Regulations, the machinery provided under the Gratuity Act would come into play along with Section 3 thereof. Therefore, it is the Controlling Authority as defined under Section 3 of the Gratuity Act who would be the competent authority to quantify the amount of gratuity to be paid by the employer to an employee. It is open to an employee as well as to the Controlling Authority to find out which of the two provisions provide better terms and conditions of gratuity and whichever is found to be more beneficial to the employee, the same is to be accepted.

In WP(C) Nos. 3086 of 2018 of The Honorable GAUHATI HIGH COURT between Assam Gramin Vikas Bank and its chairman Vs Sanjaya Nand observed that:-

“Contention raised by the petitioners that the Controlling Authority appointed under Section 3 of the Gratuity Act would have no jurisdiction to determine higher gratuity under the 2010 Regulations cannot be accepted. Such a contention is wholly unsustainable and deserves rejection. It is accordingly rejected.”

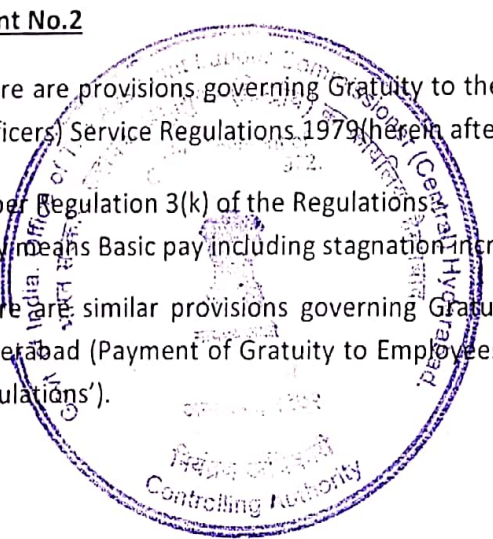
Hence, the submission of Respondents that Controlling authority has no jurisdiction to direct payment of Gratuity under a scheme formulated under regulations, has no merit and it is accordingly rejected.

Point No.2

There are provisions governing Gratuity to the employees of Respondents in the State bank Of Hyderabad (Officers) Service Regulations, 1979 (herein after referred to as ‘the Regulations’)

As per Regulation 3(k) of the Regulations
“Payment means Basic pay including stagnation increment.”

There are similar provisions governing Gratuity to the employees of Respondents in the State Bank of Hyderabad (Payment of Gratuity to Employees) regulations 1960 (herein after referred to as ‘the Gratuity Regulations’).



Contd...6.

As per the Act:-

"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 employment 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.

It is clear from above definition of "wages" that it includes dearness allowance. But the definition of "Pay" As per Regulation 3(k) of the Regulations for the purpose of calculation of gratuity amount is not as per the Act.

As per Section 14 of the Act:-

"The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

As the provisions of this Act have an overriding effect over any instrument or contract. hence the wages/pay for the purpose of calculation of gratuity amount should include Dearness Allowance.

Respondent submitted that even though the dearness allowance is not taken into account in the Regulations, Gratuity amount is still better than the gratuity amount applicable as per Act and which is better terms of gratuity and permissible as per Section 4(5) of the Act. Supporting this argument, respondent referred to the Hon'ble Supreme Court observation in case of Beed District Central Co-Operative Bank Ltd. Vs State of Maharashtra and Ors.

Let's see the Section 4(5) of the Act, which provides for better terms of gratuity which read as:-

"Nothing in this section shall affect the right of an employee receive better terms of gratuity under any award or agreement or contract with the employer."

Here, it is important to understand the meaning of the phrase "Nothing in this section". It means Section 4(5) vests a right to the employees to get better terms of gratuity under section 4, but it does not mean that on the pretext of giving better terms of gratuity employer can curtail the entitlement of employees in other sections of the Act.

Even, in the case of Beed District Central Co-Operative Bank Ltd. Vs State of Maharashtra and Ors., The subject matter, was related to the:-

1. Number of days to be taken for the calculation of Gratuity
2. Ceiling limit of Gratuity amount.

Above both are related to the section 4 of the Act only. First one is related to Section 4(2) of the Act and second is related to the section 4(3) of the Act. There is no observation of Hon'ble Supreme court, In the case of Beed District Central Co-Operative Bank Ltd. Vs State of Maharashtra and Ors, related to the Section 2 of the Act.

In Y.K. Singla v. Punjab National Bank and others Hon'ble Supreme court observed that:-

we have concluded on the basis of Section 4 of the Gratuity Act, that an employee has the right to make a choice of being governed by some alternative provision/instrument, other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4 (5) of the Gratuity Act. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995, Regulations, had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential.

Contd...7.

...7....
The benefit of interest enuring to an employee, as has been contemplated under section 7(3A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/instrument other than the Gratuity Act."

Further in the same paragraph Hon'ble Supreme court observed that:-

"We, therefore, have no hesitation in concluding, that even though the provisions of the 1995, Regulations, are silent on the issue of payment of interest, the least that the appellant would be entitled to, are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest, on account of delayed payment of gratuity (as has already been concluded above). We therefore hold, that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-Section (3A) of Section 7 of the Gratuity Act."

In the above case, even though the regulations of Punjab National Bank is Silent on the issue of payment of interest, interest was allowed as per the Act, to the ex-employee by the Hon'ble Supreme court.

Further, Section 5 of the Act confers the power to the appropriate Government to exempt any establishment from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

In State of Punjab v: Labour Court, Jullundur & Ors on 16 October, 1979 : 1979 AIR 1981, 1980 SCR(1)953, Supreme Court of India held that:

"It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. There is no need for the Bank to formulate a separate scheme when there is an Act passed by Parliament. Yes, the employer can formulate a scheme, or regulation providing for better terms of gratuity, than that of Payment of 'Gratuity Act 1972'. When a separate scheme or regulation is made providing for better terms of gratuity, each regulation of such scheme must be in consistency with the provisions of the Act 1972".

In the instant case, respondent never claimed exemption under Section 5 of the Act, hence respondent is bound by the operation of the provisions of this Act including the provisions of Section 2 of the Act. Purpose of Section 5 of the Act would stand defeated, if Respondent claims to make a scheme/ regulations, some provisions of which are contrary to the Act.

It is further submitted by the Applicants that Special Allowance should be included as Wages/Pay as it is universal to all employees.

Respondent submitted that even though the Special Allowance universal to all employees, it should not be taken into account as wages for Payment of Gratuity.

In Kichha Sugar Company Ltd. through General Manager Vs. Tarai Chini Mill Majdoor Union, Uttarkhand Hon'ble Supreme court observed that:-

"In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. "

In P. Selvaraj vs The Management Of Shardlow India, Hon'ble High Court of Madras observed that:-

"The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore, the term "last drawn wage" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation. Further, the settlement provides as to

Contd...8.

what should be the wages that should be paid to a workman and that the Management cannot adopt an artificial interpretation with reference to the term "wages". It is in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman."

In The Regional Provident Fund Commissioner (II) West Bengal Vs Vivekananda Vidyamandir and others, Hon'ble Supreme court observed that:-

"Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed."

In Manipal Academy of Higher Education vs. Provident Fund Commissioner, Hon'ble Supreme court observed that:-

- (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.
- (c) Conversely, any payment by way of a special incentive or work is not basic wages."

Hence, universality is a crucial criterion for a component to be included as wages. In the Instant case, it is fact that Special allowance at the rate of 7.75% of the Basic Pay with Applicable DA thereon is paid to all across the board and is universal to all employees of the respondents. In the view of above fact and Judgements of Hon'ble Courts, Special allowance with Applicable DA thereon should be included as wages/Pay for the calculation of Gratuity amount.

Hence, Dearness Allowance and Special allowance with Applicable DA thereon should be included as wages/Pay for the calculation of Gratuity amount.

Point No.3

Let's see Method of Calculation in the Regulation Vs the Act.

As per Regulation 49(2) of the Regulations:-

"The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a max., of 45 month's pay. Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years."

It is further mentioned in the Regulations that:-

"If the fraction of service beyond completed years of service is six months or more gratuity will be paid pro-rata for the period."

As per Section 4(2) of the Act:-

"For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned."

As per Section 4(5) of the Act:-

"Nothing in this section shall affect the right of an employee receive better terms of gratuity under any award or agreement or contract with the employer."

Hence, an employee has the right to receive better terms of gratuity under any award or agreement or contract with the employer. Employer has such scheme under Regulation 49(2) of the Regulations. Hence, if terms of scheme are beneficial than the scheme given in the section 4 of the Act, an employee has the right to opt for it.

Applicants submitted that they have been given gratuity amount as per the regulations which are one month's pay for every completed year of service subject to a max. of 15 month's pay which is for up to 30 years of completed service. Applicants further submitted that calculation for gratuity amount should be done as per the Act but there should be no ceiling, as there is no such provision of ceiling in the Regulations.

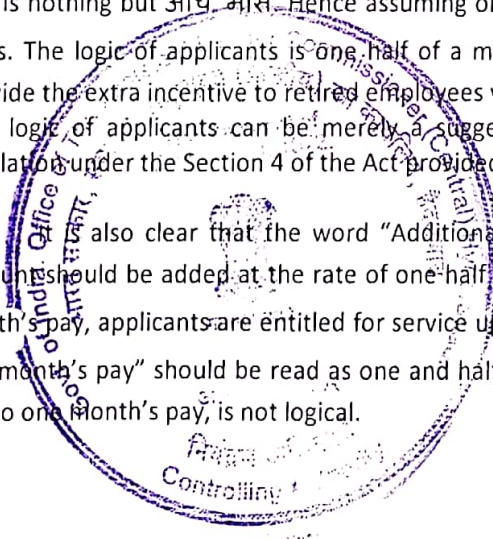
In Beed District Central Co-Operative Bank Ltd. Vs State of Maharashtra and Ors., it is observed by the Hon'ble Supreme Court that the expression 'terms' as appearing under sub-Section (5) of Section 4 of the Act must ordinarily mean all terms to the contract and that the employee is not entitled to best terms of both the statute and the contract.

Hence, Gratuity amount payable to the applicants should be calculated, separately, in accordance with the Act and the Regulation 49(2) and beneficial one of the both should be given to the applicants. Applicants cannot claim benefit of Section 4 of the Act as well as Regulation 49(2) of the Regulations. Applicants can not choose some terms from the section 4 of the Act and other terms from the Regulation 49(2) of the Regulations. Applicants have to opt for all the terms of Section 4 of the Act or Regulation 49(2) of the Regulations whichever is beneficial overall.

Another contention of the applicants is that for service rendered more than 30 years, 1+ (1/2) month's pay should be given and "one half of a month's pay" should be read as "one and half of a month's pay" to give the extra incentive to those retired employee who have retired after rendering more than 30 years of service.

After going through both the version (English as well as Hindi of the regulation of bank), it is clear that one half is nothing but आधे मास. Hence assuming one half of a month's pay" as one and half of a month's pay" has no basis. The logic of applicants is "one half of a month's pay" should be read as one and half of a month's pay" to provide the extra incentive to retired employees who have completed more than 30 years of meritorious service. But that logic of applicants can be merely a suggestion to the Respondent as Employer is free to frame his own regulation under the Section 4 of the Act provided the Regulation framed gives the better terms of gratuity.

It is also clear that the word "Additional" is prefixed to "Amount" and not to the "Rate". It means only Amount should be added at the rate of one-half of a month's pay" to whatever Gratuity amount at the rate of one month's pay, applicants are entitled for service up to 30 years. hence another contention of applicants that one half of a month's pay" should be read as one and half of a month's pay" by adding the additional one half of a month's pay to one month's pay, is not logical.



Point No.4

Section 7(3A) of the Act also provides that if the amount of gratuity is not paid by the employer within the period specified in Sub-section (3), the employer shall pay from the date on which gratuity becomes payable to the date on which it is actually paid, a simple interest at such rate not exceeding the rate notified by the Central Government and the Central Government has notified ten percent per annum as the rate of simple interest vide S.O. 874 (E) dated October 1, 1987. Payment of interest is exempted only when the delay is an account of fault of the employee and the employer obtains permission of the Controlling Authority for delayed payment.

In the case of M. Gangahanuma Gouda Vs Karnataka Agro Industries Limited (2003-I-CLR-205) the Hon'ble Supreme Court observed that "payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied and employees have valuable right to get gratuity and any culpable delay in payment of gratuity must be visited with penalty of interest. The same view taken in the case of State Of Kerala And Ors vs M. Padmanabhan Nair on 17 December, 1984.

Hence, The Respondents are liable to pay the remaining amount of Gratuity and Interest from the date on which gratuity becomes payable till the actual date of payment.

