

**BEFORE THE CONTROLLING AUTHORITY & ASSISTANT LABOUR COMMISSIONER
(CENTRAL) UNDER THE PAYMENT OF GRATUITY ACT, 1972 HYDERABAD**

CASE NO. 48 (76 to 97) / 2019 – E2 DATED 09-05-2019.

IN THE MATTER OF

Ek Nath Prasad and 21 other applicants.

22 Applicants

| Sl. No. | Case No | PF NUMBER | NAME OF THE APPLICANT |
|----------------|----------------|------------------|------------------------------|
| 1 | 76 | 50032 | EKNATH PRASAD |
| 2 | 77 | 220444 | SISTA VEERABHADRA RAO |
| 3 | 78 | 70330 | BEZWADA GANAPATHI RAO |
| 4 | 79 | 191433 | SUDHAKAR GURJAR |
| 5 | 80 | 180695 | N RAJAM |
| 6 | 81 | 110697 | K K KRISHNA PRASAD |
| 7 | 82 | 10378 | SYED ABDUL QAYYUM |
| 8 | 83 | 220524 | M VENKAT REDDY |
| 9 | 84 | 220491 | CHIRUMAMILLA VARAPRASADA RAO |
| 10 | 85 | 210087 | MARRI USHA |
| 11 | 86 | 110405 | RAMARAO KULAKARNI |
| 12 | 87 | 181012 | SETTIPALLY RAMA RAO |
| 13 | 88 | 30124 | MUNASA CHANDRASEKHAR |
| 14 | 89 | 220878 | V INDIRA SURYA KUMARI |
| 15 | 90 | 20287 | A BHASKAR RAO |
| 16 | 91 | 20421 | SANDRUKA BHEEMAIAH |
| 17 | 92 | 190887 | SHRENIK GINNAPPA HARDARIN |
| 18 | 93 | 20709 | B V RAMALINGESWARA RAO |
| 19 | 94 | 20227 | V BASAVA RAJU |
| 20 | 95 | 192016 | BIJJALA VENKATA SIVA KUMAR |
| 21 | 96 | 160716 | P V SAMEERA KUMAR |
| 22 | 97 | 181146 | R V SUBRAHMANYESWARA RAO |

Vs

Assistant General Manager, State Bank of India
PPG Department, Hyderabad.

opposite Party.

**Rejoinder to the Written Statement of the Opposite Party (Bank) Given under
Reference Case and filed with Your Esteemed Office On 05.08.2019**

The applicants at the outset humbly submit that the Opposite Party (Bank) in its written statement dated 3.8.2019 has raised various objections at Point No-1 and sub-Para numbers (a) to (e). The applicant, most humbly submits that for the purpose of avoiding repetition of reply on some of the overlapping objections and also keeping in view that the objections which involve legal aspects are given first and therefore the objections of the opposite party are replied in that order.

- A.** The applicants humbly submit that the Gratuity in State Bank Service Regulations are not consistent with the Payment of Gratuity Act, 1972. Bank has not obtained any exemption as per the Section 5 of the Payment of Gratuity Act, 1972 from the Appropriate Authority and at the same time sub section 5 of Section 4 clearly says that the employee shall have a right to receive better terms of gratuity under any award or agreement or contract with the employer and if at all in any enactment or in any instrument or contract which is inconsistent with the provisions of the Payment of Gratuity Act, 1972, shall override the other enactments, according to Section 14 of the Payment of Gratuity Act, 1972.

The applicant humbly invites kind attention of this Hon'ble Authority towards the ruling of Hon'ble Supreme Court in Civil Appeal No 1478 of 2004 in case of Allahabad Bank Vs All India Allahabad Bank Retired Employees Association decided on 15.12.2009

Quote -

Para -9 - *“A plain reading of the provisions referred to herein above makes it abundantly clear that there is no escape from 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”*

In the light of the above ruling by Hon'ble Supreme Court, it is clear that in absence of exemption, the operational provisions the Gratuity Act have full applications on the Opposite Party Bank and Bank is legally bound to follow those operational provisions.

The objections of the Opposite Party (Bank) involving legal aspects are replied as under-

1. The Opposite Party (Bank) at Point.No1 (a) has pleaded that claim application is barred by limitation on principles analogues to limitation probably on the fact that delay in submission of form N from the date of superannuation.
 - i) The applicants humbly furnish the date of superannuation for your perusal. Of late, when the applicant came to know about the decisions in the matter of gratuity given by Dy.Labour Commissioner [Central], Hyderabad, RLC, Ranchi, ALC Ajmer & ALC Silchar, Assam, then only he suspected that there are serious issues affecting gratuity payment and hence sent letter to the Bank and also acknowledged by the Bank followed by reminder for payment of difference amount of gratuity. The Bank has neither paid the difference amount nor gave any reply to our applications, therefore applicant filed the application in Form N, with the Hon'ble Controlling Authority, within the period prescribed under Rule 10 of Payment of Gratuity Rules, 1972. The applicant denies the objection made by the opponent Bank stating that the application is filed beyond the period provided in Act.
 - ii) The applicants on the point of period days elapsed, most humbly invites kind attention to

the position explained at Para (i) above and request to take into consideration the circumstances that necessitated filing the claim before this Hon'ble Authority.

- iii) Further, in regard to delay or limitation I would place before your good selves the view point of Honorable Supreme Court of India, given in case of Union of India v/s Tarmen singh reported in (2008) 8 SCC 648 where it has been observed 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 the constitution of India] relief may be granted in spite of delay as it does not affects the right of the third parties. Delay per se should not be the ground for rejection."*
- iv) Further, the Hon'ble High Court of Rajasthan in the case of Madar Union Sanatorium and Hospital v. M.B. Sathe (1986-II-LLJ-135) inter alia observed that *"the person who is not technical and legal minded is generally entitled for the benefit of Condonation of delay, especially under beneficial legislation enacted for the welfare of the people"*. In the instant case, undisputedly, the applicant is not legal minded; as such I may not be denied the benefit of Condonation.
- v) Also, the Hon'ble High Court of Judicature, Bombay in the case of Ramjilal Chimanlal Sharma v. Elphenstone Spinning and Weaving Mills Ltd., 1984 Lab IC 1703, inter alia, observed that *"this rule leaves no manner of doubt that the legislations intended the claims on the applications for gratuity by the employees should not be denied on technical consideration sand the Authority should be very liberal in condoning the delay."*
- vi) Further the applicant most humbly prays to kindly consider the ruling of Judgment by Hon'ble Andhra High Court in case of Rama Rao P. And Ors. vs Controlling Authority Under P.G. Act, decided on 29.03.1996, reported in 1998(3) LLJ 114. The conclusions drawn in referred judgment on applicability of the Limitation Act, as appears at Para No 16, is reproduced :-

"16. We need not, however, in this case examine in any detail whether the rules prescribing for limitation are ultra vires the Act, although it seems obvious to us that if they intend to extinguish the right which is recognized under Section 4 of the Act (Payment of Gratuity Act, 1972) they are ultra vires the Act. They, however, appear to us to be rules strictly procedural in nature and do not intend to extinguish the right. Rule 7 afore quoted has used the expression that an employee who is eligible for payment of gratuity under the Act, or any person authorized in writing to act on his behalf to apply, "ordinarily within thirty days from the date the gratuity became payable."

"This rule has intended only to give to the employee opportunity to seek expeditious payment of gratuity by the employer, who in any case under the Act, whether any application is made by the employee or not, is required to pay the gratuity to the employee. It is not possible to read in this rule any such limitation that in case no application is filed by the employee or on his behalf within thirty days from the date the gratuity became payable, the claim shall become extinguished. That the employee can make an application even after the said period of thirty days and the application made by the employee shall be considered by the employer for such notice as Rule 8 has envisaged and the employer is obliged to consider the same is envisaged in Sub-rule (5) of Rule 7 which provides, inter alia, that an application for payment of gratuity filed after the expiry of the period specified in the rule shall also be entertained by the employer. This Sub-rule, however, says the

employer shall entertain the application made beyond the period of thirty days, "if the applicant adduces sufficient cause for the delay in preferring his claim" and adds, "and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period". If there is a dispute in respect of payment of gratuity by the employer and the application is filed after the expiry of the period of thirty days and the employer is not willing to entertain the claim, it is a dispute which this sub-rule says "shall be referred to the controlling authority for his decision". Procedural limitation, however, is contemplated under Rule 10 in three circumstances -- (1) if an employer refuses to accept a nomination or to entertain an application sought to be filed under Rule 7; (2) issues a notice under sub-rule of Rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting the eligibility to payment of gratuity; or (3) having received an application under Rule 7 fails to issue any notice as required under Rule 8 within the time specified therein. The period fixed for such application to the Controlling Authority for direction to the employer is ninety days of the occurrence of the cause for the application. The Controlling Authority, however, is given the power to condone the delay, if sufficient cause is shown by the applicant"

The applicant humbly submits that in view of the aforesaid decisions, the period elapsed from date of superannuation to date of filing Form N, may not become the hurdle for entertaining the application. The applicant most humbly prays to this Hon'ble Competent Authority to kindly condone the delay as prayed for by the application till date of filing of Form N.

2. **(A)** The Opposite Party (Bank) at Point No.1 (c) and on the basis of combined effect of objections at sub-Para number (a) and (b) had challenged the jurisdictional authority of the Competent Authority appointed under the Payment of Gratuity Act, to decide the dispute of gratuity payable under Bank's Scheme.

It is submitted that as because the Opposite Party (Bank) has not obtained the exemption under sub section -5 of Section- 4, it has to follow the operational provisions of the Gratuity Act-1972, and will have to accept and adhere also to the jurisdictional authority of the Competent Authority. On such wrong notions of the employers who try to avoid discharging the gratuity obligations on the grounds as pleaded by the Opposite Party (Bank) , the Hon'ble Supreme Court by judgment dated 16.10.1979, in Civil Appeal No. 8 of 1977, in case of State Of Punjab Vs Labor Court, Jullundur & Ors has already decided jurisdictional authority of the Competent Authority. The relevant portions of judgment are-

- (i) *"Parliament intended that proceedings for payment of gratuity due under the Act must be taken under that Act and not under any other"*
- (ii) *"The Payment of Gratuity Act is a complete code containing derailed provisions covering all the essential features of the scheme for payment of gratuity. For the enforcement of its provisions, the Act provides for the appointment of a Controlling Authority for administering the Act. He has been invested with amplitude of power for the full discharge of his responsibilities under the Act. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act."*
- (iii) *"In this regard, the controlling authority has all the powers as are vested in Court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence"*

In the light of judgments by Hon'ble Supreme Court the objection of the bank is nothing but delaying tactics and futile attempt of derailing the proceedings of the case.

2(B)The Opposite Party (Bank)-by combined effect of objections at sub-Para number (a) and (b) pleaded that the objections go to the very root of the jurisdiction of this Controlling Authority to try and entertain the dispute, has thus prayed that the same be tried as preliminary issue.

The applicant submits that it has been established by judgment of Hon'ble Supreme Court as above that the Controlling Authority has all the powers as are vested in court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence. As regards trying the Dispute by framing the Preliminary Issues, the High Court of Lucknow in W.P. Misc. Single No.4583 of 2017 in case of City Montessori School Vs Appellate Authority & Additional Labor Commissioner by judgment dated 28.3.2018 had examined the questions as quoted here under-

"Whether framing of issues by the Controlling Authority at a pre-decisional stage like under Code of Civil Procedure is essential and non-observance of this Rule would vitiate the impugned judgment on the ground being violative of the principles of natural justice?"

The Hon'ble High Court of Lucknow had decided as under –

Quote

"The legislative intention is unambiguous on the procedural aspect. The proceedings under the Act are summary in nature and what is essentially necessary is the observance of the fundamental rule of affording fair opportunity. There is no mandate for framing of the issues, thus, it is wrong to contend that failure on the part of the Controlling Authority to set out the issues before commencing hearing of the case being violative of the principles of natural justice would vitiate the decision"

The Hon'ble Court had thereafter commented as under –

Quote-

"Framing of points for determination rather shows the application of mind by the competent authority. Since a case of prejudice on any score whatsoever is not made out, thus, to argue that the petitioner would have been able to file evidence only after the issues were framed and made known to him prior to the hearing of the case commenced, is nothing but a dilatory tactics to prolong the case for no valid reason"

3. The Opposite Party (Bank) by Point No 1(c) of its written statement has gone further to object by saying that interpretation of Rules and Regulations are within the ambit of Hon'ble High Court, but not this Hon'ble Controlling Authority.

The applicant submits that the Hon'ble Supreme Court of India in case of State Of Punjab Vs Labor Court, Jullundur as referred at Para 2(A) above, has decided that "the controlling authority has all the powers as are vested in court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence".

Thus for the purpose of interpretations of Rules & Regulations also, the Competent Authority has the jurisdiction.

4. The Opposite Party (Bank), in Point No 1(c) of its written statement, has further argued

that this Controlling Authority can grant benefits arising only under the Payment of Gratuity Act.

It appears that Opposite Party (Bank) has a notion that the monetary ceiling as per Section -4 (3) restricts the authority to interfere and deal the cases, which are of the amounts up to that limit.

The applicant submits that the jurisdictional authority of the competent authority extends even if the employer's gratuity scheme provides for payments of gratuity without reference to the ceiling limit prescribed under Gratuity Act. The applicant submits that the Hon'ble High Court of Delhi in W.P. (C) 3385/2018 M/S Bch Electric Limited vs Pradeep Mehra by judgment dated 6th February, 2019 had decided that, the issue is within ambit of jurisdictional authority of the competent authority even if the employer's gratuity scheme provides for payments of gratuity without reference to the ceiling limit prescribed under Section 4(3) of Gratuity Act. The relevant Para No 29 of the above judgment is reproduced here under -

Para No.29 *"The PG Act is a complete code in itself with respect to matters relating to the payment of gratuity and the Controlling Authority appointed under Section 3 is statutorily enjoined under Section 7(4)(b) to adjudicate any dispute qua the amount of gratuity payable or as to the admissibility of any claim to gratuity. When the PG Act itself protects the right an employee to get higher gratuity vis-à-vis the prescribed ceiling limit and does not curb the maximum amount of gratuity payable to an employee, it is unfathomable how the jurisdiction of the Controlling Authority can be curtailed to decide only those claims that have a pecuniary value less the said ceiling limit. Merely because Section 4(3) places a ceiling on the amount of gratuity payable to an employee in the absence of better terms of gratuity in accordance with Section 4(5), it cannot be said that the jurisdiction of the Controlling Authority to examine a dispute under Sections 7(4)(b) is curtailed to the same pecuniary limit". In this regard, reliance may be placed upon the decision of the Supreme Court in State of Punjab v. Labour Court (supra) as also of this Court in P.S. Gupta (supra)"*

It is submitted that the Controlling Authority had issued the order for payment Rs 173.75 lacs as gratuity to the retired employee and it was upheld by the Hon'ble High Court. Thus it is clear that jurisdiction of the Controlling Authority covers to examine a dispute of Gratuity of employer's scheme also. It cannot be pleaded the authority of the Controlling Authority under Sections 7(4) (b) is curtailed to the same pecuniary limit.

The applicant therefore submits that in view of aforesaid conclusion that even though the gratuity payable under the Bank's Scheme may be or may not be exceeding the ceiling limit prescribed under Section 4(3), the Controlling Authority has jurisdiction to decide the disputes of Bank's Scheme also.

The applicant submits that the dispute is of amount of difference of gratuity payable to the applicant under the Bank's Scheme under the provisions of Bank's Gratuity Regulations. The Bank has not obtained exemptions from the operational provisions of the Gratuity Act, hence any dispute relating to Gratuity of Bank's Scheme also can very well be filed to this Hon'ble Controlling Authority as per Section-7 of the Gratuity Act and therefore the applicant has correctly submitted the application in Form N to the appropriate competent authority to decide the applicant's claim under Bank's Scheme.

5. The Opposite Party (Bank)has at Point No1(a) has also pleaded that unless delay is

condoned after hearing the parties, valid proceedings are not said to be instituted hence controlling authority ought not to have entertain the adjudication of claim on merits.

The applicant humbly submits that similar issue came before the Division Bench of Madras High Court. There was an inordinate delay of 4 to 23 years depending upon the individual cases. Since the retiree petitioners were not able to explain the delay so occurred to the satisfaction of the Controlling Authority, the delay Condonation applications of retirees petitioners were dismissed. The retirees filed petitions in Madras High court. Hon'ble single Bench of Madras High Court dismissed on the ground of delay against the petitioners and also concluded that there is no necessity for this Court to go into the other merits of the cases at all. The petitioners filed appeals and Division Bench of Madras High Court by judgment in W.A.No.3037 of 2002 and W.P.No.7353 of 1999 & in W.A.No.3038 of 2002 against the judgment of single bench and Division Bench by judgment dated 03.08.2016 set aside the single bench judgment.

The applicant submits the relevant extracts from the Para No 9, 10 and 11 of the judgment by Hon'ble Madras High Court as under-

"9.The learned single Judge held that there was an inordinate delay of 4 to 23 years depending upon the individual cases of the petitioners and since the petitioners were not able to explain the delay so occurred to the satisfaction of the controlling authority, the authorities had rightly dismissed the delay Condonation applications filed on the side of the petitioners. It was also held that since the question of limitation has been decided against the petitioners in the aforementioned manner, there was no necessity to go into the merits of the cases. Thus, without going into the merits of the cases, the writ petitions were dismissed only on the ground of delay"

"10. In this regard, it would be appropriate to refer to the judgment of the Andhra Pradesh High Court in P.Rama Rao v. Controlling Authority under P.G. Act & ALC (C), reported in 1996 LAB. I.C. 2765. That was a judgment passed in a writ appeal, challenging the order of the learned single Judge of the Andhra Pradesh High Court reversing the judgment of the controlling authority. In that judgment, it was held that the Controlling Authority had rightly condoned the delay if any and the Single Judge of the Andhra Pradesh High Court was not right in reversing the decision of the Controlling Authority. Therefore, the matter was remanded to the Controlling Authority for disposal on merits, with a further observation that the question of delay will be agitated only after a decision upon merits is given by the Controlling Authority. The Division Bench of the Andhra Pradesh, also stated that the rules prescribing for limitation are strictly procedural in nature and do not intend to extinguish the right which is recognized under Section 4 of the Payment of Gratuity Act. Section 7 of the Payment to Gratuity Act r/w Rule 7(5) of the Payment of Gratuity Rules, expects an employer to pay gratuity, and in case the employer does not pay the gratuity and the employee claims later, their claim does not become invalid on the reason that it was not presented in time. The claims for difference in gratuity is a right to property and the State Bank of India which is an authority within the meaning of Article 12 of the Constitution of India, cannot deprive the employees of this right by the procedural law of limitation"

"11..... In the light of the principles enunciated in the judgment of the Andhra Pradesh High Court in Rama Rao's case (cited supra), this Court is of the view that the delay has to be condoned in both cases, and accordingly, the delay is condoned.

Therefore, the order of dismissal passed by the learned single Judge in W.P.Nos.7353 of 1999 and 11613 of 2000 on the ground of delay, is set aside, and consequently, the orders passed by the Appellate Authority in Gratuity Appeal Nos.3 to 11, 13 to 16 and 50 of 1998 dated 11.02.1999 and Gratuity Appeal No.2 of 1999 dated 09.02.2000, are set aside, and accordingly, the condone delay petitions shall stand allowed. The matter is remitted to the second respondent-Controlling Authority to decide the Gratuity Applications on merits and in accordance with law, in the light of the observations made in this judgment. The writ appeals are disposed of accordingly. No costs”.

In the light of above rulings of the Hon'ble Madras High Court & also in the light of the judgments of the Andhra Pradesh High Court in P.Rama Rao v. Controlling Authority referred at Para No.1 (ii) above; and the request submitted with Form N, the applicant prays to this Hon'ble Authority to condone the delay.

6. The Opposite Party (Bank) at Point No-1(b) has pleaded that applicant had accepted the amount paid to him after superannuation as full and final payment of gratuity without raising any grievance and therefore cannot raise any dispute at belated stage thus claim is liable to be dismissed on this ground alone.

The applicant humbly submits as under: -

- (a)** That Opposite Party (Bank) is a nationalized bank and is expected to act rationally in justified manner; therefore the applicant had relied upon the Bank at that time, when the Gratuity was paid to him after his superannuation. Moreover the applicant came to know recently, only recently after hearing that some ALCs/RLCs have issued orders in favour of retirees of Regional Rural Banks, therefore the applicant suspected that there are some serious issues involved in the method adopted by Banks for determining the amount of gratuity. The applicant had no knowledge of those serious issues involved at the time of his superannuation; hence he had no reason to disbelieve the Bank and to arrive at the disputed amount and therefore accepted whatever was being paid by the Bank.
- (b)** that the Opposite Party (Bank) has neither given any statement before this Hon'ble Authority on compliance of Section 7(2) by the Opposite Party (Bank) nor submitted any document to establish that the Opposite Party (Bank) had ever given any notice with amount of Gratuity determined and payable to the applicant and copy of which was ever sent to the Controlling Authority.
- (c)** that the Hon'ble Supreme Court, while dealing with similar situation of accepting the gratuity whatever is paid by the employer and retired employees accepting it without protest, in the case of Rajamani Vs. Dy. Commissioner of Labour, 2001 (4) LLN 972, 2001(2) LU 1453 (Mad) held that:

Quote

“At Para 13 the question was whether it is open to any authority either for the management or the appellate authority to give any amount lesser than the amount to which the workman is legally entitled to on the ground of waiving their entitlement. There is no possibility or scope for obtaining a receipt for a lesser amount even assuming that it is voluntarily given. The Court has to take judicial note of the fact that the petitioners are said, to be illiterate and they could not have been in a position to raise their voice at the time of superannuation and they had to receive some amount to other as superannuation benefit. Probably if they had raised their voice

that the amount was not correct, they would not have been given even that amount immediately. In any event, the receipt issued for lesser amount could not be construed that they had given up their claim for remaining amount under Section 7 of Act and if there was any deficiency in their calculation it was always open to the employee to claim for payment of the balance amount.”

“In view of the above it is held that the receipt issued for lesser amount cannot be construed that the applicant had given up their claim for remaining amount. The applicant still has right to claim the balance amount of Gratuity.”

- (d) The applicant humbly prays this Hon'ble Authority that above objection of the Opposite Party (Bank) is liable to be rejected in the light of the following facts :-
- (i) The bank is a nationalized bank and is expected to act rationally in justified manner; therefore the applicant had relied upon the Bank at that time. Of late the applicant came to know that there are some issues involved therefore calculated and sent representation letter to the on-applicant Bank under the developed circumstances mentioned by the applicant at Para Number-1(i) above,
 - (ii) The ruling of the Hon'ble Supreme Court reproduced at Para No-6(c) above and
 - (iii) Also towards the various judgments by Hon'ble Courts emphasizing that the Gratuity Act, being a beneficial piece of legislation, it has to get a liberal interpretation and the intention of the statute becomes highly relevant when an issue for rejection of a claim is pressed.

After replying to the objections involving legal aspects the applicant now submits his reply on the merits of the claim of difference of Gratuity as under –

The Opposite Party (Bank) at Point No - 8 of its statement dated 3.8.2019, has denied the inconsistency in treatment of components taken for calculation of the Gratuity paid to the applicant under Bank's Scheme. Further the Opposite Party (Bank) at Point No1 (d) of its statement, has pleaded on of Section 4(5) of the Gratuity Act and stated that Section 4(5), does not contemplate that the workman would be at liberty to opt for better terms of Contract, while keeping the option open in respect of a part of Statute. The Opposite Party (Bank) has further pleaded that “While reserving his right to opt for 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”.

The applicant most humbly submits that the replies on above objections are correlated and dependant on each other, therefore a combine reply for all of them is submitted **as per annexed Annexure--1**

- 7. The applicant submits that the Point No 2 to 4 of the written statement of Opposite Party (Bank) to the extent of being matter of records need no reply and whatever is not the matter of record has been replied in the paragraphs as above.
- 8. The applicant in reply to Point No 6 of written statement of opposite party dated 3.8.2019, submits that the applicant's purpose of giving the reference of orders of DLC and RLCs was only to explain the circumstances under which the applicant could suspect that some serious issues are involved related the Gratuity paid to the applicant and none of those order have been pleaded by the applicant for his claim, Further the various case laws as applicable for the claim of the applicants are mentioned in applicant's reply as above. The decision of this Hon'ble Authority on applicability of mentioned case laws is the matter of time to come.

9. In reply to Point No 7 of the opposite party (Bank) statement the applicants submits as under –

(i) In compliance of provision of Section 7(2) of the Gratuity Act the Opposite Party (Bank) was required to give notice in writing to the applicant specifying the amount of gratuity determined by the Opposite Party (Bank) before paying the amount of Gratuity first at the time of retirement. The copy of that notice was required to be sent the Controlling Authority also. The applicant had not received such notice from the Opposite Party (Bank). As it is to be complied with as Statutory requirement, but probably bank on its own decided it not necessary and similarly again did not find the necessity of sending Form L. On compliance or non compliance of the Provisions of the Gratuity Act by the Opposite Party (Bank) has to be decided by the Competent Authority.

(ii) As regards accepting the amount of Gratuity whatever was paid by the Opposite Party (Bank) as already been replied in these submissions.

10. The Opposite Party (Bank) at Point No.8 of its statement dated 3.8.2019, has denied the inconsistency in treatment of components taken for calculation of the Gratuity paid to the applicant under Bank's Scheme.

The applicant most humbly submits that the replies on above objections are interrelated and interdependent, therefore a combine reply for all of them is submitted annexed as **Annexure-1**, with details of the provisions of Bank's Scheme which rendered inconsistent due to overriding effect of Section 14 of the Gratuity Act read with section 4(5) of the Act, which protects the right of the applicant to receive Gratuity in better terms.

11. The Opposite Party (Bank) at Point-No. 8, has stated that applicant has wrongly included Special Allowance and other allowances, which are not required to be taken for calculation of the Gratuity as per law.

(i) The applicant submits that Opposite Party (Bank) is paying Special Allowance to its officers of different pay scales mentioned in the column 1 of the table below, a Special Allowance at the rate mentioned in the column 2 thereof against that place shall be payable.

| 1 | 2 |
|------------------|--|
| PAY SCALES | RATES |
| (a) Scale I-III | 7.75% of Basic Pay+ Applicable Dearness Allowance thereon P.M. |
| (b) Scale IV-V | 10% of Basic Pay+ Applicable Dearness Allowance thereon P.M |
| (c) Scale VI-VII | 11% of Basic Pay+ Applicable Dearness Allowance thereon P.M |

(ii) The Opposite Party (Bank) has made a rule that the special allowance with applicable DA thereon shall not be reckoned for superannuation benefits, viz, pension including NPS, PF and Gratuity.

(iii) It is submitted that the applicant was also paid special allowance for the wages of last month of his superannuation and he has included it for the calculation of gratuity payable to him. The applicant has included it, based on the ruling of the Hon'ble Supreme Court by judgment dated 29.2.2019 in C.A. No 6221 of 2011 in case of The Regional Provident Fund Commissioner, West Bengal Vs Vivekananda Vidyamandir and Others .The facts of which are submitted hereunder –

The respondent was an unaided school giving special allowance by way of incentive to teaching and nonteaching staff pursuant to an agreement between the staff and the

management. The incentive was reviewed from time to time upon enhancement of the tuition fees of the students. The authority under the Act held that the special allowance was to be included in basic wage for deduction of provident fund. The dispute reached to Supreme Court. It is submitted that the common question of law before the Apex Court was:-

"Whether special allowances paid by an establishment to its employees would fall within the expression "basic wages" under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Provident Fund?"

The Hon'ble Court held that *the establishments had failed to demonstrate that the allowances in question were being paid to its employees as an incentive for production resulting in greater output and were not paid to all employees across the board.*

The Hon'ble Court further elaborated that in order for the amount to exceed beyond basic wages, it has to be established that the workman concerned had become eligible to get this extra amount by working beyond his normal work that he was required to put in.

Conclusively, it was held that *the wage structure and components of salary examined in the current appeals had been correctly determined by the Appellate Authority under the Act and the respective High Courts as a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution to the PF account of the employees.*

Therefore, the Appeals by the Provident fund Commissioner were allowed and the Appeals by the establishments were dismissed

The applicant submits that similar is the case of Opposite Party (Bank). *The Special allowance is not linked to any special performance of any special assignment to the officers. From the rates of Special Allowance paid by the Bank it is clear that the Special allowance is being paid to all employees across the board.*

Further the Rule of the Bank that Special Allowance will shall not be reckoned for superannuation benefits, viz, pension including NPS, PF and Gratuity. This Rule itself proves that the nomenclature given as Special Allowance is only to avoid superannuation benefits, resulting out of it had it been the part of Basic Pay. Therefore being component of wages the applicant is very correctly included the Special Allowance for calculation of Gratuity payable to him.

12. The applicant submits that on the other matter as appeared at Point No 8 to 11 have been replied to support the issue of difference of Gratuity payable and therefore claimed from the Bank.

13. It is submitted that after receiving no reply from the Opposite Party (Bank) the applicants have submitted the application to this Hon'ble Competent Authority and prays, independent orders may please be issued to the Opposite Party (Bank) for payment of difference of Gratuity with interest.

13. PRAYER.

In view of the above legal facts, evidences and provisions of the Payment of Gratuity Act, 1972 and gratuity regulations 1960 / Officers Service Regulations, 1979 it has been proved that opposite party bank has not only violated, ignored and downgraded the various mandatory provisions of the Payment of Gratuity Act, 1972 but also misinterpreted the various regulations and definitions of Gratuity Regulation 1960 / OSR 1979. Applicants humbly pray the Controlling Authority to please be kind enough to issue suitable orders to make payment of differential amount of gratuity to the applicant along with mandatory interest at the rate of 10% from the date of retirement to till the date of payment. The details of the Gratuity calculation are placed as Annexure -4.

| Sl. No. | Case No | PF NUMBER | NAME OF THE APPLICANT | Gratuity Payable (No ceiling as per the Service Regulations of the Bank) | Gratuity Paid by Bank | Difference to be paid |
|---------|---------|-----------|------------------------------|--|-----------------------|-----------------------|
| 1 | 76 | 50032 | EKNATH PRASAD | 2640008.105 | 1146600 | 1493408.105 |
| 2 | 77 | 220444 | SISTA VEERABHADRA RAO | 2411741.354 | 1148930 | 1262811.354 |
| 3 | 78 | 70330 | BEZWADA GANAPATHI RAO | 2212493.53 | 1093751 | 1118742.53 |
| 4 | 79 | 191433 | SUDHAKAR GURJAR | 2630575.41 | 1092291 | 1538284.41 |
| 5 | 80 | 180695 | N RAJAM | 1183723.875 | 919501.15 | 264222.725 |
| 6 | 81 | 110697 | K K KRISHNA PRASAD | 3135167.547 | 1176493 | 1958674.547 |
| 7 | 82 | 10378 | SYED ABDUL QAYYUM | 2043910.385 | 1000000 | 1043910.385 |
| 8 | 83 | 220524 | M VENKAT REDDY | 1585694.942 | 1000000 | 585694.9423 |
| 9 | 84 | 220491 | CHIRUMAMILLA VARAPRASADA RAO | 2471098.734 | 1125170 | 1345928.734 |
| 10 | 85 | 210087 | MARRI USHA | 2709653.151 | 1094760 | 1614893.151 |
| 11 | 86 | 110405 | RAMARAO KULAKARNI | 2032405.962 | 1000000 | 1032405.962 |
| 12 | 87 | 181012 | SETTIPALLY RAMA RAO | 2416281.602 | 1031249 | 1385032.602 |
| 13 | 88 | 30124 | MUNASA CHANDRASEKHAR | 2001955.5 | 1000000 | 1001955.5 |
| 14 | 89 | 220878 | V INDIRA SURYA KUMARI | 1909242.71 | 1000000 | 909242.71 |
| 15 | 90 | 20287 | A BHASKAR RA0 | 1607762.769 | 1000000 | 607762.7692 |
| 16 | 91 | 20421 | SANDRUKA BHEEMIAH | 2630664.415 | 1187500 | 1443164.415 |
| 17 | 92 | 190887 | SHRENIK GINNAPPA HARDARIN | 1424634.231 | 726370 | 698264.2308 |
| 18 | 93 | 20709 | B V RAMALINGESWARA RAO | 1959219.712 | 1000000 | 959219.7121 |
| 19 | 94 | 20227 | V BASAVA RAJU | 1799446.154 | 760882 | 1038564.154 |
| 20 | 95 | 192016 | BIJJALA VENKATA SIVA KUMAR | 2814003.969 | 1154700 | 1659303.969 |
| 21 | 96 | 160716 | P V SAMEERA KUMAR | 2911779.36 | 1986955 | 924824.36 |
| 22 | 97 | 181146 | R V SUBRAHMANYESWARA RAO | 2256968.215 | 1000000 | 1256968.215 |

14. Verification

We, the following SBI (Esbh) retirees, do hereby verify to the best of my knowledge that the contents in the above Paras of the rejoinder to the written statement are correct and true and no part of it is false and nothing material has been concealed therein.

| Sl. No. | Case No | PF NUMBER | NAME OF THE APPLICANT |
|---------|---------|-----------|------------------------------|
| 1 | 76 | 50032 | EKNATH PRASAD |
| 2 | 77 | 220444 | SISTA VEERABHADRA RAO |
| 3 | 78 | 70330 | BEZWADA GANAPATHI RAO |
| 4 | 79 | 191433 | SUDHAKAR GURJAR |
| 5 | 80 | 180695 | N RAJAM |
| 6 | 81 | 110697 | K K KRISHNA PRASAD |
| 7 | 82 | 10378 | SYED ABDUL QAYYUM |
| 8 | 83 | 220524 | M VENKAT REDDY |
| 9 | 84 | 220491 | CHIRUMAMILLA VARAPRASADA RAO |
| 10 | 85 | 210087 | MARRI USHA |
| 11 | 86 | 110405 | RAMARAO KULAKARNI |
| 12 | 87 | 181012 | SETTIPALLY RAMA RAO |
| 13 | 88 | 30124 | MUNASA CHANDRASEKHAR |
| 14 | 89 | 220878 | V INDIRA SURYA KUMARI |
| 15 | 90 | 20287 | A BHASKAR RAO |
| 16 | 91 | 20421 | SANDRUKA BHEEMAI AH |
| 17 | 92 | 190887 | SHRENIK GINNAPPA HARDARIN |
| 18 | 93 | 20709 | B V RAMALINGESWARA RAO |
| 19 | 94 | 20227 | V BASAVA RAJU |
| 20 | 95 | 192016 | BIJJALA VENKATA SIVA KUMAR |
| 21 | 96 | 160716 | P V SAMEERA KUMAR |
| 22 | 97 | 181146 | R V SUBRAHMANYESWARA RAO |

Hence verified on this the 16th day of September, 2019.

ANNEXURE – 1

PART - A

The opposite party (Bank) at Point No - 8 of its statement dated 3.8.2019, has denied the inconsistency in treatment of components taken for calculation of the Gratuity paid to the applicant under Bank's Scheme.

B. The applicant humbly submits that the Gratuity in Service Regulations are not consistent with the Payment of Gratuity Act, 1972. Bank has not obtained any exemption as per the Section 5 of the Payment of Gratuity Act, 1972 from the Appropriate Authority and at the same time sub section 5 of Section 4 clearly says that the employee shall have a right to receive better terms of gratuity under any award or agreement or contract with the employer and if at all in any enactment or in any instrument or contract which is inconsistent with the provisions of the Payment of Gratuity Act, 1972, shall override the other enactments, according to Section 14 of the Payment of Gratuity Act, 1972.

The applicant submits the relevant portions of Bank' Gratuity Regulation and relevant portions of some other Regulations extracted from the Bank Officers Service Regulations, by which the service conditions of the applicant were governed at the time of retirement as per **Annexure- 2** and further add to submissions as under-

1. Payment of Gratuity Act -1972 to Override Other Enactments, etc

The applicant further submits that Hon`ble supreme court in Civil Appeal 9087/2012 of Y K Singla Vs. Punjab National Bank, at Para No 20 of the judgment concluded as under –

"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."

"In view of the above quoted section, it is clear that the provisions of the Act will prevail over the other enactments, instruments or contract. Strikingly, it provides overriding effect to 'instruments' or 'contract' also. It has been so held that the expression 'instrument' in section 14 covers trust deed vide Som Prakash Rekhi Vs. Union of India AIR 1981 SC 212. Similar view has been taken in Calcutta Dock Labour Board Vs. Sandhya Mitra AIR 1985 SC 996"

Thus the Hon`ble supreme court in Civil Appeal 9087/2012 of Y K Singla Vs. Punjab Bank, held that the perusal of section -14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act vis- a- vis, any other enactment (including any other instrument or contract) inconsistent therewith.

In view of the superlative status given by section -14 of the Gratuity Act, it is clear that in cases where gratuity of an employee is calculated and paid under any other scheme offered by the employer on the ground as in better terms, the method of calculations explained under the provisions of Gratuity Act, the Payment of Gratuity Act-1972, cannot be ignored or depleted.

The applicant submits that the terms *"other enactments, instruments or contract"* as appearing in quoted paragraph of referred judgment, shall most definitely be deemed to include, the Bank's Regulation dealing with Payment of Gratuity to the applicant, and thus the provision of the gratuity act will be applicable even on the gratuity calculated by the bank under its scheme.

2. Applicant's Eligibility for Gratuity of Bank's Scheme in Better Terms

(i) It is submitted that the employer–Bank has not obtained exemption from the operation of provisions of Gratuity Act as is necessary in terms of Section -5 of the Payment of Gratuity Act -1972. In this connection the applicant humbly invites kind attention of this Hon'ble Authority towards the ruling of Hon'ble Supreme Court in Civil Appeal No 1478 of 2004 in case of Allahabad Bank Vs All India Allahabad Bank Retired Employees Association decided on 15.12.2009 –

Quote -

Para – 9 - *"A plain reading of the provisions referred to herein above makes it abundantly clear that there is no escape from 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"*

The applicant submits that by above ruling Hon'ble Supreme Court has emphasized strict enforceability of operation of the provisions of PG Act, 1972 as to the employer not obtaining the exemption and thus Sec.4(5) enshrine full application of provisions of PG Act, 1972 in case the opposite party (Bank) here.

(ii) Further the applicant most humbly wishes to invite kind attention of this Hon'ble Authority towards the following extracts from the order and judgment by Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 11523 of 2004 Bank of Baroda Vs. Controlling Authority under Payment of Gratuity Act

Quote

"Sub section (5) of Section 4 of the Payment of the Gratuity Act, 1972 is material for the present purposes. It reads as follows:-

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

"Sub section (5) of section 4 is an exception to the main section under which gratuity is payable to the employee. 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. The employer, who is more concerned with the industrial peace and better employer employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs vide DTC Retired Employees' Association and others Vs. Delhi Transport Corporation and others (2001) 6 SCC 61."

"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 above view is further fortified and finds support from section 5 which deals with the power to exempt."

"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 vide Workmen of Metro Theatre Ltd., Bombay Vs. M/s.Metro Theatre Ltd. , Bombay AIR 1981 SC 1685"

(iii) The applicant submits that in view of the above rulings and the fact that the employer - Bank has not obtained exemption from the operation of provisions of the Gratuity Act and offered Gratuity as per Bank's Scheme, in better terms, the applicant is very much entitled to get secured for payment of Gratuity calculated based as defined in the Section 4(2) of the Gratuity Act. Going further as is concluded in case of Workmen of Metro Theatre Ltd., Bombay Vs. M/s. Metro Theatre Ltd., Bombay AIR 1981 SC 1685, the applicant is also entitled to preserve & get benefit of better terms conferred on the applicant by way of Bank's Scheme of Gratuity to its Officers.

In the light of the above rulings and judgments, it is submitted that the applicant is very much entitled for gratuity as Bank's Scheme but the term, which are not consistent with Provisions of Payment of Gratuity Act-1972 will get overridden by the provisions of Gratuity Act -1972 for calculation of the Gratuity under the Bank's Scheme also to give them real meaning as in better terms.

Inconsistency in treatment of components taken for calculation of the Gratuity paid to the applicant under Bank's Scheme

3. The Inconsistent Provisions of Bank's Scheme

(A) The "Pay" taken in Regulation- 49 Vs "Wages" as in P.G. Act-1972

(i) The applicant submits that for calculation of the Gratuity payable under the Bank's Gratuity Regulations, the employer-Bank should have included the Dearness Allowance to give full meaning of "Wages" and to be in consistent with provisions of the Gratuity Act. In support of claim for inclusion of Dearness Allowance, the applicant submits as under-

The applicant most humbly invites kind attention of this Hon'ble Authority towards **Annexure-1**, incorporating the extracted portions from Regulations Numbers **19, 20, 32(4), and 33(2)** of Bank Officers Service Regulations, where the terms 'emoluments', 'salary' and 'the last pay drawn' are appearing. In all types of leaves and also in the wages payable in lieu of required notice of three month's for termination of service, the Dearness Allowance is part of wages. It is further submitted that the Section 2 (s) of the Payment of Gratuity Act-1972, defines "wages" which means all emoluments which are earned by the employee while on duty or on leave in accordance with the terms and conditions of his employment and includes besides other components of wages, the Dearness Allowance also.

In view of above rulings of Supreme Court as reproduce at Para 2(i) above that the employer not obtaining the exemption will have application of provisions of PG Act, 1972.

It is therefore submitted that the term "Wages" as defined under Section 2 (s) of the Payment of Gratuity Act-1972 is inclusive of Dearness Allowance, therefore while calculating the gratuity payable as per Bank's Scheme the dearness allowance is to be included.

(ii) It is further submitted that the components that are taken for calculation or arriving at the gratuity amount, as per Gratuity Act -1972 cannot be ignored/depleted, while calculating the amount of Gratuity under Bank's Gratuity Regulations also. This legal fact to include dearness allowance, for gratuity calculation under bank's service rules also, has been clarified by various judgments of high courts and supreme court in following cases:-

- The High Court of Madhya Pradesh, main seat Jabalpur, in Application No.14091/2019(W.A1318-2018) Madhyanchal Gramin bank held "*that a co-joint reading of definitions of 'emoluments', 'pay', and 'salary', 'the last pay drawn' under Regulation 2 Proviso of sub Regulation (3) of Regulation 72 would include dearness allowance for the computation of*

gratuity in respect of officers as well". Special leave petition filed by Madhyanchal Gramin bank in Hon'ble Supreme Court of India against the order of The High Court of Madhya Pradesh, main seat Jabalpur, was dismissed on 07.05.2019 up holding the decision of double bench of Hon'ble High Court of Madhya- Pradesh at Jabalpur.

- Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 11523 of 2004 Bank of Baroda Vs. Controlling Authority under Payment of Gratuity Act and others by judgment dated 29.4.2008 have decided that Dearness Allowance should be included while making payment of gratuity under bank's Scheme i.e. Officers Service Regulations.
- Hon'ble High Court of Madras in W.A.1478 of 2006 in P.Selraj Vs The Management of Shardlow India on 12.1.2007, observed that "*Gratuity Act is beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore the term "Last Drawn Wages" found in Section 4(2) of the Gratuity Act should receive its full meaning and cannot give any fractured interpretation. Further the Settlement provides as to what should be the "Wage" that should be paid to a workmen and that the management cannot adopt any artificial interpretation with reference to the term "Wages"*

It is submitted that the salary of Bank officers are also decided by Settlements and the term "wages" appearing in Settlements includes Dearness Allowance. Therefore the "Pay" as appearing in Regulations 49 should be taken inclusive of Dearness Allowance for calculations of Gratuity amount in both types of calculations viz. - For Gratuity as per Gratuity Act and also the Gratuity as per Bank's Scheme , which is said to be in better terms.

It is submitted that the "last wages drawn" as defined by Section 4(2) read with Section 2(s) of the Gratuity Act, includes Dearness Allowance, therefore the applicant find himself eligible for payment of Gratuity under Bank's Gratuity Regulation where the "Pay" must be taken as "wages last drawn" by the applicant, inclusive of dearness allowance.

Therefore the applicant has submitted the claim of amount of recalculated Gratuity payable by taking Wages correctly.

(B) Inconsistent Method of Calculation of Bank's Scheme Vs as Per P.G.Act-1972

- (i) The applicant has at Para No 1 above referred the judgment of Hon'ble supreme court in Civil Appeal 9087/2012 of Y K Singla Vs. Punjab National Bank, and as the Section-14 of P.G. Act to overrides the inconsistent provisions of Bank's Scheme of dealing with Payment of Gratuity to the applicant. Therefore the provision of the gratuity act will be applicable even on the gratuity calculated by the bank under its scheme.
- (ii) The applicant submits that since the applicant earned wages/ pay at monthly rate, the explanation to sub section (2) of Section 4 of the Act is applicable for calculation of amount of gratuity by way of monthly pay dividing by 26 and multiplying the quotient of 30 in case the Service Regulations.
- (iii) The applicant in view of therefore For Calculation of Gratuity amount the method thus will have to be as "Wages Last Drawn x Eligible Month's Gratuity x 30/26", to make the calculation method under Bank's Scheme, consistent with sub section (2) of Section 4 of the Act.

4. The applicant most humbly pray's this Hon'ble Authority to consider above submissions in the light of effect of the Sections of the Payment of Gratuity Act on the Bank's Scheme of Gratuity as under :-

- a. Since the employer- Bank has not obtained exemptions as per Section -5 of the Payment of Gratuity Act -1972.
- b. Since inconsistent provisions of Bank's Scheme will have to be overridden by way of Section -14, and
- c. Since the applicant earned wages/ pay at monthly rate, therefore to make the provisions of Bank's Scheme, consistent with overriding provisions of Gratuity Act to the extent of wages and method of calculations, therefore
- d. The term "Pay" will be "Wages last drawn inclusive of Dearness Allowance and "Method of calculations" under Bank's Scheme will have to be as per explanation to sub section (2) of Section 4 of the Act.

PART - B

1. The opposite party (Bank) at Point No1 (d) of its statement, has pleaded on of Section 4(5) of the Gratuity Act and stated that Section 4(5), does not contemplate that the workman would be at liberty to opt for better terms of Contract, while keeping the option open in respect of a part of Statute. The opposite party (Bank) has further pleaded that "While reserving his right to opt for 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"

Further the opposite party (Bank) has given the calculated amount of Gratuity payable under Bank's Scheme, in the attached copy of office Note dated 20.9.2015 and also at Para No -5 on statement dated 3.8.2019.

- (a) The applicant submits that the opposite party (Bank) has in Office Note dated 28.9.2019 by writing the words "**Whichever is Higher**" and at Para No 5 has by writing the words "**Whichever is Beneficial**" concluded the quantum of in terms of amount as calculated by opposite party (Bank) itself is payable to the applicant.

It is submitted that the Bank has on its own concluded that higher of the amount of gratuity calculated under both – the Gratuity Act and Bank's Gratuity Regulations is in better terms. Neither in Gratuity Act nor in Bank's Scheme, the term or expression "**Whichever is Higher**" has appeared. Not only this term/ expression "Whichever is Higher" have been propagated but same Bank have used another term as "**Whichever is Beneficial**"

- (b) The applicant under the circumstances wish to bring to the knowledge of this Hon'ble Authority, the impact of not having exemption, the Bank had bear under the similar situations. That impact borne was by the order of Hon'ble Supreme Court in C.A.No.- 1478/2004 - Allahabad Bank & Anr. Vs All India Allahabad Bank Retired Employees Association decided on 15.12.2009

In the above referred case, the dispute was that Allahabad Bank was paying pension of its Old Pension Scheme -1890 in lieu of Gratuity. The Association of Retired Employees demanded Gratuity as their statutory right under the Payment of Gratuity Act -1972. The dispute reached to the level of Apex Court where bank pleaded that Bank is paying pension in lieu of Gratuity which is in better terms as is permitted under Section 4(5) of the Gratuity Act.

It is to be noted that Bank had not obtained any exemption from the operations of provisions of the Act. The relevant observations of the Hon'ble Supreme Court as written in the referred judgment are as under –

Quote

“Be it noted that in the counter affidavit filed in the High Court the Bank placed reliance on Shastry and Desai Awards which have taken the view that Allahabad Bank which had pension scheme of its own was more advantageous than the provisions of the gratuity to its employees”

“The respective comparative figures under pension and/or gratuity, in terms of Shastry/Desai Awards and/or Bipartite Settlement on one hand and the gratuity payable under the Act on the other were made available for the perusal of the Court to buttress the Bank’s submission that what has been paid to the employees was better in terms and more favourable than the benefits conferred under the Act”

Unquote

- (c) The above observations clearly indicated that the Shastry Award, Desai Award and Bank, on their own derived the conclusion that they are paying the benefit which is better in terms as compared to the Gratuity payable under the Act.

The Hon’ble Supreme Court had concluded as under –

Quote

“The submission is totally devoid of any merit for more than one reason namely, that it is for the appropriate Government to form the requisite opinion that the employees were in receipt of gratuity or pensionary benefits which were more favourable than the benefits conferred under the Act and therefore, the establishment must be exempted from the operation of the provisions of the Act. The Bank having failed to obtain exemption from the operation of the provisions of the Act cannot be permitted to raise this plea. 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.”

Unquote-

The Bank had strenuously contended that under the Old Pension Scheme of the Bank, only two terminal benefits namely, Contributory Provident Fund and either gratuity or pension were required to be paid to the employees of the bank and not both. It was also argued that the bank in view of the Awards, circulars and statutory regulations is not under any legal obligation to pay gratuity as a third retiral benefit.

The judgment had gone against the Bank and Bank had to pay the Gratuity to the pensioners, who were being paid pension in lieu of Gratuity. Bank did not stop there only. The Bank to comply with the order by Hon’ble Supreme Court Bank paid Gratuity but stopped paying pensions to those pensioners. It was only by the judgments by the Supreme Court dated 13.3.2013 in CA No 9024 of 2012, and Judgment dated 18.4.2013 in CA No 7249 of 2012 and CA No 9665 of 2012, the Allahabad Bank restored payment of pension to those Old Scheme pensioners.

- (d) Thus despite the fact that Bank had pleaded that it was paying pension in better terms the Gratuity of the Act, Bank had to pay Gratuity and Pension also to those pensioners as third benefit. It was only because the Bank had not succeeded in its attempt to get the exemption from the operations of the provisions of the Gratuity Act.

2. The applicant submits that the above case is discussed here in details, because the Opposite party- Bank is claiming that the gratuity paid by bank is in better terms. It is to be noted that has not obtained exemption, but and on its own claiming that Gratuity paid under its Gratuity Regulations is in better terms.

In the light of above decisions by the Supreme Court of India, it is clear that the Bank as employer have not been given liberty to compare only the figures as amounts of gratuity, and conclude which one is in BETTER TERMS. The Hon'ble Supreme Court in C.A.No1478 of 2004 in case of Allahabad Bank & Anr. Vs All India Allahabad Bank Retired Employees Association decided on 15.12.2009, has in clear words decided that –

Quote

*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***

- (a) The applicant submits that the opposite party (Bank)'s own conclusion based on the finally calculated figures cannot be said to be paid in better terms and hence it is not correct. It is submitted that the words/expressions "Whichever is Higher" or "Whichever is Beneficial" cannot replace the statutory provision, which reads – "Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer".

The applicant humbly submits to emphasize that two figures calculated based on combination of multiple different factors and compared as which one is higher cannot be said to be paid in better terms.

- (b) The applicant once again invite kind attention of this Hon'ble Authority towards the comments and conclusion drawn by Hon'ble Supreme Court, as reproduced at Para No (1-c) above as Quote in italic letters.

It is to be noted that despite the figures derived for pension were higher, but Hon'ble Supreme Court decided that the Statutory Provisions will have to be followed. In the light of above e conclusion drawn by the Hon'ble Supreme Court, it is clear that the bank's notion of higher of the amount is incorrect. Higher of two figures, finally derived under Gratuity Act and Bank's Scheme cannot be said to be protecting the right of the applicant to receive gratuity in Better Terms as is available under Section 4(5) of the Gratuity Act,

- (c) The applicant submits that the word "Better Terms" being in plural sense certainly means comparison of each one of the terms of Gratuity Act and those of Bank's Scheme. For such correct comparison purpose, only One Term, which is applicable for the same purpose, will have to taken at a time, to decide that which is better.

To elaborate, the applicant submits the correct way of comparison of the terms of Gratuity Act and terms of Bank's Scheme as under –

- (i) The "Rate of Gratuity" being one of the terms, which is 15 days per years as per Gratuity Act, & it is One Month per Year as per Bank's Scheme and is applied for the same purpose. The Better Term is protected as per Section 4(5) of the Act; therefore rate of One Month per Year will be applied being One Better Term, for calculation of Gratuity payable to the applicant.

(ii) The "Wages" being another term under the Gratuity Act, which is with Dearness Allowance and it is "Pay" as per Bank's Scheme and is applied for the same purpose. The Better Term is protected as per Section 4(5) of the Act; therefore "Wages" mean "Pay" will be with "Dearness allowance" for calculation of Gratuity payable to the applicant.

(iii) To be on the similar footing of Monthly Wage, the 15 Day's Gratuity per year is converted to a multiplier as 15 divided by 26, for calculating Gratuity amount as per Act, likewise for Bank's Scheme, One Month per year has to be converted as 30 divided by 26 to make it not less beneficial than provided in the Act, because of protection available to the applicant.

(iv) No Ceiling on Gratuity Amount under Bank's Scheme is better term in comparison to the Pecuniary Limit prescribed under the Gratuity Act.

The applicant submits the terms mentioned at Para –c (i) to (iv) after comparing each of it from the Gratuity Act and the term for same purpose from Bank's Gratuity Scheme and the better one taken put to gather will form the "Better Terms" in its real meaning as per Section 4(5) of the Act.

3. The applicant in support of above conclusions submits the arguments backed by Statutory Sections of Payment of Gratuity Act and the rulings from the judgments of Hon'ble Supreme Court & High Court as under -

(A) Provisions of Gratuity Act -1972 to Override Other Enactments

(i) The applicant further submits that Hon'ble Supreme Court in Civil Appeal 9087/2012 of Y K Singla Vs. Punjab National Bank, at Para No 20 of the judgment concluded as under –

"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."

"In view of the above quoted section, it is clear that the provisions of the Act will prevail over the other enactments, instruments or contract. Strikingly, it provides overriding effect to 'instruments' or 'contract' also. It has been so held that the expression 'instrument' in section 14 covers trust deed vide Som Prakash Rekhi Vs. Union of India AIR 1981 SC 212. Similar view has been taken in Calcutta Dock Labour Board Vs. Sandhya Mitra AIR 1985 SC 996"

Thus the Hon'ble supreme court in Civil Appeal 9087/2012 of Y K Singla Vs. Punjab Bank, held that the perusal of section -14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act vis- a- vis, any other enactment (including any other instrument or contract) inconsistent therewith.

(ii) In view of the superlative status given by section -14 of the Gratuity Act, it is clear that in cases where gratuity of an employee is calculated and paid under any other scheme offered by the employer on the ground as in better terms, the method of calculations explained under the provisions of Gratuity Act, the Payment of Gratuity Act-1972, cannot be ignored or depleted.

(iii) The applicant submits that the terms "*other enactments, instruments or contract*" as appearing in quoted paragraph of referred judgment shall most definitely be deemed to include, the Bank's Gratuity Regulations, dealing with Payment of Gratuity to the applicant,

and thus the provision of the gratuity act will be applicable even on the gratuity calculated by the bank under its scheme.

- (B) It is submitted that the opposite party (Bank) Bank has not obtained exemption from the operation of provisions of Gratuity Act as is necessary in terms of Section -5 of the Payment of Gratuity Act -1972. In this connection the applicant humbly invites kind attention of this Hon'ble Authority towards the ruling of Hon'ble Supreme Court in Civil Appeal No 1478 of 2004 in case of Allahabad Bank Vs All India Allahabad Bank Retired Employees Association decided on 15.12.2009 –

Quote -

Para – 9 - “A plain reading of the provisions referred to herein above makes it abundantly clear that there is no escape from 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”

- (i) Further the applicant most humbly wishes to invite kind attention of this Hon'ble Authority towards the following extracts from the order and judgment by Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 11523 of 2004 Bank of Baroda Vs. Controlling Authority under Payment of Gratuity Act

Quote

“Sub section (5) of section 4 of the Payment of the Gratuity Act, 1972 is material for the present purposes. It reads as follows:-

“(5). Nothing in this section shall affect the right of an employee to receive better term of gratuity under any award or agreement or contract with the employer.”

“Sub section (5) of section 4 is an exception to the main section under which gratuity is payable to the employee. 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. The employer, who is more concerned with the industrial peace and better employer employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs vide DTC Retired Employees' Association and others Vs. Delhi Transport Corporation and others (2001) 6 SCC 61.”

“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 above view is further fortified and finds support from section 5 which deals with the power to exempt.”

“ 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 vide Workmen of Metro Theatre Ltd., Bombay Vs. M/s.Metro Theatre Ltd. , Bombay AIR 1981 SC 1685”

Above Rulings Will Have Effect on the Provision of the Bank's Gratuity Regulations

4. The applicant submits that in view of the above rulings and the fact that the opposite party (Bank) has not obtained exemption from the operation of provisions of the Gratuity Act and offered Gratuity as Bank's Scheme, as in better terms, therefore the applicant is very much entitled to
- (i) get secured for payment of Gratuity calculated based as defined in the Section 4(2) of the Gratuity Act. Going further as is concluded in case of Workmen of Metro Theatre Ltd., Bombay Vs. M/s. Metro Theatre Ltd., Bombay AIR 1981 SC 1685,
 - (ii) the applicant is also entitled to preserve & get benefit of better terms conferred on the applicant by way of Bank's Gratuity Scheme.

In the light of the above rulings and judgments, it is submitted that the applicant is very much entitled for gratuity as per Bank's Gratuity Scheme, but the term, which are not consistent with Provisions of Payment of Gratuity Act-1972 will get overridden by the provisions of Gratuity Act -1972 for calculation of the Gratuity under the Bank's Scheme also, to give them real meaning as in better terms.

- 5.(a) It is submitted that Bank has not obtained exemptions from operations of provisions of Gratuity Act. The position being so the ruling of Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 11523 of 2004 Bank of Baroda Vs. Controlling Authority under Payment of Gratuity Act, reproduced here under, which is very effectively applicable on the Bank-

Quote

*"A conjoint reading of section 4 (5) and 14 of the Act makes it clear that the provisions of the Payment of Gratuity Act **will be attracted ipso facto** in the absence of any exemption notification **and it will have overriding effect over any Scheme** including the present one which is less favourable to the employee as also on Amalgamation Scheme. The petitioner bank is a nationalized bank and is vested with Central Government under the Banking Regulation Act, 1949 and under the Banking Company (Acquisition and Transfer) Undertaking, 1970, as per Para 2 of the writ petition. It is expected from it that it will act as a role model employer".*

Unquote

In view of above settled position as spelt out by above ruling, it was expected that the Bank ought to have paid the difference of the Gratuity as claimed by the applicant, but Bank didn't, therefore the applications is filed before this Hon'ble Competent Authority with a prayer for justice.

- 5(b) It is humbly submitted that Section 14 of the Act reading that - "Act to override other enactments, etc". and the ruling of Hon'ble High Court of Allahabad as reproduced at Para No -1 above clearly decided -"A conjoint reading of section 4 (5) and 14 of the Act makes it clear that the provisions of the Payment of Gratuity Act **will be attracted ipso facto in the absence of any exemption notification and it will have overriding effect over any Scheme including the present...**",and these rulings clearly conclude as a direction of the Hon'ble Court to give effect as under –
- 5 (c) It is submitted that Sub-section (5) of Section 4 protects the right of the applicant to receive better terms of gratuity from Bank under its Gratuity Scheme

6. The applicant submits that in absence of exemption obtained by the opposite party (Bank) bank, and required to pay gratuity in better terms, therefore the provisions of Bank's Gratuity Scheme will have impact as has been concluded at Para No. 5 (a) (b) and (c) above. The final effect will be that provisions of the Bank's Scheme, overridden by provisions of Gratuity Act attracted ipso facto but as minimum and the better terms of Bank's Scheme protected.

The effect will be that Gratuity in Better Terms as is available to the applicant by section 4(5). Thus the better terms will be as under –

- a. From Bank's Gratuity Scheme- By Section- 4(5) right to receive better terms of gratuity protected as under-
 - i. One Month's (30Day's) Eligibility per year of service up to 30 years with maximum of 15 Months and an additional amount at the rate of One and a Half Month's pay eligibility per year beyond the service of 30 years
 - ii. No Ceiling on the amount of Gratuity.
- b. From Gratuity Act - By Section -14 of the Act - Provisions of Bank's Scheme, which are inconsistent with provisions of the Gratuity Act, therefore provisions of the Payment of Gratuity Act will be attracted ipso facto in the absence of exemption. The effect will be that the inconsistent provisions of Bank's Scheme to be replaced by provisions of the Gratuity Act as under-
 - i. Wages to be Pay plus Dearness Allowance, as in Gratuity Act
 - ii. Month to be taken as 30/26 as is in Gratuity Act

7. The applicant submits that as has been submitted at Para No -5 above, describing the meaning of "Better Terms" as is worded in Statutory Gratuity Act; and also by submissions at Para No-8 backed by the Statutory Sections of the Gratuity Act as interpreted and concluded by the judiciary , the "Better Terms" in its real & acceptable applications has been established.

It is submitted that the subsection (5) of section (4),protecting right to receive the Gratuity in Better Terms makes the applicant eligible to claim and the applicant has accordingly submitted the application to this Hon'ble Competent Authority.

8. The applicant submits that the opposite party (Bank) bank while paid Gratuity of its Scheme, had not taken the rate of gratuity as One and a Half Month's per year for the service beyond 30 years. The applicant has taken the rate as One and a Half Month's gratuity per year and has claimed the difference of gratuity. The applicant submits his logics and grounds for the claimed rate of round for One and a Half Month's gratuity per year annexed as per **Annexure -2**.

The applicant most humbly prays to this Hon'ble Authority to decide in favor of applicant to meet the ends of justice.

ANNEXURE – 2

General objection of the bank against claim of 45 days had been -

That the applicant (Claimant) has miss-interpreted the meaning of "at the rate of one half of a month's Pay" in his own interest. It is clear from the word "one half of a month's pay" i.e. 1/2 of one month's pay and leaves no scope for any other or different interpretation in this regard.

REJOINDER / COUNTER REPLY BT THE APPLICANT IS SUGESTED AS UNDER-

1. It is humbly submitted that Bank is restricting its view only up to the word meaning of “one half” but not mentioning the effect of the phrase “Additional” prefixed to “one half” as mentioned in the regulation 49. The applicant further submits that while referring the background of Bank’s scheme for Gratuity to its employees, the word “ADDITIONAL” finds place way bank since 1953. The Sastry Award of 1953 gave two alternatives:
 - (i) One month's Salary for each year of service subject to a maximum of 15 months’ salary or
 - (ii) Half a month's Salary for each year of service with no maximum limit. It was submitted that the banks prefer the latter course as it would give a little more to people with longer service than 30 years a case which not infrequently happens in bank service.

The major banks had no objection to the first alternative if the workmen so desired and thus by Para Number 392 of Sastry Award, the rate of one month's Pay for each year of service subject to a maximum of 15 months’ Pay was decided as Months Gratuity. Further Sastry award of 1953 by Para Number 393 decided that long service should be specially recognized. It reads as under:-

“We are further of opinion that substantially long service should be specially recognized and we therefore direct that where a workman has put in service over 30 years he should be paid an extra amount at the rate of additional half of a month’s pay for each completed year of service beyond 30 years. To that extent the maximum provided in his case will be increased”

The applicant submits that it is to be noted specifically, that the sentence which writes that special recognition for longer service stipulates extra amount at the rate of additional half of a month’s pay for each completed year.

The intent is very clear that the service beyond 30 years is to be recognized and rewarded by EXTRA AMOUNT at the RATE of ADDITIONAL HALF MONTH’S PAY.

These two words EXTRA AMOUNT and ADDITIOANAL RATE are as clear as day light that intent is to give extra amount as additional rate on the base rate of one month per year. This clearly meant one and half month’s pay per year of service beyond 30 years.

2. After Sastry award the Desai Award of 1962, by Para number 3.82 continued to write the same language and words EXTRA and ADDITIONAL to emphasize that the rate of Gratuity should be one and a half months pay beyond 30 years as special recognition to longer service, which reflect loyalty of employee also.

Desai Award at Para No 3.82 reads as under -

“Where, however, a workman employee in any of the aforesaid banks has put in the service of over thirty years, an extra amount by way of additional gratuity will become payable at the rate of additional half month's pay for each completed year of service beyond thirty years. To that extent the maximum provided under the aforesaid clauses will stand increased”

It intended to give one Month's plus extra with Additional of one half Month's Pay, which is nothing other than 45 days. This base of Gratuity of Bank's Scheme cannot be altered by wrong interpretation as had been done by Banks.

3. It is submitted that Officers Service Regulations 1979 by its Regulation number-3 at point numbers (a) to (n) gives definitions of all the terms used such as –*Appointed date, Bank , Board, Competent Authority, Emoluments ,Family.....Officer and even Year & Calenderer Year, but does not define the word “Additional”.* Although the term

“Additional” is quite common and its meaning is also very clear, thus might have not been seen as that important and necessary to be defined specifically, but the term “Additional” appearing in Reg-49(2) in the present dispute has gained much importance.

4. It is submitted that to search the correct meaning of word “Additional” the Bank Employees Pension Regulations 1995, which are also pari-materia applicable for all Nationalized Banks, are found to be of immense help. The Regulation Number -2 of it gives Definitions of the terms used there and the **Para (zf)** of it reads as under -

(zf) all other words and expressions used in these regulations but not defined, and defined in the Act or the Service Regulations or Settlements shall have the same meanings respectively assigned to them in the Act, the Service regulations or settlement, as the case may be.

As the above **statutory clause (zf)** stipulates that words and expressions used but not defined, in the Act or the Service Regulations shall have the same meanings assigned to them in the Act, the Service regulations or settlement, therefore the use and expression of word “Additional” has been searched in the whole of the Officers’ Service Regulations 1979 and it is submitted that the term “Additional” finds place in Settlements for Wage/Salary Revisions and other documents of Bank related to payment of Pay, Wages & Increments to officers of Bank also. Therefore the interpretation of term “Additional” drawn and being given effect at other Regulations of Officers’ Service Regulations, 1979 can form conclusive and acceptable meaning of this term “Additional” to be applied similarly for deciding the eligibility of Gratuity beyond 30 years of service.

5. In the above circumstances it therefore submitted that the word “Additional” is used in the Officers’ Service Regulation, 1979 at some of its Regulations as under

(i) Regulation 5- Increments

The Regulation No 5, meant for increments to officers also deals with grant of incentive termed as Professional Qualification Allowance for passing Certified Associate of Indian Institute of Bankers Examination and at Clause 5(2) the quantum of such incentives had been as under -

(A) On and from 1-11-1994, other things being equal, the quantum of Professional Qualification Allowance shall stand revised as under:

Those who have passed only Part I of CAIIB

- (i) Rs. 120/ P.M. after one year on reaching the top of the scale.

Those who have passed both Parts of CAIIB

- (i) Rs. 120/ P.M. after one year on reaching the top of the scale
(ii) Rs. 200/ P.M. after two years on reaching the top of the scale

(B) On and from 1-11-1999, other things being equal, the quantum of Professional Qualification Pay shall stand revised as under: -

Those who have passed JAIIB OR Part I of CAIIB

- (i) Rs. 150/ P.M. after one year on reaching the top of the scale.

Those who have passed JAIIB and CAIIB or both parts of CAIIB:

- (i) Rs.150/ P.M. after one year on reaching the top of the scale
(ii) Rs.360/ P.M. after two years on reaching the top of the scale

(C) On and from 1-11-2002, other things being equal, the quantum of Professional Qualification Pay shall stand revised as under:-

(i) Those who have passed only CAIIB – Part I / JAIIB Rs.300/- p.m. one year after reaching top of the scale.

(ii) Those who have passed both parts of CAIIB –

a) Rs.300- p.m. one year after reaching top of the scale.

b) Rs.750/- p.m. two years after reaching top of the scale.

(D) On and from the 1st day of November, 2007, other things being equal, the quantum of Professional Qualification Pay shall stand revised as under:-

Those who have passed Junior Associate of Indian Institute of Bankers or Certified Associate of Indian Institute of Bankers

(i) Rs.410 per month one year after reaching maximum of the Scale

Those who have passed both parts of Certified Associate of Indian Institute of Bankers

(i) Rs.410 per month after one year on reaching maximum of the Scale.

(ii) Rs.1030 per month after two years on reaching maximum of the Scale

(E) On and from the 1st day of November, 2012, other things being equal, the quantum of Professional Qualification Pay shall stand revised as under:-

Those who have passed Junior Associate of Indian Institute of Bankers or Certified Associate of Indian Institute of Bankers

(i) Rs.670/- per month one year after reaching maximum of the Scale

Those who have passed both parts of Certified Associate of Indian Institute of Bankers

(i) Rs.670/- per month after one year on reaching maximum of the Scale.

(ii) Rs.1680/- per month after two years on reaching maximum of the Scale

From the above it is found that the quantum of Professional Qualification Allowance for Part –I to Part to II or higher certificate examination has increased. *The important aspect to be observed is that the increase in quantum for passing higher certificate exam or Part –II, has always been higher than the quantum for Part-I, as is clear from following table –*

| Effective From | For Part-1(A) | For Both Parts (B) | Incremental Amount C = (B-A) |
|----------------|---------------|--------------------|------------------------------|
| 1-11-1987 | Rs.100/- | Rs.250/- | Rs.150/- |
| 1-11-1994 | Rs.120/- | Rs.200/- | Rs. 80/- |
| 1-11-1999 | Rs.150/- | Rs.360/- | Rs. 210/- |
| 1-11-2002 | Rs.300/- | Rs.750/- | Rs. 450/- |
| 1-11-2007 | Rs.410/- | Rs.1030/- | Rs. 720/- |
| 1.11.2012 | Rs.670/- | Rs.1680/- | Rs.1010/- |

The increased quantum for certificate examination Part–II examination passed, if seen from the logical angle that by devoting extra duration to pass higher certificate examination the reward had always been extra than the quantum for base Part-I exam. In no case it is less than the quantum for Part-I passed. The Base Rate for Part – I has never been reduced to add for Part-II exam.

(F) Further the Clause 5(1) Regulation No 5 deals with a situation where the officer has reached to the stage of Pay Scale where no increments are available in the scale. It provides as under -

“An **additional** increment shall be granted in the scale of pay for passing each part of CAIIB/ Junior Associate of Indian Institute of Bankers and Part-II/Certified Associate of the Indian Institute of Bankers Examination”

Explanation –

(a) In the case of an officer who has passed Part I or Part II of Certified Associate of Indian Institute of Bankers Examination as an officer before the appointed date, the **additional increment, or increments as the case may be, shall be given effect** to from the appointed date provided that he has not received any increment or received only one increment, for passing both parts of the said Examination.

Note:

(i) If an officer who is in receipt of Professional Qualification Pay is promoted to next higher scale, he shall be granted, on fitment into such higher scale, **additional** increment(s) for passing JAIB/CAIB to the extent increments are available in the scale and if no increments are available in the scale or only one increment is available in the scale, **the officer shall be eligible for Professional Qualification Pay in lieu of increment(s).**

Now the Word "Additional" which appears at Clause **5(2) Regulation No 5** and reproduced at Pars (F) above, amply get clarified that the "Additional" has not been considered as lower than the Base Quantum as proved from Table above. Further as also seen from "explanation (a) " and "Note(i)" above, the additional quantum of Increment(s) had never been lower than the quantum of increment given immediately preceding to that **Additional Increment(s).**

(G) It is therefore submitted that the word "Additional" although not defined in Bank's Officers Service Regulations 1979, but the word and its expression, as has been applied for Professional Qualification Allowance, has the similar application for Reg-49 (2) also. It will be in line with the Regulation Number -2(zf) of Pension Regulations 1995 with its statutory force already reproduced at Para No.4 above. In view of above it is submitted that the Base Rate of Eligible Gratuity being One Month's Gratuity Per Year, with additional one half a month, it must be taken as One and A Half Month's = 45 Days per year beyond service of 30 years.

(H) The applicant most humbly further submits that the word "Additional" has the same meaning to give higher as is reflected in Bank's Officers Service Regulations 1979 at some more Regulations reproduced as under-

(ii) Regulation 34 - SICK LEAVE

(1)a. On and from 01.01.1989, an Officer shall be eligible for 30 days of Sick Leave for each completed year of service subject to a maximum of 18 months during the entire service. Such leave can be accumulated up to 540 days during the entire service and may be availed of only on production of medical certificate by a medical practitioner acceptable to the Bank or at the Bank's discretion nominated by it at its cost.

(iii) -ADDITIONAL SICK LEAVE

On and from 01.01.1989, where an Officer has put in a service of 24 years, he shall be eligible to **additional** sick leave at the rate of one month for each year of service in excess of 24 years subject to a maximum of 3 months of **additional** sick leave.

Provided that in case of **additional** sick leave availed on or after 29th June 1999, commutation of **additional sick** leave may be allowed in accordance with the Sub Regulation (2) of Regulation 34.

It is submitted that quantum of sick leave in terms of base rate of 30 days per year is not reduced of its half for Additional Sick leave for service in excess of 24 years. Therefore the term "Additional" appearing in Reg-49 cannot be interpreted to give a meaning that reduces the Base Rate of One Month's Gratuity per year.

6. Applicant further adds and submits that this Meaning of Additional one half to base rate of one month, is in consonance with spirit of the statute as under-

It is humbly submitted that in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*,^[xxi] the Apex Court had held: *"It is a 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. Therefore, when two constructions are feasible, the court will prefer that which advances the remedy and suppress the mischief as the legislature envisioned"*

In the light of above judgment the applicant submits that if the term "One Half" prefixed with word "Additional" is giving two meanings, taking the meaning as "One Half" only, if it is not the mischief of Bank, then it is certainly incorrect interpretation of the provisions of Reg-49 (2). Under both of the situations, the submissions of the applicant for "One and a Half" Month's wages are justified and correctly interpreted and taken by the applicant for calculation of gratuity payable and for claim of difference of Gratuity.

Therefore the first constructed meaning being adopted by Bank as One Half Month's only is well thought mischief of the Bank and this Hon'ble Authority may please decide the eligibility as 45 days per year to suppress the mischief being played by Banks.

7. **The applicant adds to his submissions that First Bipartite Settlement was signed on 16.10.1966 in respect of Wage Revisions of the Bank Employees and by** Para No. 12.1 the provisions of Desai Award were agreed to be continued as under -

"The provisions of the Desai Award on Gratuity shall continue except that in supersession of paragraph 8.24 and 8.35 thereof, pay for the purpose of calculating gratuity shall be the average of basic pay (100%) and special allowance and officiating allowance payable during the 12, months next preceding death, disability, retirement, resignation or termination of services, as the case may be."

It is to be noted that the Desai Award at Paragraph 8.24 & 8.35, had stipulated certain limits as percentages (80%, 75% & 90%) of Basic Pay that were being considered for calculating the amount of Gratuity, which were removed under 1st BPS and were improved to be 100% uniformly.

The decision of removing limits as percentages of basic pay to improve by taking 100% of Basic Pay for calculation of Gratuity Amount is evidence that the Banks Gratuity Scheme was being improved to make it more beneficial to employees. The history of workers and employers relationship never finds any deterioration in or curtailment of Gratuity Scheme, rather it being welfare legislations always had the intent to pass on increasing benefits to employees.

8. The spirit and intent of the Act, as seen from the increasing trend in eligible quantum of Gratuity, is evident from following Provisions of the Act -

(i) As per Act "No Gratuity" for Service less than 5 years must be a thought as no reward for service below minimum expected period.

(ii) Amount of the gratuity increases by 15 days per years as eligible number of days. The increase is in direct proportion to increase in service rendered. Longer is the service period higher will be the reward in terms of quantum of gratuity amount.

Both of above provisions of the PG Act clearly show that intent is to reward more for loyalty of employee seen from the length of service rendered.

(iii) Keeping in mind the intent of the welfare legislation, the Hon'ble Supreme court of India in Civil Appeal No.1254 of 2018 – in case of Netram Sahau Vs State of Chhattisgarh, awarded gratuity to the employee setting aside the judgments of single and divisional benches of High Court who disallowed the gratuity on the ground that his regularized services period was of three years and one month only , although appellant employee had served in the department continuously for a period of 25 years.

It is submitted that by above judgment the intent and spirit behind payment of Gratuity is established as to reward in form of higher amount for longer period of service acknowledging it as loyalty of the employee. In view of above, the reduction in rate of gratuity for longer service period i.e. service beyond 30 years from base rate of One Month's eligibility, to Half Month's eligibility, is not only against the intent and spirit of the welfare scheme, but also against the rational and justice giving policy expected of the employer like Nationalized Bank. This meaning of Additional one half is clearly in consonance with spirit of the statute. But the employer Bank has not correctly interpreted the prefix Additional to One Half of a Month.

9. Applicant further adds and submits reasons in support of claim of wages of 45 days for each year beyond 30 years by inviting kind attention of this Hon'ble Authority on the following judgments-

a) Hon'ble High Court of Bombay Bench at Nagpur by judgment dated 15.2.2017 in W.P. 775/2015 - Moil Executive Association Vs Union of India where held that in all welfare legislations, the amount payable to the employees or laborers is fixed at a minimum rate and there will not be any prohibition for the employer to give better perquisites or amounts than that are fixed under law.

b) Further Hon'ble Supreme Court in the judgment reported in AIR 2001 SC 1997 (D.T.C. Retired Employees' Association and Others Versus Delhi Transport Corporation etc.) held that sub-section 5 of Section 4 is an exception to the main section under which gratuity is payable to the employee in better terms.

It is to be kept in mind that the Banks is paying gratuity in better terms under sub-section 5 of Section 4 which is an exception as view by Hon'ble Supreme Court and High Court of Bombay decides that the rate is to be taken as minimum. The employer - Bank although offered base rate at minimum of One Month per year, but for longer service, which was adjudged by Hon'ble Supreme Court by judgment in Civil Appeal No.1254 of 2018 – in case of Netram Sahau Vs State of Chhattisgarh, already referred above as loyalty to reward, the same has been interpreted incorrectly by the Bank ignoring the prefix "Additional" and paying the Gratuity at reduced rate to half month's pay for loyalty of serving beyond 30 years.

It is submitted that this type of formula, which reduces eligibility from One Month's Pay to Half Month's Pay, can never be in line with rulings given by above judgments besides; it is not consistent with Payment of Gratuity Act-1972 because it does not comply with mandatory and operational provisions sub-section 5 of Section 4 of the Payment of Gratuity Act.

10. The applicant further submits that it can never be presumed that gratuity was payable only up to 30 years as parliament had passed the legislation ensuring payment of gratuity for each completed year of service without any restriction of years of service, as such in context of gratuity the text mentioned in Regulation – 49(2) meaning of additional "one half" would give new rate by adding 15 days wages /pay to existing base rate of one month's wages/pay i.e. $30 + 15 = 45$ days for each completed year of service. This is the logical and lawful meaning of "Additional one half" but bank has neither given any supporting reason for

applying 15 days wages for each year beyond 30 yrs service nor took any Cognizance of word "additional" as prefix to "one half" to draw the meaning of additional one half which is illogical and illegal not acceptable under the law.

It is finally submitted that by conjoint reading of the prefix "Additional" along with "one half" as mentioned above in Regulation 49(2) of Officers Service Regulations- 1979, one can easily establish that one half that is **15 days are to be added to the base rate of the Bank mentioned prior to 30 years i.e. one month's wages.** Because meaning of conjoint reading is simple, plain and unambiguous to understand entitlement of the employees as 45 days wages (30 days + additional one half of a month) as gratuity amount beyond 30 yrs of service and same can be given effect as per law. Thus Meaning of Additional one half is in consonance with spirit of the statute.

ANNEXURE – 3

Relevant portions of applicable regulations extracted from OSR 1979

(A) Regulation 49 - GRATUITY

(1) Every Officer shall be eligible for gratuity on :

(a) Retirement

(b) Death

(c) Disablement rendering him unfit for further service as certified by a medical Officer approved by the Bank.

(d) Resignation after completing ten years of continuous service ; or

(e) Termination of service in any other way except by way of punishment after completion of 10 years of service.

(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 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.

NOTE - If the fraction of service beyond completed years of service is 6 months or more, Gratuity will be paid pro-rata for the period.

Regulation 3 - Definitions:

(f) "**Emoluments**" means the aggregate of salary and allowances, if any;

(k) "**Pay**" means basic pay including stagnation increment;

(m) "**Salary**" means the aggregate of the pay and dearness allowance;

WAGES - The **Last wages drawn** as per the Payment of Gratuity Act 1972 includes Salary/Pay and Allowances as wages under different Regulation number **19, 20, 32(4), and 33(2)** of OSR, 1979 as under -

(B) Regulation 19 - Age of Retirement: Normally at the age of 60 years, but after 30 years of service or completion of 55 years of age can retire.

Provided hereinafter in sub-regulation (2) retire, if it is considered necessary to do so in the public interest, an officer employee on or at any time after the completion of 55 years

of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise, whichever is earlier;

Provided further that before retiring an officer employee, at least three months' notice in writing or an amount equivalent to **three months' substantive salary/pay and allowances**, shall be given to such officer employee;

Concluded that three month's salary/pay include allowances also, means DA too.

(C) Regulation 20 Termination of Service:

- 1.(a) Subject to sub regulation 3 of regulation 16, where the Bank is satisfied that the performance of an officer is unsatisfactory or inadequate or there is a bonafide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank, and where it is not possible or expedient to proceed against him as per the disciplinary procedure, the Bank may terminate his services on **giving him three months' notice or emoluments in lieu thereof** in accordance with the guidelines issued by the Government from time to time.

Concluded that three month's salary/pay include allowances also, means DA also.

(D) Regulation 33 - PRIVILEGE LEAVE

- (4)On and from 01.01.1990, Privilege Leave may be accumulated up to not more than 240 days except where leave has been applied for and it has been refused.

(E) Regulation 34 - SICK LEAVE

- (2)In respect of the period of Sick Leave, an Officer shall be eligible to receive one half of the full emoluments, provided that if an Officer so desires, the Bank may permit him to draw full emoluments in respect of any portion of the sick leave granted to him twice the amount of such period on full emoluments being debited against sick leave account.

Concluded that for all above type of leaves the month's salary/pay/emoluments include allowances, means Dearness allowance also.

Final Conclusions

On reading of definitions of 'emoluments' and 'salary', 'the last pay drawn" under Regulation - 49 and Proviso of sub Regulation (2) of Regulation 49 , would include dearness allowance for the computation of gratuity in respect of officers as well to be in consistent with Provisions of Payment of Gratuity Act -1972 .

| Sl. No. | Case No | PF NUMBER | NAME OF THE APPLICANT | MOBILE NUMBER | SIGNATURE |
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| 12 | 87 | 181012 | SETTIPALLY RAMA RAO | 9948650225 | |
| 13 | 88 | 30124 | MUNASA CHANDRASEKHAR | 7095390100 | |
| 14 | 89 | 220878 | V INDIRA SURYA KUMARI | 8019697527 | |
| 15 | 90 | 20287 | A BHASKAR RAO | 9849032061 | |
| 16 | 91 | 20421 | SANDRUKA BHEEMAI AH | 9440698340 | |
| 17 | 92 | 190887 | SHRENIK GINNAPPA HARDARIN | 9449831079 | |
| 18 | 93 | 20709 | B V RAMALINGESWARA RAO | 9948506850 | |
| 19 | 94 | 20227 | V BASAVA RAJU | 8522029482 | |
| 20 | 95 | 192016 | BIJJALA VENKATA SIVA KUMAR | 9866137993 | |
| 21 | 96 | 160716 | P V SAMEERA KUMAR | 9848497767 | |
| 22 | 97 | 181146 | R V SUBRAHMANYESWARA RAO | 7989151763 | |

Hyderabad.

Date: 16/09/2019

CONDONATION OF DELAY

**BEFORE THE CONTROLLING AUTHORITY & ASSISTANT LABOUR COMMISSIONER (CENTRAL)
UNDER THE PAYMENT OF GRATUITY ACT, 1972 HYDERABAD**

**Condonation of delay in submission of the Form N with the Hon'ble Controlling
Authority.**

The respondent bank in their written statement placed a view point which is not at all acceptable and an unethical effort to deny and deprive the Applicant of his rightful statutory dues, by way of payment of differential amount of Gratuity, which has been intentionally & illegally withheld by the Respondent Bank.

The applicant would like to again mention at the cost of repetition that respondent bank has never issued Form 'L' to applicant under copy to controlling authority under the PG Act.-1972, which is mandatory, hence the cause of action said to have happened only after making a representation to the bank and after having received the reply by way of denial of my claim, through the Hon'ble Controlling Authority . Hence, there is no intentional/deliberate delay on the part of applicant.

In support of my request for condonation of delay in submitting Form-N, I submit the following relevant Judgments:

1. The Hon'ble High Court of Rajasthan in the case of Madar Union Sanatorium and Hospital v. M.B. Sathe (1986-II-LLJ-135) inter alia observed that

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

That in the instant case, undisputedly, the applicant is not legal minded; as such I may not be denied the benefit of condonation.

2. The Hon'ble High Court of Judicature, Bombay in the case of Ramjilal Chimanlal Sharma v. Elphenstone Spinning and Weaving Mills Ltd., 1984 Lab IC 1703, inter alia, observed that :...

...this rule leaves no manner of doubt that the legislations intended the claims on the applications for gratuity by the employees should not be denied on technical consideration and the Authority should be very liberal in condoning the delay.

3. Three Judges Bench Judgment of the Hon'ble Supreme Court in the matter of

O.P. Kathpalia vs. Lakhmir Singh, (1984) 4 SCC 66, holding that

.....if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

4. In M.K. Prasad vs. P. Arumugam (2001) 6 SCC 176, Hon'ble Supreme Court observed that the

..... law of limitation has been incorporated to serve the interest of justice and not to defeat it.

5. In N. Balakrishnan v. M. Krishnamurty (1998) 7 SCC 123, it was held by the Hon'ble Apex Court that

.....Section 5 is to be construed liberally so as to do substantial justice to the parties.

6. In another judgments in **State of W.B. vs. Administrator, Howrah Municipality** and **G. Ramegowda, Major vs. Special Land Acquisition Officer** wherein Hon'ble Supreme Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act, must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay.

7. In the recent past , the Honourable Supreme Court in *Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649* , while dealing with an issue involving delay of 2449 days had referred various precedents on condonation of delay and cumulatively laid down that:-

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion.

- i) There should be a **liberal, pragmatic, justice-oriented, non- pedantic approach** while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- iii) **Substantial justice being paramount and pivotal** the technical considerations should not be given undue and uncalled for emphasis. **When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserve to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay**

Further the following Controlling Authorities, while dealing/deciding large number of similar Gratuity cases, purely on Merits, have extended full benefit of condonation of delay, by justifying the “Unintentional Delay” on the part of Applicants and “Sufficient Cause/Proof of Gross Injustice” caused to the Applicants:

- **The Deputy Chief Labour Commissioner (Central) Ajmer in an Appeal No. PGA-18/2017 dated 21.12.2018.**
- **The Regional Labour Commissioner (Central) Ranchi in application no. 36(31)2016-RLC(R) dated 26.06.2018.**
- **The Assistant Labour Commissioner (Central) Silchar in application no. 48(03)/2017) S/A dated 19.01.2018**
- **The Assistant Labour Commissioner (Central) Jhansi in application no. JSH-36(07)/2018) dated 18.03.2019**
- **The Assistant Labour Commissioner (Central) Ajmer in application no. AJ-48(224)/2018/ALC dated 29.03.2019**

In view of the above mentioned rulings by the Hon’ble Supreme Court as well as other High Courts, DLCs/ALCs etc., it is most humbly prayed that the applicant fully deserves to have the benefit of Condonation of delay, and the matter be decided on merits based on the cause & instance of injustice, as explained in Form N as well as in my Rejoinder-cum-Written Arguments.