



Government of India
 Ministry of Labour & Employment
 Office of the Asst. Labour Commissioner (C)
 5th Floor, Central Government Offices Complex
 Plot No. B-2, Industrial Estate, Autonagar, Vijayawada - 520 007.

No. 36/63/2019-ALC-VJA

Date: 27.01.2021

FORM "R"

(See Rule 17)

NOTICE FOR PAYMENT OF GRATUITY

To

The Managing Director and Chief Executive Officer,
 Canara Bank, Central Office, 112, J.C. Road,
 Bengaluru-560006.

Whereas **Sri Srikonda Siva Prasad Rao, S/o. Late Narasimha Rao**, Ex-Employee of erstwhile Syndicate Bank, filed an application under Section 7 of the Payment of Gratuity Act, 1972 before me.

And whereas the application was heard in your presence/your representative, on different dates and after hearing, I have come to the finding that the said **Sri Srikonda Siva Prasad Rao** is entitled for payment of **Rs. 1,83,397.64 (Rupees One Lakh Eighty Three Thousand Three Hundred Ninety Seven and Sixty Four Paise)** as Gratuity with 10 percent simple interest per annum w.e.f. 01.02.2015 to till the actual date of payment of gratuity, under the Payment of Gratuity Act, 1972.

Now, therefore, I hereby direct you to pay the said sum of to **Rs. 1,83,397.64 (Rupees One Lakh Eighty Three Thousand Three Hundred Ninety Seven and Sixty Four Paise)** with 10% interest to **Sri Srikonda Siva Prasad Rao** within 30 days of receipt of this notice with an intimation thereof to me.

GIVEN UNDER MY HAND AND SEAL, THIS 27th day of January, 2021.

(PUNUMALLI BAPUJI)

ASST. LABOUR COMMISSIONER (CENTRAL) &
 CONTROLLING AUTHORITY UNDER
 THE PAYMENT OF GRATUITY ACT, 1972,
 VIJAYAWADA

Copy to Sri Srikonda Siva Prasad Rao, S/o. Late Narasimha Rao, Flat No. 302, Samrudhi Apartments, East Point Colony, Visakhapatnam-530017. He is requested to contact the Respondent Bank for payment.

ASST. LABOUR COMMISSIONER (C)
 VIJAYAWADA

ISSUED:

DATE :

01 FEB 2021

ASST. LABOUR COMMISSIONER (CENTRAL)
 VIJAYAWADA

Received order
 Copy
 2/2/21
 Advocate

BEFORE THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 AND ASSISTANT LABOUR COMMISSIONER (CENTRAL), VIJAYAWADA

Dated this 27th Day of January, 2021

PRESENT

PUNUMALLI BAPUJI

**Controlling Authority under the P.G.Act, 1972 &
Assistant Labour Commissioner (Central),
Vijayawada**

P.G. Application No. 63 of 2019

Between

Sri Srikonda Siva Prasad Rao, S/o. Late Narasimha Rao, Flat No. 302, Samrudhi Apartments, East Point Colony, Visakhapatnam-530017
... Applicant

And

The Managing Director and Chief Executive Officer, Canara Bank, Central Office, 112, J.C. Road, Bengaluru-560006.
... Respondent

1. Sri Srikonda Siva Prasad Rao, S/o. Late Narasimha Rao, Ex-Employee of Syndicate Bank (herein after referred to as Applicant) filed an application dated 01.07.2019 in Form – 'N' under Rule 10 (1) of the Payment of Gratuity (Central) Rules, 1972, requesting the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Vijayawada (herein after referred to as Controlling Authority) to issue necessary directions to the Respondent—Syndicate Bank. (Herein after referred to as Respondent Bank) to pay him the differential amount of Gratuity of Rs. 4,16,028.67 as per Regulation 46 of Syndicate Bank (Officers') Service Regulations, 1979, read with Section 4(5) of the Payment of Gratuity Act, 1972.

The Applicant stated that he was appointed on 20-07-1981 in the Syndicate Bank and retired from service as Manager on 31-01-2015 after putting in 33 years 6 months and 12 days of service. His last wages drawn for the purpose of gratuity calculation are Rs. 58439.39. He claimed Rs. 14,16,028.67 as Gratuity eligible to him, out of which Rs. 10 Lakhs has been paid and due is Rs. 4,16,028.67 and interest thereon. He has stated that the Respondent Bank has



to include dearness allowance and special allowance in the calculation formula and to calculate gratuity for the service beyond 30 years as 30 + 15 days. The applicant requested to condone delay in filing Form N. The Applicant relied on the following judgments to strengthen his argument:

1. The Transport Manager, Kolhapur ... vs Pravin Bhabhutlal Shah (2004 (5) BomCR 10, (2005) ILLJ 104 Bom, 2005 (1) MhLj 497, 2005 (1) SLJ 485 Bombay)
2. Y.K. Singla vs Punjab National Bank & Ors (2013) 3 SCC 472, ((2002-II-LLJ 172))
3. State Of Punjab vs Labour Court, Jullundur & Ors (1979 AIR 1981, 1980 SCR (1) 953)
4. Bank of Baroda Vs. Controlling Authority under Payment of Gratuity Act (W.P. No. 11523/2004 of Hon'ble Allahabad High Court)
5. P.Selvaraj vs The Management Of Shardlow India Limited, Chennai (2007 (1) LLN 835)
6. Bank Of Baroda vs A.M.Sampath (W.A.No.1040 of 2009 of Hon'ble Madras High Court)
7. Madhyanchal Gramin Bank and another Vs. All India Gramin Bank Pensioners Organisation Unit Rewa (Writ Appeal No. 1318/2018 in Hon'ble High Court of Madhya Pradesh)
8. Chinmoy Majumder and others Vs. Paschim Banga Gramin Bank and others (W.P. No. 19538 (W) of 2018 in Hon'ble Calcutta High Court)
9. Allahabad Bank & Anr vs All India Allahabad Bank Retired Employees Association (2010 (2) SCC 44)

2. On receipt of the claim application, the Controlling Authority has issued notices to the Applicant and the Respondent Bank in Form-'O' to appear before the Authority along with all witnesses upon whose evidence and the documents on which they intend to rely in support of their allegations and defend as the case may be. The Controlling Authority held hearings on 23-7-2019, 22-8-2019, 25-9-2019, 16-10-2019, 13-11-2019, 28-11-2019, 31-12-2019, 3-3-2020, 26-03-2020, 19-10-2020, 26-10-2020, 09-11-2020 and finally on 16-11-2020.

3. The Applicant was initially represented by Sri K.V.V. Parameswara Rao, Advocate and subsequently by Sri Ch. Prasada Rao, Advocate. The Respondent Bank is represented by Sri Md. Hayad, Advocate. The Respondent Bank stated that the gratuity payable to the Applicant as per Payment of Gratuity Act is Rs. 1146311.00 and as per the Service Regulations it is Rs. 741352.08. Rs. 10 Lakhs has been paid to the Applicant in view of ceiling in Payment of Gratuity Act. The application is misconceived, untenable, incompetent and baseless and without any contractual



or legal obligation to pay the amount in excess of what has already been paid to him as such not maintainable at law and that therefore the Controlling Authority ought not to entertain present application, amongst other grounds. The application filed by the applicant against the respondent is liable to be dismissed in limini. Further, the Respondent Bank submitted that Syndicate Bank was amalgamated into Canara Bank vide Gazette Notification No. G.S.R. 155 (E) dated 4-3-2020 and requested to do further correspondence or forward the Order to Canara Bank. In view of the amalgamation, now the Canara Bank is considered as the Respondent Bank.

4. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims, counter claims and arguments made by the parties herein, the following questions are to be addressed and answered for deciding the case.

- a) Whether the gratuity claim application filed after 90 days may be entertained or not?
- b) Whether the Controlling Authority under the Payment of Gratuity Act, 1972 have jurisdiction for deciding the payment of gratuity under Service Regulations?
- c) Whether the Principle of Estoppel or Waiver is applicable for this case?
- d) Whether doctrine of Judicial Discipline is applicable to Quasi Judicial Authority?
- e) Whether the Respondent Bank calculated gratuity as per the methodology and taking all the components in the calculation formula mentioned in the Regulations?
- f) Whether the applicant is entitled for interest for delay in payment of gratuity?

5. As regards to delay, the Applicant stated that he was under the impression that the gratuity calculation made by the Respondent Bank was correct. But after knowing the decisions of the Appellate Authority and Deputy Chief Labour Commissioner (Central), Hyderabad, dated 13-12-2017 and other similar orders he came to know that the Respondent Bank had wrongly calculated his gratuity. Then he has approached the Respondent Bank for payment of balance of gratuity due to him and waited for a considerable time with a hope that the Respondent Bank will pay the difference of gratuity amount. Finally, as there was no response from the Respondent Bank, he approached this Authority by filing Form N application. Gratuity Act is welfare legislation where justice should not be denied on technical grounds but employee should be heard on merits only. In view of the above position, the Applicant prayed for



condonation of delay in filing the Application as delay caused in filing the Claim before the Controlling Authority is not intentional.

The Respondent Bank stated that the applicant has made the present application on 1-7-2019 whereas he has superannuated on 31-1-2015. Rule 7 (1) of the Payment of Gratuity (Central) Rules, 1972 that an employee, who is eligible for payment of gratuity under the Act or any person authorized in writing shall apply ordinarily within 30 days from the date, the gratuity became payable to the employee. Though Rule 7 (5) provides such application can be made beyond that period, he shall demonstrate sufficient cause for the delay in preferring his claim. The reasons assigned for condonation of delay is not a sufficient ground to condone the delay as the ground urged itself to condone delay is untenable. The application is filed after about 3 years 10 months and is barred by limitation and on the ground alone the present application cannot be entertained and liable to be dismissed.

The Rule 10 of the Payment of Gratuity (Central) Rules, 1972 provides that the controlling authority may accept application on sufficient cause being shown by the applicant, after the expiry of the specified period.

The Hon'ble High Court of Andhra Pradesh in the case of **Krishna District Milk Producers Mutually Aided Co-op Union Vs. The State of Andhra Pradesh (2016 Lab IC 755 (Hyd), 2015 (19) SCT 421)** observed that the provisions of the Gratuity Act have been brought forth as a social security measure for providing the necessary financial support and assistance to the employee concerned. Apart from payment of wages, once the provisions of the Act become applicable to any establishment, an additional obligation is thrust upon the employer to make the payment of gratuity, irrespective of whether he likes the quality of services rendered by the employee or not. The statute itself, therefore, has not recognized any outer period of limitation for payment of gratuity to the employee concerned at the behest of the Controlling Authority.

The Hon'ble Supreme Court of India in the case of **N. Balakrishnan Vs M. Krishnamurthy (1998) 7 SCC 223**, wherein it has been held that:- "words "sufficient cause" should be construed liberally-Acceptability of explanation for the delay is the sole criterion, length of delay not



relevant. In absence of anything showing malafide or deliberate delay as dilatory tactic, Court should normally condone the delay."

The Hon'ble High Court of Rajasthan in the case of **Madar Union Sanatorium and Hospital v. M.B. Sathe ((1986) ILLJ 135 Raj, 1986 (1) WLN 282)** 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".

In the case of **Vensa Biotech Ltd. v. Boddu Rambabu, 2005 (I) LLN 715 (AP HC)** the Hon'ble High Court of Andhra Pradesh observed 'In view of the elaborate submissions made by both the counsel drawing attention of this court to Section 7 of the Payment of Gratuity Act, 1972 and certain other rules in the context of the present controversy, suffice it to say that the proviso under sub-rule (1) of Rule 10 of the Rules, itself is clear and that when Controlling Authority had exercised the discretion in condoning the delay, I do not see any reason to disturb such a discretionary order while exercising jurisdiction under Article 227 of the Constitution of India.

Further, as per the dictums of the Hon'ble Supreme Court and various Hon'ble High Courts, 'the legitimate right of the employee for receiving gratuity should not be lightly brushed up because of the reason that the employee prefers the application for claiming gratuity belatedly. Being the Payment of Gratuity Act, 1972, is a beneficial piece of legislation it has to get a liberal interpretation and the intention of the statute becomes highly relevant when the issue for rejection of a claim is pressed. The cause for the delay submitted by the Applicant need not be examined strictly with a rigid rule of law but with a liberal view to see that the applicant should not be barred from having right to receive his legitimate amount of gratuity which is due to him from the responsible employer.'

The Payment of Gratuity Act, 1972 is a welfare legislation providing a scheme for the payment of gratuity to employees. The Rule 10 of the Payment of Gratuity (Central) Rules, 1972 provides that the controlling authority may accept application on sufficient cause being shown by the applicant, after the expiry of the specified period. The delay in filing the application should be condoned liberally keeping in view the intention behind the enacting the Payment of



Gratuity Act. The act has been enacted with a view to grant benefit to employees, a 'weaker section' in industrial adjudicatory process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken. The applicant is not legal minded and did not understand the complexity of Law. No mala fide intention is found in filing the application after the limitation period. As such the applicant cannot be denied the benefit of condonation of delay. I am of the considered view that the delay whatsoever claimed to have occurred by the applicant, can be condoned. The Authority, keeping in view the ratio lay down by Hon'ble Apex Court and High Courts, feels that delay should be condoned. Thus, in exercise of powers conferred under sub-rule (1) of Rule 10 of the PG (Central) Rules, 1972, the reasons shown by the Applicant for delay occurred in filing the application before this Authority is considered reasonable and having satisfied, hereby condone the delay in filing the Gratuity claim application after expiry of 90 days, before the Controlling Authority, and allowed the application.

6. The next aspect is the jurisdiction of the Controlling Authority under the Payment of Gratuity Act, 1972, over the instant case. The Respondent Bank stated that the Controlling Authority has no jurisdiction to direct the payment of gratuity admissible under a private scheme and or direct payment of differential amount, if under private scheme there is entitlement to higher amount of gratuity. The Controlling Authority can grant benefits arising only under the P.G. Act.

Hon'ble Kerala High Court in the case of **State Bank of Travancore Vs. The Assistant Labour Commissioner (Central), Trivendrum and others (W.P. (C) No. 33378/2007)** observed that when the Act itself recognizes the eligibility for better terms of gratuity as per the contract between the employer and the employee, the employee should not be driven to a different forum for claiming that better terms of gratuity, which will have the effect of the employee being driven to separate forums for claiming gratuity as per the Payment of Gratuity Act and also gratuity as per the conditions of service agreed between the employer and the employee.

The Hon'ble High Court of Delhi in the case of **BCH Electric Limited Vs. Pradeep Mehra (W.P. No. 3385/2018)**, wherein it was held that the P.G. Act is a complete 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 P.G. Act itself protects the right of 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 than the ceiling limit.

In the case of **Eastern Coalfields Limited Vs. Regional Labour Commissioner (Central), Calcutta (1982 II LLJ 324, 1981 (2) CLJ 478)** the Hon'ble Calcutta High Court held that it will not be proper construction in keeping with the beneficial purpose of the legislation, that although under Section 4 (5) of the Act an employee may be entitled to a higher payment of gratuity, but for enforcing such favourable terms of service for higher gratuity, he should move a different forum and the authority under the Gratuity Act cannot entertain such claim of higher amount of gratuity.

Again, in the case of **FCI and Another Vs. Assistant Labour Commissioner (Central) ((2008) ILJ 1107 Cal)** it was held by the Hon'ble Calcutta High Court that the provisions of Section 4 (5) of the Payment of Gratuity Act, 1972 have protected the rights of the respondents employees to receive better terms of gratuity under any contract with the employer and, therefore, the disputes relating to the claims of the concerned employees are to be decided by the ALC in terms of Section 7 (4) (b) & (c) of the Payment of Gratuity Act, 1972. Accordingly, the ALC has acted clearly within jurisdiction in entertaining the claims of the employees concerned and deciding the same on merits. Therefore orders of the ALC cannot be said to be without jurisdiction under any circumstances.

Again, in the case of **Assam Gramin Vikash Bank and another Vs. The Union of India and 4 others (W.P. (C) No. 2086/2018)** the Hon'ble Gauhati High Court observed that Controlling Authority is defined under Section 3 of the Gratuity Act and there is no corresponding definition of Controlling Authority under the 2010 Regulations. Therefore when an employee makes a claim to gratuity, it can be either under the Gratuity Act or under the 2010 Regulations which



cannot however be detrimental to the interest of the employee, under whichever provision gratuity is higher that may be availed by the employee. Though methodology has been provided for quantifying gratuity under the 2010 Regulations, the machinery has not been provided. Since it is a question of payment of gratuity, even in case of a claim under Regulation 72, the machinery provided under the Gratuity Act would come into play along with Section 3 thereof. Therefore, it is the Controlling Authority as defined under Section 3 of the Gratuity Act who would be the competent authority to quantify the amount of gratuity to be paid to an employee under the Regulations.

In view of the above observations, the Controlling Authority appointed under Section 3 is statutorily enjoined under Section 7 (4) (b) to adjudicate any dispute including the amount of gratuity payable or as to the admissibility of any claim to gratuity. The provisions of Section 4 (5) of the Payment of Gratuity Act, 1972 have protected the rights of the employees to receive better terms of gratuity under any contract with the employer and, therefore, the disputes relating to the claims of the employees under the Regulations are to be decided by the Controlling Authority in terms of Section 7 (4) (b) & (c) of the Payment of Gratuity Act, 1972.

7. The next aspect is the applicability of Principle of Estoppel or Waiver to this case. The Respondent Bank submitted that the applicant having unequivocally and voluntarily accepted an amount of Rs. 10 Lakhs which is the maximum amount eligible under PG Act as the amount in terms of Regulations 46 is less than Rs. 10 Lakhs, towards full and final payment of gratuity, without raising any grievance, cannot raise any dispute thereafter at this belated state. After submitting Form I and accepting the gratuity amount the applicant is stopped from claiming any further amount. There was no necessity to issue Form L or even reply to Applicant's letter as correct amount of gratuity was already paid to him earlier. The applicant even otherwise cannot rely upon a decision which is subsequent to settlement of gratuity by the employer as full and final settlement and the settlement of gratuity cannot be reopened on a ground that he is entitled for more amount basing on a judgment rendered as it will have only a perspective effect and the claims which were settled earlier and attained finality cannot be reopened on the basis of any judgment. The applicant having received the amount under the PG Act is estopped from making any further claim.



The Applicant submitted that the Controlling / Appellate Authorities are responsible for proper administration of the Gratuity Act. Objection of the Respondent Bank does not hold well in the light of the legal facts that in welfare legislation like Gratuity Act, if an employee comes to know about reduced/ wrong payment of the grounds not relevant / in consonance with the Act, beneficiary can very well raise a claim notwithstanding that he had received the amount payable to him and management is bound to pay the remaining gratuity amount.

In the case of **Hisco Steel Private Limited Vs. Controlling Authority and others (2002 (92) FLR 611, (2002) ILJ 708 Cal)** the Hon'ble Calcutta High Court observed that if the gratuity paid is less than the amount payable in law, even if there is a note, 'in full and final settlement', still it cannot estop the workmen from claiming the balance amount as there cannot be an estoppel against a statute.

In the case of **Premier Marine Products Vs. The Appellate Authority under the Payment of Gratuity Act, 1972 (W.P. No. 8359/2009)** the Hon'ble Madras High Court (Madurai Bench) observed that in the matters related to payment of gratuity, the principle of estoppel or waiver cannot be applicable. Section 14 of the Payment of Gratuity Act, 1972, makes it clear that the provisions of the said Act will have an overriding effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument or contract.

In view of the above observations of the Hon'ble High Courts, though the Applicant has received the Gratuity Amount decided by the Respondent Bank and when he accepted the payment without protest, the principle of estoppel is not applicable, if the gratuity paid is less than the amount payable in law. As such, the argument of the Respondent Bank that Principle of Estoppel or Waiver is applicable to this case is not sustained.

8. The next aspect is the applicability of doctrine of Judicial Discipline in Quasi Judicial Proceedings. The Respondent Bank submitted that the Applicant's claim is based upon the judgement of Appellate Authority under the Payment of Gratuity Act which cannot be treated as law laid down on this aspect, and therefore, the claim basing on the said judgment is totally misconceived and it is liable to be rejected. The decision, while exercising power as Quasi



Judicial Appellate Authority, does not bind the Controlling Authority as it is not in accordance with law.

In the case of **Union of India and others Vs. Kamalakshi Finance Corporation ((1992) 1 SCC 648, AIR 1992 SC 711)** the Hon'ble Supreme Court of India held that the Principles of Judicial Discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the department-in itself an objectional phrase-and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. The Hon'ble Supreme Court in the case of **Jain Exports Private Limited and Another Vs. Union of India and others (1988 SCR (3) 952, 1988 SCC (3) 579)** wherein it was held that in a tier system, undoubtedly decisions of higher authorities are binding on lower authorities and quasi-judicial tribunals are also bound by this discipline. Hence, the Order of the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Hyderabad, being the Jurisdictional Appellate Authority, is binding on this Authority and any orders issued contrary to the orders of the Appellate Authority amounts to violation of principles of law.

9. The next aspect is whether the Respondent Bank calculated gratuity as per the methodology and taking all the components in the calculation formula? The objections of the Applicant are:

- A. The Respondent Bank has not included the Dearness Allowance and other admissible components like Special Allowance in the last drawn wages for calculation of gratuity.
 - B. In the calculation under the Service Regulations, Pay should be divided by 26 and multiplied by 15 to arrive at the actual monthly wages, as done in calculation under Payment of Gratuity Act
 - C. For calculation of additional amount of gratuity beyond 30 years of service, additional one half of a month's pay $((30+15) = 45$ days) has not been taken into account.
- a) As regards to point (A) above i.e. inclusion of Dearness Allowance and Special Allowance in calculation formula, the Applicant stated that gratuity to any officer is payable based on the



last pay drawn. But the Dearness Allowance and Special Allowance were kept out of the purview for calculation of gratuity, which is illegal. While calculating the gratuity as per the Regulations, Basic Pay, Dearness Allowance, P.Q.A., Special Allowance and Officiating Allowance should be included in the calculation formula.

The Respondent Bank stated that the claim of the Applicant to add DA and certain allowances for the purpose of calculation of Gratuity based on the decisions of Labour Authorities in Hyderabad and Jharkhand, has no relevance in respect of gratuity payable as per the Service Regulations as the said decisions are not based on the correct interpretation of law and facts. Further, the said decisions are based on certain other regulations and as such there is no application in the present matter. The interpretation adopted in the above decisions by picking certain provisions from the service regulations and picking certain provisions from the Payment of Gratuity Act and different orders of Appellate Authorities creating an entirely new set of provisions has no legal basis. The Respondent Bank further submitted that there is no error or mistake in the calculation or payment of gratuity to the Applicant. However, the contention of the present Applicant is to pick the definition of 'wage' from the gratuity act and substitute the same to OSR for the definition of 'pay' therein and to calculate gratuity accordingly. For the said contention, they are relying on section 14 of the Payment of Gratuity Act. The contention of the applicant is not tenable and has no legal basis. The overriding effect in a statute cannot be used for substituting only the definition clause in another subordinate legislation. The gratuity act is to be interpreted based on the definition clauses given in the said Act only. The Syndicate Bank (Officers) Regulations, 1979 was dealing with the service conditions of officer employees of Syndicate Bank. Similarly OSR are to be interpreted based on the definition clauses in the said regulations respectively. It is also relevant to note that even the terms used in the Act and Regulations are different. In Gratuity Act the terms used is 'Wages', whereas in Syndicate Bank (Officers) Service Regulations the term used is 'pay'. Instead of this the contentions to calculate wage in accordance with Gratuity Act and then to put the said amount in place of pay mentioned in the Regulations and to calculate the gratuity accordingly it is not correct and not supported by law. As such the contentions of the above effect of the Applicant are not correct.



In the case of **Madhyanchal Gramin Bank** (supra) it was held that the amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay. There is a proviso that an officer or employee who has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years. The second proviso states that in respect of an officer the gratuity is payable based on the last pay drawn. The 'Pay' is defined under Regulation 2 (m) which means basic pay drawn per month by the officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations. Admittedly, no part of the emoluments has been specifically classified under the regulation as 'Pay'. The 'emoluments' is defined under Regulation (i) means the aggregate of salary and allowances, if any. 'Salary' is further defined under Regulation 2 (o) means aggregate of pay and dearness allowance. Thus proviso sub regulation (3) of Regulation 72 would include dearness allowance for computation of gratuity in respect of officers as well. The Hon'ble Supreme Court upheld the above judgment in Special Leave Petition Nos. 11113-11115/2019 filed by Madhyanchal Gramin Bank.

Hon'ble High Court of Calcutta in the case of **Chinmoy Majumder** (supra) held that 'In light of the above, I hold that the petitioners shall be entitled to gratuity based on a calculation that would include 'dearness allowance' in the "last pay". The respondents are directed to include the dearness allowance and recalculate the gratuity of the petitioners and pay the difference arising thereto to the petitioners expeditiously and preferably within 90 days from date.'

Hon'ble High Court of Andhra Pradesh in the case of **Sri B.N. Nageswara Rao Vs. Saptagiri Grameena Bank and another** (W.P. No. 21566 of 2019) directed the respondents to include Dearness Allowance in the formula for Gratuity payable to the petitioner.

In view of the observation of Hon'ble High Courts and Hon'ble Supreme Court, I feel for the purpose of calculation of gratuity, Pay defined in the Regulations includes dearness



allowance and the Respondent Bank while calculating the gratuity amount ought to have included dearness allowance in the calculation formula.

As regards to Special Allowance, the Respondent Bank stated that the applicant has wrongly included Special Allowance and other Allowances which are not required to be taken for calculating Gratuity as per settled law. The Special Allowance was included in Scale of Pay through the Joint Note dated 25th May 2015 (10th Bipartite Settlement) made between the Managements of 43 Banks as represented by Indian Banks' Association and their workmen represented by the Bank Karmachari Sena Mahasangh (BKSM) and the National Union of Bank Employees (NUBE). The note under the item Special Allowance clarifying that the Special Allowance with applicable DA thereon shall not be reckoned for superannuation benefits viz. Pension, contribution to NPS, PF and Gratuity is applicable, as such Special Allowance cannot be part of the calculation formula. Wherever it is specifically applicable like POA are considered and being paid. Since the categories of workmen employee and officer employees are different and distinct, it was justified to have different set of provisions for calculation gratuity to each of such category.

In view of the above facts, I also feel that Special Allowance should not be a part of emoluments to calculate gratuity.

b) As regards to point (B) above i.e. calculation of monthly wages under the Service Regulations by dividing pay with 26 and multiplied by 15, to arrive at the actual monthly wages, as done in the calculation under Payment of Gratuity Act, the Respondent Bank stated that it is well settled law that while interpreting even a beneficent statute, like Payment of Gratuity Act, either Contract has to be given effect to or the Statute. The provisions of the Act envisage for one scheme. Section 4 (5) of the Act does not contemplate that the officer would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While reserving his right to opt for beneficial provisions of the statute or the agreement, he has to opt for either of them and not the best terms of the statute, as well as those of the contract. He cannot have both. The provisions of Regulations are to be taken as a whole and it need to be examined whether the calculations of gratuity in a given case, based on



such provisions are less beneficial than the gratuity calculated as per Gratuity Act. If it is less beneficial, the employee is to be paid gratuity in accordance with Gratuity Act. This is the correct procedure to be adopted in the matter. In view of Section 4 (5) of the Payment of Gratuity Act the gratuity payable to an officer of Syndicate Bank is the amount admissible as per the Payment of Gratuity Act, 1972 or as per the Service Regulations whichever is higher. The explanation to Sub Section 2 of Section 4 does not have any applicability to the Applicant as it can be applied only when the claim is based on the statutory provision but not under an award or agreement with the employer. Hence, it is denied that days of month should be taken as 26 as alleged.

The Respondent Bank relied upon the case of **Beed District Central Co-operative Bank Ltd. v. State of Maharashtra ((2006) 8 SCC 514)** wherein Hon'ble Supreme Court of India held that when the expression 'terms' has been used, ordinarily it must mean 'all terms of the contract'. While interpreting even a beneficent statute like 'Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute. The provisions of the Act envisage for one scheme. It could not be segregated. Sub-Section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While reserving his right to opt for the beneficent provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both. If such an interpretation is given, the spirit of the Act shall lost.

The amount of gratuity payable under the Service Regulations shall be one month's pay for every completed year of service or part thereof in excess of six months on pro rata basis subject to a maximum of 15 month's pay. As per the Payment of Gratuity Act, for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity at the rate of fifteen days' wages, hence, to arrive at 15 days wages monthly wages should be divided by 26 and multiplied by 15. But in the case of Service Regulations, gratuity should be paid at the rate of one month's pay. Hence last month pay to be taken directly for calculation and pay divided by 26 and multiplying with 15 does not arise. In view of the observation of the Hon'ble Supreme Court in the above case and as per the provisions Service



Regulations calculation of gratuity by multiplying the pay with 15 and divided by 26 does not arise and the Respondent Bank's opinion is agreed.

c) As regards to point (C) above i.e. calculation methodology, there is no difference or dispute between the Applicant and Respondent Bank in calculation up to 30 years of service. The Applicant submitted that calculation of additional amount of gratuity beyond 30 years of service, at the rate of one half of a month's pay means 45 days (30+15) should be taken into account. The Respondent Bank, illogically taken half a month's pay only for each completed year of service as against 45 days (one and half month's) pay. There is no logic in paying one month pay for 30 years of service and 15 days pay only for each completed year of service beyond 30 years. The word 'additional amount' is used in the regulation in the sense of extra intensive to retired employees who have completed more than 30 years meritorious service by way of One and Half month's pay per year of service was framed in the Regulation as reward to employees who had rendered longest service. The Applicant further stated that in similar cases, a number of authorities have ordered for similar calculation. The Jurisdictional Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Hyderabad vide his order in P.G.A. No. 21/2017 dated 13-12-2017 directed the Saptagiri Grameena Bank, Chittoor, to pay gratuity at the rate of 45 days for the period beyond 30 years.

The Respondent Bank denied that there was any dispute in the matter and Gratuity was not correctly paid as alleged. It was also denied that there is any inconsistency in treatment of any components for calculations as alleged. The Respondent Bank stated that the calculation of gratuity representing 45 days wages per year of service in excess of 30 years is incorrect as the proviso to Regulation 46 (2) provides that the officer, who completed more than 30 years of service, is eligible for an additional amount @ one half of a month's pay for each completed year of service beyond 30 years. One half of a month's pay can never be construed as one and half of a month's pay. One half is totally misunderstood by the applicant and his calculation for the period beyond 30 years of service @ one and half month's salary is liable to be rejected for two reasons viz. only pay can be reckoned but not wages as aforementioned and per each year of service beyond 30 years of service, officer is eligible for only 15 days salary as explained



above but not one and half. Regarding the contentions of the Applicant to 'half months pay' and one half of a month's pay' are also untenable. Actually, regulations state about the additional sum equal to half month's pay in respect of each completed year of service in the Bank in excess of 30 years. Further, in any event, there is no difference in meaning between 'half' and 'one half'. Both the said terms means 50 per cent of something or one of two equal parts of which anything may be considered as both as equal. Only possible distinction is that 'half' will be used with anything whereas 'one-half' will be normally used with numeric values. 'One half' does not mean one and half as claimed by the Applicant.

Whereas, Regulation 46 (2) mentioned in two parts as mentioned below:

46 (2) The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 month's pay.

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

Whereas the Respondent Bank interpreting the English version by isolating both paragraphs and paid only half a month's pay for every completed year of service beyond 30 years. The second paragraph is continuation of first paragraph which means to honour the extra services of the employees. It was clearly mentioned additional amount at the rate of half of a month's pay. Here additional means in addition to what was already declared. Therefore, one month's pay which was declared in para one i.e. 30 days pay plus additional one half of a month's pay i.e. 15 days pay which implies to $30 + 15 = 45$ days pay for every completed years of service beyond 30 years. Therefore, I feel that one half of the month's pay has to be paid as gratuity beyond 30 years of service which is additional amount. One half additional means one month's pay plus half a month's pay per year ($30 + 15 = 45$ days).

In the case of **Chhattisgarh Rajya Gramin Bank Vs. Meghraj Pathak and others (W.P. (L) No. 55/2020)** Hon'ble High Court of Chhattisgarh upheld the orders of the Controlling Authority and Appellate Authority, wherein calculation of gratuity for $30 + 15$ days per year for service beyond 30 years was allowed, stating that it is settled position of law that under Article 226 of



the Constitution of India, while hearing a matter arising out of a Labour Court, Tribunal and Quasi Judicial Authority, the High Court does not sit as an appellate authority. It is only the power of superintendence over those Courts, Tribunals and Authorities. Since the dispute involved in the present case has already been thrashed out before the Controlling Authority who has elaborately discussed the contentions put forth on either side and based on the material produced before the Controlling Authority, has given an order which has also been affirmed by the Appellate Authority under the Act, the scope of judicial interference gets reduced substantially except on the ground of an error of jurisdiction or excess of jurisdiction which in this case is not a ground of challenge.

In view of the above observations, I therefore, calculate of gratuity for the Applicant is as below:

Period of service of the Applicant: 33 years 6 months and 12 days.

Pay means Basic Pay + Stagnation Increment + Personal Qualification Pay (PQP) + Fixed Personal Pay + Dearness Allowance which comes to Rs. 58439.39

Calculation of Gratuity as per Service Regulations:	
Up to 30 years of service (limited to 15 months pay) :	58439.39X15 = Rs. 876590.85
Beyond 30 years (3 years)	58439.39X1.5X3 = Rs. 262977.25
Pro rata additional amount of gratuity for fraction of a year i.e. 6 months or more (6 months)	58439.39X6/12X1.5 = Rs. 43829.54
Total Gratuity payable as per Service Regulations:	Rs.1183397.64

The gratuity amount payable to the Applicant as per Service Regulations is Rs. 1183397.64 which is on the higher side. The Respondent Bank has already paid Rs. 10 Lakhs to the Applicant. The balance amount due is Rs. 1,83,397.64.

10. The next aspect mentioned in 4 (f) is whether the Applicant is entitled for interest on gratuity for the delayed period or not. The Respondent Bank stated that the applicant is not entitled for any interest on the delayed payment of gratuity amount as the same was settled and paid on the date of his superannuation only as per his eligibility.

Under Section 7 (3A) of the Payment of Gratuity Act, if the amount of gratuity is not paid by the employer within 30 days from the date it becomes payable, to the person to whom the gratuity is payable, the employer shall pay from the date on which the gratuity becomes



payable to the date on which it is paid. Provided that no such interest shall be payable if the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

The Hon'ble Supreme Court in the case of **H. Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Limited (LLJ-2003-1-1119, AIR 2003 SC 1526, (2003) 3 SCC 40)** had the occasion to consider the provision of Section 3-A of the P.G.Act, 1972. The Hon'ble Court observed that payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion, but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation can't be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be paid with the penalty of payment of interest.

In view of the above facts and placing reliance on the judgment of the Hon'ble Supreme Court, as the Respondent Bank failed to pay the gratuity amount to the Applicant within the specified time limit, I feel that the Applicant is eligible for interest for delayed payment of gratuity.

DECISION

I, therefore, come to the conclusion that the Respondent Bank (read Notification No. G.S.R. 155 (E) dated 4-3-2020) is due to make payment of gratuity amounting to **Rs. 1,83,397.64 (Rupees One Lakh Eighty Three Thousand Three Hundred Ninety Seven and Sixty Four Paise)** along with simple interest @ 10% per annum w.e.f. 01.02.2015 to till the actual date of payment of gratuity to the Applicant Sri Srikonda Siva Prasad Rao, Retired Manager under the Respondent Bank within 30 days.

GIVEN UNDER MY HAND AND SEAL, THIS 27th day of January, 2021



(PUNUMALLI BAPUJI)
**ASST.LABOUR COMMISSIONER (CENTRAL) &
CONTROLLING AUTHORITY UNDER
THE PAYMENT OF GRATUITY ACT, 1972,
VIJAYAWADA**