

Summary

of

Relevant Supreme Court

&

HC Judgments On

Following Gratuity Issues

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1. Whether Following Provisions contained in PG Act-1972 can be overridden & any other Enactment can have anything inconsistent to the PG Act-1972 ?

A. Section 14 of PG Act-1972 States:

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.

B. Sub section 5 of Section 4 of PG Act provides that:-

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

C. Section 4 (2) of PG Act-1972 States:

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

Explanation.-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

D. Section 2 (s) of PG Act-1972 States:

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

E. Section 5 of PG Act-1972 - Power to exempt.-

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

Following Judgments of the Hon'ble Supreme Court & various High Courts are Very Relevant to these issues:

1. ***In State of Punjab v: Labour Court, Jullundur & Ors on 16 October, 1979 : 1979 AIR 1981, 1980 SCR(1)953, Supreme Court of India 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."

2. ***In Allahabad Bank & Anr v/s Allahabad Bank Retired Employees Association , on 15.12.2009 in civil appeal no. 1478 of 2004 Hon'ble Supreme Court of India has held at para 18:***

'.....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 right 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 view expressed by Hon'ble Supreme Court in Civil Appeal no.9087 of 2012 in case of Y.K. Singla Vs Punjab National Banks reads as under:***

....."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-à-vis, any other enactment [including any other instrument or contract] inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, **it is apparent that in cases where gratuity of an employee is not regulated under the provision of the Gratuity Act over all other provisions/enactments [including any instrument or contract having the force of law], the provision of the Gratuity Act can not be ignored**".

"..... the terms of payment of gratuity under the alternative instrument has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision is silent on the issue."

21 ***"..... First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act, that an employee has the right to make a choice of being governed by some alternative provision/ instrument, other than the Gratuity Act, for drawing the benefit of gratuity. If an employee 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 Section 4 (5) of the Gratuity Act. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument...."***

4. ***Civil Misc. Writ Petition No. 11523 of 2004 between Bank of Baroda Vs. Controlling Authority, which 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 favorable to the employee as also on Amalgamation Scheme." .It has also held that ***" In all welfare legislatures, the amount payable to the employees or labourers is fixed at the minimum rate and there will not be any prohibition for the employer to give better perquisites or amount than what is fixed under law. The employer, who is more concerned with the industrial peace and better employer employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs"***

5. DTC Retired Employees' Association and others Vs. Delhi Transport Corporation and others (2001) 6 SCC 61:

It has been held that "the Sub section (5) of Sec.4 is an exception to the main section under which gratuity is payable to the employee. In all welfare legislatures, the amount payable to the employees or labourers is fixed at the minimum rate and there will not be any prohibition for the employer to give better perquisites or amount than what is fixed under law. The employer, who is more concerned with the industrial peace and better employer-employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs."

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

It has been held that "The scheme envisaged by the Gratuity Act secures the minimum for employee in that behalf and express provisions are found in the Act under which better terms of gratuity is already existing, are not only preserved but better terms could be conferred on the employee in future."

7. Som Prakash Rekhi Vs. Union of India AIR 1981 SC 212. Similar view has been taken in Calcutta Dock Labour Board Vs. Sandhya Mitra AIR 198 5 SC 996 :

"14. Act to override other enactments etc.— The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act." In view of the above quoted section, it is clear that the provisions of the Act will prevail over the other enactments, instruments or contract. Strikingly, it provides overriding effect to 'instruments' or 'contract' also. It has been so held that the expression 'instrument' in section 14 covers trust deed.

As Respondent Bank has not obtained any exemption as per section 5 of the PG Act Because of which bank has to Apply/Comply all the Provisions of P.G Act-1972, in the Officers' Service Regulations (OSR) .

2. Applicability of Judgments of Higher Courts / Higher Authorities – even on Quasi Judicial Authorities

Supreme Court of India

A. Jain Exports (P) Ltd. & Anr vs Union Of India & Ors on 5 May, 1988

In a tier system, undoubtedly decisions of higher authorities are binding on lower authorities and quasi- judicial Tribunals are also bound by this discipline.

"I hope it will never be necessary to say so again that in the herichical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers."

This Court in [Kaushalya Devi Bogra v. Land Acquisition officer](#), [1984] 2 SCC 324 has clearly approved this position. There is aubundance of authority that quasi- judicial tribunals too are bound by this rule.

2. Union Of India And Others vs Kamlakshi Finance Corporation ...

on 24 September, 1991

The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.

3. Inclusion of DA, while calculating Gratuity;

- a. The Hon'ble Supreme Court of India vide ITEM NO. 25 (court no. 4) dated 07.05.2019 has dismissed the appeal filed & has upheld the Order dated 26.02.2019 In W.A.1316, 1317 , & 1318/2018 of High Court of Madhya Pradesh, Principal Seat At Jabalpur between Madhyanchal Gramin Bank & Anr v/s All India Gramin Bank Pensioners Organisation & Ors. Hon'ble High Court in the matter observed as under:-

"In the view of aforesaid analysis, in the considered opinion of this court the respondents have erred in not including DA while calculating gratuity under the regulations. Thus, respondents are directed to include DA and recalculate gratuity of the petitions and pay the difference arising thereto to the petitions within 60 days from the date of communication of this order....."

- b. Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 11523 of 2004 of Bank of Baroda Vs. Controlling Authority wherein D.A. was allowed while making payment of gratuity under banks Scheme i.e. Officers Service Regulations:

15. The petitioner Bank did not include the DA Component while calculating the gratuity amount of Rs.2680/-. Thus it is established that the petitioner Bank Wrongly and inaccurately calculated the gratuity amount payable to the employee by excluding the dearness allowance.

- c. In recent judgment of Supreme Court pronounced on 13 February 2018 vide **Canara Bank vs Savitri Venugopal 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.

- d. The honorable High Court of Madras in W A 1478 of 2006 in P.Selvaraj versus The management of shardlow India on 12. 01. 2007
&
e. In the case of **A.M Sampath v/s Bank of Baroda 2009 (121) FLR 698 (Mad)** Hon'ble High Court held that:

*The Gratuity Act is a beneficial piece of legislation and it should receive and 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 it cannot give any fractured Interpretation** .Further, the settlement provides as to what should be the wages that should be paid to a work man and that the management cannot adopt 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 what is so what is paid but also what is payable to a workman.***

f. In case of Life Insurance Corporation of India V/s Regional Labour Commissioner, Hon'ble Hyderabad High Court & held that:

The original Authority held that the LIC did not follow the principle of calculating the gratuity on the basis of last drawn salary and that the LIC rules do not disentitle an employee to claim higher benefits under the Act.

In this case the Appellate authority held that the method adopted by the LIC in calculating the gratuity payable to the respondent / employee taking into consideration the last drawn pay of the employee as class III official is incorrect. As the Act has overriding effect on other agreement contract etc, and as there is no exception granted to LIC the promulgation of LIC rules by itself cannot be treated as exemption from the provisions of the Act.

4. Special Allowance (DA) to be treated as part of Basic Pay;

- a. In *Manipal Academy of Higher Education vs. Provident Fund Commissioner*, (2008) 5 SCC 428, relying upon Bridge Roof's case the Supreme Court observed:

"10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:

1. *Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.*

- b. In *Kichha Sugar Company Limited through General Manager vs. Tarai Chini Mill Majdoor Union, Uttarakhand*, (2014) 4 SCC 37, the Supreme Court observed as follows:

10. *When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage.*

- c. IN THE SUPREME COURT OF INDIA CIVIL APPELLATE / ORIGINAL JURISDICTION CIVIL APPEAL NO(s). 6221 OF 2011 THE REGIONAL PROVIDENT FUND COMMISSIONER (II) WEST BENGAL ..APPELLANT(S) VERSUS VIVEKANANDA VIDYAMANDIR AND OTHERS ...RESPONDENT(S) dated 28.02.2019:-

14. Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts.

- d. CIVIL APPEAL NO.5525 OF 2012 BANK OF BARODA & ANR. .VS. G. PALANI & ORS.. Dated 13/02/2018

First we come to the rigour of the Regulations. The Regulations have statutory force, having been framed in exercise of the powers under Section 19(2)(f) of the Act of 1970 and are binding. They could not have been supplanted by any executive fiat or order or Joint Note, which has no statutory basis. The Joint Note of the officers also had no statutory force behind it and could not have obliterated any of the provisions of Act of 1970 or the existing Regulations. Thus, Joint Notes could, not have taken away the rights that were available under the Pension Regulations of 1995 to the Officer.

Thus, by the Joint Note that has been relied upon, no estoppel said to have been created. There is no estoppel as against the enforcement of statutory provisions. The Joint Note had no force of law and could not have been against the spirit of the statutory Regulations and the basic service conditions, as envisaged under the Regulations.

- e. The honorable High Court of Madras in W A 1478 of 2006 in P.Selvaraj versus The management of shardlow India on 12. 01. 2007

The Gratuity Act is a beneficial piece of legislation and it should receive and 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 it cannot give any fractured Interpretation .Further, the settlement provides as to what should be the wages that should be paid to a work man and that the management cannot adopt 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 what is so what is paid but also what is payable to a workman.

- f. The Honorable Kerala High Court in WPC No. 32386 of 2015 in MURALEE MOHANAN K.T & Anrs. V/s Corporation Bank, decided on 15/10/2019 has held that the Special Allowance paid with effect from 01.11.2012 as a result of Joint Note dated 25.05.2015 is part of Pay and hence it must be included in the calculation of pay for the purpose of Basic Pension.

"...The respondents are directed to revise the basic pension of the petitioners in accordance with the provisions of the Corporation Bank (Employees) Pension Regulation, 1995 by taking into account the Special Allowances introduced in Exhibit P6 as part of pay for the purpose of Basic Pension"

5. Gratuity Calculations on 26 days basis:

Section 4 (2) of PG Act-1972 States:

Explanation.-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by **dividing the monthly rate of wages last drawn by him by twenty-six** and multiplying the quotient by fifteen.

1. The view expressed by Hon'ble Supreme Court in Civil Appeal no.9087 of 2012 in case of Y.K. Singla Vs Punjab National Banks reads as under:

.....“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-à-vis, any other enactment [including any other instrument or contract] inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, **it is apparent that in cases where gratuity of an employee is not regulated under the provision of the Gratuity Act over all other provisions/enactments [including any instrument or contract having the force of law], the provision of the Gratuity Act can not be ignored**”.

“..... **the terms of payment of gratuity under the alternative instrument has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision is silent on the issue.**”

21 “..... First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act, that an employee has the right to make a choice of being governed by some alternative provision/ instrument, other than the Gratuity Act, for drawing the benefit of gratuity. If an employee 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 Section 4 (5) of the Gratuity Act. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument....”

“.....**This is so because, the terms of payment of gratuity under the alternative instrument has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision is silent on the issue....**”

2. Supreme Court of India Shri Digvijay Woollen Mills Ltd. ... vs Mahendra Prataprai Buch Etc on 23 July, 1980 states:

In the said case, “The employers sought to pay gratuity by dividing the workman's monthly wages by 30 and computing the 15 days' wages on that basis but the workman demanded that his monthly wages should be taken as what he got for 26 working days and not by taking half of his wages in a month of 30 days”.

The Hon'ble Supreme Court affirmed the decision of the Gujrat HC, which while dismissing the employer's petition under Art. 227 of the Constitution had observed that a worker received a full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days and, therefore, gratuity payable to him should be calculated on this basis.

The similar view has been taken by the High Courts, in the following case, as well:-

Bombay High Court Lakshmi Vishnu Textile Mills vs P.S. Mavlankar on 12 July, 1978

3. The Hon'ble Supreme Court of India in Jeewanlal (1929) Ltd.Etc. vs The Appellate Authority Under The PG Act... on 29 August, 1984

The Controlling Authority held; that for the purpose of calculating "fifteen days' wages" it was necessary to ascertain one day's wage and since a month consists of 26 working days, the amount of gratuity should be calculated by dividing the monthly wages last drawn by 26 and multiplying by 'fifteen'; and not by just taking half of the monthly wages or by dividing such monthly wages by 30.

The Appellate Authority : Disallowed the above method of Calculations.

The Hon'ble High Court: Restored the order of Controlling Authority.

The Hon'ble Supreme Court: Dismissed the Appeals & Spl Leave Petitions with Costs. Orders of CA & HC were restored.

4. 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"

5. In the case of *Allahabad Bank and another versus All India Allahabad Retired Employee Association* (2010 (124)FLR 192) the Supreme Court held that :

Welfare statutes like Payment of Gratuity Act must always receive liberal construction and are required to be so constructed so as to secure the relief contemplated by the statute.

6. *Honorable High Court of Gujarat in the case of Lalit Kumar D.Thakkar versus controlling Authority and Asstt. Labour Commissioner Surat* (2006 LLR 411) held that:

Para 8It is well settled position in law that while interpreting the statute of welfare, the interpretation should be so made so as to advance the object of the legislation and not to truncate the same.

Accordingly, since the Service Regulations of the Bank are silent on this issue, so relying on the law laid down in the above mentioned case of Sh Y P Singla about applicability of PG Act in case any Regulations are silent on any such issue

and

the Judgments of SC in other cases, the method of computing quantum of gratuity as contained in Sec 4(2) of the PG Act, 1972, needs to be extended in the present case (i.e. Division by 26 days)

6. Payment of Gratuity @ 45 days after 30 years of Service

An Employee, who has served for a longer period i.e. more than 30 years in an organization, can NOT be asked to get lesser amount of gratuity, than the employees who have served lesser than 30 years, despite the fact that OSR of the bank specifically contains the word/phrase/ concept of “Additional” amount of Gratuity at the rate of ‘One Half of a Month Pay’

(The Supreme Court & various HCs have ruled that the interpretation of statute of welfare should be so made so as to advance the object of the legislation and not to truncate the same)

Rules Relating to Payment of gratuity to Officers staff have been laid down under Regulations 46 of Bank’s (Officers) Service Regulations, 1979 which is under:-

The amount of Gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of Gratuity for an **additional amount at the rate of ‘one half of a month's’ pay** for each completed year of service beyond 30 years.

A conjoint reading of the prefix word “**Additional amount**” along with “**one half of a month**” as mentioned above in Regulation 46(2) of Officers Service Regulations- 1979, one can easily establish that even if we consider one half of a month as 15 days and the same is **Added to the base rate (i.e. one month's Pay)** of the Bank mentioned prior to 30 years, it gives a simple, plain and unambiguous meaning to understand entitlement of the employees as 45 days wages (**30 days + additional amount at the rate of one half of a month**) as gratuity amount beyond 30 yrs of service and same can be given effect as per law. **Thus Meaning of ‘Additional one half of a month’ is in consonance with spirit of the statute.**

In support of the above submissions, I quote the relevant Judgments of Hon’ble Supreme Court of India, as well as of High Court, as follows:

- 1. 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”

- 2. In the case of Allahabad Bank and another versus All India Allahabad Retired Employee Association (2010 (124)FLR 192) the Supreme Court held that :***

*Welfare statutes like Payment of **Gratuity Act must always receive liberal construction** and are required to be so constructed so as to secure the relief contemplated by the statute.*

3. Honorable High Court of Gujarat in the case of Lalit Kumar D.Thakkar versus controlling Authority and Asstt. Labour Commissioner Surat (2006 LLR 411) held that:

*Para 8It is well settled position in law that **while interpreting the statute of welfare, the interpretation should be so made so as to advance the object of the legislation and not to truncate the same.***

While giving effect of Payment of '**Additional amount of Gratuity**' payable for the service length over and above 30 years, under OSR, the bank has considered only 15 days gratuity for every completed year, instead of 45 days per year for service beyond 30 years.

Whereas, the calculation of additional gratuity beyond 30 years of service, as per the regulations 46 of OSR1979, should have been made @ **Additional one & half of a month's pay i.e. 45 days pay for each year of service beyond 30 years of service**, But the Bank has paid half of the month's pay to the applicant for the service beyond 30 years. **There does not seem to be any logic in paying one month pay up to 30 years, and half month's (15 days) pay after 30 years of service. There has to be an extra incentive to the employees who have completed more than 30 years of meritorious service** by way of $1\frac{1}{2}$ months pay, for each year of service. The spirit behind the said rules i.e. **Additional Gratuity, framed in the regulations, was with the intention to reward the employees who had rendered longest service in the bank.**

In support of above submissions, I quote the relevant portion of the Judgment delivered by the Dy Chief Labour Commissioner (Central) Hyderabad in Case Nos PGA-36 /21 to 44 /2017.

Regarding the calculation of gratuity beyond 30 years of service, the Controlling Authority held that gratuity has to be paid only at the rate of 15 days wages per each year of service. But as per the regulations 72(3), one half of the month's pay has to be paid as gratuity beyond 30 years of service. One half means, one and half of the month's pay i.e. 45 days. In this connection, I disagree with the views of the Controlling Authority and I hereby decide that the gratuity has to be calculated @ 45 days wages, per each year of service beyond 30 years of service.

*As per Act it is 15 days wages per each year of service. Since it is said to be a better scheme, the Bank has framed regulations to pay gratuity @ one month pay upto 30 years of service (subject to a maximum of 15 months pay), and $1\frac{1}{2}$ months pay per each year of service beyond 30 years of service. **There is no logic in paying one month pay upto 30 years, and 15 days pay after 30 years of service. There is extra incentive to retired employees who have completed more than 30 years meritorious service by way of $1\frac{1}{2}$ month's pay, per each of year of service was framed in the regulations as a reward to employees who had rendered longest service in the Bank. Even otherwise, "half" means $\frac{1}{2}$. "One half" means $1\frac{1}{2}$. If the intention of the regulations is to-give only 15 days pay, then they would have mentioned only***

"half" of month's pay in Regulation 72(3). Since it was specified as "one half" of the month's pay, it must be read as 1½ of the month's pay i.e. 45 days pay per each year of service beyond 30 years of service.

The same view & interpretation has been taken and awarded by the following Authorities:

1. **The Deputy Chief Labour Commissioner (Central) Hyderabad in an Appeal No. PGA-36/ 21 to 44/2017 dated 31.12.2017**
2. **The Deputy Chief Labour Commissioner (Central) Ajmer in an Appeal No. PGA-18/2017 dated 21.12.2018.**
3. **The Deputy Chief Labour Commissioner (Central) Kolkata in an Appeal No. 48 (22)/2019 dated 07.02.2020.**
4. **The Regional Labour Commissioner (Central) Ranchi in application no. 36(31)2016-RLC(R) dated 26.06.2018.**
5. **The Regional Labour Commissioner (Central) Vasco-da-gama-Goa in application no. 36(31)2016-RLC(R) dated**
6. **The Assistant Labour Commissioner (Central) Ajmer in application no. AJ-48(98)/2017/ALC dated 20.03.2018**
7. **The Assistant Labour Commissioner (Central) Raibarelli in application no. 36 (96)/2018/ALC.**
8. **The Assistant Labour Commissioner (Central) Silchar in application no. 48(03)/2017) S/A dated 19.01.2018**
9. **The Assistant Labour Commissioner (Central) Jhansi in application no. JSH-36(07)/2018) dated 18.03.2019.**
10. **The Assistant Labour Commissioner (Central) Ajmer in application no. AJ-48(224)/2018/ALC dated 29.03.2019**
11. **The Assistant Labour Commissioner (Central) Kota in application no. KT-48(24)/2018/ALC dated 07.05.2019**
12. **The Assistant Labour Commissioner (Central) Vijay wada in application no. -**
13. **The Regional Labour Commissioner (Central) Goa in application no. RV-48(14)/2019/ALC dated 30.09.2019**
14. **The Assistant Labour Commissioner (Central) Kota in application no. KT-48(45)/2019/ALC dated 30.12.2019**

7. On Eligibility of Payment along with interest @10%:

Section 7(3-A) of the Payment of Gratuity reads as under:

If the amount of Gratuity payable under sub-section (3) is not paid by the employer within the period specified in subsection (3) the employer shall pay, from the date on which the gratuity become stable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as the Government may, by notification specified:

The provision under Sub, Section 3 of section 7 of the Payment of Gratuity Act provides that the employer shall arrange to pay the amount of Gratuity within 30 days from the date it becomes payable to the person to whom the great duty payable.

The Ministry of Labour, Government of India has specified the rate of simple interest payable to the employee in case where gratuity is not paid within specified period as TEN percent per annum vide notification number 874 E dated 1.10 .1987

In the present case the delay occurred not due to the fault of applicant, but wrong interpretation of the regulation providing Gratuity by the opponent Bank.

Following Judgments supports the above:

1. The Hon'ble Supreme Court of India in H. Gangahanume Gowda vs Karnataka Agro Industries ..held on 05 February, 2003:-

....., there is a clear mandate in the provisions of [Section 7](#) to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of [Section 8](#) of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to [Section 7\(3A\)](#), no discretion was left to deny the interest to the appellant on belated payment of gratuity.

In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount.

Other Important Judgments on the issue of Payment of Interest:

- a. SC- State of Kerala & ors v/s M. Padmanabham Nayyar (1985)
- b. SC- Civil Appeal no.9087 / 2012 in case of Y.K. Singla Vs Punjab National Bank
- c. SC- State of Uttar Pradesh & ors v/s Dharendra Pal Singh (2017)
- d. SC- Kerala State Cashew Dev corp v/s Asokan (2009)
- e. HC-Chattisgarh- Karnail Singh v/s/SECL –WP-56/2017 -17/03/2017
- f. HC-Mumbai – Municipal Corp v/s Vithal Anna Kamble WP 8053/2012
- g. HC-Patna – Champaran Sugar v/s Jt Labour Comm (AIR 1997 Patna)

8. Issue of Jurisdiction of Controlling Authority

- A. The Hon'ble High Court of Delhi in W.P. (C) 3385/2018 M/S Bch Electric Limited vs Pradeep Mehra by judgment dated 6th February, 2019, held that:

*Para No.29 *In view of my aforesaid conclusion that a claim for gratuity in excess of the ceiling limit prescribed under Section 4(3) is not at all beyond the scope of the PG Act, the contention of the learned counsel for the petitioner that the Controlling Authority did not have the jurisdiction to pass the impugned order dated 31.07.2015, has to be necessarily rejected. The PG Act is a complete code in itself with respect to matters relating to the payment of gratuity and the Controlling Authority appointed under Section 3 is statutorily enjoined under Section 7(4)(b) to adjudicate any dispute qua the amount of gratuity payable or as to the admissibility of any claim to gratuity. When the PG Act itself protects the right an employee to get higher gratuity vis-à-vis the prescribed ceiling limit and does not curb the maximum amount of gratuity payable to an employee, it is unfathomable how the jurisdiction of the Controlling Authority can be curtailed to decide only those claims that have a pecuniary value less the said ceiling limit. Merely because Section 4(3) places a ceiling on the amount of gratuity payable to an employee in the absence of better terms of gratuity in accordance with Section 4(5), it cannot be said that the jurisdiction of the Controlling Authority to examine a dispute under Sections 7(4)(b) is curtailed to the same pecuniary limit. In this regard, reliance may be placed upon the decision of the Supreme Court in State of Punjab v. Labour Court"*

By the referred judgment the order of the Controlling Authority was upheld for payment Rs 173.75 lacs as gratuity to the retired employee.

- B. The Hon'ble Supreme Court of India in Civil Appeal No. 8 of 1977 in case of State Of Punjab Vs Labor Court, Jullundur & Ors by judgment dated 16 October, 1979 has concluded as under –

- a. *"The Payment of Gratuity Act is a complete code containing detailed provisions covering all the essential features of the scheme for payment of gratuity. For the enforcement of its provisions, the Act provides for the appointment of a Controlling Authority for administering the Act. He has been invested with amplitude of power for the full discharge of his responsibilities under the Act. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act."*
- b. *"In this regard, the controlling authority has all the powers as are vested in court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence"*

C. Hon'ble supreme court in Civil Appeal 9087/2012 of Y K Single Vs. Punjab National Bank, at Para No 20 of the judgment concluded as under –

“....., it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the 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 provisions of the Gratuity Act cannot be ignored.

D. 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:

“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”

E. Hon'ble High Court of Gauhati in Civil Misc. Writ Petition No. 3086 of 2018 Assam Gramin Bank Vs. Union of India & CLC...under Payment of Gratuity Act and others has held on 27/09/2019 that:

“..... Since it has already been held that the Controlling Authority had the Jurisdiction to pass the impugned orders & to that extent, the challenge made thereto has been rejected.....”

In view of the above Rulings/Judgments it can be concluded that even though the gratuity payable under the Bank's Scheme may be exceeding the ceiling limit prescribed under Section 4(3), the Controlling Authority has jurisdiction to decide the disputes of Bank's Scheme also.

9. Non- Applicability of Supreme court case of Beed District Central cooperative bank Ltd. v/s State of Maharashtra & Ors (2006) 8 SSC 514

That the respondent bank has relied on the **Supreme court case of Beed District Central cooperative bank Ltd. v/s State of Maharashtra & Ors (2006) 8 SSC 514**, which is relevant to workmen only. It is not applicable to the officers who are governed and eligible for better terms of Gratuity under Bank OSR-1979 and their interpretation with the consistency of The PG Act-1972.

Hon`ble Supreme court in similar case in Civil Appeal No 1478 of 2004 (WRIT PETITION (CIVIL) NO. 237 OF 2007) wherein the said case of BEED DISTRICT CENTRAL COOP. BANK LTD. V. STATE OF MAHARASHTRA AND OTHERS (Civil Appeal No. 4327 of 2006) was cited, found/held it irrelevant in the case similar to present one.

Hon`ble Delhi high court in similar case in W.P.C 3508/2018 decided recently on 06/02/2019 wherein case of BEED DISTRICT CENTRAL COOP. BANK LTD. V. STATE OF MAHARASHTRA AND OTHERS (Civil Appeal No. 4327 of 2006) was relied upon by the organization like present case, but the Hon`ble High Court of Delhi has also found it irrelevant and did not find it supportive to the management

In the present case the issue/prayer is NOT for choosing 'Best of the both words', but removal of inconsistencies in the Bank's OSR viz-a-viz Payment of Gratuity Act-1972, which is a complete code and its provisions cannot be overruled or overridden by any other enactment, as stipulated in the PG Act, under section 14. Hence, the quoted judgment is irrelevant in the present case.

In the said case, issues related to i) Number of days to be taken for calculations & ii) Ceiling Limit of Gratuity amount. (Which relates to Sec 4(2) & 4(3) of the Act.

However, In the above case (Beed District), there is NO question/ observation about.....

Sec 5 (Grant of Exemption),

Sec. 14 (Act to override other enactments) &

Sec 2(s) of the PG Act. i.e. last drawn wages

in calculating the amount of gratuity. Whereas in the present case component which are to be taken for the purpose of calculation of gratuity under Regulation and Act are different. Therefore above citation will not apply in the present and thus will not help to the opponent bank

In our case- We have chosen Payment only under OSR – and our pleadings are for removal of Inconsistencies in OSR- by enforcing the Statutory Provisions of the PG Act-1972 & then calculating the Gratuity – since as per Section 14 of the PG ACT- 1972

“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.”

10 On the issue of Condonation of Delay

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 cannot be said to be a legal minded person merely because he worked as an Officer/Manager in the Bank, whereof all the legal matters are being dealt by Bank's Law Managers & Empanelled Advocates; as such I may not be denied the benefit of condonation, due to the vague plea taken by the Respondent.

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. Kathalia 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 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.

6. 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, All the 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: