

BEFORE THE APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT 1972 AND
DY CHIEF LABOUR COMMISSIONER (CENTRAL) I/C
HYDERABAD

36(33 & 33(1) to 33(21)/2020-E1/Dy

PRESENT

SRI P ARUN KUMAR, CLS

APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 &
DY CHIEF LABOUR COMMISSIONER (CENTRAL) I/C
HYDERABAD

BETWEEN

Eknath Prasad and 21 others (As per list enclosed)

Appellants

AND

Assistant General Manager, State Bank of India. Amaravathi Circle, Hyderabad

Respondent

APPEARANCE

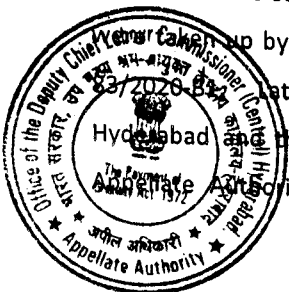
Appellants represented by: Sri Suresh Singh, Authorised Representative of the Appellants

Respondent represented by Sri T.K.Rao, Advocate Representative of the Respondent

DECISION

Sri Eknath Prasad and 21 others (hereinafter referred to as the "Appellants") submitted appeals vide letters dated 06.01.2020 before the Appellate Authority & Dy Chief Labour Commissioner (C) Hyderabad against the Assistant General Manager, State Bank of India. LHO, Hyderabad (hereinafter referred to as the "Respondent") under Section 7 (7) of Payment of Gratuity Act, 1972 and Rule 18 of the Payment of Gratuity (Central) Rules, 1972 aggrieved by the orders of the Controlling Authority & Asst Labour Commissioner (C)Hyderabad dated 20.11.2019.

The cases were submitted as common appeals for all the 22 appellants, initially; the appeals were taken up by the Dy Chief Labour Commissioner (C) Bangalore and numbered as 36/62-2020. Later the appeals were transferred to the Dy Chief Labour Commissioner (C) Hyderabad where the same were numbered as 36/33 & 33(1) to 33(21)/2020-E1/Dy by the Controlling Authority & Dy Chief Labour Commissioner (C) Hyderabad. Since the post of



(Handwritten signature)

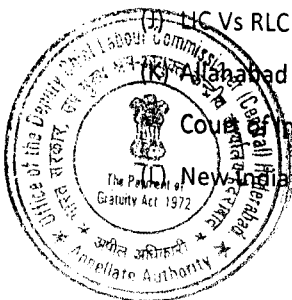
Appellate Authority & Dy Chief Labour Commissioner (C) Hyderabad was vacant and additional charge was given to Dy Chief Labour Commissioner (C) Bangalore, the appeals were initially dealt by the then Dy Chief Labour Commissioner (C) Bangalore Sri. Ganapathi Bhat. First hearing was held on 11.02.2020 and subsequently video conference on 05.03.2020, 02.12.2020 and 05.01.2021. Subsequently, Sri S Raman took charge as Dy Chief Labour Commissioner (C) Hyderabad and consequent upon his retirement, Addl Charge was given to Sri P Arun Kumar, Dy Chief Labour Commissioner (C) Chennai who held the various hearings on 19.04.2021, 30.07.2021, 17.09.2021 and the final hearing was held on 30-09-2021. On 30.09.2021 the cases were "reserved for orders".

The Appellants ie., Sri Eknath Prasad and 21 others stated the following grounds of appeal:-

1. The Appellants retired from the service of the Respondent Bank upon attaining the age of superannuation.
2. The following issues were framed by the Controlling Authority while deciding the claim cases:-
 - (A) Whether the delay in filing of claim application needs to be condoned or not?
 - (B) Whether the claim of applicants for payment of extra gratuity @ 45 days per every completed year of service rendered beyond 30 years is correct and justified?
 - (C) Whether the applicant is justified in claiming the basic pay+DA+Spl Allowance+DA on Spl Allowance for the purpose of calculating the gratuity?
3. The following case laws were referred by the applicants, which were totally ignored by the Controlling Authority & Asst Labour Commissioner (C) Hyderabad:-
 - (A) Civil WP No 8251 of 2018 of Hon'ble Supreme Court.
 - (B) Hon'ble Supreme Court of India in the case of Y K Singhla Vs Punjab National Bank & Others.
 - (C) Hon'ble Supreme Court of India in the case of Allahabad Bank & Another Vs A India Allahabad Bank Retired... Civil Appeal No 1478 of 2004
 - (D) Jaswant Singh Gill Vs Bharat Coking Coal Ltd & Ors
 - (E) State of Punjab Vs Labour Court, Jallundar & Ors 1979 AIR 1981 1980 SCR (1) 953
 - (F) Jayaben Suryakant Modi Vs Welfare Commissioner and Ors Gujarat High Court.
 - (G) Krishnendu Narayan Ghosh Vs Union of India and Ors Calcutta High Court
 - (H) Central Bank of India Vs R R Das Madhya Pradesh High Court.
 - (I) P Selvaraj Vs Management of Shardlow India Madras High Court.
 - (J) LIC Vs RLC Andhra Pradesh High Court

(K) Allahabad Bank & Another Vs A India Allahabad Bank Retired...Hon'ble Supreme Court of India Civil Appeal No 1478 of 2004

(L) New India Sugar Mills Ltd Vs Commissioner of Sales Tax, Supreme Court of India.



[Handwritten Signature]

4. The definition given by the "Pay" under the Regulations, the Dearness Allowance was not included. Since the Dearness Allowance is included in the provisions of the definition of "Wages" under Payment of Gratuity Act 1972, the definition under PG Act 1972 will prevail over the definition of "Pay" under Regulations of the Bank. Further, the gratuity has to be calculated on the "Last drawn Wages" of the employee. But, the Bank's Regulations have never defined the word "Wages". Hence, the definition of "Wages" given under the PG Act has to be adopted in place of the definition of "Pay" under the Bank's Regulations.
5. That it is submitted that Service Regulation 49, Sub Regulation (2) prescribes the method of procedure of calculation of the gratuity amount payable to an officer. 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. the employee who has completed beyond 30 years of service, should be paid 30 days of pay + in addition to that, half month's pay which comes to 45 days, as per Regulation 49(2) of the Bank, for the years of service over and above 30 years.
6. The appellant made a claim before ALC © -1, Hyderabad that the Special Allowance, which is a part and parcel of last drawn wages should be taken into consideration while calculating the Gratuity, which was ignored by the Controlling Authority.
7. The appellants have made a claim before the ALC(C)-I Hyderabad that the last drawn wages should be divided by 26 days as per Explanation to the Section 4 of the PG Act. The Appellants have also submitted written arguments on this matter. But the Controlling Authority has ignored this point, and never discussed this claim in his order dated 02nd December, 2019.
8. That in the backdrop of the above position pertaining to the retirement benefits payable to the Appellant including the gratuity was calculated by the Respondent Bank in compliance with the statute and the Regulation made there under as described above.
9. As per the contract of the employment between the Respondent bank and the Appellant officer, the gratuity amount payable to them upon their retirement from service was calculated in accordance with the Regulations and the amount arrived at as gratuity payable to them was paid. The Respondent bank has also made the calculation of gratuity amount in accordance with the provision of Payment of Gratuity Act, 1972 by taking into consideration the term "Wages" as defined under Section 2(s) of the said Act. As per the said provision, wages means all emoluments which are earned by an employee, and which are payable to them in cash and includes DA but does not include any bonus, commission, HRA, O T Wages or any other wages.



[Handwritten Signature]

10. That the Controlling Authority had failed to examine and analyze the factual position as explained in for foregoing paras and dismissed the case of appellants. The Appellant contention was If the Provisions in the Regulations are inconsistent with the provisions of the Payment of Gratuity Act, the Controlling Authority can / Appellate Authority calculate the gratuity basing upon the provisions of the Act, which have overriding effect over the Scheme of the Bank.

11. That the orders dated 02-12-2019 passed by the Controlling Authority under Payment of Gratuity Act, 1972 and Asst., Labour Commissioner (C) Hyderabad in the above claim applications mentioned above are illegal and contrary to the provisions of the Payment of Gratuity Act, 1972 and is liable to be set aside.

12. Appellant stated Gratuity and pension are the properties of the employees under article 300A of the Constitution and the same cannot be taken away without any Authority of law.

13. Appellant further contended that under regulation in absence of exemption notification has replaced the terms Wages by Term Pay which excludes DA, Special allowance and DA thereupon as per applicability of the case. This kind of misreading of the terms by Respondent Bank has resulted in short payment of gratuity in better terms of regulation. Though Section 4(5) of the Act Clearly says " That Nothing in the Section shall affect the right of an employee to receive better terms of gratuity under any award, agreement or contract with the employer," but Respondent Bank depleted the following terms in method of calculation under the regulation.

(A) Wages: In place of wages as defined under section 2(s) of the Act Respondent Bank has applied depleted term PAY which excludes DA ,Special allowance & DA on it that too in absence of Exemption Notification.

(B) To arrive one day wages for monthly paid employees PG Act at explanation of Section 4(2) says that Wages are to be divided by 26 days but Respondent Bank neither obtained exemption nor followed the Act.

(C) Under regulation base rate for the payment of gratuity is one month up to 30 years(maximum 15 months) and if service of an employee is more than 30 years then employee is entitled to receive additional amount with rate of one-half of months' pay for each year beyond 30 years of service. NOTE: in case of fraction of the year is six or more than 6 months the payment of gratuity shall be on pro-rata basis. Respondent Bank instead of giving effect of addition of 15 days' wages to running base rate of one months' pay (30+15=45) deprived the employee from right of better terms and instead of recognizing service period beyond 30 years deprived the Appellant from additional

incentive of 15 days wages over and above Base rate of 30 days for each year. Thus Appellant raised all these above contentions and claimed differential amount with Mandate payment of interest @ 10% on delayed period i.e. from the date of retirement to the actual date of payment.



[Handwritten signature]

The Respondent Bank submitted the Counter in respect of the above mentioned appeals on 16th July, 2021:-

1. The Respondent Bank submitted that prima facie the appeal filed by the Appellant is not maintainable both under the law and the facts of the case. The respondent bank is under no contractual or legal obligation to pay any amount to the appellant in excess of what has already been paid.
2. The respondent bank submitted that the finding of the controlling authority that the ex-employees in the Bank are estopped from challenging the regulation of the Bank as per the doctrine of estoppel.
3. The respondent bank submitted that the Controlling authority lacks the jurisdiction to direct payment of gratuity admissible under a private scheme.
4. The respondent bank submitted that the appellate authority to dismiss the appeal filed by the Appellant by upholding the decision of the Controlling Authority.

The Controlling Authority and Asst Labour Commissioner (C) Hyderabad has dealt with the following aspects while arriving at his decision i.e.,

1. Whether the delay in filing of claim application needs to be condoned or not?
2. Whether the claim of applicants for payment of extra gratuity @ 45 days per every completed year of service rendered beyond 30 years is correct and justified?
3. Whether the applicant is justified in claiming Basic pay + DA + Special allowance + DA on Special allowance for the purpose of calculating the gratuity?

Having dealt with all the above aspects, the Controlling Authority has issued orders that the Applicants when they applied to the Bank mentioning that error in calculation of the Gratuity, the respondent Bank has not denied the foregoing aspects and the averment of the applicant in this regard stand unchallenged. The reasons shown by the applicant for delayed occurred in filing the application before the Controlling authority are considered reasonable and having satisfied, and condoned the delay and allowed the petition.

And regarding payment of difference amount of gratuity, the applicants are not entitled for any more amount of gratuity as claimed by them and dismissed the applications.

Decision of the Appellate Authority and Dy Chief Labour Commissioner (C) I/C Hyderabad:-

The Appellate Authority, has gone through the documents on record and the arguments of both the parties, in the instant appeal. The following case laws corroborate the decision of the

Appellate Authority:-



(Signature)

On going through the submissions of both the parties and documents filed by the Appellant, the issues to be decided by this authority are:-

- i. Jurisdiction of the Controlling Authority to decide gratuity under regulation of the bank. i.e. Whether the Appellant is entitled to receive gratuity only in accordance with the provisions of payment of Gratuity Act 1972 or as per regulation which may be higher
- ii. The dearness allowance and special allowance components would be treated as part of pay or not and as to what would be the pay which would be taken into consideration for calculating the amount of gratuity?
- iii. Whether the appellant is justified in claiming that month should be taken as 26 days and calculation be made as per 15/26 not by 15/30 for every year of service rendered?
- iv. Whether the appellant is justified in claiming gratuity at the rate of 45 days' pay for each completed year of service rendered beyond 30 years?
- v. Whether the appellant is entitled to get differential amount of gratuity with interest as per his calculation / claim?

As regards Point No i:-

1. Whether the appellant is entitled to receive gratuity only in accordance with the provisions of payment of Gratuity Act 1972 or as per regulation whichever may be higher

My attention was drawn to the provisions of section 4(5) of PG Act 1972; the same is reproduced below;

Section 4(5) Says "Nothing in this Section shall affect the right of the employee to receive better terms of gratuity under any award or Agreement or contract with the employer"

Appellant has relied upon following Judgments of Hon'ble Supreme Court wherein it has been held that, to get the section 4(5) of the Act attracted and by virtue of regulation, the claim of an employee for gratuity is liable to be determined by ensuring his right to better terms than those contemplated under the PG Act"

Pl. refer WP No.9087 of 2012 of Hon'ble Supreme Court between YK Singla Vs P.N.B.

Similarly Hon'ble Supreme Court in WP No.1478 Of 2004 between Allahabad bank Vs

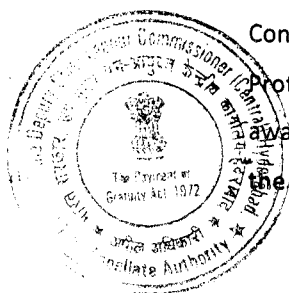
All India Allahabad bank retrdEmpl. Assn..wherein it is held at Para no.27 "The

Controlling Authority failed to appreciate that Sub-Section 5 of Section 4 of the Act

protects the right of an employee to receive better terms of gratuity under any

award or agreement or contract with employer than the benefits conferred under

the Act."



Recently, Hon'ble Supreme Court in WP 2379 of 2020 between Bharat Cutler Hammer Electric Ltd (In Short BCH-ltd) Vs Pradeepmehra has held at Para No.18 For Section 4(5) of the Act, to get attracted, there must be better terms of gratuity available and extendable to an employee "under any award or agreement or contract with the employer" as against what has been provided for under and in terms of the Act.

On bare reading of this provision I have no hesitation to reach to the conclusion that an employee who is eligible to get gratuity under the provisions of payment of Gratuity Act 1972 will always qualify to receive any amount of gratuity which may be higher to the provisions of the payment of Gratuity Act 1972, if any better / higher term of the gratuity is available to him under any award or agreement or contract with the employer. Here the Respondent bank has introduced the scheme which has been mention in the aforesaid Regulation and it is a part of contract of employment between the appellant and the respondent. The Respondent management has not allowed the application and benefit of regulation to their employees who were eligible to get gratuity under the scheme as mentioned in the aforesaid regulation. Moreover, Section 14 of the Payment of Gratuity Act-1972 has an overriding Authority upon other enactment. The provisions of section 14 are reproduced as under.

"Provisions of this act or any rule made there under 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 Section 14 of the Act is protective in nature, which clearly says that the provisions of this act has an overriding effect upon any other act. I am of the opinion that the Appellant employee would be eligible to get higher amount of gratuity, if available under the regulation than the payment of Gratuity Act 1972.

2. **ANSWER TO ISSUE NO.II:** The dearness allowance and special allowance components would be treated as part of pay or not and as to what would be the pay which would be taken into consideration for calculating the amount of gratuity?

This question is relating to the determination of gratuity and inclusion of DA. In this context, I have gone through the provisions of section 2(s) of payment of Gratuity Act 1972 and found that the definition allows the inclusion of DA under the definition of "wage". The definition of 'wage' under section 2(s) is reproduced as under;



Wage means all emoluments which are carried by an employee while on duty or on leave in accordance with terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, gratuity allowance, overtime wages and any other allowance".

[Handwritten signature]

Plain reading of the gratuity as per the Officers Service Regulation and the provision of the payment of gratuity Act, 1972 clearly stipulates that an officer or an employee of the Bank shall be entitled for gratuity either under the payment of gratuity Act, 1972 or as per Regulation of gratuity rules of the Bank whichever fetches more monetary benefit to an employee or an officer.

In the cases of:-

(1) Government of Andhra Pradesh and Ors

Vs

Syed Yousuddin Ahmed (1997) 7 Sec 24

(2) Union of India and another

Vs

DeokiNandanAggarwal 1992 Supp (1) SCC 323

(3) Nathi Devi

Vs

Radha Devi Gupta (2005) 2 SCC 271 and

(4) N D DNamboodripad

Vs

Union of India and Others (2007) 4 SCC 502

Held that on conjoint reading of the definition of "Pay" "Emoluments" and "Salary" the "Last pay drawn" would included dearness allowance for the purpose of calculation of gratuity.

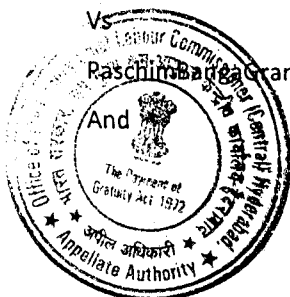
While calculating the gratuity as per the regulation, Basic Pay, DA, PQA, Special Allowance and officiating allowance should be included in the calculation formula.

The officer/employee claim is relied upon the judgement of Hon'ble High Court of M.P in the case of:-(1)MadhyanchalGrameena Bank and others Vs All India Gramin Bank Pensioners Organisation Unit Rewa (Writ Appeal No 1316-1318/2018) And In the case of Hon'ble High Court of Andhra Pradesh in WP No 20155/2019 (2)B Nageswar Rao VsSapthagiriGrameen Bank Hon'ble High Court of Calcutta in the case of :-

(3)ChinmoyMajumdar and Others

Vs

RaschimBade Gramin Bank and Ors (WP No 19538 (W) of 2018



[Handwritten signature]

(4) Hon'ble Supreme Court of India in Special Leave Petition No 20661 – 20668/2012 (Canara Bank Vs Savithri Venugopal) Hon'ble Supreme Court of India in SLP 11113-11115/2019 upheld in the case of Madhyanchal Gramin Bank and Others.

In the case of :-

(5) Bank of Baroda

Vs

G Palani and Ors CA No 5525/21012 dated 13.02.2018 For calculation of pension, the special allowance should be included.

In the case of:-

(6) Workmen of Binny Ltd

Vs

Management of Binny Ltd reported in 1985 (4) SCC 325.

(7) High Court of Kerala in the WP (C) 32386/2015 (W) held in the case of :-

Murali Mohanam K T & Others

Vs

Corporation Bank

Indian Bank

Vs

K Usha represented in AIR 1998 SC 866

Held that the provision relating to grant of gratuity is a beneficial provisions. It must be considered in the anvil of beneficent rule of construction. It is trite law that in the matter of welfare legislation, the terms of contract and the provisions of law should be liberally construed in favour of weaker section. Thus respondents in the above cases were directed to include DA and special allowance components to recalculate the gratuity of the petitioners. The dearness allowance is specifically clarified and must form part of pay.

And further in the case of :-

Y R Shenoy and Ors Vs Syndicate Bank and Ors – 2003 (2) LLJ 977 2003 LLR 615 2003 I.L.C (Noc) 231; 2003 (97) FLR 812 (Kar HQ)

Held that gratuity is a right, if accrued that cannot be taken away by agreement between the parties. Amount payable is also definite, by agreement between the parties, it cannot be reduced, but it could be enhanced.

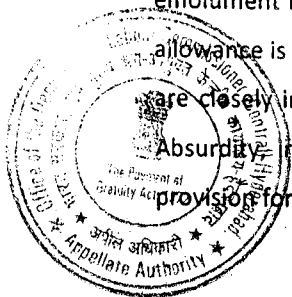


Further, my attention has been drawn by the Appellant to an important judgment of honorable High Court of judicature of Madhya Pradesh at Jabalpur, in a case between all India Gramin Bank pensioners' organization, Unit Rewa versus Madhyanchal Gramin Bank and others. The honorable High Court has clubbed 03 writ petitions relating to the similar issues to the Madhyanchal Gramin Bank (W.P.No. 9182/ 2017 WP.no. 2299/

[Handwritten signature]

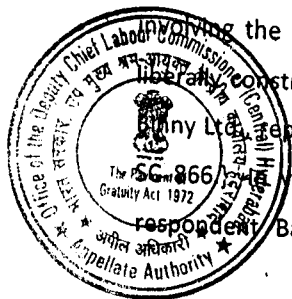
2017 WP.No.2877/ 2018). While going through the judgment, it is evident that the Honorable high court has very critically examined the definition of pay which refers to emoluments, whereas the emoluments include salary and also include pay and dearness allowance. The court has also critically examined the regulation which is similar one to the present regulation of Aryavart Bank and passed judgment dated 06/09/2018. The important part of the judgment of the honorable High Court which is very relevant to the present case is reproduced as under.

1. The learned counsels for the parties have taken a diametrically opposite stands on the question of inclusion of DA for determination of amount of Gratuity. ShriGohil contended that second and third proviso of clause (3) of regulation 72 must be read conjointly. I do not see much merit in the said contention. A careful reading of the regulation 72 shows that contention of SiriShrotri learnt senior counsel has substance that regulation is worded in a fashion whereby it deals with "employees" and "officers" separately. The second proviso in my opinion is relating to the officers, whereas the third provision covers the employees. As per second proviso the pivotal question is regarding meaning of expression "last pay drawn" this point requires serious consideration.
2. Parties are at loggerheads on the meaning of the word "Pay" the officers contended that the word "Pay" must be read with "emoluments" and "Salary" whereas, as noticed, the employer's stand is that only such part of emolument can be treated as pay which is specifically classified as "pay". clause 2(m) shows that pay means basic pay of the officers / employees which includes stagnation increments and any part of emoluments which specifically be classified as "pay" under these regulations. The definition of emoluments shows that it is aggregate of salary and allowances. Salary includes aggregate of pay and DA.
3. A microscopic reading of Regulations shows that there exists no provision whereby any part of emolument may specifically be classified as pay. This expression – any part of emoluments which specifically be classified as pay needs interpretation. In my view, a conjoint reading of definition of "pay", "emoluments" & "salary" is required for proper interpretation of the meaning of "pay" or the said highlighted expression. It is important to note that "emoluments" is aggregate of salary and allowance and "salary" is aggregate of pay and dearness allowance. Thus, said three definitions are deeply interlinked and correct meaning of said expression can be drawn by combined reading of said three provisions. The definition of "pay" refers about emolument, whereas emolument includes salary which includes pay and dearness allowance. Thus, dearness allowance is specifically classified and must form part of pay because the said definitions are closely interwoven. Otherwise, expression leads to an absurdity and impossibility. Absurdity, inconsistency and impossibility because in the Regulations there exists no provision for undertaking such exercise of specially classifying an emolument as pay.



[Handwritten signature]

4. The settled law is that if the grammatical construction leads to some absurdity or inconsistency with the rest of instruments, it may be departed from so as to avoid the absurdity and inconsistency. {See: AIR 1952 SC 324, [Shamrao vs. District Magistrate, (10) W.P. Nos. 2299/2017, 9182/2017 & 2877/2018 Thana]; 1996 (2) All ER 23, [Empirical Chemicals Industries vs. Colmer] & 2009 (2) SCC 1, [Mahmadhusen Abdul Rahim Kalota Shaikh v. Union of India]. Similar view is taken by Supreme Court in AIR 1998 SC 1070, [R. Rudraiah vs. State of Karnataka] and AIR 2000 SC 1261, [Molar Mal vs. Kañ Iron Works]]. Justice COR DO ZO said "A judge must think of himself as an artist, who although he must know the handbooks, should never trust to them for his guidance; in the end he must rely upon his almost instinctive sense of where the line lay between the word and the purpose which lay behind it." {See: Mr. Justice Cardozo by Learned Hand, 52 Harvard Law Review, pp. 361-63}.
5. This is trite law that statute should not be construed as theorems of Euclid, but it should be construed with some imagination of the purposes which lie behind them. It is said by Judge LEARNED HAND in *Lehigh Valley Coal v. Yensavage*, 218 Fed 547, pp. 552, 553 : 235 US 705 (1915). In the words of Justice Chhinappa Reddy, J "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.". {See: Reserve Bank of India vs. Pearless General Finance and Investment Co., reported in 1987 (1) SCC 424}. Iyer, J opined "to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of 'deha' and 'dehi' of the provision." {See: AIR 1977 SC 965, [Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee]}. In view of principles laid down in the said authorities, the definition, clauses and Regulation 72 must be read conjointly to draw the meaning of (11) W.P. Nos. 2299/2017, 9182/2017 & 2877/2018 second proviso of Regulation 49 and, more particularly, meaning of "last pay". As per the text and in the context the aforesaid expression relied upon by learned senior counsel is used, in my judgment "pay" includes dearness allowance as it exists as a classification in the definition of "salary" which has a direct nexus/relation with "allowments" and "pay".
6. The matter may be viewed from another angle. The provision relating to grant of gratuity is a beneficiary provision. It must be considered in the light of beneficent rule of construction. It is trite law that in the matter of social welfare legislation, especially involving the work force, the terms of contract and the provisions of law should be construed in favour of weak. {See: *Workmen of Binny Ltd. v. Management of Binny Ltd.* reported in 1985 (4) SCC 325; *Indian Bank vs. K. Usha*, reported in AIR 1998 SC 2666}. In view of aforesaid analysis, in the considered opinion of this Court the respondent Bank erred in not including DA while calculating gratuity under the



[Handwritten signature]

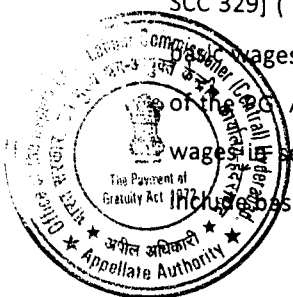
Regulations. Thus, respondents are directed to include DA and recalculate the gratuity of the petitioners and pay the difference arising thereto to the petitioners within 60 days from the date of communication of this order.

7. Respondent-Bank while Putting Reliance on judgment of the Honorable Supreme Court of India in case between Beed district Central cooperative Bank limited vs State of Maharashtra and others (2006) 8 SCC 514, The Respondent- Bank argued that authorities under the act has to consider the regulation as a whole while calculating the gratuity amount under the said regulations and not to import provisions of the PG Act 1972 in the said regulations to make it more beneficial to the Appellants.

The Respondent While analyzing the Beed district Central cooperative Bank limited vs state of Maharashtra (Supra) the Supreme Court observed that sub section 5 of section 4 of the payment of Gratuity Act 1972 does not contemplate that employees would be at liberty to opt for better terms of the contract by keeping option open in respect of a part of the statute. He cannot have both. The work man must either avail the benefit of his contract with the employer in its entirety or the statute. He cannot avail the better terms of the contract with employer and at the same time keep his options open in respect of the statue that suits him. This is against the spirit of the section 4(5) of the payment of Gratuity Act 1972.

This WP 4327 of 2006 of Hon'ble Supreme Court between Beed District Co-operative bank Vs State of Maharashtra was also discussed in detail in WP 1478 of 2004 which was an order of Hon'ble Supreme Court subsequent to Beed District central Co-operative Bank wherein Hon'ble Supreme Court did not consider its any relevance on the grounds that terms of gratuity scheme were either better than the terms of the PG Act or not less favourable than that of PG Act. Thus facts and additional facts of the present case are entirely different and cannot be equated with.

- ✓ Appellant submitted that he has not adopted any pick and choose policy but has compared the terms of regulation with terms of the PG Act. This right of comparison has been provided under Section 4(5) read with Section 14 of the PG Act to the employee only but not to employer. Various Courts of law has have also supported this view and right of comparison under regulation to an employee. Respondent Bank blamed that Appellant has unwantedly has imported the ceiling limit of the PG Act into the regulation just to defend the execution of inconsistent/ depleted terms in its regulation. Appellant has also given citation of Hon'ble supreme Court of India informing that in case of Straw Board Manufacturing Co. Ltd Vs its workmen [AIR 1977 SC 941:1977] 2 SCC 329] (Annexure-9), held in Para-28 "we clarify that wages will mean and include wages and dearness allowances and nothing else this corresponds to section 2(s) of the PG Act 1972". in other words the apex court took note of the definition of the wages in section 2(s) of the PG Act 1972 and decided that wages would mean and include basic wages and dearness allowances only.



[Handwritten signature]

In view of the above it is clear that the definition of wages as contained in the payment of Gratuity Act 1972 Section 2(S) has not been imported and made applicable in the regulation of the bank rather, the component of DA and special allowance has been found to be an integral part of pay / salary within the framework of the regulation of the bank itself .Therefore component of DA and special allowance must be added to the pay/ salary of gratuity calculation and this, in no way is against the law laid down in the Beed case (Supra).

3. **ANSWER TO ISSUE NO.III:** Whether the appellant is justified in claiming that month should be taken as 26 days and calculation be made as per 15/26 not by 15/30 for every year of service rendered?

The Respondent Bank has calculated gratuity amount dividing the monthly Salary by 30 to arrive one day Salary. The Appellant contended that there is no such provisions in the gratuity regulation to calculate gratuity assuming 26 days in a month , rather, one month's Pay word has been used that means whole of a calendar month.

Treating monthly wages it is apparent from the perusal of the regulation of e-SBH that it is silent on the subject of fifteen days Salary/ pay. The Honorable Supreme Court. In case of Y.K.SinglaVs Punjab national Bank and others (2013-II-LLJ-417) while interpreting the regulation of Punjab National Bank which is identical to the gratuity rules of the Respondent bank, has held that wherever the regulations are silent or inconsistent or negate the benefit under the Act, the benefits available under the PG Act 1972 have to be extended. Accordingly relying on the law laid down in the above mentioned case, the method of computing quantum of the gratuity is contained in section 4(2) of the PG Act 1972 can be extended in the present case

Section 4(2) of the PG Act 1972 provides quantum of Gratuity to be paid to the employee. A formula for calculation of Gratuity for monthly rated employee has been provided in the explanation to section 4(2) of the Act which is as under

Last drawn wages x 15 x number of years of service completed divided by 26

For 26 working days for the quantum of Gratuity as payable under the Act had been decided by different High Courts like Calcutta, Bombay, and Gujarat in Hukumchand jute mills Ltd vs West Bengal [1976II LLJ 285] Lakshmi Vishnu textile Mills and Digvijay woollen Mills cases respectively. The above views had been confirmed by the Honorable Supreme Court in the case of Digvijay woollen Mills limited versus Mahendra Pratap Raibuck{AIR1980Sc 1944} (ii) Mahindra Mills limited vsGopal Das Sudhabaikakad [1980 FJR 52] and Civil appeal before The Honorable Supreme Court in Jivanlal (1929) limited etc. and appellate authority, payment of Gratuity Act and others etc [LLJ Vol-II 1984 P/464]



purpose of computing the amount of Gratuity in respect of monthly rated employees, his

[Handwritten signature]

monthly wages should be taken as what he got for 26 working days, his daily wages should be ascertained on that basis and his 15 days wages worked out accordingly and not by just taking half of his wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. Similar view was taken in another case of Honorable Supreme Court of India in case of Jeevanlal (1929) Ltd etcVs Appellate Authority .

The learned controlling Authority has committed an error in not considering 26 working days for a month while calculating gratuity of the appellant who is paid on monthly basis.

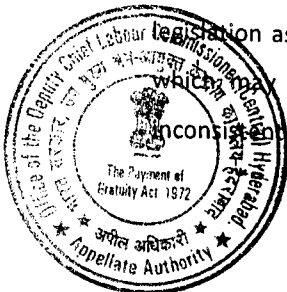
ANSWER TO ISSUE NO.IV:

Whether the appellant is justified in claiming gratuity at the rate of 45 days' pay for each completed year of service rendered beyond 30 years?

Respondent-Bank under the scope of Section 4(5) of the PG Act framed/ prepared its gratuity Scheme with intention to provide gratuity in better terms and terms means all terms. As regard to rate of wages under regulation 1979, it has admittedly stated as one month's pay for each year up to 30 years (Maximum 15 months' pay up to 30 years). This base rate would continue beyond 30 years too, because Provisions of the Act has not restricted payment of gratuity after 30 years too.

The factor of dispute is needed to be examined on the issue of payment of additional benefit beyond 30 years of service rendered by the employee as per the service regulation stipulated under 72(3) which confers that an employee will be paid additional amount at the rate of one half month's of pay for each completed year of service beyond 30 years. Here there is no doubt that half month pay that it will be about 50% pay per month paid to an employee, but the additional rate which is mentioned in the Regulation will lead to interpretation that it is the additional rate above the monthly rate which is paid to an employee for rendering service of 30 years. In other words, the additional benefit is required to be completed with additional of the monthly wages along with one half month's pay.

It has not highlighted the meaning and interpretation of additional amount at the rate to which I am of the opinion that this additional benefit of half month's pay will take the component of one month's pay for the purpose of calculation. Otherwise the concept of additional benefit is vague and as such it cannot be less than the PG Act as rendering service beyond 30 years will take away to get better terms of gratuity and the Regulations virtually became inconsistent. The gratuity being a beneficial piece of legislation as well as the Regulation which is formed for gratuity of fair service benefit which may be better than the payment of gratuity Act and as such it cannot be inconsistent with the Act at any point of time.



[Handwritten signature]

In view of the above, I am to state that the additional amount of half month's pay will be calculated in addition to the monthly rate of wages in totality it will be about 45 days pay for rendering service beyond 30 years by an employee.

In the case of :- Chhattisgarh RajyaGramin Bank VsMeghrajPathak and Ors (WP 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.

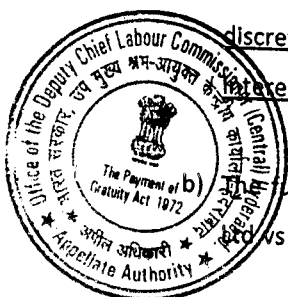
4. **ANSWER TO ISSUE NO.V:**

Whether the appellant is entitled to get differential amount of gratuity with interest as per his calculation / claim?

It is admitted fact that there is no dispute on the date of retirement, date of joining the Respondent bank, date of Birth and length of service

- a) Under section 7(3) of the PG Act 1972 employer is liable to pay the Gratuity amount within 30 days after retirement / superannuation of the employee. As per Section 7(3), the employer shall arrange to pay the amount of Gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. Further, Sub- section (3A) provides that if the amount of Gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) The Employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the central government from time to time for payment of long term deposits as the government may by notification specify".

Thus it is clear from the provisions made in Section (3A) of the PG Act-1972 that a clear Command mandating the employer to pay gratuity within the specified time and to pay interest on delayed payment of gratuity has been prescribed. Act itself specifies payment of interest for delayed payment of gratuity and no discretion is available to exempt or relieve the employer from the payment of interest if delay is made in making payment of gratuity amount.



Full Bench of the Hon'ble Patna High Court in Champaran Sugar Company vs Jt. Labour commissioner [AIR 1987 Patna (FB)] categorically held that the

[Handwritten signature]

payment of interest is mandate of the law itself and not dependent on an express claim by employee thereof. Herein employee's right to interest accrues from the failure of the employer to perform his statutory duty to tender and pay gratuity and not from any formal demand thereof by the employee. The Hon'ble Court in the instant case referred section 7(2),(3),(3A) and 4(a) of the PG Act 1972 and observed that it seems that irrespective of the fact whether an application is made by the employee to the employer or to the controlling authority, the employer is duty bound under the mandate of the law to determine the amount of gratuity due to arrange to pay the same to the employee and in the event of a dispute, to deposit the admitted amount with controlling Authority . Therefore, if the basic claim of gratuity accrues irrespective of any application or express claim on behalf of the employee, it is the Act itself which mandates the payment of gratuity and the consequential payment of interest in the event of its failure with the prescribed time. These Statutory right stem from the statute and not from any application or claim thereof.

- c) The Hon'ble Supreme Court of India in case of state of Kerala and Ors v PadmanabhamNayyar[1985](5) FLR 145] has ruled that employees on the retirement have valuable rights to get gratuity and any culpable day in payment of Gratuity must be visited with penalty of payment of interest and that specific benefit expressly given in a social beneficial legislation cannot be denied.
- d) The Honorable Bombay High Court in WP No. 8053 /2012 dated 22.01. 2013 [2013 LLR 531 in the matter of municipal corporation of great Mumbai vsVithal Anna kamble has also held that if the Employer fails to comply with the mandate of provisions of the act i.e. does not pay the gratuity to an employee who is entitled for the same in time, interest on the amount of Gratuity is justified. Further, interest on the outstanding amount of Gratuity is payable from the date when it becomes due till the final date of payment, according to the judgment of Honorable Delhi High Court in MCD vsRatiram LPA 496 /2008]
- e) Supreme Court in the case of H Ganga hanumeGowdaVs Karnataka agro industries corporation limited [SLS(c) No.4114/2002 dated 05/02/ 2003 held that there is a clear mandate in the provision of section 7 to the employer for payment of Gratuity within time and to pay interest on the delete payment of Gratuity.....
- f) InY K. Singla vs PNB [2013 (136)FLR 1087] The Honorable Supreme Court again held that Sub-Section (3A) of section 7 of the gratuity act is the most relevant provisions for the determination of the present controversy. A perusal of the sub-section (3) leaves no room for any doubt that incase gratuity is not released to an employee within 30 days from the date and time become payable under



[Handwritten signature]

sub-section (3) of section 7, the employee in question would be entitledsimple interest at such rate. Not exceeding the rate notified by the central government from time to time"

- g) Hon'ble Supreme Court while considering the proviso to sub -section (3) of section 7 of the PC Act 1972 in the matter of Kerala state cashew development corporation limited and another vs N. Ashokan [(2009) 16 SC 578] has held that no permission having been taken by employer from controlling authority for delayed payment of Gratuity and provision contained in the section 7(3A) being mandatory in, nature sub-section (3A) of the section 7 is squarely attracted and employer is liable to make payment of interest on delayed amount of Gratuity as per the rate specified in 7(3A) of the PG Act 1972.
- h) The proposition of law laid down in Padmanabhan Nair case Supra in Ganga Hanuman vs Karnataka agro case in Kerala state cashew development case Chopra and n y k Singlaki Supra has been followed with approval by their not shape of the supreme court in matter of state of Uttar Pradesh and others versus Dhirendra pal Singh 2017 149
- i) In employers in relation to the management of west MoodidhCollaiery of m/s Bharat coking coal limited DhanbadvsMaheshisaw [2015 LLR 34] "The Honorable Jharkhand High Court held that an employer is under and obligation to pay gratuity to an employee within 30 days of cessation of employment. Failure of the employer to pay gratuity within prescribe period would attract interest on delayed amount.
- j) Following the position of law laid down by the Honorable Supreme Court in the above mentioned cases, the double bench of Honorable High Court of Chhattisgarh in the matter of Karnail Singh vs general manager Bishrampur area of SECL and others [Writ Appeal No. 56 of 2017 decided on 17/03/2017 has held in Para 23 as under.
- unless the delay in payment of Gratuity is attributable to the fault of the employee and necessary permission in terms of proviso to sub section (3A) of section 7 of the Act of 1972 is obtained by the employer in writing from the controlling authority for delayed payment, the payment of interest in terms of section 7(3A) of the act of 1972 is imperative and the employer is statutorily liable to make payment of interest on the amount of gratuity and he cannot escape the liability to make payment of interest on the amount of Gratuity'



In light of these legal precedents Appellant is entitled for the payment of interest @ 10% from the date of due i.e. from date of retirement/ superannuation to till date of actual payment.

(Signature)

Summing up to my answers on questions / issues, I find that this appeal of Appellant is admitted and the order of the Controlling Authority is dismissed.

The counsel for the Appellant ie., State Bank of India as well as erstwhile State Bank of Hyderabad reiterated that the State Bank of India comes under the definition of the State "under Article 12 (Part III) of the Constitution of India. The State Bank of Hyderabad has framed the regulations with regard to the payment of gratuity to its employees under an enable's Act namely the State Bank (Subsidiary Banks) Act, 1978 enacted by the Parliament. Accordingly, Bank regulations are nothing but the "subordinate legislations" promulgated by the Bank under its semi legislative power.

Further, he stated that the Section 4(5) of the Payment of Gratuity Act, 1972 stipulated that nothing in Section No 4 ie., Payment of Gratuity to the employees under the Act, shall affect the right of the employee to receive better terms of gratuity" under any award or agreement or contract with the employer. Hence, it is ancillary right, but not principal right for gratuity.

The Hon'ble Apex Court in the case of Beed District Central Co-operative Bank Ltd at Para 14 has held that " the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the term there of" This observation certainly fortifies the principles that the agreement or award or the contract comes into existence only with the wilful consent of the parties.

And further he stated that the learned Controlling Authority is empowered to enforce the instructions of Section 4(5) of the Payment of Gratuity Act is to protect the rights of the employees to receive better terms of gratuity under an award, agreement or contract made either under Industrial Disputes Act, 1947 or otherwise only if the employees are covered under the Industrial Disputes Act.

(a) In the case of Allahabad Bank and another Vs All India Allahabad Bank retired employees Association (2010) 2 SCC 44,



[Handwritten signature]

whether the term of gratuity payable under any award, agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act.

(b) In the case of Beed District Central Co-operative Bank Vs State of Maharashtra and Others (2006) 8 SCC 514

The Hon'ble Apex Court at Para 44 has held that "it appears that the quantum should be considered from the point of view of the nature of the Scheme as also the fact that the parties agreed to the terms thereof. Sub-Section (5) of Section 4 of the Payment of Gratuity Act, 1972 provides for a right in favour of the workman. Such a right may be exercised by the workman concerned.. He need not necessarily do it. It is the right of individual workman and not all the workmen. When the expression "term" has been used, ordinarily it must mean "all the terms of the contract".

The above judgement of the Hon'ble Apex Court clearly bars the jurisdiction of the Controlling Authority and the Appellate Authority to issue orders in such a way that the employee can take best out of the Scheme provided under the Act as well as Bank regulation.

(c) In the case of BCH Electric Ltd Vs Pradeep Mehra 2020 SCC Online SC 424.

The Hon'ble Apex Court laid down that an employee must take complete package as offered by the employer or that which is available under the Act and he could not have or combination of some of the terms under the scheme provided by the employer while retaining the other term offered by the Act.

(d) In the case of Krishna Gopal Tiwari and another Vs Union of India and Others (Civil Appeal No 4744 of 2021)

The Hon'ble Apex Court held at Para 10. With regard to gratuity which has already been paid to the petitioner on the then prevailing basis as if obtained at the time of their respective date of retirement the amount got crystallized on the date of retirement on the basis of the salary drawn by him and it was already paid to them on that footing. The transaction was completed



[Handwritten signature]

As I am the Appellate Authority under the Payment of Gratuity Act, 1972 I want to reply the following manner and decide the cases also.

Under Section 4(5) of the Payment of Gratuity Act, 1972 it was told that employees can receive better terms of gratuity under any award or agreement or contract.

But as per the State Bank of Hyderabad (Officers) Service Regulation 1979 regulations are framed in exercise of the powers conferred by Section 63 of State Bank of India (Subsidiary Banks) Act, 1959. The service regulations are framed by the Bank unilaterally which have become part of the employees terms and conditions of employment.

Regulation No 49 deals with the gratuity. But these regulations must be more beneficial than the provisions of Payment of Gratuity Act, 1972. The regulations cannot supersede the provisions of the Payment of Gratuity Act, 1972 since Act is passed by the Parliament.

In the case of Kalyanpur Keshav Venkatrai Pai Vs Corporation Bank on 19/2/1987 (1988)

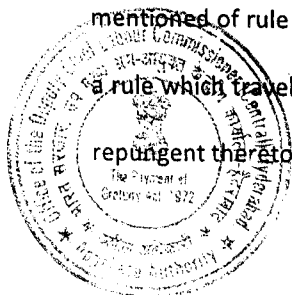
LLJ 244

The Hon'ble Bombay High Court held that "the Respondent however was dealing with him as if he were governed by the Regulation 14 of its Bank Officers Employees ("Discipline" and Appeal) Regulation 1982. This was subordinate legislations and could not prevail against a statute framed by the legislature.

In the case of Addl District. Magistrate (Rev) Delhi Admn Vs Sri Ram Manu/SC/0369/2000/2000.5 SEC 451

The Hon'ble Supreme Court observed that the mere conferment of rule making power by an Act does not mean that the subordinate legislature can exceed the scope of the enabling Act.

It was held at Para 16. It is a well recognised principle of interpretation of a statute that conferment of rule making power by an Act, does not enable the rule making authority to make a rule which travels beyond this scope of the enabling Act or which is inconsistent therewith or repugnant thereto.



From the above discussion we have no hesitation to hold that by amending the rules and Form P 5, the rule making authority has exceeded the power conferred on it by the land reforms Act.

And further I want to give citation that in the case of Shrabani Mandal (Pal) Vs State of West Bengal on 14.7.2017. MAT 1179 of 2010 Calcutta High Court (Appellate has held that without elaborating on the settled legal position that a species of subordinate legislature can only supplement and, not supplement the statutory enactment by attempting to define exempted category separately when such definition already exists in the special Act.

So the Bank cannot make any Regulation which are inconsistent with the provisions of the payment of gratuity Act 1972. Even if they are made, to the extent, it is less favourable than the provisions of the Act, in such case the Act will prevail over the regulation.

The Respondent Counsel of this case stated that the remedy for interpretation of agreement /award/contract lies under Industrial Disputes Act 1947, but not under Payment of Gratuity Act 1972. If they are not covered by the Industrial Disputes Act 1947, then they have to go to civil court.

I have examined the matter, the Bank's gratuity scheme is incorporated under regulation 49 of the State Bank of Hyderabad (officers) Service Regulation 1979, and hence not framed under Industrial Disputes Act 1947. Any dispute relating to gratuity has to be resolved under the provisions of the Payment of Gratuity Act 1972 since it is a code as decided by Hon'ble SC In the case of State of Punjab Vs Labour Court Jalandhar and Ors on 16.10.1979. 1979 AIR 1981 1980 SCR (1) 953. 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. It creates the right to payment of gratuity, indicates when the right will accrue and lays down the principles of quantifications of the gratuity. It provides further for recovery of the amount and contains a special provisions that compound interest at 10% P A will be payable as delayed



[Handwritten signature]

Further I would like to highlight the enforcement of its provisions of the Act provides for the appointment of a controlling authority who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility and he has been invested with amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate government or an appellate authority particularly contributed under the Act.

The Respondent relied upon the case of Beed District Central Cooperative Bank Ltd Para 14 "the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof.

The Respondent argued that the agreement or award or the contract comes into existence with the wilful consent of the parties. But I have seen there is no agreement or contract or any award with consent of employees. The Bank has framed the Regulation 1979 unilaterally.

The Respondent Bank submitted that the Bank's regulations are subordinate legislation promulgated by the Bank under its Semi legislative power. The Respondent in their written submission claimed one side, they are saying that the better terms of gratuity (as framed by the Bank) are as per the award, agreement or contract made under Industrial Disputes Act, 1947, and in the other hand, the Bank's scheme/Regulations are subordinate legislative promulgated by the Bank. Both the statements are quite contradictory to one another.

Further, the Respondent counsel argued that the challenge of any subordinate legislation shall be made before the High Court under Article 226 of the Constitution or before the Supreme Court. But as per the case laws quoted above, the subordinate legislation cannot prevail over the statute.

Even as per Section 14 of the Payment of Gratuity Act, 1972 the scheme/Regulation must be consistent with the provisions of the Act. In case of any inconsistency the Act will prevail.

Hence, if the regulations are not challenged by the employees, the controlling Authority or



appellate authority while adjudicating the disputed matter can give overriding effect to the provisions of the Act over the Regulations.

While adjudicating the disputed amount of gratuity eligible by the employee, the authorities are following the provisions of Payment of Gratuity Act, 1972, in case of regulations are inconsistent with the provisions of the Act, 1972. The authorities are only concerned with the matter "Whether the provisions of Regulations are less favourable than the provisions of the Act, 1972 or not?". If any, Regulations is less favourable to the employees then the provisions of the Act 1972 will prevail over the Regulations.

The State Bank of Hyderabad (officers) Service Regulation 1979 promulgated by the Bank in exercise of the powers conferred by Section 63 of State Bank of India (subsidiary Banks) Act 1959. Hence the Regulations are not awards or contract or agreement. Hence, here is no question of applicability of the Industrial Disputes Act or Civil Court.

The Respondent has argued that the controlling authority is not empowered to interpret or to fill the gaps in the Bank Regulation like the superior courts.

I hereby held that the authorities are not quashing the Regulations of the Bank while withholding the disputed amount of gratuity eligible by the employees, the authorities are following the provisions of payment of gratuity Act, 1972, in case the Regulations are inconsistent with the provisions of the Act, 1972.

The Respondent relied on Allahabad Bank and another Vs All India Allahabad Bank retired Employees Association (2010) 2 SEC 44.

The facts of the present gratuity appeal case, and the facts of the Allahabad Bank case are different. Hence, the case law is not relevant precedent in this case.

Further, the Respondent relied on Beed District Central Co-operative Bank Vs State of Maharashtra and Others (2006) 8 SEC 514.



I have examined the agreements of the Respondents Bank. There is no contract or agreement relating to the gratuity scheme in the Respondent Bank. The facts of the case of Beed District Central Co-operative Bank case and the present case are different.

A precedent is binding only when the facts of the case are same and similar otherwise not.

The Respondent relied on Bell Electric Ltd Vs Pradeep Mehra 2020 SC Online SC 424 wherein the Hon'ble Court laid down that an employee must take complete package as offered by the employer or that which is available under the Act and he could not have synthesis or combination of the terms under the scheme provided by the employer while rectifying the other terms offered by the Act.

The Bank has made Regulation 1979 but none of the clauses should be in derogation to the provisions of the Act, 1972. Even if any clause is made in the Regulation which is detrimental to the interest of the employee that too not inconsistency with the provisions of the Act, the provisions in the Act will prevail over that Act particular Regulation. Hence, I hereby decide that the claim made by the employee/appellant is just and proper.

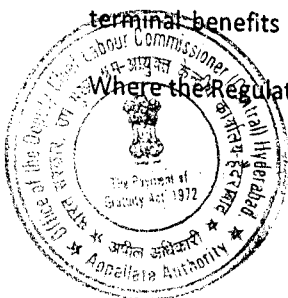
The Respondent has relied on Y K Singla case. It was argued that the Hon'ble S C has entertained the appeal filed by Sri Y K Singla and granted the relief by interpreting the Payment of Gratuity Act vis-à-vis regulations of the Punjab National Bank.

It is also place to mention that the Regulation 1979 are full proof and not complete code on gratuity like Payment of Gratuity Act, 1972.

They only give certain limited clauses about the eligibility ceiling limits etc. But there are lot of amendments that are taking place in the Payment of Gratuity Act, 1972. Amending the definition of the employee, ceiling limits etc. In the entire service Regulations 1979 there is one clause that deals with the gratuity in 49.

It is cited that at Regulation 48 of the Bank, terminal benefits – provident fund, the definition of the Pay was given at the end of Regulation 48 note "Pay for the purpose of provident fund shall mean Basic Pay including stagnation increments, officiating allowance, professional qualification allowance and increment component of fixed personal allowance. But under terminal benefits – gratuity at Regulation 49 no such explanation about the pay was given.

Where the Regulations are silent, the provisions of the Act have to be taken into consideration.



[Handwritten signature]

I have gone through the Y K Singla case wherein at Para 24, it was mentioned that "From the mandate of Section 14 of the Payment of 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 provisions or instrument. As such, where there is inconsistency in the Regulations with the provisions of the Act, the Act will prevail.

The Respondent relied upon Krishna Gopal Tiwari and another Vs Union of India and Others civil 4744 of 2021, wherein it was held that once gratuity has been settled to the employees, he cannot make any claim due to subsequent revision. But the facts of the present case are totally different. The present appellants are not asking for any arrears due to revision. Their claim is that their full gratuity amount was not paid. They are claiming that the difference of gratuity was not paid by the Bank and it should be paid now. Hence the case law of Krishna Gopal Tiwari is not relevant to this present case.

Regarding condonation of delay the Respondent has objected and argued that the controlling authority has condoned the delay by referring the court case of Union of India Vs Tarman Singh (2008) 8 SEC 648.

The Respondent has objected the condonation of delay of the appellants before the controlling authority since Taman Singh case is relating to fixation of monthly salary which continues month after month.

I disagree with the argument of the Respondent, other than Tarman Singh case there are number of decided cases, where it was held that only because there was delay in claiming gratuity, the entitled amount of gratuity cannot be denied purely on technical grounds. The controlling authority has been given powers to condone the delay if he is satisfied with the reasons for the delay.

In Rama Rao and others Vs Controlling Authority under Payment of Gratuity Act 29/03/1996 -

1996 (2) ATF 406 (1998) III LLJ 114 AP The Andhra High Court held that at Para 21, it has the liability to pay gratuity to this employees in accordance with law. It has claimed however that

it did pay the gratuity and discharged its liability.



In the case of Improvement Trust, Ludhiana Vs Vjagar Singh & Ors on 9.6.2010 Civil Appeal Nos 2395 of 2008 the Hon'ble Supreme Court held that after all, justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at its threshold. In the legal arena an attempt should always be made to follow the matter to be contested on merits rather than to throw it on such technicalities.

In the case of W P No 16325 of 2000 between the Secretary Sidhartha Academy of General and Technical Education, Vijayawada and another Vs The Appellate Authority under Payment of Gratuity Rules 1972 and the Deputy Commissioner of Labour Eluru W G Dt wherein it was held that it is clear from the Principle enunciated that is a valuable right has accrued in favour of one party as a result of the failure of the other party all because of the delay, in the absence of a justifiable and sufficient cause, it would be unreasonable to take away the valuable right accrued in favour of the party who is not to be blamed for the delay.

The Respondent has argued that as per Kerala High Court Canara Bank and Devi Properties Ltd RP 383 of 2021, wherein the Court found delay of more than 1000 days is unreasonable. I have gone through this case, it is relating to delay in filing of review petition in a Rent Control Matter. This case is not relating to the labour laws or relating to the dues of employees from the employer. This case law cannot be applicable to the present facts of the case.

The Respondent Bank argued that in Chhatisgarh High Court Writ Appeal No 436 of 2020 and 445 of 2020, the High Court has set aside the decision of the single Judge, controlling authority and appellate authority. I respectfully disagree with the decision of the Chhattisgarh High Court, (which is not a binding present over the State of Telangana) and say that the employees have opted for the Bank's Regulations and only thing is that some of the provisions of the Bank's Regulations which are inconsistent with the provisions of the Gratuity Act, 1972, must be prevailed over by the Payment of Gratuity Act, 1972. The employees are not asking benefits of both the Act and the Scheme/Regulations. The Regulations will be followed but if the

Regulations are not in consistent with the provisions of the Act, the Act will prevail over to that extent. For this reason the claim made by the employees/appellants is upheld.



[Handwritten signature]

The Respondent Bank has relied upon Calcutta High Court decision in FMA No 657 of 2020 wherein it was held that there is no dispute that the Act over in terms of Section 14 therein. Here Respondents have elected to urge their entitlements under the Regulations. So the overriding effect of the Act is irrelevant for their purpose. I respectfully disagree with the decision of the Calcutta High Court and say that the Regulations cannot be made contrary to the main Act, because it is a subordinate legislature. I hereby rely upon Kalyanpur Keshar Venkat Rai Pai Vs Corporation Bank on 19/2/1987 (1988) LLJ 244. In Addl District Magistrate (Rev) DPK Admn Vs Sri Per Manu/SC/0369/2000 (2000) SC SCC 451, Hon'ble Supreme Court, in Shrabani Mandal (Pai) Vs State of West Bengal on 14 July 2017/MAT 1179 of 2010 Calcutta High Court (Appeal Side) as Act will prevail over the Regulation, wherever it is not consistent with the provision of the Payment of Gratuity Act, 1972 and hold that the employees/appellants are entitled to the relief sought by them. By sharing some clauses of the Regulation 1979, the benefits under the Act passed by the Parliament cannot be denied.

All the issues relating to the claim/appeals were heard and a decision of jurisdictional objections, condonation of delay and the eligibility of the claim etc is hereby issued by the Appellate Authority allowing the claims of the Appellants/employees /Officers of the Bank.

Further, with regard to the written submissions dated 06.10.2021 and 08.10.2021 (Received on 25.10.2021) submitted by the Counsel for the Respondent Bank;-

In the written submissions dated 06.10.2021, filed by the counsel for the Respondent Bank, it has been prayed that... "after deciding the jurisdiction and condonation of delay as submitted above, the matters may be taken up for hearing on merits, if required"

The above 178 cases filed in 6 batches have already been dealt by the Dy Chief Labour Commissioner (C) Bengaluru I/C Hyderabad on 11.02.2020, 05.03.2020, 29.04.2020, 02.12.2020 and 05.01.2021 and 09.02.2021 (through video conference), and later transferred to Dy Chief

Labour Commissioner (C) Hyderabad consequent upon the reporting of Sri S Raman, as Dy Chief Labour Commissioner (C) Hyderabad. Further, consequent upon the retirement of Sri S Raman, Dy Chief Labour Commissioner (C) Hyderabad, 'additional charge of Dy Chief Labour Commissioner (C) Hyderabad was given to me, and I had held hearings in the above cases on



[Handwritten signature]

various dates and based on the documents filed by both the parties, the cases are "reserved for orders" on 30.09.2021.

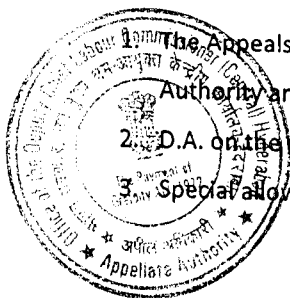
It was only as an afterthought that the Counsel for the Respondent Bank submitted written submissions dated 06.10.2021 and 08.10.2021 (Received on 25.10.2021) praying that "after deciding the jurisdiction and condonation of delay as submitted above, the matters may be taken up for hearing on merits, if required"

The appeals were initially taken up for hearing on 11.02.2020, 05.03.2020, 29.04.2020, 02.12.2020 and 05.01.2021 and 09.02.2021 (through video conference) by the Dy Chief Labour Commissioner (C) Bengaluru, And further, after additional charge of Dy Chief Labour Commissioner (C) Hyderabad was given to me, I had also held physical hearings at Hyderabad on the various dates and sufficient time was given to both the parties for filing their submissions/documents in support of their claims. Since, the matter was already heard during the above mentioned dates, and the cases were "Reserved for Orders" on 30.09.2021, I am pronouncing the order in full pertaining to all the aspects as per the appeals filed before me. Further, I cannot pronounce order in parts, as prayed for by the Counsel for the Respondent Bank regarding (1) issue of jurisdiction of the Controlling Authority and (2) Condonation of Delay now, and the other issues in subsequent order since the appeals were kept "Reserved for Orders" for all the issues and not for the specific two issues mentioned above. The orders are passed accordingly.

Summing up to my answers on questions / issues, I find that the appeals of Appellants are admitted and the orders of the Controlling Authority are dismissed.

ORDER

Having gone through the entire submissions made by both the parties, and also the orders of the Controlling Authority the following common order is passed:-



1. The Appeals filed by the Appellants are allowed. The Orders issued by the Controlling Authority are dismissed.
2. D.A. on the components of wages/salary including on special allowance allowed.
3. Special allowance for the calculation of Gratuity allowed.

4. 26 days should be taken while calculating the gratuity, per month, as explained in the Payment of Gratuity Act, is allowed.
5. Payment of extra gratuity @45 days per every completed year of service rendered beyond 30 years is allowed.
6. As per the Government of India notification No SO 874 (E) Dated 01.10.1987 the rate of interest is 10% for the delayed period of payment of difference amount gratuity. Accordingly, the Respondent Bank is directed to make the payment along with interest within 30 days to the Appellants.

GIVEN UNDER MY HAND AND SEAL ON THIS DAY THE 26TH DAY OF OCTOBER, 2021



(Signature)
Arjun Kumar

Appellate Authority under the
Payment of Gratuity Act, 1972 &
Dy Chief Labour Commissioner (C) I/C
Hyderabad

Copy to:-

1. The Assistant General Manager, State Bank of India, Amaravathi Circle, Hyderabad.
2. Sri Eknah Prasad and 21 Others with an advice to contact the Controlling Authority & Asst Labour Commissioner(C), Hyderabad for further process of release of gratuity amount.
3. The Controlling Authority & Asst Labour Commissioner (C) Hyderabad.