

BY RPAD  
PH: 0866 - 2555101



Government of India  
Ministry of Labour & Employment  
Office of the Asst. Labour Commissioner (C)  
5th Floor, Central Government Offices Complex  
Plot No. B-2, Industrial Estate, Autonagar, Vijayawada - 520 007.

No. 36/65/2019-ALC-VJA

Date: 18.05.2021

FORM "R"  
(See Rule 17)  
NOTICE FOR PAYMENT OF GRATUITY

To

The Assistant General Manager,  
State Bank of India, PPG Department,  
Amaravathi Circle, Gunfoundry,  
Hyderabad-500002

Whereas Sri Paruchuri SVS Siva Prasad, S/o. Ramakrishnaiah, D. No. 1-38-35, Kolluru Vari Veedhi, Nazeerpet, Tenali-522201 an employee under you filed an application under Section 7 of the Payment of Gratuity Act, 1972 before me.

And whereas the application was heard in your/ representative presence on different dates and after hearing, I have come to the finding that the said Sri Paruchuri SVS Siva Prasad is entitled for payment of Rs. 968334.63 (Rupees Nine Lakh Sixty Eight Thousand Three Hundred Thirty Four and Sixty Three Paise) as Gratuity with 10 percent simple interest per annum w.e.f. 01.02.2016 to till the actual date of payment of gratuity, under the Payment of Gratuity Act, 1972.

Now, therefore, I hereby direct you to pay the said sum of to Rs. 968334.63 (Rupees Nine Lakh Sixty Eight Thousand Three Hundred Thirty Four and Sixty Three Paise) with 10% interest to Sri Paruchuri SVS Siva Prasad within thirty days of receipt of this notice with an intimation thereof to me.

GIVEN UNDER MY HAND AND SEAL, THIS 18<sup>th</sup> day of May, 2021.

(PUNUMALI BAPUJI)  
ASST.LABOUR COMMISSIONER (CENTRAL) &  
CONTROLLING AUTHORITY UNDER  
THE PAYMENT OF GRATUITY ACT, 1972,  
VIJAYAWADA

Copy to Sri Paruchuri SVS Siva Prasad, S/o. Ramakrishnaiah, D. No. 1-38-35, Kolluru Vari Veedhi, Nazeerpet, Tenali-522201. He is advised to contact the employer for collecting payment.



ASST.LABOUR COMMISSIONER (CENTRAL)  
VIJAYAWADA

**BEFORE THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 AND  
ASSISTANT LABOUR COMMISSIONER (CENTRAL), VIJAYAWADA**  
Dated this 18<sup>th</sup> Day of May, 2021.

**PRESENT**  
**PUNUMALLI BAPUJI**  
Controlling Authority under the P.G.Act, 1972 &  
Assistant Labour Commissioner (Central),  
Vijayawada

**P.G. Application No. 65 of 2019**

**Between**

Sri Paruchuri SVS Siva Prasad, S/o. Ramakrishnaiah, D. No. 1-38-35, Kolluru Varl Veedhi,  
Nazeerpet, Tenali-522201 ... Applicant

**And**

The Assistant General Manager, State Bank of India, PPG Department, Amaravati Circle,  
Gunfoundry, Hyderabad-500002 ... Respondent

\*\*\*

1. Sri Paruchuri SVS Siva Prasad, S/o. Ramakrishnaiah, Ex-Employee of State Bank of Hyderabad (herein after referred to as Applicant) filed an application dated 30.07.2019 (received in this office on 30-07-2019) in Form - 'N' under Rule 10 (1) of the Payment of Gratuity (Central) Rules, 1972, requesting the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Vijayawada (herein after referred to as Controlling Authority) to issue necessary directions to the Respondent - State Bank of India (Herein after referred to as Respondent Bank) to pay him the differential amount of Gratuity of Rs. 14,74,767.00 as per Regulation 49 of State Bank of Hyderabad (Officers) Service Regulations, 1979 read with Section 4(5) of the Payment of Gratuity Act, 1972.

The Applicant stated that he was appointed on 21-12-1978 in State Bank of Hyderabad which was amalgamated into State Bank of India with effect from 01-04-2017 and retired from service as Deputy Manager on 31-01-2016, after putting in 37 years 1 month and 10 days of service. His last wages drawn for the purpose of gratuity calculation are Rs. 86,169.50. He claimed Rs. 25,35,372.00 as Gratuity eligible to him, out of which Rs. 10,60,605.00 has been paid and due is Rs. 14,74,767.00 and interest thereon. He further stated that the Respondent Bank has omitted dearness allowance and special allowance while taking the last drawn pay/wage for calculation of gratuity. And also while calculating the gratuity for the period above 30 years of service, the words additional one half is misinterpreted as 0.5 instead of 1.5. The



applicant requested to condone delay in filing Form N. The Applicant relied on the following judgments in support of his arguments.

their allegation  
11-09-2019, IS-7  
2021-27-04-2021

- a) Union Of India & Anr vs Tarsem Singh ((2008) 8 SCC 648)
- b) State Bank of India and others vs. Atindra Nath Bhattacharyya, (2019) 8 SCC 134
- c) P.Selvaraj vs The Management Of Shardlow India Limited, Chennai (2007 (1) LLN 835)
- d) Bank of Baroda Vs. Controlling Authority under Payment of Gratuity Act (LAWS[ALL]-2008-4-245)
- e) Y.K.Singla v. Punjab National Bank and others ((2013) 3 SCC 472)
- f) Allahabad Bank vs. All India Allahabad Bank Retired Employees Association (2010 (2) SCC 44)
- g) Collector, Land Acquisition, Anantnag and Another Vs. MST. Katiji and others (1987 AIR 1353, 1987 SCR (2) 387)
- h) BCH Electric Limited vs Pradeep Mehra (W.P.(C) 3385/2018 of Hon'ble Delhi High Court)
- i) Assam Gramin Vikash Bank and Another Vs. The Union of India and 4 others (W.P. (C) No. 2086/2018 of Hon'ble Gauhati High Court)
- j) Jaswant Singh Gill vs. Bharat Coking Coal Limited and others ((2013) 3 SCC 472)
- k) State of Punjab v. Labour Court, Julundur, (1980-1 LLN. 39, 1979 AIR 1981, 1980 SCR (1) 953)
- l) Surya Roshni Ltd. and others vs. Employees Provident Fund and others (2019 LLR 339 (SC))
- m) Muralee Mohanan K.T and Others Vs. Corporation Bank and others (WP(C).No.32386 OF 2015 of Hon'ble High Court of Kerala)
- n) Bank of Baroda vs. G. Paiani and Others (W.P.No.5525 of 2012 of Hon'ble Supreme Court of India).
- o) I.S. Iyer Vs. Union of India and others (2004 (3) Bom CR 333, (2004) ILL1885)
- p) Hukumchand Sugar Mills Limited vs State Of West Bengal And Ors ((1976) ILLI 285 Cal)
- q) Vallabadas Kanji (Private), Ltd. v. Esmail Koya And Others (1978 IC 809, 1978 (26)FLR 171)
- r) Shri Digvijay Woollen Mills Ltd. vs Mahendra Prataprai Buch Etc (1980 AIR 1944, 1981 SCR (1) 64, 1980 SCC (4) 106)
- s) Jeevanlal (1929) Limited and Ors. vs Controlling Authority ((1982) ILLI 86 Mad)
- t) H. Gangahanume Gowda Vs. Kamataka Agro Industries Corporation Limited (LLI-2003-1-1119, AIR 2003 SC 1526, (2003) 3 SCC 40)
- u) Union Bank Of India vs C.G. Ajay Babu ((2018) 9 SCC 529)
- v) BCH Electric Ltd. v. Pradeep Mehra ((2020) III LJI 1 SC), (ILR 2020 (2) (Ker.)345 (SC), 2020 KHC 6365 (SC))

2. On receipt of the claim application, the Controlling Authority has issued notices to the Applicant and the Respondent Bank in Form-'O' to appear before the Authority along with all witnesses upon whose evidence and the documents on which they intend to rely in support of



their allegations and defend as the case may be. The Authority held hearings on 19-08-2019, 11-09-2019, 18-03-2020, 07-12-2020, 18-01-2021, 29-01-2021, 25-02-2021, 17-03-2021, 12-04-2021, 27-04-2021 and finally on 17-05-2021.

Sri T. Sivakumar, AGM Law of the Respondent Bank has sent email to this Authority in the afternoon of 13-5-2021 requesting for adjournment for 30 days from 17-5-2021 due to lockdown. Moreover, on 27-4-2021 also the Respondent Bank has requested for 15 days adjournment and on their request case was posted for 17-5-2021. The representative of the Applicant Sri Gentela Janaki Rama Sarma stated that the Applicant is a senior citizen, fighting for the right under Article 300 A of the Constitution of India. All the Central Government Offices and State Government Offices are working during lock down. All the offices and branches of the Respondent Bank are also working during this lockdown period. But the Respondent Bank is playing delaying tactics by seeking adjournments in the name of lock down. The Applicant already filed written arguments and the Respondent Bank has filed their written arguments twice. The Respondent Bank has utilized all the opportunities during the last two years and at this stage they cannot file any other documents. Further, he stated that the Respondent Bank is doing forum shopping by filing Writ Petition in the Hon'ble High Court of Andhra Pradesh. However, there were no specific directions from the Hon'ble High Court in this regard. The Applicant relied upon the case of Atindra Nath Bhattacharyya ((2019) 8 SCC 134)) and requested to pass orders without giving any adjournment in the interest of justice as justice delayed is justice denied.

In the case of State Bank of India and others vs. Atindra Nath Bhattacharyya, (supra) Hon'ble Supreme Court observed "once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is 'justice demands' that the respondent be given one last opportunity to place his version. The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice. Therefore, we find that the directions contained in Para 18 of the judgment passed by the Division Bench are not sustainable and the same are set aside."

As the Respondent Bank has availed sufficient effective opportunities (around a dozen) since 2019 and filed written arguments, further the Respondent Bank is doing forum shopping.





By suppressing it and not coming with clean hands. In **Union of India and others Vs. Cipla Limited and others (2017) 5 SCC 262** Hon'ble Supreme Court laid down the following test to determine whether a party is indulging in forum shopping.

"157. The decisions referred to clearly lay down the principle that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there any functional similarity in the proceedings between one Court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not."

At this stage keeping in view the present stage of the case and above observation of the Hon'ble Supreme Court either in Atindra Nath Battacharyya (supra) or Union of India and others Vs. Cipla Limited and others, adjournment is not granted. Therefore placing reliance upon the said cases of Hon'ble Supreme court, this authority feels further adjournment is not needed and reserve the case for orders on 17-5-2021.

The Respondent Bank stated that the Ministry of Finance, Government of India, has taken a decision to merge all the Subsidiaries and Associates of State Bank of India with State Bank of India itself. The Respondent Bank, with the sanction of the Central Government and in consultation with the Reserve Bank of India had acquired by way of amalgamation, the business including assets and liabilities of State Bank of Hyderabad, wherein the Applicant was working. The Application filed seeking a direction to the Respondent Bank to pay further amount as Gratuity alleging that the amount of gratuity paid by the Respondent Bank was less than what the Applicant is eligible under law is misconceived, baseless and without any contractual or legal obligation to pay the amount in excess of what has already been paid to him. The Applicant has utterly failed to make out any case, not even a prima facie case, in support of the alleged cause of action and/ or in support of the prayers for grant of reliefs as prayed for or otherwise not any case exists or at all. Hence the Application filed by the Applicant against the Respondent Bank is liable to be dismissed in limine. The Respondent Bank relied on the following judgments in support of their arguments.

- a) BCH Electric Limited Vs. Pradeep Mehra ((2020) III LLJ 1 SC))
- b) Beed District Central Co-operative Bank Limited vs. State of Maharashtra ((2006) 8 SCC 514)
- c) Baroda Uttar Pradesh Gramin Bank Vs. The Appellate Authority (2020 (166) FLR 408)



3. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims, counter claims and arguments made by the parties herein, the following questions are to be addressed and answered for deciding the case.

- a) Whether the Controlling Authority under the Payment of Gratuity Act, 1972 have jurisdiction for deciding the payment of gratuity under Service Regulations?
- b) Whether the gratuity claim application filed after 90 days may be entertained or not?
- c) Whether the Principle of Estoppel or Waiver is applicable for this case?
- d) Whether doctrine of Judicial Discipline is applicable to Quasi Judicial Authority?
- e) Whether the Respondent Bank calculated gratuity as per the methodology and taking all the components in the calculation formula mentioned in the Regulations?
- f) Whether the applicant is entitled for interest for delay in payment of gratuity?

4. As regards to jurisdiction of the Controlling Authority under the Payment of Gratuity Act, 1972, over the instant case, the Respondent Bank stated that the Controlling Authority has no jurisdiction in the present case. As per Regulation 20 of State Bank of Hyderabad (Payment of Gratuity to Employees) Regulations, 1960, the decision of the Trustees shall be final and binding upon the employees in all respects and upon all matters, questions disputes relating to or connected with the interpretation of these Regulations or with Gratuity Fund and administration thereof. Hence, the interpretation of provisions of Gratuity Regulations does not come under the purview of the Controlling Authority. The Controlling Authority has no jurisdiction to interpret the service rules and regulations and the same is beyond the scope. The Controlling Authority has no jurisdiction to direct payment of gratuity under SBH Payment of Gratuity Regulations to employees. The Controlling Authority can grant benefits arising only under the Payment of Gratuity Act.

Whereas, State Bank of Hyderabad (Officers') Service Regulations, 1979 was came into force from 1<sup>st</sup> October, 1979. Every officer shall be eligible for gratuity as per Regulation 49. Regulation 76 clarified that any rule, regulations, order, agreement resolution or other instrument, or any usage, custom, convention or practice governing any matter deal with in these regulations including allowances, perquisites and facilities shall on and from the appointed date i.e. 1<sup>st</sup> October, 1979, cease to have effect in regard to such matter unless the contrary is provided in these regulations. As such, with respect to gratuity payable to the applicant, State Bank of Hyderabad (Payment of Gratuity to Employees) Regulations, 1960, ceased to have effect from 1<sup>st</sup> October, 1979. Whereas these regulations does not define the Controlling Authority or the Appellate Authority for dealing with the matter.



Moreover, in the case of **Assam Gramin Vikash Bank and another Vs. The Union of India and 4 others (W.P. (C) No. 2086/2018)** the Hon'ble Gauhati High Court observed that Controlling Authority is defined under Section 3 of the Gratuity Act and there is no corresponding definition of Controlling Authority under the 2010 Regulations. Therefore when an employee makes a claim to gratuity, it can be either under the Gratuity Act or under the 2010 Regulations which cannot however be detrimental to the interest of the employee, under whichever provision gratuity is higher that may be availed by the employee. Though methodology has been provided for quantifying gratuity under the 2010 Regulations, the machinery has not been provided. Since it is a question of payment of gratuity, even in case of a claim under Regulation 72, 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 to an employee under the Regulations.

A/C has acted clear and deciding the same jurisdiction under am...

Again, Hon'ble Kerala High Court in the case of **State Bank of Travancore Vs. The Assistant Labour Commissioner (Central), Trivandrum and others (W.P. (C) No. 33378/2007)** observed that when the Act itself recognizes the eligibility for better terms of gratuity as per the contract between the employer and the employee, the employee should not be driven to a different forum for claiming that better terms of gratuity, which will have the effect of the employee being driven to separate forums for claiming gratuity as per the Payment of Gratuity Act and also gratuity as per the conditions of service agreed between the employer and the employee.

In the case of **Eastern Coalfields Limited Vs. Regional Labour Commissioner (Central), Calcutta (1982 II LJI 324, 1981 (2) CLJ 478)** the Hon'ble Calcutta High Court held that it will not be proper construction in keeping with the beneficial purpose of the legislation, that although under Section 4 (5) of the Act an employee may be entitled to a higher payment of gratuity, but for enforcing such favourable terms of service for higher gratuity, he should move a different forum and the authority under the Gratuity Act cannot entertain such claim of higher amount of gratuity.

Again, in the case of **FCI and Another Vs. Assistant Labour Commissioner (Central) ((2008) ILLJ 1107 Cal)** it was held by the Hon'ble Calcutta High Court that the provisions of Section 4 (5) of the Payment of Gratuity Act, 1972 have protected the rights of the respondents employees to receive better terms of gratuity under any contract with the employer and, therefore, the disputes relating to the claims of the concerned employees are to be decided by the ALC in terms of Section 7 (4) (b) & (c) of the Payment of Gratuity Act, 1972. Accordingly, the





the is on  
ad that  
filed

ALC has acted clearly within jurisdiction in entertaining the claims of the employees concerned and deciding the same on merits. Therefore orders of the ALC cannot be said to be without jurisdiction under any circumstances.

The Hon'ble High Court of Delhi in the case of **BCH Electric Limited Vs. Pradeep Mehra** (W.P. No. 3385/2018), held that the P.G. Act is a complete in itself with respect to matters relating to the payment of gratuity and the Controlling Authority appointed under Section 3 is statutorily enjoined under Section 7 (4) (b) to adjudicate any dispute qua the amount of gratuity payable or as to the admissibility of any claim to gratuity. When the P.G. Act itself protects the right an employee to get higher gratuity vis-a-vis the prescribed ceiling limit and does not curb the maximum amount of gratuity payable to an employee, it is unfathomable how the jurisdiction of the Controlling Authority can be curtailed to decide only those claims that have a pecuniary value less the said ceiling limit.

In appeal against the above mentioned BCH Electric Limited case, the Hon'ble High Court of Delhi (**BCH Electric Limited Vs. Pradeep Mehra** (LPA. No. 97/2019)), observed that the question before the Supreme Court in **Allahabad Bank and another Vs. All India Allahabad Bank Retired Employees Association (2010) 2 SCC 44** was whether the retired employees were entitled to receive gratuity in addition to the pension they had opted for under the pension scheme. That was answered in the affirmative. It was emphasized that the determination whether the pension scheme was more advantageous when compared to the provisions of the gratuity under the Payment of Gratuity Act had to be done by the appropriate government. It was in that context, while dealing with the challenge laid by the retired employees' Association to the order of the Controlling Authority. It is clear that the observations of the Hon'ble Supreme Court were in the context of an employer being granted exemption from applicability of the PGA and not so much as the jurisdiction of the Controlling Authority to decide a claim made by an employee for gratuity with reference to a scheme of an employer which provided better terms of gratuity. The Allahabad Bank was that the Controlling Authority did not have the power to decide "whether an employer is exempt from paying gratuity under the said Act, merely because it finds that the employer's internal scheme for pensionary benefits is better than the statutory scheme for gratuity". Such power had been granted only to the appropriate government.

In appeal against the above mentioned BCH Electric Limited case, (**BCH Electric Limited Vs. Pradeep Mehra** ((2020) III LJ 1 SC) on which the Respondent Bank relied upon, the Hon'ble Supreme Court has not held any negative observation on the in the issue of the jurisdiction of



the Controlling Authority. Whereas the Respondent Bank misunderstand and misinterpret the case. Actually, it was not the intention of the Hon'ble Supreme Court in that case.

Final order is not  
condone the del.  
without offering a  
and without offer.

In view of the above observations, the Controlling Authority appointed under Section 3 is statutorily enjoined under Section 7 (4) (b) to adjudicate any dispute including the amount of gratuity payable or as to the admissibility of any claim to gratuity. The State Bank of Hyderabad (Officers) Service Regulations, 1979, has not defined any authority to deal with the gratuity claims. The provisions of Section 4 (5) of the Payment of Gratuity Act, 1972 have protected the rights of the employees to receive better terms of gratuity under any contract with the employer and, therefore, the disputes relating to the claims of the employees under the Regulations are to be decided by the Controlling Authority in terms of Section 7 (4) (b) & (c) of the Payment of Gratuity Act, 1972. The Respondent Bank has not submitted the notification issued under Sub Section (1) or Sub Section (2) of Section 5 of the Act exempting them from the operation of the provisions of the Act as their employees are in receipt of gratuity not less favourable than the benefits conferred under the Act.

5. As regards to delay, the Applicant stated that he was not aware of the technicalities and legalities of the provisions of the Gratuity Act. He believed that the management of the Respondent Bank is fair with them and believed that their calculation would be correct and accepted the gratuity amount in good faith. But they have interpreted the regulations in their favour and wrongly calculated the gratuity which was not as per Service Regulations. After the decisions of the Deputy Chief Labour Commissioner (Central), Hyderabad in the case of Saptagiri Grammeena Bank and other authorities in similar cases he came to know that Regulation 49 of Service Regulations are not consistent to the provisions of the Payment of Gratuity Act and payment of gratuity made to him by the bank is faulty. Then the Applicant requested the Respondent Bank to recalculate their gratuity and pay them the balance amount of gratuity. But the management did not respond at all and hence approached this Authority. In view of the above position, the Applicant requested to reject the objections of the Respondent Bank and condone the delay in filing the Application to hear and decide the case of applicant on the merits to meet the ends of justice, as delay caused in filing the Claim before the Controlling Authority is not intentional or deliberate.

The Respondent Bank stated that the application is barred by limitation and on this ground alone the application is liable to for dismissal. Condonation of delay cannot be obtained for mere asking there has to be sufficient cause to condone the delay though the expression 'sufficient cause' is liberally construed and is elastic enough to enable this authority to apply the law in a meaningful manner. There can be no dispute that while condoning the delay what



3  
21  
prepaid

matters is not the length of the period but the acceptability of the explanation offered to condone the delay. An application for stale claim which is filed after inordinate delay and without offering any explanation as regards the delay and without making out sufficient cause and without offering satisfactory explanation cause for such inordinate delay does not deserve to be entertained. As per Rule 10 of the Payment of Gratuity (Central) Rules, an application filed after the expiry of 90 days period from the date of retirement could be accepted by the controlling authority only if the applicant showed sufficient cause for the delay and the Controlling Authority was satisfied with the cause shown for the delay. The application is filed beyond limitation period as prescribed under the Limitation Act. The Applicant did not explain the reasons/ sufficient cause for the delay in filing the application. There is no sufficient cause or reasonable grounds are found in the application to condone the delay. In the absence of sufficient cause for delay in filing application for gratuity, delay cannot be condoned and further, adjudication of claim on merits cannot be done by the Controlling Authority. On this ground alone the claim application is liable for dismissal without going into the merits of the case.

Whereas Rule 10 of the Payment of Gratuity (Central) Rules, 1972 provides that the controlling authority may accept application on sufficient cause being shown by the applicant, after the expiry of the specified period.

The Hon'ble High Court of Andhra Pradesh in the case of Krishna District Milk Producers Mutually Aided Co-op Union Vs. The State of Andhra Pradesh (2016 Lab IC 755 (Hyd), 2015 (19) SCT 421) observed that the provisions of the Gratuity Act have been brought forth as a social security measure for providing the necessary financial support and assistance to the employee concerned. Apart from payment of wages, once the provisions of the Act become applicable to any establishment, an additional obligation is thrust upon the employer to make the payment of gratuity, irrespective of whether he likes the quality of services rendered by the employee or not. The statute itself, therefore, has not recognized any outer period of limitation for payment of gratuity to the employee concerned at the behest of the Controlling Authority.

In the case of **The Secretary, Siddhartha Academy of General & Technical Education, Vijayawada and another Vs. The Appellate Authority...** (W.P. No. 16325/2000) Hon'ble High Court of Andhra Pradesh held that by delay on the part of the employee in making a claim for payment of gratuity, the obligation statutorily thrust upon the petitioners does not get withered away.



The Hon'ble Supreme Court of India in the case of **N. Balakrishnan Vs M. Krishnamurti** (1998) 7 SCC 223, wherein it has been held that words "sufficient cause" should be construed liberally. Acceptability of explanation for the delay is the sole criterion, length of delay not relevant. In absence of anything showing mala fide or deliberate delay as dilatory tactic, Court should normally condone the delay.

Legislation, the  
not understand  
after the limitation  
of delay. "

The Hon'ble High Court of Rajasthan in the case of **Madar Union Sanatorium and Hospital v. M.B. Sathe** ((1986) 111 LJ 135 Raj, 1986 (1) WLN 282) inter alia observed that the person who is not technical and legal minded is generally entitled for the benefit of condonation of delay, specially under beneficial legislation enacted for the welfare of the people.

In the case of **Vensa Biotech Ltd. v. Boddur Rambabu**, 2005 (1) LLN 715 (AP HC) the Hon'ble High Court of Andhra Pradesh observed 'In view of the elaborate submissions made by both the counsel drawing attention of this court to Section 7 of the Payment of Gratuity Act, 1972 and certain other rules in the context of the present controversy, suffice it to say that the proviso under sub-rule (1) of Rule 10 of the Rules, itself is clear and that when Controlling Authority had exercised the discretion in condoning the delay, I do not see any reason to disturb such a discretionary order while exercising jurisdiction under Article 227 of the Constitution of India.

Further, as per the dictums of the Hon'ble Supreme Court and various Hon'ble High Courts, the legitimate right of the employee for receiving gratuity should not be lightly brushed up because of the reason that the employee prefers the application for claiming gratuity belatedly. Being the Payment of Gratuity Act, 1972, is a beneficial piece of legislation it has to get a liberal interpretation and the intention of the statute becomes highly relevant when the issue for rejection of a claim is pressed. The cause for the delay submitted by the Applicant need not be examined strictly with a rigid rule of law but with a liberal view to see that the applicant should not be barred from having right to receive his legitimate amount of gratuity which is due to him from the responsible employer.

The Payment of Gratuity Act, 1972 is a welfare legislation providing a scheme for the payment of gratuity to employees. The Rule 10 of the Payment of Gratuity (Central) Rules, 1972 provides that the controlling authority may accept application on sufficient cause being shown by the applicant, after the expiry of the specified period. The delay in filing the application should be condoned liberally keeping in view the intention behind the enacting the Payment of Gratuity Act. The act has been enacted with a view to grant benefit to employees, a 'weaker section' in industrial adjudicatory process. In interpreting the provisions of such beneficial



legislation, therefore, liberal view should be taken. The applicant is not legal minded and did not understand the complexity of Law. No mala fide intention is found in filing the application after the limitation period. As such the applicant cannot be denied the benefit of condonation of delay. The Authority, keeping in view the ratio laid down by Hon'ble Apex Court and High Courts, feels that delay should be condoned. Thus, in exercise of powers conferred under sub-rule (1) of Rule 10 of the Payment of Gratuity (Central) Rules, 1972, the reasons shown by the Applicant for delay occurred in filing the application before this Authority is considered reasonable and having satisfied, I hereby condone the delay in filing the Gratuity claim application after expiry of 90 days, before the Controlling Authority, and allowed the application.

6. The next aspect is the applicability of Principle of Estoppel or Waiver to this case. The Respondent Bank stated that the Applicant received entire terminal benefits including the gratuity without protest as full settlement and now filed this application with wrongful gain and without sufficient reason. After submitting Form I and accepting the gratuity amount, the Applicant is stopped from claiming any further amount. The Applicant unequivocally and voluntarily accepting the gratuity amount towards full and final settlement without raising any grievance cannot raise any dispute thereafter at belated stage. The Applicant unconditionally accepted all retirement dues and therefore stopped from filing the application before the Controlling Authority under the Payment of Gratuity Act.

The Applicant stated that the objection of the Respondent Bank has no legs to stand in the light of the legal facts that in welfare legislation like Gratuity Act, if an employee comes to know about reduced / wrong payment on the grounds not relevant/ in consonance with the act, Beneficiary can very well raise a dispute notwithstanding that he has received the amount payable to him and management is bound to pay the remaining gratuity.

In the case of **Hisco Steel Private Limited Vs. Controlling Authority and others (2002 (92) FLR 611, (2002) 111 708 Cal)** the Hon'ble Calcutta High Court observed that if the gratuity paid is less than the amount payable in law, even if there is a note, 'in full and final settlement', still it cannot estop the workmen from claiming the balance amount as there cannot be an estoppel against a statute.

In the case of **Premier Marine Products Vs. The Appellate Authority under the Payment of Gratuity Act, 1972 (W.P. No. 8359/2009)** the Hon'ble Madras High Court (Madurai Bench) observed that in the matters related to payment of gratuity, the principle of estoppel or waiver cannot be applicable. Section 14 of the Payment of Gratuity Act, 1972, makes it clear that the



provisions of the said Act will have an overriding effect notwithstanding anything therein or therein contained in any other enactment or in any instrument or contract.

The  
method of  
Applicant's

In view of the above observations of the Hon'ble High Courts, though the Applicant has received the Gratuity Amount decided by the Respondent Bank and when he accepted the payment without protest, the principle of estoppel is not applicable, if the gratuity paid is less than the amount payable in law. As such, the argument of the Respondent Bank that Principle of Estoppel or Waiver is applicable to this case is not sustained.

7. The next aspect is the applicability of doctrine of Judicial Discipline in Quasi Judicial Proceedings. The Respondent Bank stated that it can be seen from the application filed by the Applicant where under he calculated the gratuity that the calculation is based on the orders passed by the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Hyderabad and by the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Ajmer and by the Controlling Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Ranchi, which are not binding on the this Controlling Authority as it is not in accordance with law.

In the case of **Union of India and others Vs. Kamalaksi Finance Corporation ((1992) 1 SCC 648, AIR 1992 SC 711)** the Hon'ble Supreme Court of India held that the Principles of Judicial Discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the department in itself an objectional phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. The Hon'ble Supreme Court in the case of **Jain Exports Private Limited and Another Vs. Union of India and others (1988 SCR (3) 952, 1988 SCC (3) 579)** wherein it was held that in a tier system, undoubtedly decisions of higher authorities are binding on lower authorities and quasi-judicial tribunals are also bound by this discipline. Hence, the Order of the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Hyderabad, being the Jurisdictional Appellate Authority, is binding on this Authority and any orders issued contrary to the orders of the Appellate Authority amounts to violation of principles of law. Ironically, the Respondent Bank has relied upon the order dated 20-11-2019 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Hyderabad.



10/11/2015

10/11/2015

8. The next aspect is whether the Respondent Bank calculated gratuity as per the methodology and taking all the components in the calculation formula? The objections of the Applicant are:

- A. The Respondent Bank has not included the Dearness Allowance and other admissible components like Special Allowance in the last drawn wages for calculation of gratuity.
- B. In the calculation under the Service Regulations, Pay should be divided by 26 and multiplied by 15 to arrive at the actual monthly wages, as done in calculation under Payment of Gratuity Act
- C. For calculation of additional amount of gratuity beyond 30 years of service, additional one half of a month's pay ((30+15) = 45 days) has not been taken into account.

a) As regards to point (A) above i.e. inclusion of Dearness Allowance and Special Allowance in calculation formula, the Applicant stated that the Respondent Bank has to add the dearness allowance and other eligible components in its calculation including consideration of Special Pay, which was introduced in 10<sup>th</sup> Bipartite Settlement. Under statutory requirement, employer is required to calculate the gratuity separately under the Regulation and under the PG Act but under regulation/ scheme it is to be kept in mind that provisions of the Act are not depleted in any term because provisions of the Act are the guiding tools, sanctity of provisions of Section 4 (5) read with Section 14 are to be maintained. In other words provisions of the statute are minimum standards which cannot be reduced/ downgraded most importantly when employer has not taken exemption as per Section 5 of the Act. Thus under scheme/ regulation execution of provisions of the statute are to be taken care of in a better terms only if compared with the Act but not at all independently as misinterpreted by the Respondent Bank. It is quite clear that definition of pay refers to about 'emoluments' whereas emoluments include salary which includes pay and dearness allowance and other allowances. In the said regulation 49, thus dearness allowance is one of the unavoidable components of pay. Section 4 (5) of the Act says nothing in this Section shall affect the right of an employee to receive better terms of gratuity under any Award or agreement or contract with the employer. The Respondent Bank has not taken any exemption from operational provisions of the Act as prescribed under Section 5 of the Act.

The Respondent Bank stated that Section 63 (2) (v) of the State Bank of India (Subsidiary Banks) Act, 1959 allowed the subsidiary banks to frame regulations for the establishment and maintenance of superannuation, pension, provident fund or other funds for the benefit of the officers or employees of the subsidiary banks or of the dependants of such officers or employees or for the purpose of the subsidiary bank, and the granting of superannuation and pensions payable out of any such fund. In accordance with the powers conferred under Section



63 of the Subsidiary Banks Act, the State Bank of Hyderabad (Payment of Gratuity to Employees) Regulations 1972 was framed. The said Regulations governed the payment of gratuity to the employees of State Bank of Hyderabad.

However, the contention of the Applicant is to pick up the definition of wages from the Gratuity Act and substitute the same to SBH OSR for the definition of pay therein and to calculate gratuity accordingly. For the said contention, they are relying on Section 14 of the Payment of Gratuity Act which state that the provisions of the Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or any instrument or contract having effect by virtue of any enactment other than the Act. The above contentions of the Applicant are untenable and has not legal basis. The overriding effect in a statute cannot be used for substituting only the definition clause in another subordinate legislation. The Gratuity Act is to be interpreted based on the definition clauses given in the said Act only. The State Bank of Hyderabad (Officers) Service Regulations, 1979 was dealing with the service conditions of officer employees of SBH. Similarly SBH Gratuity Regulation and SBH OSR are to be interpreted based on the definition clauses in the said regulations respectively. The terms used in the above Act and Regulations are different. In Gratuity Act, the term used is 'wages', whereas in SBH Gratuity Regulations and SBH OSR the term used is 'pay'. As such the contentions to the above effect of the Applicant are not correct.

As per Regulation 2 (e) of State Bank of Hyderabad (Payment of Gratuity to Employees) Regulations, 1960, pay is defined below for Award Staff as well as Supervisory Staff for calculation purpose of gratuity payable to them on reaching their superannuation or by way of death, disability, retirement, resignation or termination of service as the case may be:

Award Staff:- 'Pay' means the average of the Basic Pay and Special Allowance and Officiating Allowance during the 12 months next preceding death, disability, retirement, resignation or termination of service as the case may be or any other emoluments which may be specially classed as 'Pay' by the Board.

Supervising Staff: Provided, however, that in case of an employee governed by the State Bank of Hyderabad (Officers) Service Regulations, 1979, pay will means basic pay last drawn by him as on the date of retirement, death, disablement or resignation or termination of service in any other way except by way of punishment after completion of 10 years of service.

As per Regulation 3 (k) of State Bank of Hyderabad Officers Service Regulations, 1979, Pay means Basic Pay including stagnation increment.





State Bank of Hyderabad, being an employer and as authorized by the provisions of SBI (Subsidiary Banks) Act are empowered to frame gratuity regulations for its employees. The provisions of Regulations are to be taken as a whole and it need to be examined whether the calculation of gratuity in a given case is based on such provisions are less beneficial than the gratuity calculated as per the Gratuity Act. If it is less beneficial, the employee is to be paid gratuity in accordance with Gratuity Act. This is the correct procedure to be adopted in the matter. Instead of this contentions to calculate wages in accordance with Gratuity Act and then to put the said amount in place of pay mentioned in the Regulations and to calculate the gratuity accordingly is not correct and not supported by law. It is denied that there is any dispute in the matter as alleged. It is denied that the gratuity was not paid to the Applicant as alleged. The decisions of Labour Authorities in Jharkhand and Hyderabad to add Dearness Allowance for the purpose of calculation of gratuity have no relevance in respect of gratuity payable as per the SBH Gratuity Regulations. The said decisions are not based on the correct interpretation of law and facts. The said decisions are based on certain other Regulations and as such there is no application in the present matter. The interpretation adopted in the above decisions by picking up certain provisions from the service regulations and picking up certain regulations from the Payment of Gratuity Act and Appellate Authority creating an entirely new set of provisions has no legal basis.

Whereas, in the case of Y.K.Singla v. Punjab National Bank and others ((2013) 3 SCC 472) Hon'ble Supreme Court held in para 21 "..... 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."

Whereas, in the case of Madhyanchal Gramin Bank and another Vs. All India Gramin Bank Pensioners Organisation Unit Rewa (Writ Appeal No. 1318/2018) it was held that the amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay. There is a proviso that an officer or employee who 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. The second proviso states that in respect of an officer the gratuity is payable based on the last pay drawn. The 'Pay' is defined under Regulation 2 (m) which means basic pay drawn per month by the



officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations. Admittedly, the part of the emoluments has been specifically classified under the regulation as 'Pay'. The 'emoluments' is defined under Regulation (i) means the aggregate of salary and allowances, if any. 'Salary' is further defined under Regulation 2 (o) means aggregate of pay and dearness allowance. Thus proviso sub regulation (3) of Regulation 72 would include dearness allowance for computation of gratuity in respect of officers as well. The Hon'ble Supreme Court upheld the above judgment in Special Leave Petition Nos. 11113-11115/2019 filed by Madhyanchal Gramin Bank.

Hon'ble High Court of Andhra Pradesh in the case of **Sri B.N. Nageswara Rao Vs. Saptagiri Grameena Bank and another (W.P. No. 21566 of 2019)** directed the respondents to include Dearness Allowance in the formula for Gratuity payable to the petitioner.

In view of the observation of Hon'ble High Courts and Hon'ble Supreme Court, I feel for the purpose of calculation of gratuity, Pay defined in the Regulations includes dearness allowance and the Respondent Bank while calculating the gratuity amount ought to have included dearness allowance in the calculation formula.

As regards to Special Allowance, the Respondent Bank stated that Indian Banks' Association on behalf of member Banks have entered into a Joint Note on 25-5-2015 with the representatives of the Officers' Associations on various issues pertaining to revision of salaries of Officers governed by the Officers Service regulations and accordingly Circular was issued by the State Bank of Hyderabad, wherein it was clearly mentioned under S. No.6, that with effect from 01-11-2012, officers shall be paid Special Allowance and it is mentioned that the Special Allowance with applicable D.A. thereon shall not be reckoned for superannuation benefits viz. Pension, including NPS, PF and Gratuity. Hence Special Allowance is not eligible to consider in calculation of Gratuity. As Joint Note signed by both IBA and Officers' Associations, the said Note and Circular are binding on the applicants. The Applicant has wrongly included Special Allowance and other Allowances which are not required to be taken for calculating gratuity as per the settled law. As per salary revision vide Circular No. PER/2015-16/30 dated 20-06-2015 issued by State Bank of Hyderabad under Clause 6 of Joint Note it was advised that the Special Allowance with applicable D.A. therein shall not be reckoned for superannuation benefits i.e. Pension including NPS, PF and gratuity.

In view of the above facts, I also feel that Special Allowance should not be a part of emoluments to calculate gratuity.



b) As regards to point (B) above i.e. calculation of monthly wages under the Service Regulations by dividing pay with 26 and multiplied by 15, to arrive at the actual monthly wages, as done in the calculation under Payment of Gratuity Act, the Applicant stated that he is a monthly paid employee but Respondent Bank did not consider month of 26 days for the purpose of calculating gratuity against the provisions of Section 4 (2) under Explanation, despite the fact that the Respondent Bank has not defined month anywhere in its Regulations. While the Scheme of the Respondent Bank is neither separate nor independent but it is the offshoot of the Payment of Gratuity Act under Section 4 (5). The Applicant is not opting for terms of the Act but comparing the terms of regulation with that of the Act as per given right and protection to receive gratuity in better terms. The Applicant is repeatedly placing its request to process his gratuity as per the Respondent Bank Regulations which is a scheme framed by the Respondent Bank under the scope of Section 4 (5) to give gratuity in better terms of its employees. The Applicant has raised objection only towards the inconsistent rules and definitions of regulations which have been given effect while calculating amount of gratuity by degrading / depleting or downgrading the mandatory operational provisions of the Act.

The Respondent Bank stated that it is well settled law that while interpreting even a beneficial statute like Payment of Gratuity Act, either contract has to be given effect to or the Statute. The provisions of the Act envisage for one scheme. Section 4 (5) of the Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of Statute. The Respondent bank is required to calculate the eligible amount of gratuity payable to the employees both under the Gratuity Regulations of the Bank and the Payment of Gratuity Act and higher of those will be paid. While reserving his right to opt for beneficial provisions of the Statute or the Agreement, he has to opt for either of them and not the best terms of the Statute as well as those of the Contract. He cannot have both. The provisions of the Acts envisage for one scheme and does not contemplate that the Applicant would be at liberty to opt for better terms and he has to opt for either of them and not the best of terms of the Statute as well as those of the Contract as per well settled law of the Hon'ble Supreme Court.

The Hon'ble Supreme Court in the case of **Beed District Central Co-operative Bank Limited vs. State of Maharashtra (2006) 8 SCC 514** has held that when the expression 'terms' has been used, ordinarily it must mean 'all terms of the contract'. While interpreting even a beneficial statute like 'Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute. The provisions of the Act envisage for one scheme. It could not be segregated. Sub-Section (5) of Section 4 of the 1972 Act does not contemplate that the



workman would be at liberty to opt for better terms of the contract, while keeping the right open in respect of a part of the statute. While reserving his right to opt for the beneficial provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both. If such an interpretation is given, the spirit of the Act shall be lost.

The amount of gratuity payable under the Service Regulations shall be one month's pay for every completed year of service or part thereof in excess of six months on pro rata basis subject to a maximum of 15 month's pay. As per the Payment of Gratuity Act, for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity at the rate of fifteen days' wages, hence, to arrive at 15 days wages monthly wages should be divided by 26 and multiplied by 15. But in the case of Service Regulations, gratuity should be paid at the rate of one month's pay. Hence last month pay to be taken directly for calculation and pay divided by 26 and multiplying with 15 does not arise. In view of the observation of the Hon'ble Supreme Court in the above case and as per the provisions Service Regulations calculation of gratuity by multiplying the pay with 15 and divided by 26 does not arise and the Respondent Bank's opinion is agreed.

c) As regards to point (C) above i.e. calculation methodology, the Applicant stated that the gratuity payable to an officer at the rate of one month pay for every completed year of service subject to maximum of 15 months pay up to a period of 30 years of service as better terms. This one month pay for each year would continue even after 30 years with additional amount of one half of a month's pay, i.e. 45 days.

The Respondent Bank stated that the contentions of the Applicant to 'half months pay' and 'one half of a month pay' are untenable. In any event, there is no difference in meaning between 'half' and 'one half'. Both the said terms means 50% of something or one of two equal parts into which anything may be divided. Only possible distinction is that 'half' will be used with anything whereas 'one-half' will normally use with numeric values. 'One-half' does not mean 'one and a half' as claimed by the Applicant. Actually, Regulation 14 (b) of the SBH Gratuity Regulations state about the additional sum equal to half month's pay in respect of each completed year of service in the Bank in excess of 30 years.

Regulation 49 (2) of State Bank of Hyderabad (Officers) Service Regulations, 1979:

"(2) 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 15 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."

Hence the contention of the applicant that one half means one and half is not correct. It is very clear on perusal of the above, there is no difference in meaning between 'half' and 'one half'. Both the said terms means 50 % of something or one of two equal parts. Additional amount means in addition to 15 months pay i.e. maximum celling up to 30 years of service, half months pay for each completed year of service beyond 30 years of service without any ceiling.

Whereas when a part of the statute is declared unconstitutional then the question arises whether the whole of the statute is to be declared as void or only that part which is unconstitutional should be declared as such. To resolve this problem the Hon'ble Supreme Court has devised the doctrine of severability or separability. This doctrine means that if an offending provision can be separated from that which is constitutional, then only that part which is offending is to be declared as void and not the entire statute. Article-13 of the Constitution uses the words "to the extent of such inconsistency be void" which means that when some provision of the law is held to be unconstitutional then only the repugnant provisions of the law in question shall be treated by courts as void and not the whole statute.

In *AK.Gopalan v. State of Madras* the Hon'ble Supreme court while declaring section 14 of the Preventive Detention act 1950 as Ultra Vires, Observed.

Therefore the decision that Sec-14 is Ultra vires does not affect the validity of the rest of the act. Similarly in the State of Bombay *V Balsara* a case under Bombay Prohibition act-1949, it was observed that the provisions which have been declared as void do not effect the entire statute. Therefore there is no necessity for declaring the entire statute as invalid".

This is however subject to one exception. If the valid portion is so closely mixed up with invalid portion that it cannot be separated without leaving an incomplete or more or less mingled remainder that the courts will hold the entire act Void. The primary test is whether what remains is so inextricably mixed with the part declared Invalid that what remains cannot survive independently". The Hon'ble Supreme Court observed in "*Ramesh Thappar v State of Madras*,"

Right to equality vide Article 14 to 16 of the constitution - Here equality before law means that among equals the law should be equal and should be equally administered.

The rule .... has to pass the doctrine of severability or separability as per the Hon'ble Supreme court.-



Assuming gratuity is eligible & payable on completion of 5 years of service the OSR of bank as follows.

Rule- 49.....	Gratuity payable on completion of service up to 15 years is	15 months pay	Minimum rate of gratuity payable @ one month's pay per every completed year of service	No dispute regarding rate of gratuity payable.
	Gratuity payable on completion of service, 16 years to 30 years	15 month's pay	No increase in the rate of gratuity payable from 16 years to 30 years. It's just stagnated.	Person with 16 to 30 years of service will get the same rate of gratuity payable to person with 15 years of service
	Gratuity payable on completion of 31 years and above is	Half months pay	Having served the Organization more than 30 years and contributed rich experience without any deficiency of service...	Whereas for no reason it's looking like a punishment. By serving the organization with dedication & putting up meritorious service the bank is reducing the gratuity..... to half months pay ( from the initial one month's pay )  It is like discrimination based on age... faithfulness & violation of Article-14- to 16.



...reverses the interpretation of the Rule-49 should be other way round, as below.

<p>Gratuity payable on completion of service of 31 years and above</p>	<p>@ one and half months pay ( 30 + 15 = 45 ) for each completed year of service beyond 30 years and at pro rata for the balance period.</p>	<p>Having served the Organization more than 30 years and contributed rich experience without any deficiency of service... the mgt naturally recognizes the service &amp; gives additional Incentive. Therefore in the rule ... It was clearly mentioned that-  The amount of gratuity payable to an officer shall be one months pay for every completed year of service subjected to a maximum of 15 months 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 months pay for each completed year of service beyond 30 years.</p>	<p>To be in line with the constitution article- 14-16 &amp; to avoid discrimination based on age &amp; length of service and meritorious service to the organization the rule-...  A conjoining reading of the prefix word " Additional amount" along with " one half of a month " as mentioned above in the regulation 49 (2) of officers service Regulations-1979 one can easily establish that even if we consider one half of a month as 15 day and the same is Added to the base rate ( i.e. One months pay) of the bank mentioned prior to 30 years it gives a simple , plain and unambiguous meaning to understand entitlement of the employee a 45 days wages (30 days + additional amount at the rate of one half of a month) as gratuity amount beyond 30 yrs of service and the same can be given effect as per law. Thus meaning of " additional one half of a month " is in consonance with sprit of the statute.</p>
--	--	---	--



In support of the above I quote the relevant Judgement of India.- Judgment in – New India Sugar Mills Ltd vs .Commissioner o AIR 1207, 1963 SCR Supl. (2) 459) the Apex court had held-

"It is a recognized rule of interpretation of statute that expressions ordinary be understood in a sense in which they best harmonize with the statute and which effectuate the objective of the legislature. Therefore, if two constructions are feasible, the court will prefer that which advances the remedy which the legislature envisioned".

Secondly, The Hon'ble High Court of Madras in P. Selvaraj v. Shardlow India (2007 (1) LLN 835) on 12-01-2007 observed that "The purpose of a piece of legislation and it should receive an interpretation consistent with equity and fair play. Therefore the term "last drawn wages" found in the act should receive its full meaning and it cannot give any fractured meaning. The settlement provides as to what should be the wage that should be paid. It is in this context the term wages which is defined under Gratuity Act, 1972, so what is paid but also what is payable to a workman.

Thirdly Hon'ble High court of Gujarat in the case of Lalit Kumar v. Authority and Assistant Labour Commissioner- Surat-( 2006 LLR 41) observed a well settled position in law that while interpreting the statute of law, the interpretation should be so made so as to advance the object of the legislation and not to defeat it.

Moreover, Regulation 49 (2) mentioned in two parts. The Regulation provides that the English version by isolating both paragraphs and paid only for a completed year of service beyond 30 years. The second paragraph which means to honour the extra services of the employee by paying a mentioned additional amount at the rate of half of a month's pay in addition to what was already declared. Therefore, one month's pay



additional amount at the rate of one half of a month) as gratuity amount beyond 30 yrs of service and the same can be given effect as per law. Thus meaning of "additional one half of a month" is in consonance with spirit of the statute

In the case of **Chhattisgarh Rajya Gramin Bank Vs. Meghraj Pathak and others (W.P. (L) No. 55/2020)** Hon'ble High Court of Chhattisgarh upheld the orders of the Controlling Authority and Appellate Authority, wherein calculation of gratuity for 30 + 15 days per year for service beyond 30 years was allowed, stating that it is settled position of law that under Article 226 of the Constitution of India, while hearing a matter arising out of a Labour Court, Tribunal and Quasi Judicial Authority, the High Court does not sit as an appellate authority. It is only the power of superintendence over those Courts, Tribunals and Authorities. Since the dispute involved in the present case has already been thrashed out before the Controlling Authority who has elaborately discussed the contentions put forth on either side and based on the material produced before the Controlling Authority, has given an order which has also been affirmed by the Appellate Authority under the Act, the scope of judicial interference gets reduced substantially except on the ground of an error of jurisdiction or excess of jurisdiction which in this case is not a ground of challenge. The Hon'ble High Court has also considered the earlier judgement in **Baroda Uttar Pradesh Gramin Bank Vs. The Appellate Authority (2020 (166) FLR 408)** on which the Respondent Bank relied on.

In view of the above observations, I therefore, calculate of gratuity for the Applicant is as below:

Period of service of the Applicant: 37 years 1 month and 10 days. (Which is undisputed)  
 Pay means Basic Pay + Stagnation Increment + Personal Qualification Allowance (PQA) + Fixed Personal Pay + Dearness Allowance which comes to Rs. 79566.26.

Calculation of Gratuity as per Service Regulations:	
Up to 30 years of service (limited to 15 months pay) :	79566.26X15 = Rs.1193493.90
Beyond 30 years (7 years)	79566.26X1.5X7 = Rs. 835445.73
Pro rata amount of gratuity for fraction of a year i.e. 6 months or more which is beyond 30 years. (1 months)	0.00
<b>Total Gratuity payable as per Service Regulations:</b>	<b>Rs.2028939.63</b>

The gratuity amount payable to the Applicant as per Service Regulations is Rs. 2028939.63 which is on the higher side. The Respondent Bank has already paid Rs. 10,60,605.00 to the Applicant. The balance amount due is Rs. 968334.63 .

9. The next aspect is whether the Applicant is entitled for interest on gratuity for the delayed period or not. The Respondent Bank stated that the applicant is not entitled for any interest on the delayed payment of gratuity amount as the same was settled and paid on the date of his superannuation only as per his eligibility.



Under Section 7 (3A) of the Payment of Gratuity Act, if the amount of gratuity is not paid by the employer within 30 days from the date it becomes payable, to the person to whom the gratuity is payable, the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid. Provided that no such interest shall be payable if the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

The Hon'ble Supreme Court in the case of *H. Gangahume Gowda Vs. Karnataka Agro Industries Corporation Limited* (LU-2003-1-1119, AIR 2003 SC 1526, (2003) 3 SCC 40) had the occasion to consider the provision of Section 3-A of the P.G.Act, 1972. The Hon'ble 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 can't be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be paid with the penalty of payment of interest.

In view of the above facts and placing reliance on the judgment of the Hon'ble Supreme Court, as the Respondent Bank failed to pay the gratuity amount to the Applicant within the specified time limit, Hence, I feel that the Applicant is eligible for interest for delayed payment of gratuity.

#### DECISION

Therefore, I come to the conclusion that the Respondent Bank is due to make payment of gratuity amounting to Rs. 968334.63 (Rupees Nine Lakh Sixty Eight Thousand Three Hundred Thirty Four and Sixty Three Paise) along with simple interest @ 10% per annum w.e.f. 01.02.2016 to till the actual date of payment of gratuity to the Applicant Sri Paruchuri SVS Siva Prasad, Retired Deputy Manager under the Respondent Bank.

GIVEN UNDER MY HAND AND SEAL, THIS 18<sup>th</sup> day of May, 2021



(PUNUMALLI BAPUJI)  
ASST. LABOUR COMMISSIONER (CENTRAL) &  
CONTROLLING AUTHORITY UNDER  
THE PAYMENT OF GRATUITY ACT, 1972,  
VIJAYAWADA