

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CWP No. 14116/2026 a/w connected matters
Decided on: 19.08.2026

CWP No. 14116/2026

Ramesh Kumar Verma ...Petitioner

Versus

H.P. Gramin Bank & Ors. Respondents.

CWP No. 14118/2026

Kulbir Singh ...Petitioner

Versus

H.P. Gramin Bank & Ors. Respondents.

CWP No. 14121/2026

Rajender Prasad Jhajni ...Petitioner

Versus

H.P. Gramin Bank & Ors. Respondents.

CWP No. 14113/2026

Kartar Singh Dadwal ...Petitioner

Versus

H.P. Gramin Bank & Ors. Respondents.

CWP No. 14119/2026

Ramesh Chand Gautam ...Petitioner

Versus

H.P. Gramin Bank & Ors. Respondents.

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Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioners: **Mr. Narendra Guleria and
Mr. Loveneesh Thakur, Advocates
in all the petitions.**

For the respondents: **Mr. Khulbhushan Khajuria,
Advocate in all the petitions, for
respondent No.1-Bank.**

Jyotsna Rewal Dua, J.

Challenge in all these writ petitions is to the order dated 20.04.2026 passed by the Appellate Authority-respondent No.2 allowing respondent No.1's appeal against order passed by respondent No.3.

In view of the nature of petitioners' grievance and the order being passed hereinafter, there is no necessity to call for reply from Respondent No. 1. Respondent Nos. 2 and 3 are the adjudicating authorities. The matter has, accordingly, been heard at this stage.

For convenience, reference hereinafter is made to CWP No. 14116/2026.

2. The petitioner, an employee of respondent No. 1-bank, moved an application on 07.01.2019 seeking gratuity under Section 4 of the Payment of Gratuity Act, 1972 and Regulation 72 of the

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations, 2010 on the ground of his superannuation on 31.12.2016 statedly after completing 37 years and 11 months of continuous service.

2(i) Respondent No. 3-Controlling Authority passed an order on 07.01.2020 directing respondent No. 1 to pay the balance amount of gratuity in the sum of Rs.4,99,981/- to the petitioner.

2(ii) Feeling aggrieved, respondent No. 1 preferred an appeal before respondent No. 2. The appeal was allowed on 20.04.2026 with the observation that an employee can claim gratuity either under the Payment of Gratuity Act, 1972 or under the Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations, 2010, but cannot claim the benefit by intermixing the provisions of both the statutes. To this an effect, the order as passed by respondent No. 2 is as under: -

“Thus, I am of the considered opinion that an empoloyee, can claim gratuity either under the Act of 1972 or under the Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations 2010, but cannot claim the benefit by intermixing the provisions of both the statutes.

The Controlling Authority-cum-Assistant Labour Commissioner (Central), Chandigarh is directed to take necessary steps, in accordance with law, to refund the amount deposited by the appellant at the time of filing of the present appeal.”

It was settled in **Y.K. Singla vs. Punjab National Bank & Ors.**² that an employee has to make choice between the two schemes for drawing the benefit of gratuity. To this extent, respondent No. 2 did not commit any error in holding that employees can claim the benefit of gratuity either as per the formulation available in the regulations of respondent No. 1-bank or under the Payment of Gratuity Act, 1972, whichever formulation is more beneficial to them. Held accordingly.

3. Respondent No.2 has further held as under in the impugned order: -

“ Based on the decisions cited above, it is abundantly clear to the undersigned appellate authority that the employees can claim the benefit of gratuity as per the formulation available in the Regulations of the bank or under the Payment of Gratuity Act, 1972. Whichever formulation is able to guarantee more beneficial gratuity to the employee would be protected by virtue of Section 4(5) of Payment of Gratuity Act 1972. However, it is essential to note that terms of calculation for gratuity cannot be cherry-picked from both the schemes i.e. the Regulations and Payment of Gratuity Act, 1972

As per the law, an employee, therefore, can claim gratuity either under the Payment of Gratuity Act, 1972, or Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations 2010, but cannot-claim the benefit under both the statutes. Inclusion of components such as DA, Special Pay, emulations not explicitly mentioned in the formula of Bank OSR for calculation of gratuity is unwarranted in law and would to cherry picking where the components of wages are picked up as per a different statute and applied in the gratuity formula of a different set of regulations.

² 2013 (3) SCC 472

Based on the above legal position I am also of the considered opinion that the appellant employee's contention that calculation of Gratuity, under banks regulations 2010 should be made by applying the Denominator as 26.....

It has been contended by the appellant employee that the Controlling Authority erred in declining the claim of the employee that payment of gratuity should have been paid as per the service regulation @ 45 days of the each year after completion of the 30 years of service.

In this regard, it is evident that the regulations of the Bank clearly states that for the service beyond 30 years the employee is entitled for one half of months' pay for each completed year of service as gratuity the primary contention of the appellant employee is that one half or to be interpreted as 45 days rather than 15 days. Such an interpretation is against the express provisions set out in the bank's regulations 2010. The Controlling Authority correctly interpreted and held that the appellant employee are not entitled for 45 days wages as being pressed by him. Therefore the issue is accordingly decided and the interpretation of Controlling Authority in this regard is not interfered with."

In the instant case, though the application was moved by the petitioner seeking gratuity under the Payment of Gratuity Act as also under Regulation No. 72 of the Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations, 2010, however, during hearing of the writ petition, learned counsel for the petitioner submitted that the petitioners shall restrict their prayer for the grant of gratuity only in terms of Regulation No. 72 of the Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations, 2010, and that it was so projected during the hearing

before respondent No. 2 as well. The said Regulation No. 72 reads as under:

“72. Gratuity. (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee shall be eligible for gratuity on.-

(a) retirement.

(b) death,

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

(d) resignation after completing 10 years of continuous service, or

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

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3). The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:

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

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn:

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding

death, disability, retirement, resignation or termination of service, as the case may be.”

3(i) It appears that the aforesaid provisos to sub regulation (3) of Regulation 72 have not been appropriately discussed by respondent No. 2 in the impugned order dated 20.04.2026, while holding that pay allowance, special pay, and officiating allowance are not liable to be computed towards gratuity.

Learned counsel for the petitioner has drawn specific attention to the 3rd proviso to Regulation No.72(3), in terms of which, pay for the purpose of calculation of gratuity shall be the average of basic pay (100%), dearness allowance, special allowance, and officiating allowance payable during 12 months preceding death, disability, retirement, resignation, or termination of service, as the case may be.

3(ii) Learned counsel made further reference to the first two provisos to sub-regulation (3) of Regulation 72, in terms of which the amount of gratuity payable to an officer or employee would be one month's pay for every completed year of service or part thereof in excess of 6 months, subject to a maximum of 15 months' pay, provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one-half of a month's pay for each completed year of service beyond 30 years.

Learned counsel for the petitioner submitted that the aforesaid provisions were considered & interpreted by the Honorable Division Bench of the High Court of Uttarakhand in **Babu Ram Kashyap vs. Canara Bank (Erstwhile Syndicate Bank)**³.

Portion of the said decision relevant to the context is as under: -

“13. The Hon’ble Supreme Court in the case of The Regional Provident Fund Commissioner (II) W.B. vs. Vivekanand Vidhya Mandir & Ors. (Civil Appeal No. 6221 of 2011, decided on 28.02.2019) held that the basic principle is where the wage is universally, necessarily and ordinarily paid to all employees across the board, such emoluments are basic wages. It is not denied by the respondent-Bank that Special Allowance is being paid to all the officers working in the Bank at the rate based on their scale of pay. Therefore, exclusion of Special Allowance from the component of Basic Pay is not permissible for the purpose of calculating gratuity. Therefore, the same shall be taken as part of basic pay for calculating the gratuity payable to the officers of the respondent-Bank but no reason has been assigned by the learned AA with regard to exclusion of Special Allowance. In the said judgment with regard to addition of Dearness Allowance, the Hon’ble Supreme Court has observed as under:- 12

“9. Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of dearness allowance finds inclusion in Section 6. The test adopted to determine if any payment was to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not

³ Writ Petition (M/B No. 75 of 2023), decided along with connected matters on 29.04.2024

being common to all. The crucial test is one of universality. The employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. The aforesaid provisions fell for detailed consideration by this Court in Bridge & Roof (supra) when it was observed as follows:-

"7. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with s. 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exceptions to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term "basic wages", and these are contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance 13 with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to clause (ii). It excludes dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment. This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of "basic wages". It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment. It was admitted by counsel on both sides before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from clause (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by employees in accordance with the terms of the contract of employment. Having excluded "dearness allowance" from the definition of "basic wages", s. 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in s. 6 which lays down that contribution shall be $6\frac{1}{4}$ per centum 14 of the basic wages, dearness allowance and retaining allowance (if any). We must therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance (for any) in s. 6. It seems that the basis of inclusion in s. 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose, of contribution under s. 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution.

Dearness allowance (for examples is payable in all concerns either as an addition to basic wages or as a part of consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and is therefore included in s. 6; but house rent allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken out of the definition of "basic wages", even though the basis of payment of house rent allowance where it is paid is the contract of employment. Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment; but because it may not be earned by all employees of a concern it is excluded from "basic wages". Similarly, commission or any other similar allowance is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned by all employees of the 15 same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that the basis for the exclusion in clause (ii) of the exceptions in s. 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in clause (ii) is an exception. But that exception has been corrected by including dearness allowance in s. 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the propose

of contribution by s. 6 and the real exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through S. 6.”

14. Original Pension Regulation of 1995 is still in force and no amendment has yet been made in such Regulation regarding exclusion of Special Allowance. The definition of ‘Pay’ as defined in Reg. 3(k) is inclusive definition, which means that the basic pay not only includes stagnation increment, but also other component of basic pay as held by the Hon’ble Apex Court in Vivekanand Vidyamandir case (supra) and the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others vs. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018, decided on 26.02.2019).

21. The judgment of Rajasthan High Court is applicable to the facts of the present case, which made it clear that for the purpose of calculation of gratuity beyond thirty years, which is an exception, the additional amount at the rate of one half month’s pay for each completed year of service beyond 30 years has to be calculated. The Rajasthan High Court has held that the officers, who have completed more than thirty years of service, shall be eligible by way of gratuity for the additional amount @ one half month’s pay for each completed service beyond thirty years. Thus, once the statute is very clear, there is no question of expanding the meaning.

22. In the present case as well, as per the proviso to Regulation 46(2) of the SBOSR, if an officer has completed more than thirty years he is eligible by way of gratuity for an additional amount at the rate of one half month’s salary for each completed year of service beyond thirty years. Hence, for the purpose of calculation of gratuity, the salary of 45 days has to be taken into account for each completed year beyond thirty years.

27. In the judgment of the Hon’ble Supreme Court in the Regional Provident Fund Commissioner (II) W.B. (supra), while dealing with the employees of the Bank, it has been held that the definition of ‘pay’ was an inclusive definition, which means that the Basic Pay not only includes stagnation increment but also

other component of the Basic Pay, i.e. the Special Allowance. Similarly, the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others (supra) and the Kerala High Court in Muralee Mohanan K.T. and others (supra) have held that exclusion of Special Allowances payable to the bank employees / officers for calculating gratuity was not correct, and the petitioners were held entitled to pension in terms of the Pension Regulations by taking into account the Special Allowances.

29. *The definitions of words 'pay' and 'salary' are given in Regulation 3(k) and Regulation 3(l) of the Regulations of the Bank respectively, which read as under:-*

"k) "Pay' means basic pay including stagnation increment.

l) "Salary" means the aggregate of the pay and dearness allowance."

30. *Applying the ratio of the above said judgments, the definition of 'pay' is inclusive of special allowances, emoluments, dearness allowance and stagnation increments. Hence, the petitioners (employees) are entitled to include the Special Allowances as part of Pay for the purpose of calculation of gratuity by including Dearness Allowance as well."*

Reliance was also placed upon *Madhyanchal Gramin Bank and Another vs. All India Gramin Bank Pensioners Organization Unit⁴*., decided by the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur. Relevant portion thereof reads as under: -

"9. After having heard rival submissions of the parties, we do not find any merit in the present appeals. Chapter VII of regulation deals with the various provisions relating to provident fund, pension, gratuity, domicile, transferability, lending of services of an officer or employee to other organization,

⁴ WA 1318/2018, decided on 26.02.2019

implementation of regulations and repeal and savings. The Regulation 72 provides that an officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 or as per sub regulation (2) whichever is higher. Officer or employee are eligible for gratuity on retirement, death, disablement, resignation after completing 10 years of the continued service or termination of service in any other way except by way of punishment after completion of 10 years of service. Sub section (3) provides the calculation of the amount of gratuity. 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 2(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, the learned Single Judge has rightly held after referring to the definitions of 'emoluments', 'pay' and 'salary' that a conjoint reading of definitions of 'emoluments', 'pay' and 'salary', 'the last pay drawn' under regulation 2 proviso of sub regulation (3) of Regulation 72 would include dearness allowance for computation of gratuity in respect of officers as well.

10. The judgments referred above by the learned Senior Counsel in support of his contention would not render any assistance to contend that the intention of the Rule making authority is to treat

the officers differently from the employees in view of the definitions of 'emoluments', 'pay' and 'salary' and further Regulation 72."

*Madhyanchal Gramin Bank and Another vs. All India Gramin Bank Pensioners Organization Unit*⁵ preferred against the aforesaid decision was dismissed by the Hon'ble Supreme Court on 07.05.2019.

Learned counsel for the petitioner submitted that aforesaid decisions were duly brought to the notice of respondent No. 2.

A perusal of the order impugned herein does not reflect deliberation and consideration of the aforesaid decisions.

4. In view of the above, it is deemed appropriate to direct respondent No. 2 to decide petitioners' respective gratuity claims by taking into consideration the applicable Regulation 72 of the Himachal Pradesh Gramin Bank (Officers and Employees) Service Regulations, 2010. Accordingly, the impugned order dated 20.04.2026 passed by respondent No. 2 is set aside in all the petitions. Respondent No. 2 is directed to consider the respective claims of the petitioners in all the writ petitions for grant and payment of gratuity in terms of Regulation 72 of the Himachal Pradesh Gramin Bank (Officers and Employees) Service

⁵ Special Leave to Appeal (C) No. 1113-1115/2019 decided on 07.05.2019

Regulations, 2010 afresh, in accordance with law. Parties, through their learned counsel, are directed to appear before respondent No. 2 on **07.09.2026**.

These writ petitions are disposed of in above terms. Pending miscellaneous applications, if any, shall also stand disposed of.

Jyotsna Rewal Dua
Judge

19th August, 2026_(rohit)