

By Hand/Regd. Post



GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT
OFFICE OF THE REGIONAL LABOUR COMMISSIONER [CENTRAL],
Kendriya Sadan, Block-A, 3rd Floor, Sector-10, Vidhyadhar Nagar,
Jaipur-302023

No. JP-48(54)/2019-RLC

Dated, the

FORM 'R'

See Rule 17

Notice for Payment of Gratuity

24 MAY 2021

To,

The Chief General Manager
State Bank of India
Local Head Office, Tilak Marg
C-Scheme, Jaipur

Whereas **Shri Mohar Singh Rathore s/o Shri GS Rathore** of B-52 "Govindam" Agarsen Nagar Churu - 331001 (Raj) 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 after the hearing I have come to the finding that the said **Shri Mohar Singh Rathore** is entitled to a payment of **Rs 212618/-** as gratuity under the Payment of Gratuity Act, 1972 & Simple interest @10% from 29.05.2019 to date of payment

Now, therefore, I hereby direct you to pay the said sum of **Rs 212618/-+ Simple Interest @ 10%** to **Shri Mohar Singh Rathore** within thirty days of the receipt of this notice with an intimation thereof to me.

Given under my hand and seal, on 03rd May 2021.

Encl: As above

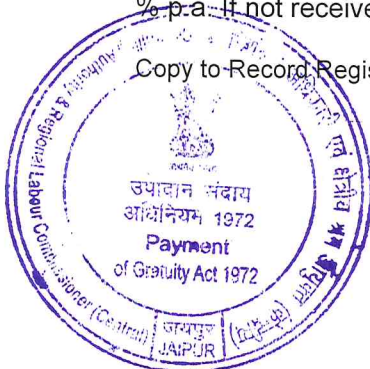
Yours faithfully,

I

(GIRIRAJ VERMA)
Controlling Authority under
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central),
Jaipur

✓ Copy to **Shri Mohar Singh Rathore s/o Shri GS Rathore** of B-52 "Govindam" Agarsen Nagar Churu - 331001 (Raj). He is advised to Contact the employer for collecting payment of his gratuity dues as mentioned above along with simple interest @ 10 % p.a. If not received, he may file an application for recovery after 30 days.

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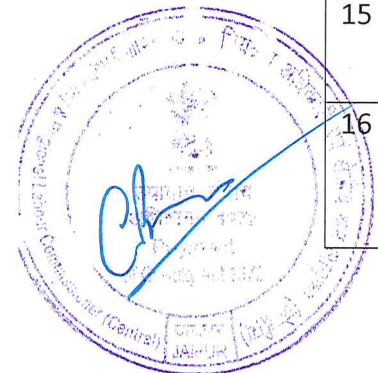
(GIRIRAJ VERMA)
Controlling Authority under
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central),
Jaipur

1901. Y. 11. 11.



BEFORE THE CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972
& REGIONAL LABOUR COMMISSIONER(CENTRAL), JAIPUR

1	Shri Mohar Singh Rathore s/o Shri GS Rathore B-52 "Govindam" Agarsen Nagar Churu - 331001 (Raj)	PGA-54/2019
2	Shri Badri Prasad Misra, Plot No 166, Sector - 7, Vidyadhar Nagar, Jaipur - 302039	PGA-55/2019
3	Shri Kaloo Ram Meena s/o Shri Manna Lal Meena J-36, Janta Colony Behind, P.G. College, Dausa (Raj)	PGA-59/2019
4	Shri Shyam Sunder Sharma s/o Shri Giriraj Prasad Sharma, 306 Tulip Enclave, Central Spine Vidhyadhar Nagar, Jaipur (Raj) - 302039	PGA-63/2019
5	Shri Santosh Kumar Sharma s/o Shri Prahlad Narayan Sharma, 401, Apporva Alokik Homes, Lotus Villa, Jagatpura, Jaipur	PGA-68/2019
6	Shri Ashok Kumar Garg s/o Late Shri Bishan Swaroop Garg3/521 Malviyanagar, Jaipur, Near Jain Mandir, Main Road Jaipur - 302017	PGA-94/2019
7	Shri Rakesh Kumar Chaturvedi s/o Shri Kanhaiya Lal, Flat No 704 Shiv Gyan Enclave Gautam Marg Nirman Nagar, Jaipur	PGA-95/2019
8	Rakesh Kumar Gupta s/o Shri Murari Lal Gupta78-K-5 Scheme Green Park Khatipura Road Jaipur - 302021	PGA-97/2019
9	Shri Rakesh Kumar Jain s/o Shri Satish Chandra Jain A - 271, Nehru Nagar, Jhotwara Jaipur - 302016	PGA-98/2019
10	Shri Sudhir Tandon s/o Shri RN Tandon, 69-A, Shalimar Bagh, Ajmer Road, Near Heerapura,Jaipur - 302006	PGA-03/2020
11	Shri Ram Dhan Meena s/o Shree Bhura Ram Meena 4/H/471, Indra Gandhi Nagar, Jagatpura, Jaipur – 302017	PGA-05/2020
12	Shri Tek Singh Premi s/o Shri Bidhi Singh House No 204, Second Floor, Pocket - 40, Chitranjan Park, New Delhi - 110019	PGA-09/2020
13	Shri Manna Ram Royal s/o Shri Mala Ram Royal Flat No 310, SDC Building, The Destination, Gandhi Path West, Vaishali Nagar, Jaipur 302021	PGA-10/2020
14	Shri Rajendra Kumar Satsangi s/o Shri Sahib Das Mathur, G7, Dayal Ashram, Dayalbagh Radhasoami Satsang Colony, Opp. Indusind Bank, Mayhapura, Jaipur - 302026	PGA-13/2020
15	Shri Bhanwar Lal Soniwal s/o Shri Ramdev C/o Raj Kumar Soniwal, Bank of Baroda, Sujangarh, District : Churu (Raj) - 331507	PGA-20/2020
16	Shri Braj Mohan Sankhla s/o Shri Ramdeen Ji Sankhla291/50, Harbilas Sharda Marg, Civil Lines, Ajmer – 305001	PGA-24/2020



17	Shri Brij Mohan Teji s/o Shri Ram PalP-9, Bapu Colony, Ashok Chowk, Adarsh Nagar, Jaipur - 302004	PGA-48/2020
18	Shri Rajendra Kumar Varandani s/o Shri Sobhraj Varandani, 40, Shalimar Bagh, Chitrakoot Marg, Ajmer Road, Jaipur - 302021	PGA-55/2020
19	Shri Satish Kumar Joshi s/o Shri Satya Narayan Joshi, 80/74, Patel Marg, Mansarovar, Jaipur - 302020	PGA-56/2020
20	Shri Manoj Mairh s/o Shri Ridhi Karan Soni, 5-E-23, Jai Narain Vyas Colony, Bikaner - 334003	PGA-121/2020
21	Shri Ram Kishore Bairwa s/o Shri Devi Lal, Ward No 9, Sikandra Road, Opp. New Krishi Upaj Mandi Samiti, Bandikui - 303313	PGA-122/2020
22	Shri Manohar Lal Popli s/o Shri Badha Ram, D-830 Malviya Nagar, Behind Fortis Hospital, Jaipur-302017	PGA-128/2020
23	Shri Bharat Kumar Sharma s/o Shri Manohar Lal Sharma, B-56 Mahesh Nagar 80 Feet Road, Jaipur (Raj) - 302015	PGA-129/2020

Applicants

Vs.

The Chief General Manager,
State Bank of India
Local Head Office, Tilak Marg
C-Scheme, Jaipur- 302005

Non Applicant

PRESENT**GIRIRAJ VERMA**

Controlling Authority under P.G.Act, 1972 &
Regional Labour Commissioner (C)

APPEARANCE:

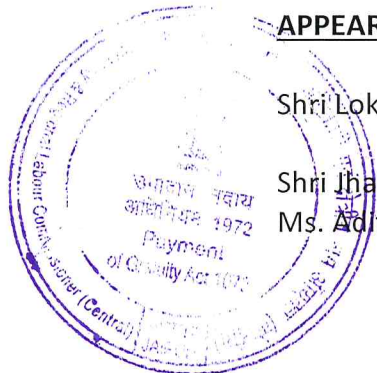
Shri Lokendra Singh Kachhawaha

- Advocate for Applicants

Shri Jhabar Swami

Ms. Aditi Swami

- Advocate for Non-Applicant



ORDER**03-05-2021**

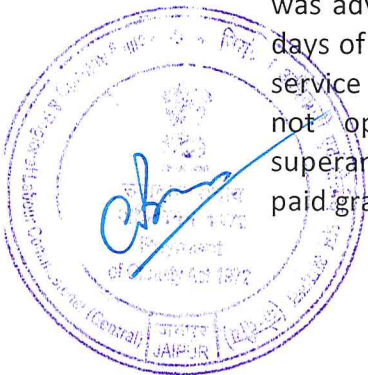
From S.No 1 to S.No 20 Ex-employees of the State Bank of India (earlier an employee of State Bank of Bikaner and Jaipur- herein after called as 'Applicants') against the Chief General Manager, State Bank of India, Local Head Office, Tilak Nagar, Jaipur (hereinafter referred to as 'Non-Applicant'). All these cases have been clubbed.

The Applicants filed an application in Form "N" under sub-section 4 of section 7 of P.G. Act, 1972 read with sub rule (1) of Rule 10 of Payment of Gratuity (Central) Rules, 1972 against the Non-Applicant with an application of condonation of delay for the period for more than 01 Months to 4 Year 6 Months.

The Applicants in their application submitted that Non-Applicant Bank has paid less gratuity than they eligible as per State Bank of Bikaner & Jaipur (Officers') Service Regulation, 1979 (herein after called as 'OSR, 1979'). The Applicants submitted that the Non-Applicant Bank has not calculated the Gratuity by including the components of allowances viz. Dearness Allowance, Special Allowance (forming part of /derived from @7.75%/10% of basic Pay), Dearness Allowance on Special Allowance, Dearness Allowance on Fixed Personal Allowance are excluded from computation, Days of the month are not considered as 26 as stipulated under Payment of Gratuity Act, 1972 and claimed difference of gratuity as per calculation sheet attached with form 'N'.

Taking into cognizance of the application in Form 'N', notices in form 'O' were issued to the Applicants as well as to Non-Applicant for appearance before the Controlling Authority under sub-Rule (1) of Rule 11 of PG (Central) Rules, 1972 for the hearing of application. Hearings were held on several dates. Both parties filed their reply, rejoinder, counter reply and written arguments

The Non-Applicant Bank submitted that the Applicants were the employees of State Bank of Bikaner and Jaipur (in short "SBBJ") which has been merged with State Bank of India w.e.f 01-04-2017 by Gazette Notification No GSR 156(E) dated 22.02.2017. In view of acquisition of State Bank Bikaner and Jaipur by State Bank of India, e-SBBJ delivered an officer of Employment (Option Letter) vide SBBJ Circular PER/127/16-17 dated 30.03.2017 to opt either Terminal/Superannuation Benefits as mentioned in Option B of clause 2(a) or SBI terminal benefits as mentioned in Option 'A' of clause 2(a) of the Terms and Conditions of service applicable to officers and Award staff to all the permanent officers and employees of State Bank of Bikaner and Jaipur including Officers or employees on probation, who were on employment of State Bank of Bikaner and Jaipur as on 31.03.2017, except those retiring on that date. It was advised therein that the employees who do not exercise any option within 15 days of date of the offer-letter shall be deemed to have accepted to continue in the service of SBI from 1st April 2017. The Non-Applicant submitted that Applicants did not opt any option, therefore, deemed to have accepted the existing superannuation benefit of Associate Bank as per OSR 1979. The Applicants were paid gratuity by crediting in their accounts as per Regulation 49 (2) of OSR 1979.



Arguments in the similar matter of the matters having the same & similar issues of claim application had heard on 27.8.2020 which were made by the senior counsel Shri Kamlakar Sharma & present counsels Shri Jhabar Swami & Aditi Swami for Non-Applicant appearing in these cases and decided the cases on 22.9.2020. Arguments in these cases were also made by the counsel of Non-applicant on **18.1.2021, 17.2.21, 18.2.21 and 10.3.2021**. Besides oral arguments, the learned counsel for Non-applicant also submitted a combined written argument in all cases in addition to reply filed in each case. The learned counsel also makes a submission for deciding the each & every case separately in the note of combined written arguments.

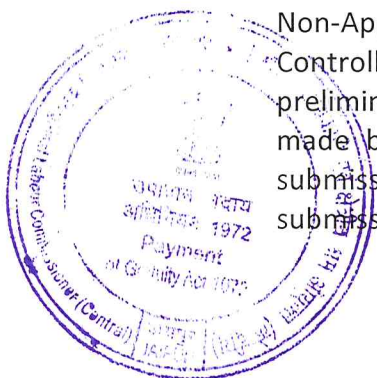
The counsel for applicants' argued that present matters involve similar issue i.e. claim for additional payment of gratuity and pleading on condonation of delay. It is also submitted that present bunch of cases have no new facts or circumstances have arose but the respondent Bank has himself argued the similar cases alongwith senior advocate on 27.8.2020 involving similar issue and requested to decide the cases in the light of order date 22.9.2020 passed by this Authority.

I heard the arguments. There are common issues which are to be decided by this authority in all bunch of cases. The main issues pertains to additional payment of gratuity of amount of DA & special allowances are included under OSR, 1979 , mode of calculations is either with divisible 26 or months as well as additional payment of gratuity beyond 30 years of services are to be calculated by taking meaning of one-half as 15 days or 45 days under the OSR, 1979. The Advocate for applicant has no objection in deciding the issues by common order as given his views in his written argument.

Since the issues involved in the bunch of claims filed by the Applicants and the cause of action are being same, hence, all these claim applications are being decided by this common order.

At the stage of argument the learned counsel for Non-Applicant raised the question of jurisdiction of the Controlling Authority under Payment of Gratuity Act and cited the decisions of Hon'ble Supreme Court in case of Allahabad Bank & Anr Vs All India Allahabad Bank retired employees ...on 15 December, 2009, Judgment of Hon'ble Kerala High Court in Thomas Kurian Vs Idukki District Co-Operative --- on 25-02-2003 & Judgement of Hon'ble Supreme Court in Chairman cum Managing Director---Vs Sri Rabindranath Choubey on 27-05-2020.

On perusal of the records available in the files and reply filed by the Non-Applicant this Authority has not found anywhere on the record that prior to argument the Non-Applicant has ever make preliminary objections over the Jurisdiction of the Controlling Authority in these cases. The Non-Applicant filed their reply in which preliminary submission was with regard to merger of the Bank, Payment of Gratuity made by the Non-Applicant, submission about the regulation 49 of OSR, 1979, submission of principle of estopells. Further in their reply they have make submission regarding condonation of delay upon the application filed by Applicant



and had given para wise reply to the claim application of the Applicant but never raised the question of jurisdiction of this Controlling Authority.

However, this authority thought it proper to decide the issue raised by the counsel of Non-applicant and views of this Authority are as under;

In the decisions of Hon'ble Supreme Court in case of Allahabad Bank & Anr Vs All India Allahabad Bank retired ... on 15 December, 2009 The Hon'ble court held that

"The Act nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of provisions of the Act."

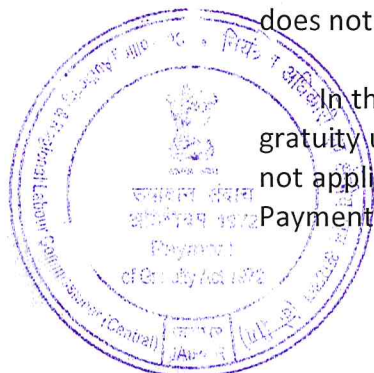
In the aforesaid judgement the Hon'ble Supreme Court has also held that:-

"Even on Merits the conclusion drawn by the Controlling Authority that the pension scheme (old) offered by the Bank is more beneficial since the amount of money pensioners got the pension scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. In this case the Controlling Authority has decided that the benefits available under the Pensions Scheme are more beneficial than the gratuity payable under the P.G.Act, 1972".

The Hon'ble Court held that "the comparison, if any, could be only between terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under section 4 of the Act. There can be no comparison between a pension scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act viewed from any angle the order of the Controlling Authority is unsustainable.

In the aforesaid case the Controlling Authority exceeded his jurisdiction and held that benefits available under the Pension Scheme are more beneficial than the gratuity payable under the Act which is not permissible as the Pension Scheme does not provides gratuity and thus Controlling Authority cannot decide that which scheme shall be better. The powers to make comparison between the Scheme or Act does not lies with the Controlling Authority.

In the present case the Applicants employees claimed for differential amount of gratuity under OSR, 1979 which provides for gratuity and therefore this judgment is not applicable in the present case as Controlling Authority has to decide the issue of Payment of Gratuity as also held by Hon'ble Supreme Court in this judgement that



“the comparison, if any, could be only between terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under section 4 of the Act.

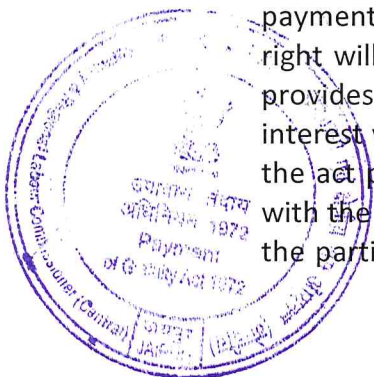
The details of decisions of Hon’ble Kerla High Court have not put up by the learned counsel in the submissions. Thus this decision cited by the Non-applicant has no relevance and in no manner supports the Non-applicant’s case.

The learned counsel for Non-Applicant referred the judgement of Hon’ble Supreme Court in Chairman Cum Managing Director... Vs Sri Rabindranath Choubey on 27-05-2020. I have gone through the judgement and found that the judgement is in relation to provision of section 4(6)(a) & 4(6)(b). The Hon’ble Court held that the Controlling Authority had no Jurisdiction to go into the legality of order of disciplinary Authority. This judgement is also not relevant with the present case hence no relevance in the matter.

In order to decide the issue of Jurisdiction it is necessary to refer the relevant provision of the P.G.Act, 1972.

“As per Section (3) of P.G.Act, 1972 the appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different area. Section 7(4) of the P.G.Act, 1972 creates a mechanism authorizing the Controlling Authority to decide disputes regarding Payment of Gratuity after making Inquiry and after giving parties to the dispute a reasonable opportunity for conducting the inquiry under sub-section (4) for the purpose of determination of the “matters or matters” in dispute. In doing so the Controlling Authority shall have the same power as are vested in a Court while trying a suit under the code. Such inquiry under Section 7 of the Act shall be judicial proceedings within the meaning of Section 193 and 228 and for the purpose of Section 196 of the Indian Penal Code. Therefore, the Controlling Authority has the trappings of a court to decide “matter or matters” in dispute meaning thereby even incidental or peripheral issues covered under the Act particularly regarding the payment of gratuity under Section 4 can be considered. Any person aggrieved by an order under Sub-section (4) of Section 7 within Sixty days from the date of receipt of the order has a right to prefer an appeal to the appellate authority. Thus there is remedy under the Act for resolving the dispute.

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 for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that interest will be payable on delayed payment. For the enforcement of its provisions, the act provides for the appointment of a controlling authority, which 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 of an appellate authority particularly constituted under the Act.

The issue is whether the Controlling authority had the jurisdiction to decide the dispute? It appears from the records that since the Applicants employee were aggrieved by the amount received as gratuity from Non-applicant bank, he had disputed the same before the Controlling Authority in Form 'N' under the relevant rules. It may be noted that in the year 1979 Non-applicant bank had introduced the OSR, 1979. The Non-Applicants Bank in their reply filed before the Controlling Authority submitted that there are two sets of method of calculation of Gratuity viz. one under provision of Payment of Gratuity Act and another under provision of OSR, 1979. As per these regulations, the employee will be paid the amount whichever is more beneficial to him, meaning thereby, whichever provides him higher amount of gratuity and more beneficial to him, the employee will get gratuity under the method of calculation under that provisions only as per section 4(5) of the payment of gratuity Act.

The regulation 49(2) of the OSR, 1979 deals with the payment of gratuity to the officers of Non-applicant Bank. It only emphasized the fact that the Non-applicant bank had accepted the right of the Applicants to receive better terms under Section 4 (5) of the P.G.Act.

Now question arise – whether the Regulation can be treated to be a contract of employment and, if so, whether it comes within the scope of Section 4(5) of the P.G.Act.

In this regard it is appropriate to refer to the judgment in Eastern Coalfields V/s RLC (Supra) G.N.Roy J. held that Payment of Gratuity Act being a beneficial legislation, its provisions should be construed liberally so that the benefit under the Act reaches the maximum possible employees. It was held that under Section 4(5) of the Act, the Controlling Authority has power to grant higher quantum of gratuity under the Act in terms of favourable contractual provisions of service.

The similar view was taken by Hon'ble Kolkata High Court while deciding the matter between FCI and Ors. V/s ALC – II (Central and C.A. and others) in W.P. No. 5354 (W) of 2005 that “I find that the said respondent – the employee under the Act enjoyed a right to receive better terms of gratuity under the Service regulation thereby bringing the dispute with in the fold of the Controlling Authority in my view, “..... it is now well – recognized that whereas a right or liability in created by a statute which given special remedy for enforcing it, the remedy provided by the statute only must availed of”

The Apex Court has also taken the similar view while deciding the matter between State of Punjab V/s Labour Court, Jallundhar & Ors. on 16.10.1979 Citation 1979 AIR – 1981/1981 – I LLJ 354. It has been held that Gratuity Act is a self -



contained code and its provisions impliedly exclude recourse to any other statute for payment of gratuity.

Upon all these considerations, the conclusion is that Parliament intended that proceedings for Payment of Gratuity due under the Act must be taken under that Act and not under any other. The Applicants have right to claim better terms of gratuity under Section 4(5) of the P.G.Act, 1972 provided under the Service Regulations of the Non-applicant Bank which is more beneficial to him hence the Controlling Authority has jurisdiction to decide the issue of gratuity payable to the employee under better terms of gratuity available to the employees as the Non-applicant Bank had not taken any exemption from the operation of the provision of the Payment of Gratuity Act, 1972 under Section 5(2) of the Act.

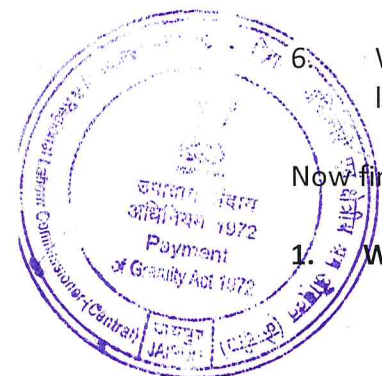
The main disputes between the parties are that the Non-Applicant Bank has paid the less amount of gratuity to Applicants due to calculation as per definition of "Pay" given under Regulation 3(k) of OSR, 1979 considering the Basic Pay+ PQP +FPP /FPA /FPA only instead of considering 'wages last drawn' including D.A, Special Allowance, and DA on Special Allowances as per definition of 'wages' given under Sec. 2(S) of the Act, 1972 and interpretation of one half as well as not dividing the wages by number of 26 days while considering No. of years of service for the purpose of calculation of gratuity

After having heard parties and examining/ investigation in the claim filed by the Applicants, reply and counter reply of Non-Applicants, rejoinders filed the Applicants the following issues have framed to be decided by this Authority.

1. Whether the delay in filling the application deserve to be condoned
2. Whether the Dearness Allowances, DA on PQP & FPP are to be included while calculating gratuity as per Regulation 49 of OSR, 1979
3. Whether Special allowance shall be included on calculation of the Gratuity.
4. Whether meaning of one half would be 15 days or 45 days for the purpose of calculating additional gratuity after completing 30 years of services.
5. Whether mode of calculation of gratuity of wages last drawn would be divisible by 26 days or 30 days.
6. Whether the Applicants are entitled to claim interest on delay payment for less payment/ delayed payment of Gratuity amount.

Now findings of this Authority are as under;

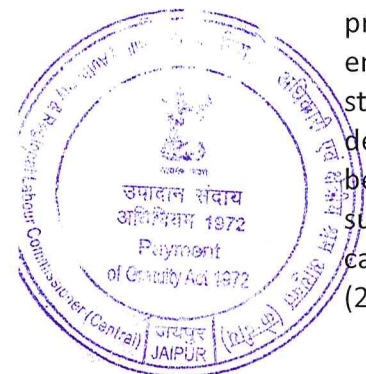
1. Whether the delay in filling the application deserve to be condoned.



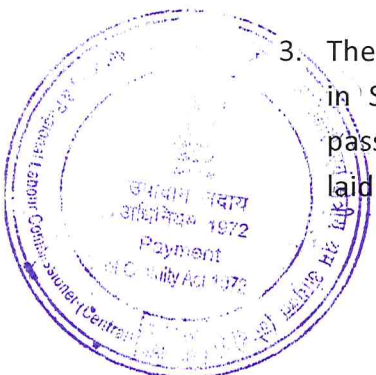
On appreciation of the facts available, it is undisputed fact that the Applicants were retired on superannuation from service on the given dates in form 'N' and claim application filed before the Controlling Authority after a period of more than 01 Months to 4 Year 6 Months. There is delay for more than more than 01 Months to 4 Year 6 Months in filing the claim applications by the Applicants.

The learned counsel for Applicants submitted that neither the Non-Applicant has given any calculation sheet at the time of Payment of Gratuity nor any notice in Form 'L' as required under Rule 8(1) (i) of Act, 1972 was given and endorsed copy thereof to Controlling Authority. He submitted that P.G Act, 1972 is a substantive law which creates a responsibility over the employer to disclose the method of calculation of gratuity and amount of gratuity to be paid. Whereas the payment of Gratuity (Central) Rules, 1972 are procedural in nature and will come into existence when all the provisions of the substantive law have been complied with. The applicant in his application submitted that he was not aware of the technicalities and legalities of the gratuity acts and I fully relied upon my bank management that their calculation would be correct. But after Decision of RLC Ranchi dated 15.6.2018 for application No. 36(31)/2016 RLC (R), Order of DLC (Central) Hyderabad in case No. PGA-36/21 to 44/2017, Order of ALC (Central), Silchar No. 48(03)/2017-S/A dated 19.1.2018, Order of ALC (Central) Ajmer No. AJ-48(98)/2017-ALC dated 16.3.2018 and other cases I came to know that respective regulations of OSR, 1979 of applicant's bank are not consistent to the provisions of the P.G.Act- 1972 and payment of gratuity made to officers of banks were also proved faulty. It is also submitted that section 7(1) of the Act 1972 is purely directory in nature whereas section 7(2) and 7(3) are mandatory in nature. He relied upon the following judgements of Hon'ble Supreme Court for condonation of delay.

1. In case of Union of India V/s Tarmen Singh reported in (2008) 8 SCC 648. Wherein it has been observed by the Hon'ble Court that if issue relates to payment or re fixation of pay or pension (both pension and gratuity are property within the meaning of Article 300 A of constitution of India) relief may be granted in spite of delay as it does not affect the right of third party.
2. In case of Transport Manager Kolhapur Vs Pravin Bhabhuatlal Shah of Bombay High Court order dated 02.07.2004. The Hon'ble High Court held that Mr. Topkar, learned Advocate for Respondent No 1 workman, submits that there is no period of limitation prescribed under the Act or the Rules framed thereunder. As rightly submitted by Mr. Topkar, the second proviso to Rule 10 provided that there is no limitation for filing an application under Rule 10 if the employer has failed to give notice under sub-section (2) of Section 7 of the Act stipulates that the employer shall as soon as the gratuity becomes payable, determine the amount of gratuity, irrespective of whether an application has been made by the workman to claim gratuity. The learned advocate rightly submits, in my view, that the question of limitation does not arise in the present case as the petitioner has failed to give the notice as stipulated in sub-section (2) of Section 7 of the Act.



3. The Krishna District Milk Producers Mutually Aided Co.op Union Vs The state of Andhra Pradesh and Others in WP No. 7210/2015.
 4. In case of Neelakandan Namboothiri Vs State of Kerala of Hon'ble Kerala High Court.
 5. P.Rama Rao P. & Ors Vs Controlling authority under PG Act of Andhra High Court.
 6. In case of V.S Ekambaram V/s The Appellate Authority of Hon'ble Madras High Court .
 7. Hon'ble Punjab and Haryana High Court in National Project Construction Corporation Ltd. Vs Appellate Authority and Ors.
 8. Hon'ble Gujarat High Court in Himatbhai Panchabhai Makwana Vs Jiviben Khima bhai and Anr.
 9. Hon'ble Rajasthan High Court in Madar Union Sanatorium and Ors. V/s M.B Sathe and Ors.
1. The Non-Applicant Bank submitted that it is well settled that any judgement passed by any Authority would not give rise to any cause of action in favour of a person. The judgement referred by Applicants in case of Union of India Vs Tarmen Singh in Civil Appeal No 5151-5152 is not applicable to the facts and circumstance given by the Applicants because the Payment of Gratuity is one-time payment and therefore, it would not be constitute continuing cause of action like payment of re-fixation of pay or pension and requested to dismiss the application of Applicants.
 2. During the arguments, the learned counsel for Non-applicant submitted that applicants were working in the capacity of Senior Officer of the Bank, who are considered to be educated enough to be awarded about the basic legal knowledge pertaining to the operation of limitation, applicable in his case. However, he kept sleeping over his rights and only recently, after coming to know about certain claims being allowed by the Controlling Authority in favour other claimants, these applications have been filed. He further argued that the two fundamental principles on which the Law of Limitation primarily rests are "Interest republicaet sit finis lithium" and "Vigilantibus non dormenti bus jura subvenit".
 3. The learned counsel for non-applicant refer the judgement of Madras High Court in S.R.Vediappan Vs. S.P.Ramalingam on 11.2.2020, Order of this Authority passed on 6.10.2020 dismissing 07 applications by relying upon the principles laid down for condonation of delay in judgement of Hon'ble supreme court in



Esha G.Bhattacharijee vs. Mg. commit. Of Reghunathpur nafar Academy besides other many judgements of Appellate Authorities & High courts.

I heard the argument of both parties and my findings are as under;

The present applications were filed after a delay of maximum period of 4 Year 06 Months from the date of superannuation whereas perusal of the Rule 10 provided that the application before the Controlling Authority should be filed within 90 days. Section 7 of the Act prescribed for determination of payment of gratuity, which reads as under;

Section 7- Determination of the amount of gratuity.

Section 7(1) : A person who is eligible for payment of gratuity under this Act or any person authorized, in writing to act on his behalf **shall send a written application** to the employer, within such time and its such form, as may be prescribed, for payment of such gratuity.

Section 7(2): As soon as gratuity becomes payable, **the employer shall, whether an application referred to in sub Section (1) has been made or not, determine the amount of gratuity and given notice in writing to the person to whom the gratuity is payable and also the controlling authority specifying the amount of gratuity so determined.**

Section 7(3): The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

Rule 10 of the Payment of Gratuity (Central) Rules, 1972 provides as under

Rule 10 - Application to the Controlling Authority for direction.

If an employer-

- (i) refuses to accept a nomination of to entertain an application sought to be filed under Rule 7, or
- (ii) issues a notice under sub rule (i) of rule 8 either specifying an amount of gratuity which is considered by the Applicants less than what is payable or rejecting eligibility to payment of gratuity, or
- (iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may within ninety days of occurrence of the cause for the application, apply in form 'N' to the



Controlling Authority for issuing a direction under sub section (4) of Section 7 with as many extra copies as are the opposite parties.

While going through the sub section (2) of Section 7 it is observed that whether or not application has been received under Sub-Section (1) the employer is bound to determine the amount of gratuity and give notice in writing to the person to whom gratuity is payable. I have considered the views of learned counsel of Applicants in this regard

The applicants cited the judgement of Hon'ble Supreme Court of India in case of Union of India Vs Tarmen Singh reported in (2008) 8 SCC 648 has observed that if issue relates to payment or re-fixation of pay or pension relief may be granted in spite of delay as it does not affects the rights of the third parties. In the said Judgement the Hon'ble court also narrated Article 300-A". This judgement is in relation of fixation of pay or pension, which are regular component whereas gratuity is one time component, hence, this judgement is not applicable in this case.

I have gone through the decision of Hon'ble Supreme Court dated 13-09-2013 in **Esha Bhattacharjee Vs Managing committee of Raghunathpur Nafar academy** and others in which the Hon'ble Supreme Court laid down certain principle for condonation of delay. According to judgement of Hon'ble Supreme court in this case the Applicants while filing the claim application does not fulfil the criteria given by Hon'ble Supreme Court in the above. Upto a certain period of delay, I relied upon this judgement but the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice as decided in case of Shakuntala Devi Jain Vs. Kuntal kumara (AIR 1969 SC 575) and State of West Bengal Vs. The Administrator, Howrah Municipality (AIR 1972 SC 749).

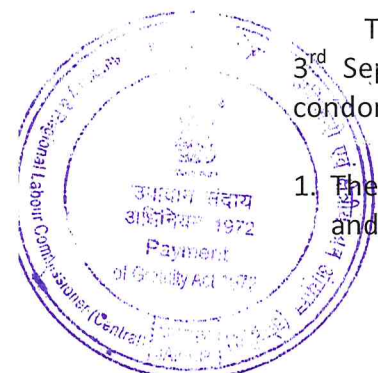
There is delay of maximum period of 4 Year 06 Months in these cases.

Now I have also relied upon the judgements in case of Habib Ahmed Khan Vs. The U.P. Sunni Central of Waqfs and others, the Hon'ble High Court of Allahabad in Civil Revision No. 18 of 1988 at para 15 held that;

"Needless to mention here that in respect to the matter relating to condonation of delay, it is settled proposition of law that liberal consideration shall be given in order to advance the substantial justice. If technical and substantial justice is pitted together, the way should be given to the substantial justice, and there is no need to explain day to day delay in filing an application for condonation of delay."

The Hon'ble Supreme Court in case of N. Balakrishnan Vs. M. Krishnamurthy on 3rd September, 1998 have given the following comments in reference to delay condoned :-

1. The primary function of court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit foxed for approaching court in



different situations in not because on the expiry of such time a bad cause would transform into a god cause.

2. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delays in approaching the court is always deliberate. This court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumara (AIR 1969 SC 575) and State of West Bengal Vs. The Administrator, Howrah Municipality (AIR 1972 SC 749). It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him.

In these cases also though applicants have not shown any sufficient cause but claim of applicants cannot be dismissed due to the reasons of delay as refusal to condone delay would result foreclosing the applicants' right from putting forth his cause.

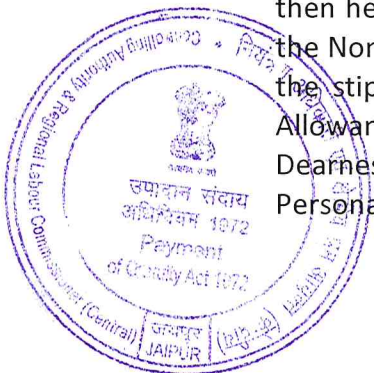
In view of the observations made by the Apex Court and also the observations of different High Courts coupled with the facts of the present matter, this authority has to take a liberal view in considering the claim of applicants in order to advance the substantial justice. If technical and substantial justice is pitted together, the way should be given to the substantial justice. Therefore, I considered the applications and the delay in bunch of applications in filing the claim applications under Payment of Gratuity Act from 08 Months to 4 Year 6 Months are hereby condoned by this common order.

2. Whether the Dearness Allowances, DA on PQP & FPP are to be included while calculating gratuity as per Regulation 49 of OSR, 1979

There is no dispute with regards to Date of appointment, date of superannuation/VRS, payment of gratuity to the Applicants, Basic pay, DA, PQP, FPP/FPA/FPA etc.

The main disputes between the parties are that the Non-Applicant Bank has paid the less amount of gratuity to the Applicants due to calculation as per definition of "Pay" given under Regulation 3(k) of OSR, 1979 considering the Basic Pay+PQP+FPP/FPA only instead of considering 'wages last drawn' including D.A, Special Allowance, and DA on Special Allowances as per definition of 'wages' given under Sec. 2(S) of the Act, 1972.

The Applicants submitted that Non-Applicant Bank has paid less payment of gratuity then he deserve as per OSR 1979. It is submitted that while calculating the gratuity the Non-Applicants Bank has adopted the method of calculation which deviate from the stipulation of Payment of Gratuity Act, 1972. The components like Dearness Allowance, Special Allowance (forming part/ derived from @ % of Basic Pay), Dearness Allowance on Special Allowance, and Dearness Allowance on Fixed Personal Allowance are excluded from computation.



The Non-Applicants Bank submitted that before making payment to the Applicants the gratuity was separately calculated under both Regulations i.e in accordance with the Provisions of Payment of Gratuity Act, 1972 and in accordance with Regulation 49(2) of OSR 1979. For the purpose of determination of gratuity in accordance with OSR 1979 the Basic Pay +PQP+FPP/FPA was taken into consideration as the Dearness Allowance is not included as per definition of Pay given under Rule 3(K) of OSR, 1979. On the other hand, the amount of gratuity was separately calculated under Payment of Gratuity Act. However, maximum amount payable under the Act at the time of retirement of Applicants was Rs 10.00/ 20.00 Lakhs as the case may be. Therefore, the higher amount of gratuity was paid to the Applicants in accordance with OSR 1979 / Act, 1972.

The Non-Applicants Bank further submitted that after accepting the retiral dues without any protest, the Applicants is not entitled to raise any dispute with regards to the payment received towards terminal/retiral dues. Thus Applicants is estopped by making any objection by virtue of Statutory Provisions of Estoppel under Section 115 of Indian Evidence Act, 1872.

The learned counsel of Applicants submitted that the gratuity received by the Applicants without protest cannot be taken as the employer has discharged fully from the liability. In other words, the obligation to make correct amount of gratuity will never get discharged. Thus the right of the employee for correct gratuity also does not extinguish. The Applicants submitted that acceptance of gratuity amount without any protest does not take away/waive of Applicants' right to have better gratuity under the Service Regulations. The Applicants invites the attention towards section 7-A, 7-B, 8, 9 and 11 of PG Act, 1972 which requires checking system for ensuring correct Payment of Gratuity. He relied upon the judgment of The Hon'ble Calcutta High Court in Ram Ranjan Mukherjee and other Vs Mining and Allied Machinery Corporation Ltd. has held as under :-

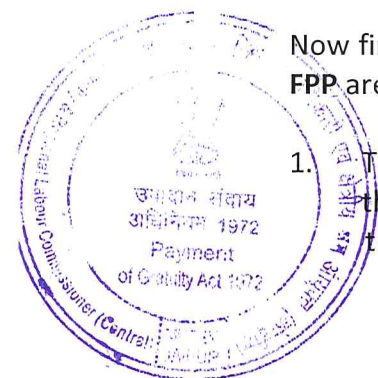
" 3.....(1) There can be no estoppels against the payment of gratuity Act 1972.

(g) An employee cannot waive his rights under the payment of Gratuity Act, 1972 because the provisions of Payment of Gratuity Act have been enacted for reasons of public policy....."

Keeping in view the judicial law decided by the Apex court in case of 'D.P Maheshwari Vs. Delhi Administration, 1983-II-LLJ-425 (SC) and judgement referred by learned counsel for Applicant, Principal of Estoppel cannot be applied in this case and plea taken by the learned counsel for Non-Applicants not considered.

Now findings on the main issue of inclusions of **Dearness Allowances, DA on PQP & FPP** are as under;

1. The learned counsel for Non-applicant submitted in his written arguments that the Board of Directors of a subsidiary bank may, after consultation with the State Bank of India and the Reserve Bank and with the previous approval



of the Central Government, by notification in the official Gazette, make regulations not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act or any other law for the time being in force.

It is also submitted that Article 12 and 13 of the Constitution of India empowers Government Companies or statutory bodies to make the rules/regulations/law. The Article 12 and 13 discussed as under:-

Article 12. Definition. - In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

Article 13. Laws inconsistent with or in derogation of the fundamental rights. - (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires, -

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

The government companies - Statutory or Autonomous Bodies or Registered Societies created to discharge Government functions are "State" "Agency or Instrumentalities of State" or "Other Authorities" within the meaning of Article-12 of the Constitution of India and are competent to make law "Rules/Regulations" within the meaning of Article-13(3)(a) and (b) of the Constitution of India and such law "Rules or Regulations" would have statutory force.

The Regulations made by the bank are laid in the Parliament and it undergoes the legislative process. The officers and employees services are governed by these regulations. Thus, the service regulations of the bank is a law which is enforceable in the court and it is not inconsistent with the Payment of Gratuity Act, 1972 as the Regulations has not snatched away the right of the employees as far as the gratuity is concerned.

The provisions of the Payment of Gratuity Act, 1972 does not confer any competence to the Controlling Authority to re-write the regulations under the garb of interpretation.



The Controlling Authority is responsible for the administration of the Payment of Gratuity Act, 1972 and not to legislate under the pretext of social welfare act. Hence, it is in dominion of State Bank of Bikaner & Jaipur to frame Regulations regarding Superannuation Benefits of its employees. Having strength of The Constitution of India and under Section-63 of the State Bank of India (Subsidiary Banks') Act, 1979, the State Bank of Bikaner and Jaipur framed Officers' Service Regulations, 1979. More particularly to extent the benefits of better terms of gratuity to its officers, the erstwhile SBBJ incorporated Regulation-49 in OSR, 1979. The regulations of e-SBBJ are self-contained complete statute and the language of each and every provision of the regulation is very clear, self-explanatory and leaves no room for any doubt to be subjected for further interpretation. It is pertinent to mention that regulations of the bank neither changed nor repealed or struck down by any Constitutional Courts.

The regulation in relation to Payment of gratuity is as under;

STATE BANK OF BIKANER AND JAIPUR (Officers') Service Regulation, 1979

1. Gratuity –“Regulation 49(2): The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum 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.

Provided further that **pay** for the purpose of Gratuity for an officer who ceased to be in service during the period 01.07.1993 to 31.10.1994 shall be with regard to scale of pay as specified in sub-regulation (1) of regulation 4.

Note: if the fraction of service beyond completed year of service is 6 months or more, gratuity will be paid pro-rata for the period.”

Regulation 3(k): “Pay means basic pay including stagnation increments.”

The Non-Applicants Bank submits the gratuity Calculation table as under;

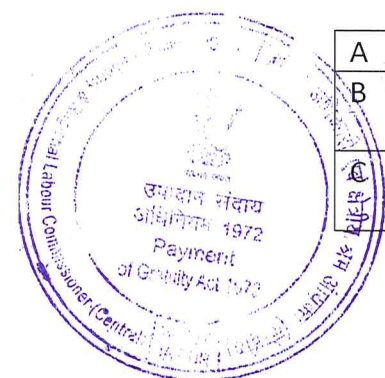
A. As per the OSR, 1979

“Pay Calculation as per OSR, 1979-

Basic Pay+	PQA+	FPP/FPA	=Total Pay

Calculation of Gratuity Amount as per OSR, 1979

A	For Service up to 30 Years	(Pay means Basic pay+ PQA+FPP/FPA)x15
B	For additional Gratuity over 30 Years of Service	(Pay means Basic pay+ PQA+FPP/FPA) X Additional Completed year of Service)/2
	For additional service rendered over Six months	(Pay means Basic pay+ PQA+FPP/FPA) X additional months of service)/(2X12) (Pay X



	and more but less than one year (prorate basis)	additional days of service) / (2 X 365)
D	A+B+C	Total Gratuity payable as per OSR, 1979=

B. As per Gratuity act, 1972-

“Wages” Calculation as per Act, 1972-

Basic Pay+	FPP/FPA+	PQA+	DA	=Total Wages

Calculation of Gratuity Amount as per Act, 1972

A	For Total Service rendered	Wages X 15 X length of service (in years)/26		
B	*Max Payable as per Act of 1972	Total Gratuity Payable		

(*Maximum Payable Rs 20,00,000/- for employees retiring on or after 29.03.2018, Rs 10,00,000/- retiring on or after 24.05.2010 up to 28.03.2018 and Rs 3,50,000/- for employees retired before 23.05.2010)

Amount of Gratuity Payable

1. Under Act of 1972 - Rs 3.50 lacs or Rs. 10.00 Lacs or Rs. 20 Lacs (As the case may be)

Under SBBJ OSR, 1979 - As shown in **Calculation sheet with this claim** to each Applicants

Keeping in view of the above calculation, amount of Gratuity Payable under OSR, 1979 being higher amounts and same were paid to the Applicants.

2. The learned counsel for Non-applicant submitted that the officers Service Regulations, 1979 of the bank have been framed in exercise of powers conferred under the provisions of the State Bank of India (Subsidiary Banks) Act, 1959 by the board of directors of the bank, after consultation with the State Bank of India and Reserve Bank of India and with the previous approval of Central Government and were forwarded to the Central Government to be laid before each house of parliament. The applicants should have made an objection to the drafts of regulation before the competent regulation making authority of the bank or to be assailed before competent Constitution court to declare such regulation illegal, if the same was found to be inconsistent with the provisions of P.G. Act. Alternately, applicants should have approached the competent rule making authority of the bank to bring a change therein. The authorities under the P.G. Act are having a bound on legal duty to implement the provisions of the said Act within the framework of the act. Authorities under P.G. Act have no jurisdiction, dominion,



powers to declare the said provisions as illegal and unconstitutional in the absence of such explicit powers under the said Act. It is also settled position of law that any legal instrument/ settlement/ regulation to be read as a whole and not in a piecemeal manner and to be dealt with and applied accordingly.

To decide the above observations made by learned counsel for Non-applicant, It would be appropriate to re-produce the relevant provisions of the Act and the Regulation 1979 to appreciate the controversy in this dispute and the same are as under:

Section 14 : Act to override other enactments, etc. - The 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.

Section 4(5) : 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.

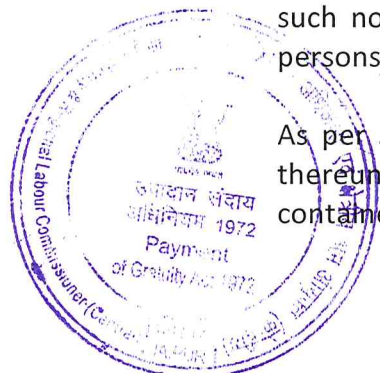
Section 2(S) : "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Section 5 : Power to exempt : (1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port railway company or shop are in the receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of provisions of this Act, if, in the opinion of the appropriate government, a such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially, affect the interests of any persons.

As per Section 14 of the Act, 1972, the provisions of this Act or any rules made thereunder shall have effect notwithstanding anything **inconsistent** therewith contained in any enactment other than this Act or **any instrument or contract** having



effect by virtue of any enactment other than this Act. The OSR, 1979 is a Rules/regulations and this Authority has to examine as to whether there is any inconsistency contained therewith with the provisions of Act, 1972. If so, the provisions of Payment of Gratuity Act, 1972 shall have override effect under Section-14 of the Act. The contention of the learned counsel is that the provisions of Payment of Gratuity Act, 1972 does not confirm any competence to the Controlling Authority to re-write the regulations under the grab of interpretation is correct up to the extent that the provisions of regulations should not be inconsistent with the provisions of the Act, 1972 due to overriding effect of Section-14.

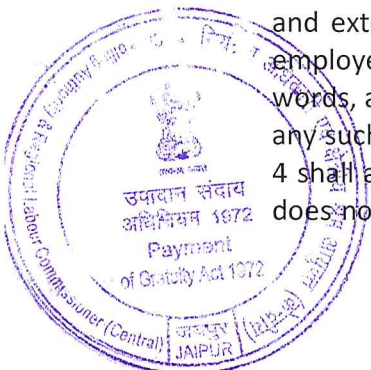
The definition of 'pay' provided under Regulation 3-K of OSR, 1979 means basic pay including stagnation increment whereas the definition of 'wages' provided under Section-2(s) includes all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

On perusal of Section 4 (5) read with Section 14 of the Act, it can be seen that it protect the right of an employee to receive better terms of gratuity from his employer under any award or agreement or contract as the case may be.

The learned counsel for Non-applicant submitted that the operative word "Nothing in this section shall affect" in itself make it clear that when the employees opts to the better term under award or agreement or contract, the rest of provisions contained in this section shall become inoperative. Hence, the payment of gratuity act itself speaks that - in the journey of an employee towards better terms of gratuity under any award or agreement or contract, the provisions contained in sub-sections - (1),(2),(3) and (4) of Section-4 shall be out of sight. In other words, we can say that it is condition precedent to ignore the provisions of the Payment of Gratuity Act while opting with better terms of gratuity as provided in sub-section (5) of Section-4 of the Payment of Gratuity Act.

The learned counsel for Applicants submitted that Non-Applicants Bank paid Gratuity as per Regulation 49 of OSR 1979 but Bank has not obtained required exemption under section 5(2) of the PG Act; therefore, the operational provisions of PG Act are applicable. The Non-Applicants Bank has given various interpretations to terms of "Pay", etc. as per their convenience and to debar its employees/officers from their legitimate terminal/retiral claims. The definition of "pay" under regulation 3(K) of OSR, 1979 is not consistent with the definition of wages under Section 2 (S) of the Payment of Gratuity Act, 1972.

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. In other words, as against what is made applicable by the Act, if better terms are available under any such arrangement with the employer, Section 4(5) stipulates that nothing in Section 4 shall affect the right of any employee to receive such better terms. The Section 4(5) does not prohibits or prevent any employees to get better terms of benefits under any



Award or agreement or contract but gives right to get gratuity in better terms. The word 'better terms' have wide meaning. The terms under OSR, 1979 of 'Pay' cannot be said to be a better terms in comprising to definition of 'wages' given under section-2 (s) of the Act. The heart of calculation of gratuity is only definition of 'pay' or 'wages'. The definition of pay under OSR, 1979 is inconsistent with the definition of wages under the Act, 1972. The non-applicant bank has also not sought exemption under Section 5(2) of the Act, 1972. A plain reading of the provisions referred to herein above makes it abundantly clear that there is no escape from the terms of payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government under Section 5(2) of the Act, 1972.

Therefore, the argument and submission made by learned counsel for Non-applicant are not maintainable.

3. The learned counsel for non-applicant argued that earlier prior to amendment of Payment of Gratuity Act, 1984, the applicants were not entitled for gratuity under the Payment of Gratuity Act and were excluded as applicants were employed in managerial and administrative capacity. I do not think that arguments on the subject are anywhere relevant to the present claim.

In the present scenario, the applicants' employees are covered under the definition of employees given under Section 2(e) of the Act. Hence, no further investigation or comments in the matter required and therefore, argument of learned counsel for Non-Applicant are not maintainable.

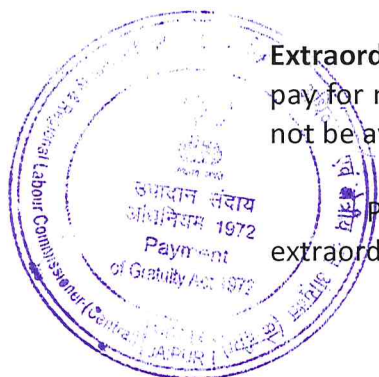
The learned counsel of Applicants submitted that the Non-Applicant Bank not only mis-interpreted the operational provisions of OSR 1979 but also has deprived the right of the Applicants. The Non-Applicants has interpreted the definition of 'pay' in different prospect while paying the Maternity Benefit & deducting the wages for extra ordinary leave as per Rule 36 & 37 of OSR, 1979 whereas while paying gratuity, the definition of 'pay' taken in different prospect.

Maternity Leave under Rule 36: Leave up to the period of three months at a time may be granted by way of maternity leave including in respect of post-natal period or at the time of mis-carriage or abortion, so however, that not more than 12 months of such leave shall be available during the entire period of service of the officer.

The learned counsel for the Applicants argued that at the time of paying the maternity benefits the Non-Applicants Bank paid the wages of wages last drawn including D.A and Special allowance.

Extraordinary Leave: An Officer shall be eligible for extraordinary leave on loss of pay for not more than 360 days during the entire period of service. Such leave may not be availed of except for sufficient reasons on more than 90 days at a time

Provided that in very special circumstances, the Board may grant extraordinary leave on loss of pay to an officer up to a total period of 720 days.



The learned counsel for the Applicants argued that at the time of deducting the wages in lieu of extra ordinary leave availed by the employees/Officers the Non-Applicants Bank deducted the wages as of wages last drawn including D.A and Special allowance. Thus the Non-Applicants not interpreting the definition of pay as provided under rule 3 (k) of OSR, 1979.

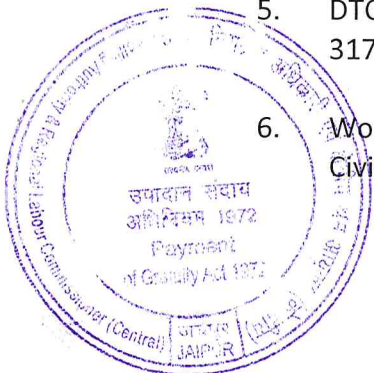
The learned counsel of the Applicants further submitted that bank has calculated the amount with inconsistent terms of Regulation 49(2) of OSR, 1979 and also calculated with the terms as per provisions of the P.G Act and paid the higher of two such figures. The Applicants submits that the notion of Non-Applicants Bank that payment of higher of the two amounts meet the statutory requirement of Section 4 (5) for payment of Better Terms of Gratuity is not correct, in the light of the judgement of Hon'ble Supreme Court dated 15.12.2009 in C.A No 1478 of 2004-Allahabad Bank and Anr. Vs All India Allahabad Bank Retired Employees Association, the Hon'ble Court had decided against such self-derived conclusion of the employer by giving the ruling as under:-

“No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Sub-Section (5) of Section 4 protects the rights of an employee to receive better terms of gratuity from its employer under any Award or agreement or contract as the case may be”.

The definition of “Pay” under Regulation 3(k) of OSR, 1979 is not consistence with the definition of wages u/s 2(s) of the payment of Gratuity Act, 1972. The basic ingredient of ‘pay’ viz. D.A. & Special allowances and D.A. on Special allowance have not been taken in to account in calculation of gratuity payable.

The learned counsel for Applicants relied upon the following decisions of Hon'ble Supreme court & High Court;

1. State of Punjab Vs. Labour Court, Jallander & others – AIR 1981 : 1980 (SCR) 953 of Supreme Court of India.
2. Bank of Baroda and Anr. Vs. G.Palani & others – Civil appeal No. 32386/2015 dated 13.2.18.
3. Y.K. Singla Vs. Punjab National Bank – Civil appeal No. 9087 of 2012 dated 14.12.12.
4. New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax decided on 26.11.1962.
5. DTC Retired Employees Vs. Delhi Transport Corporation & others – CA No. 3175-3176 of 2001.
6. Workmen of Metro Theatre Ltd. Bombay Vs. Metro Theatre Ltd. Bombay in Civil appeal No. 1558(L) of 1978



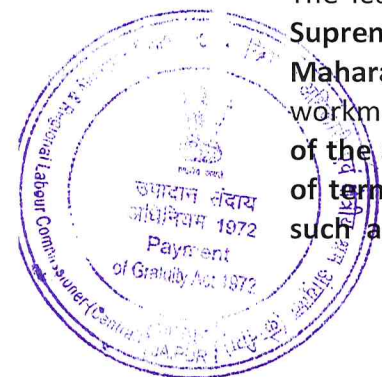
The Applicants employees submitted that the definition of 'pay' in OSR, 1979 is not consistent with the definition of 'wages' under Section 2 (S) of the Payment of Gratuity Act, 1972 and interpretation of Non-Applicants itself is different while applying the definition of 'pay' in OSR 1979. It is also argued by the counsel that till date of retirement Applicants were getting DA but at the time of calculating gratuity Non-Applicants Bank has not considered DA is itself inconsistent with PG Act, 1972 being welfare legislation.

The Applicants referred the Judgement of Madras High Court in Case W.A 1478 of 2006 of P.Selvraj Vs the Management of Sharadlow India which held that "the Gratuity act is a beneficial piece of legislation and it should receive an interpretation consistent with the principal of equality and fair play. Therefore the term "wage last drawn" found in section 4(2) of the Gratuity act should receive its full meaning and it cannot give any fractured interpretation." Bank has adopted artificial interpretation with reference to the term wages to be paid to a workman or the officer. The term "wages" defined under the Gratuity act would definitely include not only what is paid but also what is payable to workman.

The learned counsel for Non-Applicants strongly objected the arguments advanced by the Applicants' Advocate and submitted that for the purpose of gratuity under the Regulations, 1979 the expression 'emoluments', 'Pay' & Salary has been categorically defined under rule 3(f), 3(k) & 3(l) of the Regulation, 1979. The definition of 'pay' does not include dearness allowance & Special Allowance; therefore, the same cannot be taken for consideration, for calculation of gratuity under the Regulations, 1979. It is also submitted by the learned counsel that definition cannot be treated as common in all respect but it is applicable differently with different purposes. The decision referred by opposite counsel in of Madras High Court in case of P. Selvaraj V/s Management of Sharadlow India Ltd, Chennai and others are not applicable in this case as employee can choose only one better terms

The Non-Applicants Bank in their reply filed before the Controlling Authority submitted that there are two sets of method of calculation of Gratuity viz. one under provision of Payment of Gratuity Act and another under provision of OSR, 1979. As per these regulations, the employee will be paid the amount whichever is more beneficial to him, meaning thereby, whichever provides him higher amount of gratuity and more beneficial to him, the employee will get gratuity under the method of calculation under that provisions only as per section 4(5) of the payment of gratuity Act.

The learned Advocate for Non-Applicants submitted and argued that the **Hon'ble Supreme Court in case of Beed District Central Cooperative Bank Ltd. Vs State of Maharashtra & Ors judgment dated 29.09.2006** has categorically held that the workmen/employee "while reserving his right to opt for the beneficent provisions of the Statue or the agreement, he has to opt for either of them and not the best of terms of the Statue as well as those of the contract. He cannot have both. If such as interpretation is given, the spirit of the Act shall be lost". From this



judgment it is very clear that workman can opt either the Scheme or the Act and not both.

It was held by Hon'ble Supreme Court in the above case that;

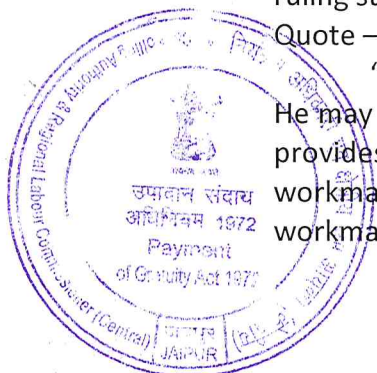
"Applying the 'golden rule of interpretation of statute' to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. When better terms are offered, a workman takes it as a part of the package. He may volunteer there for, he may not, Sub- Section (5) of Section 4 of the 1972 Act provide 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 "terms" have been used, ordinarily it must mean "all the term of the contract" while interpreting even a beneficent statute, like payment of Gratuity Act, we are of the opinion that either contract has to be segregated. Sub Section (5) of Section 4 of the Payment of Gratuity Act 1972 does not contemplate that the workman would be liberty to opt for better terms of contract, while keeping the option open in respect of a part of the statute. While reserving his right to opt for the beneficent provisions of the statute or the agreement, he has to opt for the beneficent provisions of the statute or the agreement; he has to opt for either of them and not the best of terms of the statute as well as those of the contract. In this manner, the Applicants cannot take the benefit of both statute as well as the regulation under contractual agreement.

The learned counsel for Non-Applicant relied upon the judgement of Union Bank of India and Others Vs C.G Ajay Babu and Another, In which Hon'ble Supreme Court held that "the learned counsel for the appellant Bank submits that sub-section (5) of section 4 while providing for better terms of gratuity under any award or agreement of contract "deals only with the quantum of the gratuity and not with the entitlement under any award or agreement of contract as such. We are afraid, this submission cannot be appreciated. The statute provided for better terms of gratuity under any award or agreement of contract which means all terms of the contract. The choice is between the award or agreement of contract and the statute, but not partially of either"

The counsel for applicants submitted that the shelter of ruling of Hon'ble Supreme Court in case of Beed District Central Co-operative Bank Vs. State of Maharashtra is not correct and Although the facts of that case are totally different but without prejudice to the right of the retirees, even if the ruling as quoted by the Banks is considered, the full content of that rulings has to be taken into consideration. The ruling stats read as under –

Quote –

"When better terms are offered, a workman takes it as a part of the package. He may volunteer there for, he may not. Sub-Section (5) of Section 4 of the 1972 Act 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 "terms" has been used,



ordinarily it must mean “ all the terms of the contract”. While interpreting even a beneficent statute, like, Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute.”

The ruling as above has to be analysed for its applicability on the present dispute of difference of gratuity claimed by the Bank retirees. It is to be seen that Hon’ble Court has dealt with the Section 4(5) only and termed all the provision of the employer’s scheme as One Package in itself.

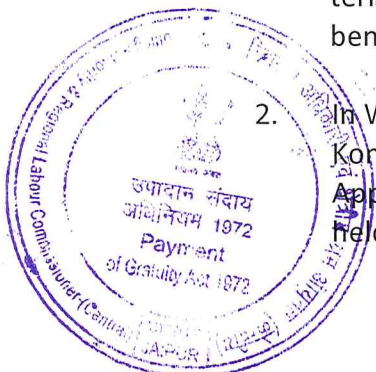
It is to be kept in mind that the Hon’ble Court has termed the “One package” without conjoint application of Section 4(5) & Section-14 of the Act. The application of Section-14 of the Act, overrides the Provisions of that One Package, and Section-14 , strives to give effect of provisions of P.G.Act, to the extent, where anything inconsistent is contained that One Package. Therefore, the ruling in absence of effect of Section-14 of the Act cannot be applied in the present case of banks, which are not exempted from operational provisions of the Payment of Gratuity Act, 1972.

It is submitted that as per Section 14 of the Payment of Gratuity Act, 1972 the provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act. Thus, the particular terms and conditions/provisions or any rules in the OSR which are inconsistent with the particular terms and conditions/provisions or any rules under the Payment of Gratuity Act, 1972 are required to be ignored and to be read in line with the terms and conditions/provisions and rules made under Payment of Gratuity Act, 1972 and the Payment of Gratuity (Central Rules), 1972.

Besides above, the learned counsel for non-applicant also cited the following judgements;

1. In Civil Appeal No 2379 of 2020, BCH Electric Limited V/s Pradeep Mehra in which it is held that ‘ 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. In other words, as against what is made applicable by the Act, if better terms are available under any such arrangement with the employer, section 4(5) stipulates that nothing in Section 4 shall affect the right of any employee to receive such better terms. Thus, when two choice are available, one under provisions of the Act and one under such arrangement with the employer and if the latter offers better terms, the employees cannot be denied right to receive those higher benefits.”

2. In Writ Petition No. 8272/2018 of Bombay High Court in case of Vidharbha Konkan Gramin Bank V. Appellate Authority. The learned counsel for non-Applicants submitted that in the aforesaid judgement, the Hon’ble High court held that “ it is significant that the expression “salary” is specifically



separately defined under Regulation 2(o) as aggregate of pay and dearness allowance, while the expression "Emoluments" is also separately defined under Regulation 2 (i) as the aggregate of salary and allowances. The three expressions "pay", "salary" and "emoluments" are distinctly and separately defined under the said Regulations. "

3. Gujarat High Court in Bank of Baroda Retired Officers' Vs. Bank of Baroda and Anr. on 12 April, 2004

The learned counsel for non-applicant submitted that all the applicants here are with a contention that the provisions of regulations which support their claim must be given effect while the other part which cast some restriction over their claim may be overlooked and be substituted by extraneous facts. But law does not permit such contentions to be allowed. The regulations either be accepted or denied in their totality and not in pieces. He further submitted that beneficial legislation cannot be stressed and referred judgement of in the case of " **Regional Director Employee' State Insurance Corporation, Trichur V/s. Ramanuja Match Industries** (1985 AIR 278 SC) Hon'ble Supreme court of India held :

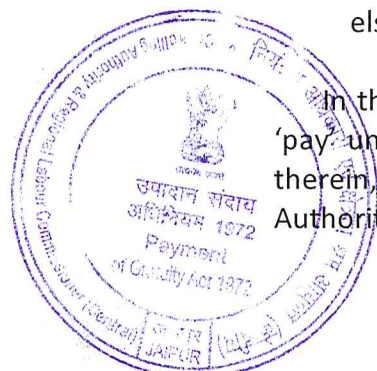
"We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme...."

4. The Hon'ble Allahabad High Court in the matter of Baroda Uttar Pradesh Gramin Bank vs. the Appellate Authority under.... On 15 October, 2019 held that while calculating the gratuity under the Regulation (WHICH CONTAINS SIMILAR DEFINITION AS DEFINED UNDER OSR OF 1979) the dearness allowance cannot be included in definition of "pay" under the Regulation. The definition of the 'pay' under Regulation and 'wages' under the Act, both are different so method of calculation of Gratuity under both the enactment are different and employee is entitled for the best deal.

5. Hon'ble High Court of Chhattisgarh, Bilaspur, judgement Reserved on 12.1.2021, judgement Delivered on 28.1.201 in the matter of Chhattisgarh Raja Gramin Bank versus Arun Phansalkar and others held as :-

"Since the dispute is in relation to the Gratuity payable under the Regulations, it has to be computed strictly in terms of the Regulations and not on the basis of the definition of any other term or as to the mode of calculation given elsewhere."

In the above matter the Hon'ble Court also observed the definition of the term 'pay' under Regulation 2(m) cannot be widened beyond the explicit terms as given therein, by reading something more into it. This exercise done by the Controlling Authority, the Appellate Authority and the learned single Judge of this Court as



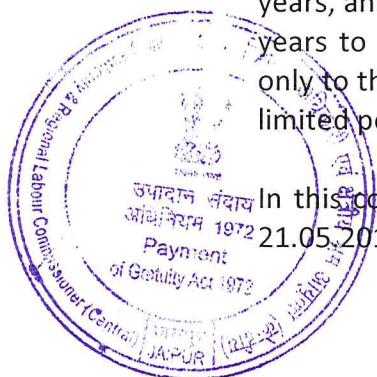
discussed above, in our view, is not correct. We respectfully disagree with the view taken by the division Bench of the Madhya Pradesh High court and the learned judges of Telangana, Rajasthan (Jodhpur Bench) and Calcutta High Courts; while concurring with the view expressed by the learned Single Judge of the Bombay High court in this regard.

6. **In the High Court at Calcutta** : “The Hon’ble Justice Arindam Sinha And the Hon’ble Justice Suvra Ghosh” F.M.A. 657 of 2020 Paschim Banga Gramin Bank & Ors.Vs. Chinmay Majumdar & Ors. Held that “We are not satisfied with contention of respondents regarding emoluments or any part of it having been classified in the Regulations, as ‘pay’. The phrase used in clause (m) of definition regulation 2 is ‘specifically be classified’. Such phrase would exclude any interpretation by implication, based on what is meant or scope or effect of clause (c) in regulation 10 or sub-regulation (2) in regulation 66. Meaning of ‘pay’ makes clear that it is basic pay and specially classified part of emoluments. Though stagnation increments are included with basic pay but no part of emoluments is. There is thus, distinction between pay and basic pay. Second proviso under sub-regulation (3) of regulation 72 refers to gratuity payable to an officer based on last ‘pay’ drawn. 3rd proviso is in respect of employee, to take average of ‘basic pay’ along with, inter alia, dearness allowance. Here too a clear distinction has been made by the Regulations, between officer and employee, in the matter of calculation of gratuity. Pay includes within it, certain components and to be taken into account in respect of officers. Regarding employees, it is basic pay and specifically mentioned allowances. We see no ambiguity in the proviso. In view of what we have said above **All India Gramin Bank Pensioners Organization Unit Rewa(supra) (Judgment dated 6th September, 2018 of The Single Judge of High Court of Madhya Pradesh in, inter alia, WP 9182 of 2017 (All India Gramin Bank Pensioners Organization Unit Rewa – vs. – Madhyachal Gramin Bank & another)**, is a view we are unable to accept or be persuaded by.”

The learned counsel for Non-Applicants submitted during the arguments that the terms of “pay” have been used differently in different prospects viz. Payment of Maternity Benefit, extraordinary leave etc. keeping in view of the judgement of Hon’ble High court of Bombay.

The Advocate for Applicant submitted that the gratuity as substitute under Bank’s Scheme, has the only better feature of “No ceiling on Amount of Gratuity’ otherwise it is in no way better, because it does not pay Gratuity for service period up to 09 years, and the Month’s Gratuity freezes at 15 months, for the service period from 16 years to 30 years. Further the “No ceiling Feature” could pay a little extra money only to those approx. 3 % of retirees only, who retired at Higher Grades, that too for limited periods only.

In this context it is submitted that Hon’ble Kerala High Court by Judgement dated 21.05.2010, in WP(C) No. 25584 of 2011--Dr. C Renuka Vs Kerala State Council for



Science....., has elaborated and spelt the intent of section 4(5) providing payment of "Better Terms of gratuity" to be available for the entire employees of the establishment concerned at Para no 17 as under-

Quote

"Though Section 4(5) speaks about the "right of an employee", the provisions in Section 4(5) can be invoked so long as there is an award or agreement or contract envisaging better terms of gratuity not only for an individual employee but also for a class or category of employees or for the entire employees of the establishment concerned. This is because if the employer has envisage a better terms of gratuity to a class or category of their employees compared to the ceiling limit in Section 4(3), then each such employee belonging to such class or category can invoke the right to better or higher gratuity, by the mandate of Section 4(5)"

Thus the Bank's Scheme, in the way it is being implemented by the Bank, does not meet the said intent also, that better terms of gratuity should be for the entire employees of the establishment concerned.

The learned counsel for Applicant submitted that section 4(5) protect the rights of the employees to receive better terms gratuity and word "TERMS" is in plural sense which means more than one better term. It is submitted that the Hon'ble Supreme Court in case of Allahabad Bank & Anr Vs A. India Allahabad Bank retired ... on 15 December, 2009, in CA No 1478 of 2004, while did not accept higher of two compared figures , has suggested also at Para No 27, to have such comparison of following words :-

Quote

"The Controlling Authority failed to appreciate that sub-section (5) of Section 4 of the Act, protects the right on an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under section 4 of the Act.

Thus it is clear that the Hon'ble Supreme Court while did not accept higher of the two figures calculated by "two independent sets of terms" has suggested also, the way out as above, to compare between the Terms to get "Each Better Terms" selected from "Two Sets of the Terms: each one meant for the same purpose for calculation of gratuity amount to meet the requirement of Section 4(5) of the Act for payment of Better Terms of Gratuity.

He also cited decision of the Hon'ble Supreme Court judgment dated 14.12.2012 in Civil Appeal No 9087 of 2012 in case of Y.K Singla Vs Punjab National Bank, has very clearly spelt out the way to comply with requirement of section 4(5) of the Act. By this judgment the better terms from P.G Act was adopted for application on the Bank's Gratuity Scheme to give effect of Better Terms of Gratuity.



Besides above the learned counsel for Applicants relied upon the following judgement of the Apex Court and submitted that ;

1. The Hon'ble Supreme Court by judgment dated 31.07.1981 in Civil Appeal No 1558 (L) of 1978 Workmen of Metro Theatre Ltd. Bombay Vs Metro Theatre Ltd, Bombay held :-

“On a plain and simple reading of sub section (5) of section 4, the intention of legislature is axiomatic. It is evident that the legislature intended that more beneficial scheme of payment of gratuity would be enforced notwithstanding the provisions of Gratuity Act or the scheme either..... The scheme envisaged by the Gratuity Act secures the minimum for employee in that behalf and express provisions are found in the Act under which better terms of gratuity is already existing , are not only preserved but better terms could be conferred on the employee in future.”

2. Hon'ble Supreme Court by judgement dated 08-05-2001 in case CA No 3715 3716 of 2001 of DTC Retired Employees' Association & others Vs. Delhi Transport Corporation & others, decided on 08-05-2001, held :-

“In all welfare legislatures, the amount payable to the employees or labourers is fixed at the minimum rate and there will not be any prohibition for the employer to give better perquisites or amount than what is fixed under law”

3. Hon'ble Supreme Court by judgment dated 26-11-1992 in case New India Sugar Mills Ltd Vs Commissioner of Sales Tax, Bihar decided on 26-11-1962, held:-

“ it is recognized rule of interpretation of statutes that expressions used therein should ordinary be understood in a sense in which they best harmonies with the object of the statute and which effectuate the object of the legislature”.

In this case, the Bank has provided two methods of calculations for a payment of gratuity viz. as per the provisions of Payment of Gratuity Act, 1972 and another as per OSR, 1979.

The important question which arises for my consideration is that whether the **Dearness Allowances, DA on PQP & FPP** Shall be included while calculating Gratuity under OSR 1979. It is essential again to refer the Section 14 of the P.G. Act, 1972 which is being extracted hereunder.

Section 14 : Act to override other enactments, etc. - The 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.



On perusal of Section 14 leaves no rooms for any doubt, that a superior status has been vested in the provisions of the P.G.Act, 1972 vis – a – viz any other enactment (including any other instrument or contract) in consistent therewith. Therefore, in so far as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provision of the P.G. Act, the legislature having vested superiority to the provisions of the Gratuity Act overall other provisions/ enactments (including any instrument or contract having the force of law), the provisions of the P.G.Act cannot be ignored. The term 'Instrument' and the Phrase "Instrument or contract is having the force of law" shall definitely be deemed to include the Regulation, 1979 which regulate the Payment of Gratuity to Applicants'.

Based on the conclusions drawn hereinabove, I shall endeavour to determine the present controversy. First and foremost, I have concluded on the basis of Section 4(5) of the Gratuity Act that an employee has the right to make a choice of being governed by some alternative provision/instrument, other than the Gratuity Act, for drawing the benefit of gratuity. If an employee make such a choice, he is provided with a statutory protection, namely, that 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.

The benefit of definition of "Wages" given to an employee, has been contemplated under section 2 (s) of the Gratuity Act, cannot be denied to an employee, where gratuity is regulated by some provision/instrument other than the Gratuity Act. This is so because, the terms of Payment of Gratuity under the alternative instrument has to ensure better terms than the ones provided under the Gratuity Act. Therefore, even though the OSR, 1979 exclude the D.A. from the calculation of gratuity under the regulation If such benefit is not extended to the employee/officer, the protection contemplated under Section 4 (5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in Section 14 of Gratuity Act, deliberated in detail hereinabove would stand negated.

In Reserve Bank of India Vs Peerless General Finance and Investment Co. Ltd. (1987) 1 SCC 424 : (AIR 1987 SC 1023) the court held "that interpretation is best which makes the textual interpretation match the contextual interpretation." It further held at page 1042 (of AIR) :-

"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 the 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. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase



by phrase and word by word'. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed that every word has a place and everything is in its place".

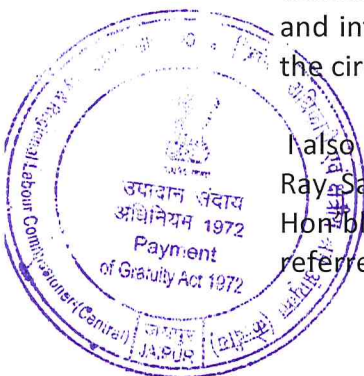
As per section 14 of the PG Act, 1972, every enactment thereunder must be inconsistent with the provisions of the PG Act, 1972 and cannot fractured the definition of 'Wages' for the purpose of calculation of gratuity under the Regulations, 1979, in the name of better terms.

On reading of Rule 36 & 37 of OSR, 1979 it may be seen that the Non-Applicants has interpreted the definition of 'pay' in different manner while paying the Maternity Benefit & deducting the wages for extra ordinary leave as per Rule 36 & 37 of OSR, 1979 whereas while paying gratuity, the definition of 'pay' taken in different prospect. Interpretation of 'pay' in different manner under the OSR, 1979 i.e. deduction of pay for extra ordinary leave on the basis of 'wages last drawn' which includes the DA & special allowance and while calculating the gratuity, the 'pay' is considered as basic wages only; itself inconsistent with the provisions of OSR, 1979 and cannot said to be justified & in such case it is inconsistent with the provisions of Act, 1972

The learned counsel for Non-applicant relied upon the Judgements of Hon'ble High Court of Chhattisgarh, Bilaspur, **In the High Court at Calcutta** : "The Hon'ble Justice Arindam Sinha And the Hon'ble Justice Suvra Ghosh" F.M.A. 657 of 2020 Paschim Banga Gramin Bank & Ors. Vs. Chinmay Majumdar & Ors.

I relied upon the judgement in case of in Vanguard Fire & General Insurance v. Fraser & Ross AIR 1960 SC 971; the Hon'ble Supreme Court has held that the approach of that meaning should be ordinarily given as the one given in the definition clause, is not inflexible and that there may be sections in the Act, where the meaning may have to be departed on account of the subject or context, in which the word has been used and that will be giving effect to peening sentence in the definition section, namely, unless there is anything repugnant in the subject or context and that in view of this qualification, the court has not only to look at the context, the collocation and the object of such words and relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances.

I also relied upon the decision of Hon'ble Supreme Court In case of Gohil Jesangbhai Ray Sangbhai and others Vs State of Gujarat and another 2014 (5) SCC 199; the Hon'ble Court has made a survey of all the major decisions of the Supreme Court as referred to in the aforementioned earlier decisions of the Apex Court and upheld the



necessity for making an interpretation, which is dependent not only on the text , but also on the context of the matter.

We may also discuss the decisions of Hon'ble High Court of M.P. while deciding the W.P. 9182/2017 between All India Gramin Bank Pensioners Organization Unit Rewa V/s Madhyachal Gramin Bank & another and decided the issue of inclusion of dearness allowance while calculating the amount of Gratuity as per Regulation.

In this regard the High Court of Madhya Pradesh Principle seat at Jabalpur held "that the "Emoluments" defined under regulation 2(i) means that aggregate of salary and allowance if any. Salary is further defined under regulation 2(o) means aggregate of pay and dearness allowance. Thus the learned Single Judge has rightly held after referring to the definitions of 'emoluments', 'pay' and 'salary' that a conjoint reading of definitions of 'emoluments', 'pay' and 'salary', the last pay drawn' under regulation 2 provision of sub regulation (3) of Regulation 72 would include dearness allowance for computation of gratuity in respect of officers as well.

The Hon'ble High Court of Madhya Pradesh Principle seat at Jabalpur also held that ;

"The matter may be viewed from another angle. The provision relating to grant of gratuity is a beneficiary provision. It must be considered on the anvil of beneficent rule of construction. It is trite law that in the matter of welfare legislation, especially involving the work force, the terms of contract and provision of law should be liberally construed in favour of weak. (Workmen of Binny Ltd. V. Management of Binny Ltd., reported in 1985 (4) SCC 325, Indian Bank V/s K. Usha reported in AIR 1998 SC 866,

In view of aforesaid analysis, in the considered opinion of this court is that the respondents have erred in not including DA while calculating gratuity under the Regulations. Thus, respondents are directed to include DA and recalculate the gratuity of the petitioners and pay the difference arising there to the petitioners within 60 days from the date of communication of this order. Since, employer has not taken into account the DA for calculating gratuity because of a genuine interpretation problem which is not based on any other reasons like lethargy or inaction; I am not inclined to grant interest on such payment of Gratuity to the petitioners."

The Madhyanchal Gramin Bank has filed an appeal before the Hon'ble High Court of Jabalpur No W.A 1318/2018 against the Judgement in W.P No 9182/2017 which was dismissed by the Hon'ble High Court of Madhya Pradesh Principal Seat at Jabalpur on 26.02.2019. Thereafter, the Madhyanchal Gramin Bank also filed a SLP before the Hon'ble Supreme Court against the dismissal of appeal in W.A No 1318/2018 which were also dismissed by the Hon'ble Supreme Court on 07-05-2019 at the admission stage.



Keeping in view of the Judgement of Hon'ble M.P High Court and dismissal of appeal by Hon'ble Supreme Court there seems no reasons to not to rely upon the Judgement of Hon'ble M.P High Court.

Section 14 has an override effect upon the Regulation 1979 and Section 4(5) provides 'better terms' of Gratuity having the meanings that under the Regulation 1979 the Non-Applicants Bank cannot give the lesser benefit through Regulations as discussed above with many of judgements of Apex court. In the present case the Non-Applicants has calculated the gratuity as per defination given under Regulation 3(K) of OSR, 1979 excluding the components of D.A and other emoluments as earned by an employee during his employment. Therefore, the purpose of Section 14 and Section 4(5) have been defeated by the Regulations, 1979 and it cannot be allowed to Non-Applicants to calculate the Gratuity against the Provisions of Law which have override effects and giving the better terms. Accordingly defination of 'pay' found inconsistent with the provisions of Act, 1972.

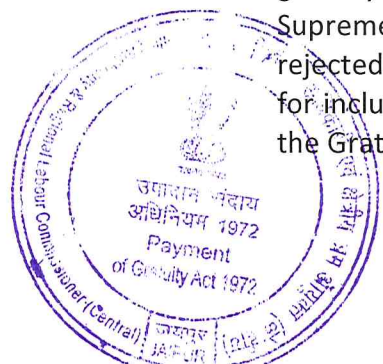
In view of the above it is clear that provisions of the Act will prevail over the other enactment, instrument or contract. Strikingly, it provides overriding effects to 'Instruments' or 'Contract' also. It has been so held that the expression "instrument" in Section 14 covers trust – deed vide Som Prakash Rakhi V/s Union of India (1981) 1 SCC 449 : AIR 1981 SC 212. Similar view has been taken in Calcutta Dock Labour Board V/s Sandhya Mitra (1985) 2 SCC 1 : AIR 1985 SC 996.

The Hon'ble Appellate Authority & Dy. Chief Labour Commissioner (Central), Ajmer has also allowed to include DA & other components while deciding appeal in case of The Chairman, Rajasthan Marudhara Gramin Bank, Jodhpur V/s Shri Bhanwarlal Suthar through The General Secretary, Gramin Bank Pensioners Samiti, Pali and others

From the foregoing paras, I held that defination of 'Wages" shall prevailed while calculating the gratuity under the OSR, 1979 instead of 'pay' as provided under Rule 3(K) of OSR, 1979. I am of the considered opinion that Non-Applicants Bank have erred in not including D.A. while calculating gratuity under the OSR, 1979. I, therefore, allow the claim of the Applicants in respect of including of DA while calculating the gratuity under OSR, 1979.

3 Whether Special allowance shall be included on calculation of the Gratuity.

The Applicants in his claim application submitted that he has made a claim under Rule 7 of the Act, 1972 to the Non-Applicants for differential claim amount of gratuity by including special allowances and D.A on special allowance in the light of Supreme Court's decision in Civil Appeal No 5525 of 2012. But the claim was rejected by the Non-Applicants. Therefore, the Applicants filed this claim application for including Special allowance, D.A and D.A on Special Allowances while calculating the Gratuity.



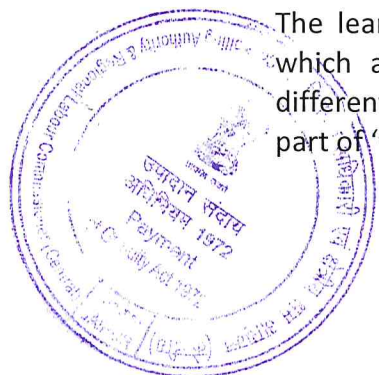
The learned counsel for Non-Applicants argued that the Banking industries revised the salary of officers in terms of joint notes signed between representative of various Officers Associations and the representative of Indian Bank Association. The terms of joint notes are binding upon Applicants also. In terms of joint note dated 25.05.2015, a Special Allowance is also known as grade pay. As per Joint notes the special allowance with applicable D.A thereon shall not reckoned for superannuation benefit viz. pension including NPS, PF & Gratuity.

The learned Counsel for the Applicants relied upon the judgment in case of Bank of Baroda Vs G. Palani and other. In the said judgment as held that "Thus joint note/ agreement could not have been in irrigation of the existing history regulations and regulations 2(s) (c) could not have been given retrospective effect from the decision of this court in P. Sadagopen Vs Food Corporation of India (4 SCC 301) executive instructions cannot be issued in derogation of the statutory regulations....."

In the said judgment Hon'ble Court held that I am of the opinion that the prayer sought for in the writ petition are liable to be allowed. The petitioners are entitled to pension in terms of the Pension Regulation especially regulation 2(d) and 35 thereof. The respondents are directed to revise the basic pension of the petitioner in accordance with the provisions of the corporation's bank (employees') pension regulation, 1995 by taking into account the special allowance introduced in exhibit P6 as part of pay what we purpose of basic pension there will be a direction to the second respondent to be calculated the commutation pension of the petitioner on the basis of the revised basic pension by including the special allowance introduced vide exhibit P6 and to refund the pension area record from the petitioner as per exhibit P-5.

The learned Counsel for Applicants relied upon the decision of apex court in case of Regional Provident Fund Commissioner Vs Vivekananda Vidya Mandir and others. At para 14 of the decisions, the Hon'ble apex court held that " Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishment to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employees and that the allowances in question were not paid across the board to all employees in a particulars category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basics wages, it has to be shown that the workmen concern had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in....."

The learned counsel for applicant argued that special allowance is such amount which are payable to all employees irrespective of any special work done & differentiate any category of employees while paying the amount. So it would be part of 'wages'.



The learned counsel for Non-Applicant submitted that as per definition of wages provided under section 2(s) of the Act the Special Allowance is excluded from the paruve of wages. Even otherwise also as per the definition of 'Pay' under the SBBJ OSR, 1979, the special allowance is not a part of 'pay' for the purpose of calculation of gratuity payable under the said regulations. That multiple round of consultation, discussion and negotiation between the Indian Banks Associations and the Employees Associations were held and as a result thereof, a joint note dated 25-05-2015 was signed in between the parties. In the note, it is specifically mentioned that the special allowance with applicable DA thereon shall not be reckoned for superannuation benefits, viz. pension including NPS , PF and Gratuity. He reliance on the decision of Hon'ble Supreme Court in United Bank of India and Others Vs. United Bank of India Retirees' Welfare Association and Others etc. and stated that applicants have gained the benefit of the said note. He also refer the provision of Indian Contract Act, 1872 and submitted that the terms and condition contained in the Joint Note shall have binding effect over the parties.

The learned counsel for Non-Applicant invited attention towards section 18(1) of the Industrial Disputes Act, 1947, which reads as;

18 . Persons on whom settlements and awards are binding:-

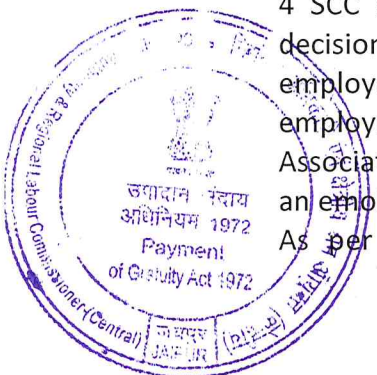
- (1) A Settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

The contention of learned counsel for Non-Applicant is that the Joint Note bindings upon the parties' means the terms and conditions settled between the parties have become the terms and conditions of employment of the employees binding to the settlement.

To decide the issue, we have to go through the defination provided under Section 2(S) speaks as under;

Section 2(S) : "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Now from the reading of judgments of Regional Provident Fund Commissioner Vs Vivekananda Vidya Mandir and others; P. Sadagopen Vs Food Corporation of India (4 SCC 301) and Bank of Baroda Vs G. Palani and other , I relied upon these decisions. It is a fact that the amount of Special allowance is payable to all employees of the Non-Applicant Bank and it is payable as per terms & condition of employment as per Joint note signed between representative of various Officers Associations and the representative of Indian Bank Association. Therefore, it became an emolument which was earned by an employee of the Bank and is a part of wages. As per Joint Note, the amount of Special Allowances are payable ordinarily,



necessarily and universally, therefore, it became the part of Wages earned by an employee while on duty and also became the part of terms & conditions of Employment.

In this regard again I have to go through section 14 read with section 4(5) of the Act, 1972 and according to which the conditions mentioned in the Joint Note by an agreement has to be considered in the prospects of provisions of Payment of Gratuity Act as per definition of wages given under section 2(s) of the Act which speaks that "wages means all emoluments which are earned by an employees while on duty or on leave in accordance with the terms and condition of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

The Special Allowance payable to an employee is an emolument which was earned by an employee during his employment means while on duty. As per Joint Note signed between the parties the amount of Special Allowances payable to employee has become terms and conditions of employment as per section 18(1) of Industrial Dispute Act, 1947. Further the contention of learned counsel for Non-Applicant that Special Allowances is excluded from the purview of wages because the Special Allowance is payable to an employee cannot be termed as word of 'any other allowances'. The intention of legislation of giving the meaning of any other allowances may be as Transport Allowance, Tribal Area Allowance, Outstation Allowance, Hostel Allowance, Island Duty Allowance, Children's Education Allowance, Uniform Allowance, Academic/Research Allowance, Travelling Allowance, Conveyance Allowance, Daily Allowance, Helper Allowance the expenditures incurred can get an allowance are of incidental, temporarily, circumstantial or other natures of allowances but not of permanent nature of allowances which are part of terms and conditions of employment and are payable ordinarily, universally and necessarily. Therefore, in my firm view the Special Allowance payable to an employee as per Joint Note comes under the purview of wages being terms and conditions of employment and a component which are to be calculated for the purpose of Gratuity.

Arguments in the similar issues of claim application had also been heard on 27.8.2020 which was made by the senior counsel in the presence of present counsels for Non-Applicant appearing in these cases. This issue has been decided by this Authority vide order dated 22.9.2020. Now learned counsel for non-applicant reviewing the decision of this authority and make arguments in that manner which cannot be considered at this stage as it may be placed before the Appellate Authority.

As per general principle of law any terms and conditions agreed between the parties by a bipartite settlement arrived by any law is become a condition of employment. The special allowances are being paid as per 10th bi-partite settlement w.e.f 01-11-2012. In this regard, I relied upon the judgement of Hon'ble Supreme Court given in



case of Regional Provident Fund Commissioner Vs Vivekananda Vidya Mandir and others.

The special allowance payable to Applicants by the respondent bank is ordinarily, necessarily and universally and thus it becomes the part of wages as per terms and condition of employment

I, therefore, allowed claim of Applicants for including of 'Special Allowance' to be calculated for the purpose of gratuity.

4. Whether meaning of one half would be 15 days or 45 days for the purpose of calculating additional gratuity after completing 30 years of services.

The Applicants submitted that as per regulation of 49(2) of OSR 1979 the word "additional gives literal meaning will be reads as half month of gratuity and additional has wrongly been interpreted by the Non-Applicants Bank. As per regulation where an officer or an employee has completed more than 30 years of service, he shall be eligible for an additional amount at the rate of one half month pay for each completed year of service beyond 30 years for the purpose of calculating the gratuity. The Applicants stated that one half months pay for each year of service beyond 30 years has wrongly been interpreted as a half month pay by the non-Applicants but it should be furnished as one half month i.e 45 days. The learned counsel given the citation of following judgement of Hon'ble Apex Court.

1. K.V Muthu V/s Angamuthu ammal 1997 (2) SCC 53.
2. Vanguard Fire & General Insurance V. Frased & Ross AIR 1960 SC 97
3. Gohil Jesangbhai Raysangbhai and others Vs state of Gujarat and another 2014(5) SCC 199.

The above judgements speak that the approach and meanings should be ordinarily given as the one given in the definition clause, is not inflexible and that there may be section in the act, where the meaning may have to be departed on account of the subject or context, in which the word has been used and that will be giving the effect to the opening sentence of the definition.

The Non-Applicants Bank submitted that the intention of making of Rule 49 of OSR 1979 was very clear and that the provisions where an officer has completed more than 30 years of service, he shall be eligible for gratuity of an additional amount at the rate of one half of a month's pay for each completed years of service beyond 30 years. The referred provisions provided that the employee shall be entitled for one half of months' pay i.e 15 days in addition to the 15 month pay, in case render services beyond 30 years. The Applicants has misinterpreted the Service Regulations of 46 of OSR 1979 I have gone through the verdict of both parties.

The provision of Service Regulations of 49 of OSR, 1979 which provides that;



Service Regulations of 49(2) of OSR 1979 : The amount of gratuity payable to an officer shall be one month's pay for every completed year of service , subject 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 a month's pay** for each completed year of service beyond 30 years:

Provided further that pay for the purpose of calculation of the gratuity for an officer who ceased to be in service during the period 1.7.93 to 31.10.94 shall be with regard to scale of pay as specified in sub-regulation (1) of regulation 4.

The learned counsel of Non-Applicant argued that on simple reading of Regulation 49(2) gives clear inference that there is ceiling in calculation of gratuity for 15 month. He relied upon the judgement of Hon'ble Supreme Court in case of Haryana State Cooperative Land Development Banks Ltd. Vs. Haryana State cooperative Land Development Banks Employees Union and another IN Civil Appeal No. 10091 of 2003 (2004-SCC-574). He argued that whatever payable additional shall be except to ceiling of gratuity for 15 months, and therefore, 15 days' pay has to be calculated as one half month's.

On perusal of Service Regulations of 49(2) of OSR,1979 it is mentioned that where an officer who has completed more than 30 years of service, 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 .

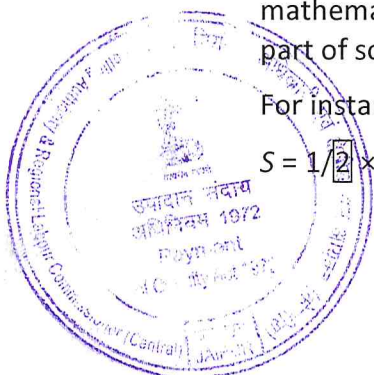
On perusal of Service Regulations of 49 of OSR 1979 , the word additional amount at the rate of one half a month's pay – meanings thereby clear that it is the one half of month's pay. I also agreed with the submission of learned counsel for Non-Applicants that there is ceiling for calculation of gratuity for 15 months under the Regulation 49 of OSR, 1979. Meaning of one half month's shall be drawn only keeping in view of the calculation with ceiling of 15 months.

If we go by the dictionary meaning of one half is one of two equal parts of a divisible whole and in the present context one half means half of month i.e. 15 days. Another meaning of Dictionary is as under:-

“One half is the irreducible fraction resulting from dividing one by two (2) or the fraction resulting from dividing any number by its double. Multiplication by one half is equivalent to division by two, or "halving"; conversely, division by one half is equivalent to multiplication by two, or "doubling". One half appears often in mathematical equations, recipes, measurements, etc. Half can also be said to be one part of something divided into two equal parts.

For instance, the area S of a triangle is computed

$S = \frac{1}{2} \times \text{base} \times \text{perpendicular height.}''$



On perusal of Service Regulations of 49 of OSR 1979 , the word additional amount at the rate of one half a month's pay – meanings thereby clear that it is the one half of month's pay.

The literal interpretation is only one half i.e. 15 days. Further counting of one months' pay for gratuity calculation after 30 years cannot be said to be justified as there is restriction of 15 months' pay as per OSR, 1979. The word additional does not gives meaning of relaxing the limit of 15 months' pay.

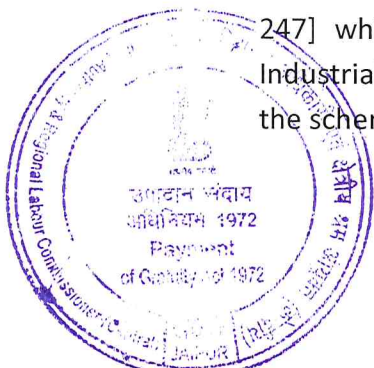
Hence I am of the considered view that officer or employee who has completed 30 years of service shall be eligible to get additional amount of gratuity at the rate of one half of month's (i.e. 15 days) pay for each completed years of service beyond 30 years and not at the rate of 45 days . Therefore, I am not allowing the claim of Applicant of claiming the amount at the rate of 45 days.

Accordingly claim of Applicants for calculation the addition amount at the ratio of 45 days is rejected.

5. Whether mode of calculation of gratuity of wages last drawn would be divisible by 26 days or 30 days.

The Applicants claim the calculation of gratuity, paid for a month, reckoned as wages should be divided by 26 days instead of 30 days as per payment of gratuity act. It is submitted by the Applicants that in case of monthly rated employee, the 15 days wages shall be calculated by dividing the monthly rates of wages last drawn by 26 and multiplying by the quotient by 15.

The Applicants submitted that the word 'rate' appears twice in sub section (2) of section 4 and it necessarily involves the concept of actual working days. In Shri Digvijay Mill's case the Supreme Court rightly observed that although a month is understood to consist of 30 days, Gratuity Payable under the Act treating the monthly wages 26 working days is not new or unknown. The Applicants relied upon the Supreme Court Judgement in Jeevan Lal Case 1984 (49) FLR 313(SC) In Para 12 of its judgement the Supreme Court concurred with its earlier decision in Shri Digvijay Woollen Mills Ltd. and held that ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse. He also relied upon the judgement of Delhi Cloth and Genera Mills Ltd Vs Workmen (AIR 1970 SC 919 :(1969) 2 SCR 307 : (1969) 2 LLJ 755 :36 FJR 247] while disposed of several appeals arising out of an award made by the Industrial Tribunal , Delhi the expression "average of the basic wage" occurring in the schemes was explained as under :-



“The expression ‘average of the basic wages’ can only mean the wage earned by a workman during a month divided by the number of days for which he has worked and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable”.

The learned counsel submitted that the monthly pay should be divided by 26 while calculating the gratuity under OSR 1979.

The learned counsel of Non-Applicants Bank stated that Hon’ble Supreme Court has clearly brought out the liberty of the employees in opting for better terms of contract while keeping the option open in respect of part of the statue in Beed District Central Co-operative Bank limited Vs State of Maharashtra and others judgment dated 29.09.2006.

The mode of calculation of gratuity provided under PG Act, 1972 is;

“In the case of a monthly rated employee, the fifteen days’ wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen”

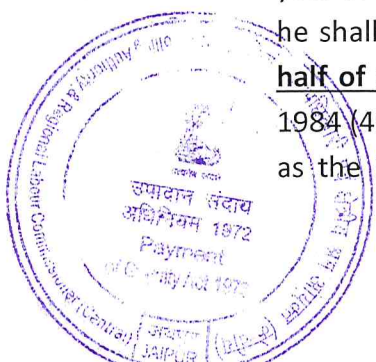
The mode of calculation of gratuity provided under clause 49(2) of OSR, 1979 is given below

Regulation 49(2) : 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 :

Provided that where an officer or employee 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 :

Provided further that pay for the purpose of Gratuity for an officer who ceased to be in service during the period 1.7.1993 to 31.10.1994 shall be with regard to scale of pay as specified in sub-regulation (1) of regulation 4.

After going through the method of P.G.Act, 1972 and OSR, 1979 it would be found that there is no calculation of dividing by number of days or others but simple calculation given in the mode of months’ i.e. one month’s pay for every completed year of service and in case employee 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**. The decisions of Hon’ble Supreme Court in Jeevan Lal Case 1984 (49) FLR 313(SC) & Digvijay Woollen Mills are not applicable in the present case as the Hon’ble Supreme court has decided the case in which gratuity is payable



under the Payment of Gratuity Act, 1972 and calculation is in the number of days whereas under OSR, 1979 the calculation is of in 'ONE MONTHS'.

The OSR, 1979 clearly give the mode of calculation with the word 'one months' pay and month has not been defined anywhere and divisible either under the OSR, 1979 or Act. In Section 4(2) of the Act says that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee **at the rate of fifteen days' wages** based on the rate of wages last drawn by the employee concerned. In this proviso there is mode of calculation at the rate of 15 days wages mentioning the number of days whereas under the OSR, 1979 the mode of calculation is in the months. The month is not defined and convertible in days. In the month of February the months is having 28/29 days, in other months the number of days in the months is 30/31. Furthermore, the working days in banking industry are now having holiday of 2nd & 4th Saturday in addition to Sunday holiday. Therefore, there is no mode of calculation which can be divisible by the any number of days as per the definition 46(2) of OSR, 1979.

In view of the above, I do not consider that the claim of Applicant in respect of calculating the amount of Gratuity as per OSR, 1979 by dividing Month's pay with 26 instead of 30. The claim of Applicant is accordingly not allowed.

6. Whether the Applicants is entitled to claim interest on delay payment for less payment/ delayed payment of Gratuity amount.

Gratuity is in the nature of gracious gift and a donor cannot be compelled to make a gift but in the Industrial Law, gratuity came to be recognized as a retiral benefit available as of right to an employee for long, continuous and meritorious whether such retirement is the result of superannuation, physical disability or otherwise. The act is intended to safeguard the employees who served the employer for a long time from penury in their declining yeas of old age and the helpless dependents of the employees in the event of the employee's death.

As per the provision of Section 7(2), (3), (3-A) of the act which read as follow;

Section 7 (2) : As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub – section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

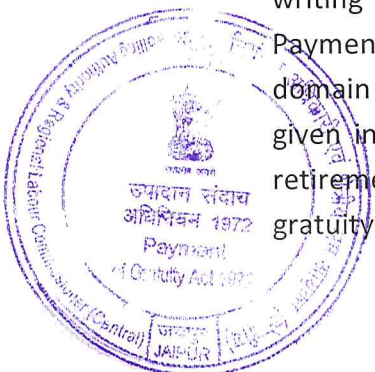


Section 7(3) : The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

Section 7 (3 – A) : 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 repayment of long – term deposits, as that Government may, by notification specify :

PROVIDED that no such interest shall be payable if the delay in the 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.

As the payment of interest is statutory liability after the amounts becomes payable after the introduction of sub – section (3-A) of Section 7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity. Under Section 7 (3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under subsection (3 – A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in subsection (3) he 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 repayment of long term deposits. Provided that no such interest shall be payable if the delay in the payment is due to fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on that ground. From the provision made in Section 7 a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may. However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Payment of gratuity with or without interest as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with penalty of payment of interest. This is not the case of



delay in the payment of gratuity due to the fault of the employee and that appellant bank had not obtained permission in writing from the Controlling Authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity.

In the present case, there is dispute in the matter of including the D.A & Special allowance in "pay" while calculating the Gratuity. This dispute is arson at all India level & number of petitions is pending before the Hon'ble High Court at different places in country on the same question. Therefore, it cannot be said to be a fault or negilance on the part of Employer. The Applicants himself kept silent after receiving the Gratuity for long time. The Applicants is an Officer of Bank & a Vigilant Citizen. Therefore, I considered allowing the claim of Payment of interest only from the date of filing of the claim upon the difference of payment of gratuity as shown in order.

ORDER

I accordingly held that claim of Applicants for including of DA & Special allowance plus applicable DA thereon is allowed and claim for calculation of gratuity for additional benefits of 45 days taking of meaning of additional gratuity for one half month and divisible of number of days from 26 is rejected.

The Applicants are entitled to receive the differential amount of gratuity after including of DA & Special allowance plus applicable DA thereon while calculating the gratuity under the OSR, 1979.

The determination of gratuity in respect of each Applicant shall be as per calculation sheet attached with this order.

No order to cost

Given under my hand and seal, on the 03-05-2021



(Giriraj Verma)

Controlling Authority under
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central),
नियंत्रण अधिकारी अन्तर्गत उपादान अधिनियम 1972
Controlling Authority Under P.G. Act 1972
एवं राष्ट्रीय श्रम आयोग (केन्द्रीय)
& Regional Labour Commissioner (Central)
जायपुर / Jaipur

Computation of Gratuity

PGA-54/2019

S.No 01

Shri Mohar Singh Rathore V/s SBI

Name of Applicant	Shri Mohar Singh Rathore s/o Shri GS Rathore
Address of Applicant	B-52 "Govindam" Agarsen Nagar Churu - 331001 (Raj)
Date of appointment	2/9/1983
Date of superannuation	31-08-2016
Length of service rendered	32 years 11 Months and 29 days i.e 33 Years
Basic Pay	45950
FPP	1453
DA on FPP	0
PQP	0
DA on PQP	0
DA on BP	22528
Special Pay/ Allowance	3561
DA on Special Pay/ Allowance	0
Total	73492
Amount of Gratuity Payable	
Upto 30 years (73492.00 x 15 x 30/30) =	1102380.00
Above 30 years (.5*3=01.50) (73492.00*01.50*30/30)	110238.00
Total	1212618.00
Total (Round off)	1212618
Amount of gratuity already paid	1000000
Differential amount of gratuity to be paid	212618

Order

Shri Mohar Singh Rathore, Applicant is entitled to receive differential amount of Gratuity of Rs 212618.00 (Rs Two Lac Twelve Thousand Six Hundred and Eighteen Only) with interest @ 10% per annum w.e.f 05-04-2019 i.e from the date of filing the claim.



(GIRIRAJ VERMA)

C.A under Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central),

निर्बंधन अधिनियम 1972
Control of Money Payment Under P.G. Act 1972
एच. ए. एम. आर. (केन्द्रीय)
& Regional Labour Commissioner (Central)
जयपुर / Jaipur

10/10/10

10/10/10

10/10/10

