

REJOINDERS

to Banks 🇮🇳

1. [Reply to Central bank of India](#)
2. [Reply to Corporation Bank](#)
3. [Reply to Indian Overseas Bank](#)
4. [Sri. Vijay Munteja, PNB, shared his proforma reply](#)
5. [Reply to Canara Bank](#)

Reply to Central bank of India through ALC, Bengaluru

(From page No 2 to Page No 14)

I , Suresh Singh -9172900138 & 8077398808, smsaligarh@gmail.com has prepared as requested by Mr. Chandrashekhran. Applicant must check it data and claim amt or edit according to your situation.

BEFORE THE CONTROLLING AUTHORITY UNDER GRATUITY AT-1972 & ASSISTANT
LABOUR COMMISSIONER(CENTRAL) BANGLURU

Gratuity application No. JP-48(133)/2019-B3

IN THE MATTER OF

SHRI. N. CHANDRASEKHRAN

VERSES

CHAIRMAN AND MANAGING DIRECTOR CENTRAL BANK OF INDIA

Applicant most humbly wish to submit point wise reply /rejoinder as under.

POINT NO. 1: Reply of the bank that application is liable to be dismissed is without any logic, facts and does not hold good in absence any legal support. Thus a reply having no merit is denied on the basis following legal facts supporting the view of the applicant.

□ It is admitted fact that Applicant at the time of superannuation/retirement was governed by the service regulation 46 of 1979 of Central Bank of India.

□ Bank has not included D.A. in the wages as defined in the gratuity act while making payment of gratuity to the applicant.

□ Despite the regulation a LAW, cannot supersede the rules and provisions of the PG Act-1972.

□ It is also a settled position that in welfare legislation like Gratuity and pension if employee comes to know about reduced /wrong payment on the grounds not relevant / in consonance with the Act. Can very well raise a dispute notwithstanding that he had received the amount payable to him and management is bound to pay the remaining gratuity. Please refer (Para no 15) in case of P.Selveraj vs management of Shardlow India limited. 2007(I)LLN 835 of Madras High Court.

POINT NO. 2 There is no dispute about the date of superannuation, but there is dispute about the payment of gratuity amount paid to me. I was paid gratuity amount of Rs.1186930/-as retrial benefit towards the gratuity where as applicant

was entitled For Rs.2840439/- .Thus respondent bank has paid Rs1653509/- less than my entitled amount. Reasons behind it is, that applicant fully relied upon the respondent that bank had paid the gratuity amount without any deficiency, But when I came to know from various orders of ALC/DLC/COURTS that respondent bank has paid me lesser gratuity amount then I took up the matter with Employer-Bank which had neither given me form "L" nor it let me know about the calculation as to how paid amount of gratuity was calculated. Though it is obligatory at the part of employer to comply section 7(2) of the Act by giving the Form "L" to applicant with a copy to the respective Controlling Authority. Applicant has observed following deficiencies.

- a. Dearness Allowance and other admissible components were not included in last wages, against the protection available to the applicant under the provision of section 4(5) read with Section 14 of gratuity Act.
- b. Additional Amount @ 45 days wages for the period of the service beyond 30 years have not been taken in to account, against the protection available under the provision of section 4(5) read with Section 14 of gratuity Act.
- c. Month not taken of 26 days to arrive wages for 15/30 or 45 days, against the protection available under the provision of section 4(5) read with Section 14 of gratuity Act.

Please refer (Para no 15) in case of P.Selveraj vs management of Shardlow India limited, 2007(I)LLN 835 of Madras High Court where it has been stated that "The management is duty bound to pay the remaining gratuity amount under Section 7 of the Act and if there is any deficiency in their calculation it is

always open to the employee to claim for payment of the balance amount." As per the above given legal facts & reasons applicant has rightly placed the dispute before your esteemed office.

POINT NO. 3: Applicant of the firm and sustainable view that bank has paid me gratuity amount based on INCONSISTENT components , ignoring the applicability of the operational provisions of the gratuity act in the Scheme of the respondent Bank which formed by the respondent as regulation 46 under officers service regulation of 1979 of Central Bank of India (hereinafter be as referred CBI-OSR) only under the scope of section 4(5) of the P.G.Act-1972. Had there been No such section then Bank would have not prepared it's regulation just because PG ACT -1972 was made

available to all the industries by the Govt. of India by passing the legislation on Gratuity which is applicable to whole of the country. Section 4(5) of the PG ACT Says :-"Nothing in this section shall effect the right of the employee to receive better terms of gratuity under any award or agreement or contract with the employer".

Section 4 of the gratuity act permits an employee to exercise the right to make a choice of being governed by some alternative provisions/instruments, other than gratuity act for drawing the benefits of the gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under the said provision/ instrument in comparison to his entitlement under the gratuity act-1972..

Thus , Applicant by virtue of sub-section 5 of section 4 is entitled to receive better terms of gratuity provided under the said regulation 4(5) . It also suffice to proved that Respondent bank is on the erroneous and on unlawful track while deciding the gratuity amount.

In support of above applicant wish to submit following Judgments.

a) Honorable Supreme court of India in case of Allahabad Bank &Anr vs A.India Allahabad Bank Retired ... on 15 December, 2009 Civil Appeal no1478 of 2004 had held at para18 (see last 9th line); 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.

b) Supreme court in case of Civil Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 202) which speaks about applicability of mandatory & provisions of the gratuity act over regulations at Para 20& 21[page 18&19] held that In order to determine which of the two provisions (the Gratuity Act or the 1995, regulations) would be applicable to for determining the claim of the Appellant, it is also essential to refer to section 14 of the Gratuity Act which is being extracted here 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.”

c) Please refer Moil Executive Association, ... vs Union Of India Through Ministry on 15 February, 2017 W.P. 775/2015 Bombay high court Nagpur which has held at para 6;“Sub-section 5 of Section 4, with which we are concerned, provides that nothing in Section 4 of the Act would affect the right of

an employee to receive better terms of gratuity under any award, agreement or contract with the employer”. It is, thus, clear from a reading of the provisions of sub-section 5 that the said provisions have an overriding effect over the other provisions of Section 4, which deals with the manner in which the gratuity is computed and the limit of gratuity, as fixed by sub-section 3 of Section 4 of the P.G.Act-1972. In view of sub-section 5 of Section 4, an employee would be entitled to receive better terms of gratuity under any award, agreement or contract with the employer.(last lines of para 6 of page7) It is 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. (Annx-14)

POINT NO. 4 : The data related with Date of joining , Superannuation, period of service and Particulars of salary are not under dispute , but non inclusion of D.A ,Special allowance and DA on Special allowance and DA on FPP in wages is not acceptable to the applicant on legal grounds which are being given below.

I. Pl. refer Civil Misc. Writ Petition No. 11523 of 2004 of Bank of Baroda Vs. Controlling Authority wherein it is has been held that“ 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.” This order has included DA in calculation of the regulation.

II. 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 the Applicants are also decided by Settlements and the term “wages” appearing in Settlements includes Dearness Allowance. Therefore the “Pay” as appearing in Regulations 46 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.

III. In W.A.No.1040 of 2009 between Bank of Baroda vs A.M.Sampath Honourable madras high court has held that “We are not impressed with this line of argument. The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore, the term "last drawn wage" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the management cannot adopt an artificial interpretation with reference to the term "wages". It is in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman.".

IV. 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 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

□ As far as Inclusion of the Special allowance is concerned, Bank has admittedly disclosed that it is the Component Carved out /derived from the Basic pay by the rate of 7.75%.

□ As per the joint note dated 25/05/2015 it is mentioned that the part of basic so derived would not be taken in to account for the purpose of P.F. Contribution & superannuation benefits. Reason may be to increase the net take home salary of the working employees while making an intentional loss to the retirees. Furthermore, this part of Basic was named as Special

allowance though it would attract equal % of D.A. as applicable to Basic pay.

□ Any component in wages is considered as basic pay by its Nature but not by its name which may be given to deceive the employee. Thus, Bank as a clever employer reduced the basic pay and balance amount was paid by changing the name from Basic pay to Special allowance. It is worthwhile to mention that components of wages are recognized by the nature of components, not by the nomenclature. Special allowance is not given in lieu of any special task to be performed but is the part of basic . Because of the Nature as being a part of Basic it attract equal % of D.A as paid on principal basic pay.

□ From above admitted facts it is clear that Special allowance is part of Basic and D.A. on it same in all terms without change in name(DA on Special allowance). Please take the reference of Gujarat High Court in SPECIAL CIVIL APPLICATION No. 844 of 2010 of Pitamberdas vs Girishkumar, on 29 March, 2010 where it is held at para no 8 that “. The right to receive an amount of gratuity as per provisions made in Payment of Gratuity Act; any curtailment of benefits by management or deprivation of any existing benefits available to workman under provisions of Payment of Gratuity Act cannot be inferred without a provision to that effect either express or implied. Therefore, such alleged settlement with Union Representative which apparently found contrary to order passed by Controlling Authority against interest of present respondent workmen. No deduction or reduction in amount of gratuity is permissible contrary to provisions of Payment of Gratuity Act, 1972.

□ Besides above Recent judgment of honorable supreme court under Civil Appeal no(s)6221 of 2011 says that those wages which are universally and ordinarily paid to all the employees across the board are basic wages. Special

allowance is paid universally across the board as such it is also part of Basic Pay and to be counted for PF contribution.

Applicant has placed the legal facts in regard to inclusion of Special allowance and D.A. on it.

□ The monthly wages of an employee should be taken as what he gets for 26 working days and his daily wages should be ascertained on that basis but bank has not considered the same as it has considered monthly wages for 30 days. Pl. Refer case of Calcutta High Court in case of Hukam chand jute mills ltd and Kerala High Court in case of Vallabhdas kanji (P) Ltd wherein Honourable courts held that for the purpose of determining the gratuity 'fifteen days wages should be taken as wages earned in fifteen days and NOT WAGES EARNED DURING A PERIOD OF FIFTEEN DAYS including the days on which the employee is not

entitled to payment of wages. The High court of Gujrat is also of the same view. The supreme Court has held that the views of the High court of Gujrat are reasonable₹.

□ Regarding Payment of gratuity beyond 30 years of service, bank has taken word meaning of one half but ignored the word prefixed to one-half of months pay which gives clear meaning or rate of 45 days wages for each year of service beyond 30 years. In support of our version applicants are submitting hereunder the logical and sustainable view.

By conjoint reading of the prefix "Additional" along with "one-half" as mentioned above in Regulation 46(2) of Officers Service Regulations- 1979, one can easily establish that one half i.e. 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. Applicant further adds and submits reasons in support of claim of wages of 45 days for each year beyond 30 years service as under-

i. Bank has clearly mentioned the rate of payment of gratuity at regulation 46 (2) reproduced by the respondent. Bank's basic rate is one month's Pay for every completed year of service. Thereafter Additional one half is payable. On drawing the mathematical formula it comes as 30 + additional 15 days wages = 45 days wages for each year beyond 30years. The Service Gratuity beyond

30 years is prefixed with word Additional, which is to maintain the intent and spirit of the Act. If we go by the spirit and intent of the Act, as seen from the increasing trend in eligible quantum of Gratuity, which is evident from following Provisions of the Act –

(a) No Gratuity for Service less than 5 years is a well thought provision of the Payment of Gratuity Act-1972

(b) Quantum of eligible number of days increases with increase in service rendered, i.e. amount of the gratuity is directly proportionate to the length of service (if more is the length of service more would be the quantum of gratuity). (c) More over service in excess of 6 months has been treated to maintain the Spirit of the statute. Besides these

two clauses division of monthly wages by 26 working days to draw the wages of one or more days also expresses the intent of the statute.

Above provisions of the PG act clearly show that intent is to reward more for loyalty of employee seen from the longer period of service rendered.

(ii) Keeping in mind the intent of the welfare legislation- (P.G.Act-1972), the Hon^{ble} Supreme court of India in Civil Appeal No.1254 of 2018 - case of Netram Sahau Vs State of Chhattisgarh awarded gratuity amount to the applicant setting aside the judgments given by single and divisional benches of High Court who disallowed the gratuity on the ground that his regularized services period, was only for the period of three years and one month, though applicant has served in the department continuously for a period of 25 years out of which 22 years he has worked as DAILY WAGER .

It is submitted that by above judgment the intent and spirit behind payment of Gratuity is also a reward in form of higher amount for longer period of service taking 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 to be half month from one month is not only against the intent and spirit of the welfare scheme, but also against the rational and justice giving policy.

(iii) 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”

If banks view is taken as only 15 days beyond 30 years then what for two rates were quoted in regulation 46(2), in that situation bank formula would have been 15 days wages irrespective of the service period. This type of formula, which reduces eligibility from One Month's Pay to Half Month's Pay, can never be consistent as it does not comply with mandatory and operational provisions of the PG Act-1972. (iv) It is submitted that the non-applicant "Central Bank of India" is paying gratuity as per Scheme with better terms, under Reg-46 of Officers Service Regulations-1979, as permitted under sub-section -5 of Section-4 of Gratuity Act. It is held by the 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.) that sub-section 5 of Section 4 is an exception to the main section under which gratuity is payable to the employee. Further 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 it is 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.

In view of above submissions it is clear that the method adopted for calculation of the gratuity amount by reducing the rate from one month per year to half month per years if not is mischief, then it is certainly incorrect interpretation of the provision therein.

(V) 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 - 46 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.

(VI) It is submitted that the interpretation is the method by which the true sense or the meaning of the word is understood. Logical interpretation calls for the comparison of the statute with other statutes and with the whole system of law, and for the consideration of the time and circumstances in which the

statute was passed. It is the duty of the judicature to ascertain the true legal meaning of the words used by the legislature. Whenever the meaning of the word, phrase, expression or sentence is uncertain, it may

be a case of departing from the plain grammatical meaning, and there may be a need for application of the golden rule. If the meaning of the section is plain, it is to be applied whatever be the result "golden rule" that the words should be given their ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the instrument. For the application of the literal rule, a clear and unequivocal meaning is essential.

□ In view of all above submission, it is clear that phrase "Additional" prefixed to "one-half" as mentioned in the proviso clause of Regulation 46(2), has the only logical conclusion that it must be taken as One and a Half Month's Wage for service beyond 30 years

Point No 5: Calculation of the gratuity amount under the PG Act is neither under Dispute Nor the applicant has been paid as per PG Act but the applicant has been paid gratuity as per gratuity regulation 46 under which applicant was governed at the time of superannuation. The amount paid under service regulation was calculated by using inconsistent components as such Dispute was raised before the Hon^{ble} controlling Authority.

Point No 6:.

Bank is very much confused in regard to applicability of the operational provisions of the PG Act in service regulation in case where applicant has chosen gratuity under the provision other than the PG Act. Applicant is repeatedly requesting to consider my request only under the service regulation under which applicant was governed at the time of superannuation. Bank has misquoted the Supreme court case of Union Bank of India vs C.G.Ajay babu and others in civil appeal no 8251/2018 because it was pertaining with forfeiture of the gratuity, Moreover, in the present case Applicant has chosen payment of gratuity only under the regulation. Contrary to it applicant request your good selves to please read the para no 10. of the same civil appeal no 8251/2018 which clearly supports the legal and sustainable view/ version of the applicant as it says that

" The subtle distinction between sub-Section (5) and sub-Section (6) is that the former is a non-obstante clause of the entire Section whereas the latter is only in respect of sub-Section (1). In other words, sub-Section (5) has an overriding effect on all other sub-Sections under Section 4 of the Act. Thus,

notwithstanding anything contained under Section 4 of the Act, an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. Further, Para no 12 also says that "The statute provides for better terms of gratuity under any award or agreement or contract which means all terms of the contract. The choice is

between the award or agreement or contract and the statute, but not partially of either.

Applicant is also saying the same that he is governed under the regulation and have chosen gratuity payment under regulation but in better and consistent terms as defined above.

Bank has not considered the DA and special allowance etc in its calculation while paying gratuity under regulation than how it can be better than the Act where DA is included. Applicant Mean to say that product of gratuity under regulation would never compete the figure of the PG Act. Then obviously end Product of gratuity calculation under regulation will always be lesser that that of Act that is why bank is paying in majority of cases as per PG Act . But in cases like that of applicant amount of gratuity has been paid higher then PG ACT not by virtue of higher product than the act but by virtue of Higher basic which exceeded the limit of PG act. Pl see the examples below.

□ As per P.G.Act-1972 (Eligible service period was 38 years)

Wages (Basic+FPA Rs60820+Rs1650)+(D.A Rs.2852458+180 DA on FPP)X15yrs X38=Rs1998827.33

26

□ As per Regulation of CBI-OSR (Eligible service period was 38 years)

(A) Applicable up to 30 years

Wages (Basic Rs60820+Rs1650)+(D.A Rs.oo)X15months =Rs937050/-

(B) Applicable beyond period of 30 yrs of service i.e. 5 years for applicant

Wages (Basic Rs60820+Rs1650)+(D.A Rs.oo)X 8 years =Rs249880/-

2 Thus total of A+B under OSR = Rs937050/- + Rs249880/- =Rs1186930/-

In my view instead of giving narration of two slabs in regulation, one up to 30 years and other for beyond 30 years of service, bank would have given a simple and single flat formula being given below with no break up.

Wages (Basic Rs60820+Rs1650)+(D.A Rs.00)X3 8 years = Rs1186930/-

2

From the above it is very much clear that terms of CBI-OSR would never be better until and unless operative provisions are applied in OSR formula, to protect the Right of the applicant who was governed under the agreement that is other than the ACT. In accordance to above cited Judgments of various Courts. Amount calculated with narration having two slab-rates (@up to 30 years + @ beyond 30 years) and narration without break up of slabs-rates is showing no difference in amount . reason is , Bank has misinterpreted the intention of the law makes by treating the first and second slab- rates giving no effect in better terms to its employee, whereas sustainable, legal and logical fact is that “ if gratuity of any employee is governed by any agreement or settlement other than the PG Act then every operational provision term is to be compared with that of Act. As such above Formula under PNB-OSR is inconsistent and cannot be given effect.

Now please have a look on the calculation of the applicant which is having all the consistent components and definitions

(A) Applicable up to 30 years

Wages (Basic Rs60820+Rs1650)+(D.A Rs. 28524.58+180)X30daysX15months
=Rs1578021.57

26 days

(B) Applicable beyond period of 30 yrs of service i.e. 5 years for applicant

Wages (Basic Rs60820+Rs1650)+(D.A Rs. 28524.58+180)X45daysX8years
=Rs1262417.26

26

Total claim=A+B = Rs1578021.57+ Rs1262417.26 = 2840438.83 rounded to Rs.2840439.00 In view of above legal facts Bank has given less amounts to the tune of(Rs.2840439.00- Rs1186930) Rs1653509/- for which dispute has been rightly raised before the Controlling authority.

Point No 7: It is being brought to kind notice of hon^{re}ble Controlling authority that bank has neither given any form “L” to the applicant nor there was any kind of detailed communication including regulation46 of the respondent-Bank in regard to applicability of the PG Act in the gratuity regulation. Applicant

came to know only after judicial orders of various ALC/DLC etc. Thereafter applicant observed that bank has neither taken exemption from applicability of the PG Act nor it used consistent components while calculating the gratuity amount under regulation

Point No 8: Pl. refer Order of Bombay High court in case of The Transport Manager, Kolhapur ... vs Pravin Bhabhutulal Shah, on 2 July, 20042004 (5) BomCR 10, (2005) ILLJ 104 Bom, 2005 (1) MhLj 497, 2005 (1) SLJ 485 Bombay which says: at para 8." Mr. Topkar, learned Advocate for Respondent No. 1 workman, submits that there is no period of limitation prescribed under the Act or the Rules framed there under. As rightly submitted by Mr. Topkar, the second proviso to Rule 10 provides that there is no limitation for filing an application under Rule 10 if the employer has failed to give notice under Sub-section (2) of Section 7. Sub-section (2) of Section 7 of the Act stipulates that the employer shall as soon as the gratuity becomes payable, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable specifying the amount of gratuity, irrespective of whether an application has been made by the workman to claim gratuity. The learned Advocate rightly submits, in my view, that the question of limitation does not arise in the present case as the Petitioner has failed to give the notice as stipulated in Sub-section (2) of Section 7 of the Act. Thus I have rightly approached the controlling authority filing dispute on form 'N' within limitation as per act

N. CHANDRASEKHRAN

Place –Bangluru (Name of Applicant)

Address of Applicant

Date : 23/06/2019

Reply to Corporation Bank

(From page No. 15 to page No. 27)

PREPARED BY SURESH SINGH

BEFORE THE CONTROLLING AUTHORITY U/R THE PAYMENT OF GRATUITY ACT,
1972. BANGLURU

Between

SHRI . Satyanarayana K.R : Applicant

And

ASSITANT GENERAL MANGER (IR), HRM , ZONAL OFFICE –BANGLURU NORTH , #
1/1, GROUND FLOOR, JEEVAN SAMPIGE, 2ND MAIN SAMPIGE ROAD
MALLEPURAM-BANGLURU-PIN560003
(AUTHORISED REPRESENTATIVE OF THE CORPORATION BANK)

Applicant is submitting following point wise reply before the Hon^{re}ble
Controlling Authority as under.

2.1 Bank says that application is neither maintainable in law and nor on facts
and same is liable to be dismissed.

Bank's view is neither supported by any law or facts even then respondent
bank is advising the learned Authority for dismissal of application of the
applicant. It is a well established truth that any opinion or view without
sustainable reasons cannot turn in to the facts. While legal facts is; that, prior
to promulgation of P.G.Act-1972 different states were paying gratuity with
different methods creating discord /disatisfaction among the workers of the
industries which have branches in more than two states. Govt. of India in order
to remove this anamoly brought this welfare legislation in 1972 called P.G.Act-
1972 to ensure uniformity in payment of gratuity in territory of India. Under the
scope of sub-section 5 of section 4 of P.G.Act-1972, industries / institutions
were allowed to make their own scheme of gratuity but in better/higher terms

only i.e. Mandatory & operative provisions should not be down- graded / depleted. Section 5 also gave opportunity to establishments to take exemption from implementation of the Mandatory & operative provisions of the P.G.Act-1972 from the Appropriate Authority (as per Act) same may be granted if Appropriate Authority becomes satisfied that that organization is paying gratuity not less favourable than P.G.Act-1972.

Our bank which is more concerned with Industrial piece and better employoer and employee relation, framed its own regulation (scheme) only under the scope of Section 4(5) of the P.G.Act,1972 to give better or higher amount of gratuity to its employees. Otherwise what was the need to frame this regulation 46 of 1979 when there exist welfare legislation passed by the Indian parliament. It may also be noted that none of the Industry or Organization is Exempted from the P.G.Act-1972, untill and unless it seeks due permission from the Appropriate Authority as provided under section 5 of the P.G.Act.-1972. Bank knows it well that it has not obtained any notification of exemption from appropriate authority in regardt to P.G.Act. As such bank is bound to follow mandatory and operational provisions of the P.G.Act, in its scheme/regulation to maintain the spirit of the this welfare legislation for which it was passed by the parliament. Thus, applicant has validly and rightly raised the dispute against the inconsistant provisions of

gratuity regulation given under rule 46 of 1979, and placed it before the Controlling as per the provisions 10(1) read with section 7 of the P.G.Act-1972.

With above legal and sustainable facts applicant request the learned Authority to thrust aside the irrelevant views of the respondents.

2.2 Gratuity of the Applicant at the time of retirement / superannuation was governed by the regulation 46 Of 1979 of Corporation bank i.e. other than the PG Act-1972. Hon^{re}ble Supreme Court in Civil Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 2012) has clearly said that in cases where gratuity of an employee is not regulated under the provisions of Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law)THE PROVISION OF THE GRATUITY ACT CANNOT BE IGNORED. provision of sub-section (5) of section 4 of the PG act-1972 which read as :-
“Nothing in this section shall effect the right of the employee to receive better terms of gratuity under any award or agreement or contract with the employer”

In light of the above provisions applicant was paid less than the actual entitlement for which applicant is legally eligible to receive differential amount of gratuity with mandatory interest from very next day of my retirement / superannuation. Thus once again it applicant has justified its claim and accordingly raised the issue before the learned Authority. Contrary to it bank is intentionally abusing the legal process.

2.3 Respondent-Bank is very much confused in matter of gratuity, in order to understand legal position and nature of gratuity it should read section 4(5) along with section 14 which has been explained / stated by the Honorable Supreme court in Civil Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 2012) and in many other cases that " In order to determine which of the two provisions (the Gratuity Act or the 1995, regulations) would be applicable to for determining the claim of the Appellant, it is also essential to refer to section 14 of the Gratuity Act which is being extracted here 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."

A 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. Therefore, insofar as entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law) **THE PROVISION OF THE GRATUITY ACT CANNOT BE IGNORED.** The term instrument and the phrase instrument or contract having the force of law shall most definitely be deemed to include the 1995 regulations which regulate the Payment of Gratuity to the appellant.

Section 4 of the gratuity act permits an employee to exercise the right to make a choice of being governed by some alternative provisions/instruments, other than gratuity act for drawing the benefits of the gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under

the said provision/ instrument in comparison to his entitlement under the gratuity act.

This protection has been provided through sub-section 5 of section 4 of the gratuity act-1972. Furthermore, from the mandate of section 14 of the gratuity act, it is imperative to further conclude that the provisions of the gratuity act would have overriding effect with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995, regulations had debarred the payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest ensuring to an employee, as has been contemplated under section 7(3A) of the gratuity act cannot be denied to an employee, whose gratuity is regulated by some provision or instrument other than the gratuity act. THIS IS SO BECAUSE THE TERMS OF PAYMENT OF GRATUITY UNDER ALTERNATIVE INSTRUMENT HAS TO ENSURE BETTER TERMS THAN ONES PROVIDED UNDER THE GRATUITY ACT. The effect would be the same, when concerned provision is silent on the issue. If such benefit is not extended to the appellant, the protection contemplated under section 4 (5) of the gratuity act would stand defeated.

3. There is no merit in submission of the banks objections to be appreciated as under;

3.1 It is a matter of record and is not denied

3.2 IT is not true that form L was issued to me, However, it is on record that a sum of Rs.1011443.39 were credited in the account of applicant.

3.3 Bank's version that amount of Rs1011443.39 which is beneficial as compared to gratuity act. Was paid to applicant under gratuity regulation 46 of 1979. supreme court of India in case of Allahabad Bank & Anr vs A.India Allahabad Bank Retired ... on 15 December, 2009 Civil Appeal no1478 of 2004 had held at para18 (see last 9th line); 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

It is absolutely wrong to compare the amount of CBOSR with that of Ceiling limit of the gratuity Act in situation when ingredient of gratuity regulation are inconsistent and cannot be given effect. If anything is to be compared than

operative and mandatory provisions of the PG Act are to be compared with that of CBOSR in accordance with the section 4 (5).

Section 4 of the gratuity act permits an employee to exercise the right to make a choice of being governed by some alternative provisions/instruments, other than gratuity act for drawing the benefits of the gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under the said provision/ instrument in comparison to his entitlement under the gratuity act. Thus respondent bank has no merit in its pleadings submitted before the Learned authority.

3.4 Respondent-Bank has tried to justify the replacement of word wages by the word pay in formula of payment of gratuity under BOSR. By quoting definition of expressed in service regulation of the bank. In the present case Components of wages like , D.A. & Special allowances and D.A.on Special allowance have not been taken in to account while calculating the gratuity undr CBOSR which is clear cut violation and can not be justified in eyes of LAW. There can not be any wages/salary without D.A, moreover, same components of salary must be considered which are being

paid as salary at the time of leave like C.L/P.L and paternity leave in consonance with definition of wages under the Act which is extracted as under

“WAGES” defined under section 2(s) of the PG act-1972 says as under:-

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

In light of Madras High court case W.A.1478 of 2006 of P.Selvraj vs The Management of Sharadlow India Which held that “The Gratuity act is a beneficial piece of legislation and it should receive an interpretation consistent with the principal of equality and fair play? Therefore the term “last drawn wage” found in section 2(s) of the gratuity act should receive its full meaning and it cannot give any fractured interpretation.

Bank has adopted artificial interpretation with reference to the term wages to be paid to a workman or the officer. The term “Wages” defined under the gratuity act would definitely include not only what is paid but also what is payable to workman.

Primarily, all the regulations framed by the bank must be consistent with provisions of the Payment of Gratuity Act-1972. The regulations which are more beneficial than act will prevail but regulations which are not consistent with the provisions of the act cannot prevail over the provisions of the PG Act and they cannot be given effect to. If the bank is calculating gratuity without including dearness allowance then how can bank proclaim its definition as consistent and how can it say gratuity amount arrived by it without D.A.WOULD be higher or better ?.

Further, to arrive one day wages bank has not divided monthly wages by 26 days against the legal provision provided under the PG ACT for the applicant who was paid on monthly basis.

3.5 As stated at point no.3.4, Bank cannot adopted artificial interpretation with reference to the term wages to be paid to a workman or the officer. The term "Wages" defined under the gratuity act would definitely include not only what is paid but also what is payable to workman. Civil Misc. Writ Petition No. 11523 of 2004 Bank of Baroda Vs. Controlling Authority has held that "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."

3.6 There is no dispute on the formula of gratuity. Actual Dispute is that in BCOSR bank has not implemented the mandatory and operative provisions of the PG Act while calculating the gratuity.

4. Applicant at the cost of repetition would like to say that applicant had submitted my differential claim on the basis of Consistent components i.e. Basic pay+DA+ Special Allowance+ DA on S Special Allowance based on various judgments of of ALC/RLC/DLC as well as that of Hon^{ble} High Courts and Supreme Courts which are as under.

i. ALC –Ajmer in case no. AJ-48(224)/2018-ALC in Case Central Bank of India vs Shyam sunder Sharma dated 29/March 2019

ii. The appellate authority under PG act 1972 and Deputy Chief Labour Commissioner (Central) Hyderabad in case no nos.PGA-36/21 to 44/2017 between Saptgiri Gramin Bank Vs Shri.P.Venugopal Gupta and 23 others

iii. . Civil Misc. Writ Petition No. 11523 of 2004 Bank of Baroda Vs. Controlling Authority

iv. In Writ Appeal no. 1318-2018, 1316-2018 and 1317-2018 Hon^{ble} Double bench of High court at Jabalpur endorsed the Judgment of single bench which includes D.A while calculating the gratuity under regulation of the bank.

v. Special leave petition filed by Madhyanchal Gramin bank in Supreme Court of India against the order of The High Court of Madhya Pradesh, main seat Jabalpur, was not admitted and rejected on 07.05.2019 and passed the order as quoted below:

“No case is made out to interfere with the impugned order(s) passed by the High Court. The special leave petitions are, accordingly, dismissed.

Pending application(s), if any, shall stands disposed of.”

vi. Madras High Court, W.A. 1040 of 2009 Bank of Baroda v/s A.M. Sampath..The Term “ last drawn pay “ found in Sec. 4 (2) of the gratuity act should receive its full meaning and it can not give any fractured interpretation. Further settlement provides as to what should be the wages that should be paid to workman and that the management cannot adopt an artificial interpretation with reference to the term “Wages” it is in the context, the term “wages” which is define under the Gratuity Act, must include not only what is paid but also what is payable to a workman.

vii. In recent judgment of Supreme Court pronounced on 13 February 2018 vide Canara Bank vs SavitriVenugopal and others in special leave petition number 20661-20668 /2012 wherein the supreme court uphold the definition of pay as per Bank employee pension regulation 1995 for calculation of pension . Among other things the court has observed the following which are relevant to the bank employees who retired after November2012.

"there cannot be two pay scales one for the purpose of calculation of salary and other for calculation of pension/gratuity etc .in other words the Pay taken for the calculation of salary should be required for the purpose of pension/ gratuity.

The Supreme Court judgment has very clearly laid down that above system of having two pay scales one for the purpose of calculating salary and other one for calculation of superannuation benefit is illegal. thus the special allowance which was carved out of basic pay portion and given a new nomenclature with intention to deprive actual pension or gratuity benefits of the retirees with a view to manage the cost agreed upon in 10 th bipartite, was pronounced as illegal by the supreme court accordingly Banks have to include the new special allowance for calculation of Gratuity /pension. As per above last drawn wages

of an officer means basic pay+DA+ PQA + DA on PQ FPP + special allowance . It may please be noted that any contract or settlement which is found to be contrary to provisions of the gratuity act where less amount has been paid to the workman against his entitlement, is not tenable. No reduction or deduction in amount of gratuity is permissible contrary to provisions of the payment of gratuity act 1972 in this regard please refer SPECIAL CIVIL APPLICATION No. 844 of 2010 of Gujrat high court which held at point no 8 The right to receive an amount of gratuity as per provisions made in Payment of Gratuity Act; any curtailment of benefits by management or deprivation of any existing benefits available to workman under provisions of Payment of Gratuity Act cannot be inferred without a provision to that effect either express or implied. Therefore, such alleged settlement with Union Representative which apparently found contrary to order passed by Controlling Authority against interest of present respondent workmen. No deduction or reduction in amount of gratuity is permissible contrary to provisions of Payment of Gratuity Act, 1972

Employer should not take the plea of nothingness as well as to take refuge of untruth & lie. Employer must interpret the clauses of law in right perspectives for which law is meant for but not to take advantage of misinterpretation to deceive the employee. Unfortunately bank has taken advantage of misinterpretation to deceive the employee.

5. Bank has failed to prove that regulations of gratuity framed by the bank are in consonance with P.G. Act. but has misinterpreted the provision section 4(5) and trying to justify application of inconsistent rules . Rules made under the provision of

section 4(5) have been distorted completely .It is also worthwhile to mention that Corporation bank has not taken any exemption from applicability of the PG Act-1972.

6. OTHER CONTENTIONS ;

6.1 Because gratuity of the applicant was governed by the Service regulation 46 of 1979 i.e. other than PG Act as such we are entitled for the better amount within the scope available under section 4(5) which gives protection to the employee to Compare the amount and the better one. Here bank has framed a formula by using inconsistent ingredients which has resulted in poor and inconsistent product. Bank has calculated the gratuity as per PG.Act and as per regulation. But employer-bank has intentionally never let the applicant know about these calculations prior to this dispute as Form 'L' was intentionally not issued to applicant violating the provisions of section 7(2) of P.G.Act.

Bank has made such a jugglery by misinterpretation of the provisions in its regulation that “End product” arrived by Bank’s formula would always remain less than End product arrived by the formula of of the PG.Act-1972.

For example (a) wages have been replaced by Basic Pay only.(b) To arrive one day wages bank divides the monthly pay by 30 instead of 26 days as decided by various Courts.(c) 15 days wages have been considered for every year of service beyond 30 years in place of 45 days by misinterpreting the provisions.

As such view without any logic and supportive law is not acceptable to the applicant.

6.2 Pl. refer Order of Bombay High court in case of The Transport Manager, Kolhapur ... vs Pravin Bhabhulal Shah, on 2 July, 2004 2004 (5) BomCR 10, (2005) IILLJ 104 Bom, 2005 (1) MhLj 497, 2005 (1) SLJ 485 Bombay which says: at para 8.” Mr. Topkar, learned Advocate for Respondent No. 1 workman, submits that there is no period of limitation prescribed under the Act or the Rules framed there under. As rightly submitted by Mr. Topkar, the second proviso to Rule 10 provides that there is no limitation for filing an application under Rule 10 if the employer has failed to give notice under Sub-section (2) of Section 7. Sub-section (2) of Section 7 of the Act stipulates that the employer shall as soon as the gratuity becomes payable, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable specifying the amount of gratuity, irrespective of whether an application has been made by the workman to claim gratuity. The learned Advocate rightly submits, in my view, that the question of limitation does not arise in the present case as the Petitioner has failed to give the notice as stipulated in Sub-section (2) of Section 7 of the Act. Thus I have rightly approached the controlling authority filing dispute on form ‘N’ within limitation as per act

In CBOSR wages last drawn is not having DA component, 15 days wages have been considered for every year of service beyond 30 years in place of 45 days by misinterpreting the provisions and to arrive one day wages bank has not divided monthly wages by 26 days Then HOW bank can proclaim that gratuity amount of Rs.1011443.38 is better or higher. Please note that This amount is not better because of the service rules but by virtue of my higher basic at the time of superannuation. supreme court of India in case of Allahabad Bank & Anr vs A.India Allahabad Bank Retired ... on 15 December, 2009 Civil Appeal no1478 of 2004 had held at para18 (see last 9th line); 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

It is absolutely wrong to compare the amount of CBOSR with that of Ceiling limit of the gratuity Act in situation when ingredient of gratuity regulation are inconsistent and cannot be given effect. If anything is to be compared than operative and mandatory provisions of the PG Act are to be compared with that of CBOSR in accordance with the section4 (5).

6.3 Civil Misc. Writ Petition No. 11523 of 2004 of Bank of Baroda Vs. Controlling Authority is a judgment of Hon^{ble} Allahabad High court which must be honored by the Bank.

6.4 Banks wants to analyze the legal aspects of the DLC Hyderabad given in order dated 31/12/2017 which has compared the components of the Act with that of the regulation . Applicant is well prepared to face the legal test by making its stand very clear in next paras.

6.5 Bank has misquoted the order of the Hon^{ble} Supreme court as it is not applicable in light of section 14 of the PG act which has rightly been explained by Apex Court of India in Civil Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 2012) that "A perusal of section14 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. Therefore, insofar as entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law)THE PROVISION OF THE GRATUITY ACT CANNOT BE IGNORED. The term instrument and the phrase instrument or contract having the force of law shall most definitely be deemed to include the 1995 regulations which regulate the Payment of Gratuity to the appellant. Civil Appeal no 14739/2015 cited by the bank is very much applicable in present welfare legislation i.e. in gratuity act passed by the parliament wherein definition of wages is very clear and to be given effect in regulation 46 of 1979 of the bank. As bank has not obtained any exemption from the applicability of the provisions of the PG Act as such Definition of the wages under section 2(s) and other rules which are very clear

and plaint to understand are to be compared with that of regulation so that there is no Inconsistency in the scheme . Unfortunately bank has misunderstood that provisions of the regulation are superior to the Act due to which bank is perplexed.

6.6 . Because Bank is very much confused about the nature of gratuity and its applicability in service regulation. As such applicability of the cited case is completely denied in our present case.

6.7 Banks version has no merit as respondent has not given any reason for not taking in to account the applicability of operational provisions in its scheme. Simply saying that Pay has been defined in regulation and payment is in accordance to it does not hold good legally, Contrary to it applicant most humbly wish to submit following legal and sustainable views as under.

1. Applicants at the time of superannuation/retirement were governed by the regulation of the bank i.e. other than the PG Act-1972 and the applicants are entitled to payment of gratuity under section 4 of the Payment of Gratuity Act, 1972 OR as per sub regulation 46 (2) of the bank of India officers service regulation1979 , whichever is higher. Our Employer-

Bank is more concerned with the industrial peace and better “employer-employee relations” as such our employer bank prepared a scheme under the scope of sub-section 5 of Section 4 to pay Gratuity in better terms to its employees, irrespective of any statutory minimum amount prescribed under law.

2. Payment of Gratuity in better terms as permissible only under the scope of sub-section 5 of Section 4 of the P.G.Act-1972. At the same time Section 5 of the P.G. Act also stipulates to obtain exemption from the operation of the provisions of the act-1972. Otherwise in absence of exemption provisions of the Payment of Gratuity Act will be attracted ipso facto . Please refer Civil Misc. Writ Petition No. 11523 of 2004 between Bank of Baroda Vs. Controlling Authority wherein it has been held that “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.”.

3. Respondent-Bank has not obtained any exemption, as provided under section 5 of the Act, from the operation of the provisions of the PG act- as such it is obligatory at the part of respondent-bank to comply with operational&

mandatory provisions of the PG Act-1972 in its gratuity scheme i.e. Regulation 46 of Bank of India 1979. Pl. refer ruling of Hon'ble Supreme Court in Civil Appeal No 1478 of 2004–Allahabad Bank Vs All India Allahabad Bank Retired Employees Association decided on 15.12.2009 And Civil Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 2012) between PNB vs YK singla wherein above legal view has been endorsed in both the Judgments.

4. The applicants wish to put forward that for calculation of the Gratuity payable under the Regulation 46(2), the non-applicant- Bank, should have included the Dearness Allowance to give full meaning of “Wages” (instead of Basic Pay only) and to make it consistent with provisions of the Gratuity Act. In support of claim, the applicant submits as under;

A. 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 banks Scheme i.e. Officers Service Regulations

B. 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 the Applicants are also decided by Settlements and the term “wages” appearing in Settlements includes Dearness Allowance. Therefore the “Pay” as appearing in Regulations 46 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.

C. In W.A.No.1040 of 2009 between Bank of Baroda vs A.M.Sampath Honourable madras high court has held that “We are not impressed with this line of argument. The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair

play. Therefore, the term "last drawn wage" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the management cannot adopt an artificial interpretation with reference to the term "wages". It is in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman.".

D. 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 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

E. Besides the above in Bank of India salary is reckoned for gratuity in respect of officers. It is also a legal fact there cannot be salary without D.A . Definition of Salary includes Basic +DA. Pl. refer judgment of APPELLATE, AUTHORITY UNDER PAYMENT OF GRATUITY ACT,L972 AND DEPUTY CHTEF LABOUR COMMTSSTONER (CENTRAL),SHRAM BHAWAN, JAGJIVAN NAGAR, DHANBAD wherein he has stated that The Gratuity Rules of Bank of India and the Refutations of the Appellant 'Bank governing the payment of gratuity to the officers and employees is by and large same except the fact that in case of sponsor bank(BOI) salary is reckoned for gratuity in respect of officers whereas-in case of the Appellant Bank it is the Basic pay.

On the basis of above Judgments applicants has given reasons to include Dearness Allowance while making payment of gratuity under banks Scheme i.e. Officers Service Regulations.

Thanks and regards

Name of Applicant

Date

Address:

Rejoinder of Corporation Bank has been prepared by me ,(suresh Singh .8172900138, smsaligarh@gmail.com) Pl ensure that service in excess of 6

month is being treated as complete or not in COB. Any matter if not pertains to your regulation then pl. edit according to need.

Reply for IOB through ALC
(From page No. 28 to page No. 33)

BEFORE THE CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY AT-1972
& THE REGIONAL LABOUR COMMISSIONER (CENTRAL) TRIVANDRUM.
SECTOR 9A, CHANDIGARH

G.A. NO.36/69/2019/ACH/C.III

Between:

G.V.ANANTHA KRISHNAN

: Applicant

And

G.M. INDIAN OVER SEAS BANK

: Respondent

Applicant most humbly wish to submit point wise reply /rejoinder as under.

1. Such a reply which is without any support of law and facts is not acceptable to the applicant contrarily to it applicant wish to submit that Prior to promulgation of P.G.Act-1972 different states were paying gratuity with different methods creating discord /dissatisfaction among the workers of the industries which have branches in more than two states. Govt. of India in order to remove this anomaly brought this welfare legislation in 1972 called P.G.Act-1972 to ensure uniformity in payment of gratuity in territory of India. Under the scope of sub-section 5 of section 4 of P.G.Act-1972, industries / institutions were allowed to make their own scheme of gratuity but in **better/higher terms only** .Violating the law laid down by the parliament Canara Bank has framed gratuity regulation 46 of 1979 by misinterpreting applicable operational and mandatory provisions of the PG Act-172. Thus Applicant has rightly raised the dispute at right form.
2. It is a matter on record with no dispute.
3. Applicant has retired / superannuated on Date.....But Respondent-bank neither paid me gratuity within 30 days from its due date nor provided Form "L" in compliance of Sub-

section 2 of the section 7. Thus Respondent-bank deprived the applicant from opportunity to choose gratuity in better terms, violating the statutory provisions under section 7 (2). Applicant has been paid lesser amount as Components which were to be taken for last wages as per definition of Section 2(s) were not taken. Had the bank taken consistent components of wages under the gratuity scheme of the bank then my claim would have been for Rs. Thus bank has paid me Rs. Less if compared with my entitled amount of Rs.

4. Bank has rightly said that Section 4(5) says that “Nothing shall affect the right of an employee to receive better terms of gratuity under any award/agreement or contract with the employer. But it is an absolute misconception that this section protects the Scheme. Contrary to it section 4(5) gives protection to the employee to compare the terms of the regulation with that of gratuity Act. Respondent-bank is required to read sub-section 5 of section 4 along with section 14 of the PG Act then only bank can understand the legal position. On having a bird's view on following mathematical formulae of PG Act and that of Regulation, anyone can draw a conclusion that bank has not at all complied the operative & mandatory provisions of provisions of the PG Act, and instead of giving protection in its scheme bank has exposed the applicant to severe consequences .

(a) As per P.G.Act,

$$\text{Last wages} / 26 \times 15 \text{ days} \times \text{no of years served} = \text{Product}$$

Here last wages have been defined by PG Act as “Wages” mean all emoluments which are carried by an employee while on duty or on leave in accordance with terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, rent allowance, overtime wages and any other allowance”

(b) Formula as per Regulation:

$$\text{Last pay Drawn} \times 15 = \text{Product (up to 30 years)} + \text{Last pay} / 2 \times \text{no of years beyond service period of 30 years} = \text{Product as per regulation}$$

Here last Pay/Salary defined by the Bank for the purpose of Gratuity is only Basic pay which is Inconsistent which cannot be given effect. **How bank can proclaim its scheme/regulation as better or higher? When (a) wages does not include D.A, Special allowance and DA on special Allowance (b) to arrive one day wages bank is dividing monthly pay by 30 instead of 26 days(c) by taking wrong interpretation of phrase Extra / ADDITIONAL to one half of a month's pay banks has not considered 45 days wages for every year beyond service period of 30 years. Despite all the demerits / Inconsistent component , surprisingly bank is claiming that it has paid the gratuity in better terms** We conclude reply of the bank at this is point has no merit whereas claim of the applicant is genuine, legal and sustainable due to its consistency which is capable to qualify the legal tests in court of law..

5. **As per Clause 32 of the regulation applicant is entitled to get one month's salary for each completed year of service subject to a maximum of 15 months' salary . As per clause 33(a) an employee who rendered service more than thirty (30) years, is entitled to get an extra gratuity at the rate of one half pay months' salary for each completed year of service in excess of 30 years.**

On drawing the mathematical formula for calculation of gratuity amount for the service period beyond the 30 years, shall be Existing rate One months' Salary for each year (up to 30 years) + Extra, half pay of months' salary = 30 +15=45 days Salary for each year of service beyond 30 years. But bank is paying only 15 days Basic pay only for each year of service beyond 30 years that too without any basis or logic where as applicant is submitting herewith logically sustainable arguments as under.

- (a) If you go by the definition of Salary then it includes D.A.
(b) Jabalpur High Court in Application no 14091 Of 2019 has held that there cannot be salary without DA
(c) Pl. refer Civil Misc. Writ Petition No. 11523 of 2004 of Bank of Baroda Vs. Controlling Authority wherein it is **has been held that**“ 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.” This order has included DA in calculation of the regulation.

Bank is restricting its view only up to the word meaning of “ Half of months salary ” but not mentioning the effect of the phrase “Extra ” prefixed to “ Half of months Salary ” as mentioned in the clause 33(a) of regulation 46 . True extract is being given hereunder;

As per Clause 32 of the regulation applicant is entitled to get one month's salary for each completed year of service subject to a maximum of 15 months' salary . As per clause 33(a) an employee who rendered service more than thirty (30) years, is entitled to get an extra gratuity at the rate of one half pay months' salary for each completed year of service in excess of 30 years.

As mentioned above in regulation , one can easily establish that half pay of month's salary i.e 15 days are to be added to the base rate of the Bank mentioned for 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 (30days +Extra half) as gratuity amount beyond 30 yrs of service and same can be given effect as per law. Thus Meaning of Extra Half Pay of month's salary is in consonance with spirit of the statute.

the BASE RATE ,of ONE MONTH per year, to be correctly mean as ONE added with HALF to be ONE AND A HALF.

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 ordinarily be understood in a sense in which they best harmonize 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.

If bank's view is taken as only 15 days beyond 30 years then what for two rates were quoted in regulation 46, in that situation bank formula would have been 15 days wages irrespective of the service period ($\frac{LASTPAY}{2 \times 15 \times \text{no. of completed year of service or part thereof in excess of 6 months}}$) or $\frac{LASTPAY \times \text{no. of completed year of service or part thereof in excess of 6 months}}{2}$) This type of formula can never be consistent as it does not comply mandatory and operational provisions of the PG Act-1972. **Please refer *Moil Executive Association, ... vs Union Of India Through Ministry on 15 February, 2017 W.P. 775/2015 Bombay high court Nagpur* where it is 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.**

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 or part thereof in excess of 6 months without any restriction of years of service, as such in context of gratuity the text mentioned in regulation 46 meaning of Extra “one half” would give new rate by adding 15 days wages /Salary to existing base rate of one month's wages/Salary i.e. $30 + 15 = 45$ days for each completed year of service. This is the logical and lawful meaning of “Extra half pay of months salary” but bank has neither given any supporting reason to support applicability of 15 days wages/Salary for each year beyond 30 yrs service nor took any cognizance of word “Extra” as prefix to “ half pay of months pay ” to draw the actual meaning of Extra one half which is illogical and illegal not acceptable under the law.

Interpretation is the method by which the true sense or the meaning of the word is understood , logical interpretation calls for the comparison of the statute with other statutes and with the whole system of law, and for the consideration of the time and circumstances in which the statute was passed. It is the duty of the judiciary to ascertain the true legal meaning of the words used by the legislature.

Whenever the meaning of the word, phrase, expression or sentence is uncertain, it may be a case of departing from the plain grammatical meaning, and there may be a need for application of the golden rule. If the meaning of the section is plain, it is to be applied whatever be the result “golden rule” that the words should be given their ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the instrument For the application of the literal rule, a clear and unequivocal meaning is essential.

Besides the above if we go by the intent of increase in eligible quantum of Gratuity is evident from following Provisions of the Act –

A. No Gratuity for Service less than 5 years is a well thought provision of the PG Act-1972

B. Quantum of eligible number of days increases with increase in Service Rendered. i.e. amount of the gratuity is directly proportionate to the length of service(if more is the length of service more would be the quantum of gratuity).

Both of above provisions of the PG act clearly show that intent is to reward more for loyalty of employee seen from the longer period of Service Rendered.

Keeping in mind the intent of the welfare legislation –P.G,Act Hon`ble Supreme court of India in case of Netram Sahu Vs State of Chhatisgarh awarded gratuity amount to the applicant setting aside the judgments given by single and divisional benches of High Court who disallowed the gratuity on the ground that his was regularized in services only for the period of three years and one month, though applicant has served in the department continuously.

Further, Various Judgments have concluded that the Gratuity Act is social security and welfare measure, which must be interpreted for liberal application.

6. There cannot be two meaning of Salary one with DA as included in formula of PG Act and another Meaning without D.A as given in formula of Regulation 46 of 1979. This is highly objectionable and does not sustain in eyes of the LAW.
7. Banks calculation under regulation are inconsistent as regard to following . **(a) wages does not include D.A, Special allowance and DA on special Allowance (b) to arrive one day wages bank is dividing monthly pay by 30 instead of 26 days(c) by taking wrong interpretation of phrase Extra / to half pay of a month's salary. Banks has not considered 45 days wages for every year beyond service period of 30 years. As such Components of the regulations are under dispute in absence of exemption by the bank. Dispute has been placed before the learned Controlling Authority for the justice to the applicant.**
8. Applicant was governed by the regulation of the bank i.e. other than the PG Act as such he right of the applicant under section 4(5) gives protection to the employee to compare the terms of the regulation with that of gratuity Act. In present case banks has calculated the gratuity of the applicant with inconsistent components which are to be removed with the order/ judgment of the learned Controlling authority . Claim of the applicant is to be settled with following consistent components
 - A. Last salary /26 X30 days X 15 months up to 30 years. B. Last salary /26 X45 days X no of years beyond 30 years . Entitled amount will be equal to A+B while for arriving differential amount reduce gratuity amount which have already received by you.

PRAYER

In view of the above legal facts, orders of Ho`ble apex Court and High Courts, evidences , provisions of P.G.Act-1972 and regulations of Canara bank mentioned as 46 of 1979 it has been proved that employer-bank has not only violated, ignored and downgraded the various mandatory provisions of the P.G. act-1972 but also misinterpreted the various regulations and definitions

of the Salary in service regulation 46 of 1979 and even could not issued proper form "L" with a copy to your esteemed office , thus deprived the applicants for the benefits for which applicant is entitled. **I pray your good office to please be kind enough to issue suitable orders to make payment of my differential amount along with mandatory interest at the rate of 10% from the date of my retirement to till the date of actual payment.**

Date :

[name] with full address

Applicant:

Address :

**Sri. Vijay Munteja, PNB, shared his proforma reply.
(Page No 34 to 37)**

**Our Reply in Rejoinder- if the Bank takes objection on
condonation of delay**

The respondent bank in his reply dated _____ in para no. ____ 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, vide Respondent Bank's letter/mail dated_____. Thereafter, it took me some time to have legal consultations and collection of old documents related to my last drawn salary as well as details of Payment of Gratuity etc. 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, if any, 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.

This reply has been prepared by SURESH SINGH 8172900138 & 80773988 - smsaligarh@gmail.com against reply of CANARA BANK

(Page No. 38 to Page No. 56)

BEFORE THE CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY AT-1972
& THE REGIONAL LABOUR COMMISSIONER (CENTRAL)

TRIVANDRU.

Application No. G.A -36/48)2019/RLC/TVM

Between:

Sri G. VIJAYAKUAR : Applicant

And

CANARA BANK : Respondent

Applicant most humbly wish to submit point wise reply /rejoinder as under.

1. Such a reply which is without any support of law and facts is not acceptable to the applicant contrarily to it applicant wish to submit that Prior to promulgation of P.G.Act-1972 different states were paying gratuity with different methods creating discord /disatisfaction among the workers of the industries which have branches in more than two states. Govt. of India in order to remove this anomaly brought this welfare legislation in 1972 called P.G.Act-1972 to ensure uniformity in payment of gratuity in territory of India. Under the scope of sub-section 5 of section 4 of P.G.Act-1972, industries / institutions were allowed to make their own scheme of gratuity but in better/higher terms only I.e all the terms of the Act are to be maintained in letter and spirit . But Canara Bank violating the welfare legislation has framed gratuity regulation 46 of 1979 by misinterpreting applicable operational and mandatory provisions of the PG Act-172. Thus Applicant has rightly raised the dispute at right forum.

2. This point of bank has no MERIT as Respondent-Bank has paid Gratuity by applying inconsistent components in its mathematical formula to arrive gratuity amount which is not only at lower side but also a inconsistent product. It is well established law that in any formula if Inconsistent components/

ingredients will replace the Consistent components then final result would also be Inconsistent and same cannot be give effect to. Bank has not applied standards/basic rules of the PG Act in its ₹ regulation or Scheme. It can be understood by following.

(I) $(3+2) \times 5 \text{ years} = 25$, Here $(3 \text{ Basic pay} + 2 \text{ D.A}) = \text{Salary}$

(II) $(3+0) \times 5 \text{ years} = 15$ Here $(3 \text{ Basic pay} + 0 \text{ D.A}) = \text{Salary}$

In its regulation Bank has not included D.A. Component in Salary. SALARY has been defined in Banks ₹ regulation as Basic + D.A. But in gratuity calculation bank has taken only Basic pay by arbitrary exercise of powers even then Bank is saying that it is paying higher. Wherever there are two products arrived differently one by a standard

formula(PG Act) and other in better terms(Regulation) then a lay man can understand that product of the better formula would be better. But in above cited example bank's product is lower & inconsistent to Standard formula Then how bank can say that it has paid better?. Pl refer supreme court of India in case of Allahabad Bank & Anr vs A.India Allahabad Bank Retired ... on 15 December, 2009 Civil Appeal no1478 of 2004 had held at para18 (see last 9th line); 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.

3. The respondent bank in his reply dated 11/06/2019 in para no. 03 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.

Applicant had relied completely on the bank management and believed that bank had paid gratuity in accordance to law. But from the various orders Like DLC-Hydrabad, RLC-Ranchi and many others, applicant who was not aware of technicalities of the law, came to know that Bank has not included D.A. in qualifying amount of Salary, counted for payment of gratuity, furthermore, instead of 26 days ₹ month Bank had considered 30 days ₹ month for the

purpose of calculating the gratuity against the applicability of the provisions of the PG Act, most importantly when bank has not taken any exemption from the appropriate authority under section 5 of the Act. Applicant after collecting the related data like salary slip etc (Pl. refer reply at page no.4 point no.4 which says that bank under RTI only provided the last Salary slip 20/03/19 through appellate authority). consulted the legal practitioners and welfare societies of the retirees, thereafter applicant also studied the provisions of the PG Act and following Judgments of Various courts of law and then only applicant filed this dispute at the right forum. I. 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.

II. 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.

III. 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.

IV. 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.

V. 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.

VI. 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.

VII. 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:

1. The Deputy Chief Labour Commissioner (Central) Ajmer in an Appeal

No. PGA-18/2017 dated 21.12.2018. 2. The Regional Labour Commissioner (Central) Ranchi in application no. 36(31)2016-RLC(R) dated 26.06.2018.

3. The Assistant Labour Commissioner (Central) Silchar in application no. 48(03)/2017) S/A dated 19.01.2018

4. The Assistant Labour Commissioner (Central) Jhansi in application no. JSH-36(07)/2018) dated 18.03.2019

5. The Assistant Labour Commissioner (Central) Ajmer in application no.

AJ-48(224)/2018/ALC dated 29.03.2019 It is a well settled legal position that cause of action arises only when the payment is denied/not responded and nonpayment of gratuity is continuing.

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, if any, 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.

4. Applicant does not dispute the construction of the regulation as law but wish to refer Civil Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 202) which speaks about applicability of mandatory provisions of the gratuity act over regulations which says "A perusal of section 14 under the PG Act, 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. Therefore, insofar as entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law) THE PROVISION OF THE GRATUITY ACT CANNOT BE IGNORED. The term instrument and the phrase instrument or contract having the force of law shall most definitely be deemed to include the 1995 regulations which regulate the Payment of Gratuity to the appellant". Article 41 of the Constitution of India states that the law declared by Supreme Court is to be binding on all Courts within the territory of India.

5. Bank has taken misinterpretation of last wages by applying the Basic pay+FPP+PQP+ Stagnation Increment only, in regulation 46 of 1979 of CBOSR i.e. D.A has been excluded in regulation against the provision of the Act,. Further, to arrive one day wages monthly wages have not been divided by 26 in regulation against the provision of the Act. Besides above two inconsistencies under gratuity regulation, bank has considered 15 days wages for each completed year beyond 30 years of service against the applicability of 45 days wages for each year beyond 30 years. Thus bank has contemplated its own rules as if regulation gives power to the employer to frame inconsistent rules violating the mandatory provisions of the PG Act. Thus it is proved that definitions of the regulation are inconsistent and cannot be given effect.

6. Appreciation of the Objections given in its written briefs:

i. It is a matter of record and is not under dispute

ii. Respondent bank has not issued any Form L as per section 7(2) of the PG Act and thus violated the provisions of the Act. Bank has paid the gratuity amount of

Rs.636812.67 against the entitlement of Rs..... Thus Cause of action is of continuing nature.

iii. Bank has stated that it has calculated the gratuity amount by both the methods.

a) Calculation as per P.G.Act : Rs.883076.95

b) Maximum Payable under the Act : Rs.350000.00

c) Calculation as per CBOSR : Rs.636812.67

Bank has made such a jugglery by misinterpretation of the provisions under regulation that "End product" arrived by Bank's formula would always remain less than End product arrived by the formula of of the PG.Act-1972 as it does not includes DA in last wages of the applicant. that is why bank has intentionally not provided form "L" according to section 7(2). Bank's version that amount of Rs636812.67 is beneficial as compared to the Act is a misleading statement because this amount does not include D.A, 45 days wages for each year of service beyond 30 years and had not considered 26

days month in place of 30 as provided under statute. Had the bank included these applicable components then qualifying amount of gratuity would have been much more than this amount. That is the reason applicant has rightly raised the dispute for differential amount through proper forum. Total entitlement of the applicant comes To Rs..... against which Rs.636812.67 was received , now differential claim of the applicant is for Rs.....

iv. Extracts of Service regulation are under no dispute being true extract but application of its provisions with inconsistent definitions and inconsistent components are under lawful dispute. Bank has taken misinterpretation of last wages by applying the Basic pay+FPP+PQP+ Stagnation Increment only, in regulation 46 of 1979 of CBOSR(Canara Bank officers Service regulations) i.e. D.A has been excluded in regulation against the applicable provision of the Act,. Further, to arrive one day wages monthly wages have not been divided by 26 in regulation against the provision of the Act. Besides above two inconsistencies under gratuity regulation has considered 15 days wages for each completed year beyond 30 years of service against the applicability of 45 days wages for each year beyond 30 years. Thus bank has contemplated its own rules as if regulation gives power to the employer to frame inconsistent rules violating the mandatory provisions of the PG Act. Thus it is proved that definitions of the regulation are inconsistent and cannot be given effect. Formula of the P.G. Act mentioned at this point is not under dispute.

v. Formula of the P.G. Act mentioned at this point is not under dispute. It may be noted hear the in place wages bank has used Salary which includes D.A

vi. Applicant has rightly taken gross salary which is in consonance with the definition of the last wages defined under section 2(s) which is extracted as below;

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

Pl. refer Civil Misc. Writ Petition No. 11523 of 2004 of Bank of Baroda Vs. Controlling Authority wherein it is has been held that “ 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 favorable to the employee as also on Amalgamation Scheme.” This order has included DA in calculation of the regulation.

vii. There is no dispute that employer has to calculate Gratuity separately as per act and as per regulation. But there is legal protection to the applicant under section 4(5) which says that if an employee is governed by any agreement /Contract then he has right to receive gratuity in better/higher terms, wherein mandatory and operative provisions of the act would be applicable under the regulation. Thereafter whichever amount is higher is to be chosen by the employee. This option is only for the employee but not to the employer. But unfortunately bank has neither applied mandatory and operative provisions of the act in its scheme nor offered calculation of the regulation in form “L” specified under section 7(2). as such view of the bank has no Merit specifically under the circumstances when bank has not taken exemption from the applicability of the provisions of the Act in regulation.

SUBMISSION OF THE BANK AGAINST THE CONTENTIONS OF THE APPLICANT::

Pointwise reply on subject is being submitted as under

1. It is absolutely wrong to say that gratuity of the Applicant was calculated both as per PG Act and as per regulation 46 of 1979 . Had the respondent prepared it as stated above than calculation and amount offered under regulation must have been reflected in form “L” . In absence of it bank can not say the amount paid under the act was better or higher when respondent has not included DA in calculation under regulation 46 of CB-OSR

Honorable Supreme court of India in case of Allahabad Bank &Anr vs A.India Allahabad Bank Retired ... on 15 December, 2009 Civil Appeal no1478 of 2004 had held at para18 (see last 9th line); 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.

2. Reply of the respondent is not at all acceptable and as it has tried an unethical effort to deny and deprive the Applicant of his rightful statutory dues. Reason is that Bank has deprived the applicant by excluding not only DA but also did not consider a month of 26 working days. Contrary to it bank considered a month of 30 days while calculating the gratuity. Further, for each year of service beyond 30 years bank has taken the word meaning of one-half without recognition of phrase Additional which was pre-fixed to one-half. Thus only 15 days wages were given for each year beyond 30 years in place of 45 days. Respondent has misconceived the section 4(5) of the PG Act as if it contemplates the employer to frame its own rules which cannot be challenged or compared with provisions of the PG.Act. whereas legal fact is that Section 4(5) of the PG ACT Says :-“Nothing in this section shall effect the right of the employee to receive better terms of gratuity under any award or agreement or contract with the employer”.

Section 4 of the gratuity act permits an employee to exercise the right to make a choice of being governed by some alternative provisions/instruments, other than gratuity act for drawing the benefits of the gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under the said provision/ instrument in comparison to his entitlement under the gratuity act-1972..

3. As respondent-bank has admittedly said that as per act wages of the applicant were taken as Rs.42518.52 being drawn as last salary where as under the regulation wages were taken as Rs.35510.00. From the above it is clear that Salary has been defined under regulation without DA. The High Court of Madhya Pradesh, main seat Jabalpur, in Application no.14091/2019(W.A1318-2018) of Madhyanchal Gramin bank held that DA is to be included while calculating the gratuity under regulation. and Other contents like designation and period of service are not in any dispute. By virtue of high Basic pay qualifying gratuity amount under regulation was higher than the amount calculated under the act then it does not mean that bank will reckon this amount as higher and deprive the applicant from the inclusive effect of D.A which would make the qualifying gratuity amount on very higher side. This version of the bank is unsustainable in the light of Hon^{ble} supreme court order in case of Allahabad Bank &Anr vs A.India Allahabad Bank Retired ... on 15 December, 2009 Civil Appeal no1478 of 2004

4. It confirms that bank has delayed the supply of RTI information related with last drawn Salary.

5. Applicant is mentioning following Judgments of various court supporting the legal view of applicant that respondent has calculated gratuity with inconsistent components .

I. Pl. refer Civil Misc. Writ Petition No. 11523 of 2004 of Bank of Baroda Vs. Controlling Authority wherein it is has been held that“ 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.” This order has included DA in calculation of the regulation.

II. 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 the Applicants are also decided by Settlements and the term “wages” appearing in Settlements includes Dearness Allowance. Therefore the “Pay” as appearing in Regulations 46 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.

III. In W.A.No.1040 of 2009 between Bank of Baroda vs A.M.Sampath Honourable madras high court has held that “We are not impressed with this line of argument. The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore, the term "last drawn wage" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured

interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the management cannot adopt an artificial interpretation with reference to the term "wages". It is

in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman.".

IV. 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 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

V. The monthly wages of an employee should be taken as what he gets for 26 working days and his daily wages should be ascertained on that basis but bank has not considered the same as it has considered monthly wages for 30 days. Pl. Refer case of Calcutta High Court in case of Hukam chand jute mills ltd and Kerala High Court in case of Vallabhdas kanji (P) Ltd wherein Honourable courts held that for the purpose of determining the gratuity 'fifteen days wages should be taken as wages earned in fifteen days and NOT WAGES EARNED DURING A PERIOD OF FIFTEEN DAYS including the days on which the employee is not entitled to payment of wages. The High court of Gujrat is also of the same view. The supreme Court has held that the views of the High court of Gujrat are reasonable.

VI. Regarding Payment of gratuity beyond 30 years of service, bank has taken word meaning of one half but ignored the word prefixed to one-half of months pay which gives clear meaning or rate of 45 days wages for each year of service beyond 30 years. In support of our version applicants are submitting hereunder the logical and sustainable view.

By conjoint reading of the prefix "Additional" along with "one-half" as mentioned above in Regulation 46(2) of Officers Service Regulations- 1979, one can easily establish that one half i.e. 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. Applicant further adds and submits reasons in support of claim of wages of 45 days for each year beyond 30 years service as under-

i. Bank has clearly mentioned the rate of payment of gratuity at regulation 46 (2) reproduced by the respondent. Bank's basic rate is one month's Pay for every completed year of service. Thereafter Additional one half is payable. On drawing the mathematical formula it comes as 30 + additional 15 days wages = 45 days wages for each year beyond 30years. The Service Gratuity beyond 30 years is prefixed with word Additional, which is to maintain the intent and spirit of the Act. If we go by the spirit and intent of the Act, as seen from the increasing trend in eligible quantum of Gratuity, which is evident from following Provisions of the Act –

(a) No Gratuity for Service less than 5 years is a well thought provision of the Payment of Gratuity Act-1972

(b) Quantum of eligible number of days increases with increase in service rendered, i.e. amount of the gratuity is directly proportionate to the length of service (if more is the length of service more would be the quantum of gratuity).(C) More over service in excess of 6 months has been treated to maintain the Spirit of the statute. Besides these two clauses division of monthly wages by 26 working days to draw the wages of one or more days also expresses the intent of the statute.

Above provisions of the PG act clearly show that intent is to reward more for loyalty of employee seen from the longer period of service rendered.

(ii) Keeping in mind the intent of the welfare legislation- (P.G.Act-1972), the Hon'ble Supreme court of India in Civil Appeal No.1254 of 2018 - case of Netram Sahau Vs State of Chhattisgarh awarded gratuity amount to the applicant setting aside the judgments given by single and divisional benches of High Court who disallowed the gratuity on the ground that his regularized

services period, was only for the period of three years and one month, though applicant has served in the department continuously for a period of 25 years out of which 22 years he has worked as DAILY WAGER .

It is submitted that by above judgment the intent and spirit behind payment of Gratuity is also a reward in form of higher amount for longer period of service taking 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 to be half month from one month is not only against the intent and spirit of the welfare scheme, but also against the rational and justice giving policy.

(iii) 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"

If banks view is taken as only 15 days beyond 30 years then what for two rates were quoted in regulation 46(2), in that situation bank formula would have been 15 days wages irrespective of the service period. This type of formula, which reduces eligibility from One Month's Pay to Half Month's Pay, can never be consistent as it does not comply with mandatory and operational provisions of the PG Act-1972. (iv) It is submitted that the non-applicant "Canara Bank " is paying gratuity as per Scheme with better terms, under Reg-46 of Officers Service Regulations-1979, as permitted under sub-section -5 of Section-4 of Gratuity Act. It is held by the 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.*) that sub-section 5 of Section 4 is an exception to the main section under which gratuity is payable to the employee. Further 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 it is 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.

In view of above submissions it is clear that the method adopted for calculation of the gratuity amount by reducing the rate from one month per year to half

month per years if not is mischief, then it is certainly incorrect interpretation of the provision therein.

(V) 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 - 46 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.

(VI) It is submitted that the interpretation is the method by which the true sense or the meaning of the word is understood. Logical interpretation calls for the comparison of the statute with other statutes and with the whole system of law, and for the consideration of the time and circumstances in which the statute was passed. It is the duty of the judicature to ascertain the true legal meaning of the words used by the legislature. Whenever the meaning of the word, phrase, expression or sentence is uncertain, it may

be a case of departing from the plain grammatical meaning, and there may be a need for application of the golden rule. If the meaning of the section is plain, it is to be applied whatever be the result "golden rule" that the words should be given their ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the instrument. For the application of the literal rule, a clear and unequivocal meaning is essential.

□ In view of all above submission, it is clear that phrase "Additional" prefixed to "one-half" as mentioned in the proviso clause of Regulation 46(2), has the only logical conclusion that it must be taken as One and a Half Month's Wage for service beyond 30 years

9. There is no dispute over the meaning of one-half but contention of the applicant is that this one-half is to be read along with prefix " ADDITIONAL" if it is read with prefix " Additional one-half" then from the Narration of the provision a person of normal prudence can draw inference of " Additional one-

half” as one and half. Detailed explanation in support of this view has already given in previous para / point no 8.

10. Respondent-Bank is placing a view as if gratuity was to be paid only for 30 years and beyond period of 30 years one half payment was additional. This view cannot qualify the legal test under the following legal situation.

I. PG Act has made provision for payment of gratuity for every completed year of service and also for the period if it exceeds six months to be taken as one year. Then how respondent –bank can say that payment of gratuity was restricted only up to 30 years. Because bank is admittedly saying the it is paying gratuity in better terms under the provision of section 4(5)

II. Applicant has right to receive better gratuity in better terms if compared with that of provisions/terms of PGAct. Thus bank has now power to restrict payment of gratuity only up to 30 years.

III. Interpretation taken by the bank is absolutely wrong but meaning of the text “ Additional one half” is to be taken in context in which it has been used . As per regulation there are two slabs/ brackets first includes service period up to 30 years with base

rate of one month’s wages/pay for each completed year. Second bracket for the service beyond the 30 years for which rate is additional one –half this phrase gives correct meaning as 30 days + 15 =45. Employer should not take the plea of nothingness as well as to take refuge of untruth &lie. Employer must interpret the clauses of law in right perspectives for which law is meant for but not to take advantage of misinterpretation to deceive the employee.

11. Applicant would like to mention that provisions of the PG Act would over ride the regulation having any inconsistency. Pl refer Appeal No 9087 of 2012 (arising out of SLP(Civil) no 14570 of 202) which speaks about applicability of mandatory provisions of the gratuity act over regulations..

12. Applicant do not find any logic or relevance of mentioning of provisions of amendment of year 1994 by the respondent . Further, mentioning of Incomplete extract of service regulation showing rate of one month’s wages/pay for every completed year with a maximum of 15 months Pay” is an attempt of the respondent to deceive the applicant otherwise he would have

completed the extract by adding the remaining part which says Additional one-half is payable for each completed year of service beyond 30 years. Respondent not leaving any attempt of deceiving by this way or that way.

13. In eyes of the respondent there is only one major difference in provisions of PG Act and that of regulation which is that PG Act allows payment of 15 days for each year while regulation provides only 15 months wages/pay as maximum. This type of reply either can be expected from really innocent person or from a very clever person who wants to deceive the others for his own interest. Otherwise, respondent must have read the above quoted/cited Judgments of High/Supreme Court of India and should have understood that in absence of Exemption provisions of the statute would be attracted ipso facto. Further, As Applicant has stated in previous para /point no 10(III) that regulation has two brackets dividing the service period into two with two different rates one up to 30 years having base rate of one months pay up to 30 years with maximum of 15 months pay. Thereafter for 2nd bracket of each year beyond 30 years there is rate of Additional one-half that means 30 days wages +15 days wages in addition= 45 days for each year beyond 30 years which is in consonance with provisions of section 4(5) read with section 14 and also is also in better terms.

14. Respondent has cited provisions of section 14 and section 4(5) of the PG Act but to understand its relevancy respondent must know that sub-Section (5) of section 4 has an overriding effect on all other sub-Sections under Section 4 of the Act. Thus, notwithstanding anything contained under Section 4 of the Act, an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. Further, 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. Therefore, insofar as entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law) **THE PROVISION OF THE GRATUITY ACT CANNOT BE IGNORED.**

15. Respondent has no merit in saying that above section contemplate not to interfere in regulation despite of inconsistency. May applicant know through your esteemed office that how bank is claiming that it is paying gratuity in better or higher terms when it does not includes following

(1) D.A. not included despite various judgments of honorable Courts of Law.

(2) 26 working days not considered to arrive one day or for more days ₹ wages as per provisions under the act. Bank considered 30 days in place of 26 days

(3) 45 days ₹ rate not considered for each year of service beyond 30 years

With above inconsistency can anybody claim that product arrived with the formula of regulation would be better if yes then let the respondent prove it before your good selves.

16. Respondent has requested the honourable Controlling authority to verify the provisions of PG Act and that of fund regulation. We also endorse the same in interest of justice.

17. . Respondent-Banks has stated that componemts of the Wages under regulation and under the section 2(s) are different . This is the one of the bone of contentions as bank does not include D.A and other allowances of permanent nature though it is obligatory at the part of Bank to comply provisions of the statute when Bank has not obtained exemption under section5 of the Act and secondly when applicant is governed by the bipartite agreement.

Respondent-Bank has sanctioned all kind of leaves to the applicant while in service with full emoluments then why only basic in payment of gratuity when act is also statiing the same definition as “Wages” mean all emoluments which are carried by an employee while on duty or on leave in accordance with terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, rent allowance, overtime wages and any other allowance”.

18. In regard to objection at this point related with section 7(5) .Applicant would like to mention that in case of State of Punjab vs Labour Court, Jullundur &Ors on 16 October, 1979 AIR 1981, 1980 SCR (1) 953supreme court of India had held that “It is apparent that the Payment of Gratuity Act enacts a

complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity”

19. Respondent is actually has no merit in its any of the replies as such he wants to get the matter delayed on such unsustainable grounds. Applicant has raised the dispute NOT for any modification or amendment in any ACT or Regulation but for interpretation of the provisions of the regulation 46 which are inconsistent and being defended by the bank un-lawfully with no merit.

20. Applicant has raised dispute because wordings and in the rules of the regulation are inconsistent as such there is no merit in this objection in light of above detailed explanations / judgments ,

21. Respondent-bank has cited the supreme court civil appeal no 14739/2015 which is not related with the gratuity. Moreover, in present case situation is entirely different from the given facts. As such citation does not hold good.

6. It is not correct to say that Writ petition of Saptgiri Gramin bank is under subjudice where as fact is this Hon’ble High Court of Hyderabad in its Interim Order dated 01/02/2018 passed by Hon’ble Justice Suresh kumar Kait and Hon’ble Justice Abhinand kumar Shavili in Writ Appeal No. 91 of 2018 in which declined to interfere with in I.A. No. 1 of 2018 in W.P. No. 1283 of 2018 passed by single Judge, and passed the Order to pay 50% amount.

without prejudice, the Bank is taking shelter of the awards of the Hon’ble Appellate Authority / Dy C.L.C. Dhanbad in case no. 24/2018- A.7 dated 15/11/2018. between Jharkhand Gramin Bank vs Ashok Kumar Prasad, in this case Hon’ble Appellate authority has compared Gratuity Regulations of the Sponsored Bank (Bank of India) with gratuity regulations of Jharkhand Gramin Bank instead of comparing with P.G.Act-1972 . Besides, Appellate Authority Dhanbad has given so many superfluous Justifications like work of RRBs is differen fron Sponsor Bank (BOI), RRBs have limited srvice area while BOI is having vast service Area and he also told that RRBs can not afford additional load of gratuity amount etc. Fact is this RRBs are at par with nationalized commercial bank with regard to Pay and pension, Because of above unrelated reasons Order of the DLC Dhanbad has been challanged in Hon’ble High Court of Jharkhand at Ranchi through Writ Petition Civil no. 1197/2019 and is yet not conclusive and finalized one and hence cannot be relied upon by this Authority.

The Bank seems to be fully confused as he should introspect himself as to where he stands.

PRAYER In view of the above legal facts, orders of Hon^{ble} apex Court and High Courts, evidences , provisions of P.G.Act-1972 and from regulations of 46 of 1979 of Respondent Bank it has been proved that employer-bank has not only violated, ignored and downgraded the various mandatory provisions of the P.G. act-1972 but also misinterpreted the various regulations and definitions like that of the wage etc in service regulation 1979. As such .Applicant pray your good office to please be kind enough to issue suitable orders to make payment of my differential amount of gratuity along with mandatory interest at the rate of 10% from the date of my retirement to till the date of actual payment.

SHRI . G.V. JAGAN MOHAN

Name of : Applicant

Date :

Address :