

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14334 of 2016

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The Chairman, Uttar Bihar Gramin Bank, Kalambagh Road, at and P.S.-
Muzaffarpur, District-Muzaffarpur-842 001.

.... Petitioner

Versus

1. The Deputy Chief Labour Commissioner (Central), Patna, the Appellate Authority under Payment of Gratuity Act, 1972.
2. The Controlling Authority under Payment of Gratuity Act, 1972-cum- Assistant Labour Commissioner (Central), Pakur.
3. Sri Hem Chandra Dutta, Son of Late Ram Sharan Prasad Singh, Mohalla -Gaurab Nagar, Islampur, District- Nalanda-801303.
4. The Union of India through the Secretary, Ministry of Labour and Rehabilitation, Department of Labour and Employment, Delhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prashant Vedasen, Advocate

For the Respondent/s : Mr. Satyavrat Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 24-04-2018

Heard Mr. Prashant Vedasen, learned counsel for the
petitioner and Mr. Satyavrat Verma, learned Central Government
Counsel.

2. In the instant writ petition, the petitioner has
prayed for setting aside the orders dated 08.06.2016 passed by the
respondent no.1, the Deputy Chief Labour Commissioner (Central),
Patna, the Appellate Authority under the Payment of Gratuity Act,
1972 (for short 'Gratuity Act') as contained in Annexure-3
upholding the order dated 18.05.2015 passed by the respondent no.2,
the Controlling Authority-cum-Assistant Labour Commissioner



(Central), Pakur as contained in Annexure-2 by which Uttar Bihar Gramin Bank (for short 'Bank') has been directed to pay to the respondent no.3 the gratuity from the date it became payable and to pay interest at the rate of 10% over it under the provisions of Section 7(3-A) of the Gratuity Act from the date gratuity became payable to the date on which it is paid.

3. Mr. Prashant Vedasen learned counsel for the petitioner submitted that specific submission was made before the Controlling Authority and the Appellate Authority in view of Regulation 45 of the Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (for short 'Regulations') that pending the departmental proceeding against the respondent no. 3, there was no occasion for payment of gratuity to him and, as such, the order passed by the Controlling Authority and the Appellate Authority directing the Bank to pay gratuity amount and interest over the same is wholly illegal and arbitrary. He submitted that the Appellate Authority in the most illegal and arbitrary manner came to the finding that since the Bank did not seek exemption from the applicability of the provisions of the Gratuity Act, it is covered under the provisions of the Gratuity Act. According to him, the Appellate Authority erred in law in holding that any provision contrary to Gratuity Act must fail as invalid in view of Section 14 of



the Gratuity Act. He argued that due to pendency of the departmental proceeding in view of Regulation 45(4) of the Regulations withholding of gratuity is permissible in law. The Controlling Authority and the Appellate Authority failed to appreciate that since the respondent no. 3 was an officer employed in the Bank which has separate rules and regulations framed with sanction of the Central Government for regulating the service conditions of officers and employees of the Bank including payment of gratuity, the payment of his gratuity would be governed under the Regulations of the Bank. He submitted that since the payment of gratuity to the respondent no.3 was withheld because of initiation and pendency of departmental proceeding and passing of final order, interest over gratuity amount could not have been directed to be paid from the date when gratuity became payable. According to him, interest over gratuity amount could have been directed to be paid to the respondent no. 3 only for the period after the final order was passed in the disciplinary proceeding till the actual payment. In sum and substance, his submission is that the impugned order passed for payment of interest over gratuity since it became payable to the date on which it is paid is wholly illegal and against the provision of Regulation 45(4) of the Regulations, which governs the service conditions of the respondent no.3 His contention is that since



payment of gratuity is governed by Regulations in case of officers of the Bank, which is special in nature, vis-a-vis the Gratuity Act, which is general in nature, the provisions of the Gratuity Act would be wholly inapplicable in case of payment of gratuity to officers of the Bank.

4. In reply, Mr. Satyavrat Verma, learned counsel appearing for the Central Government submitted that there is no separate rule for payment of gratuity to the officers of the Bank, which is more beneficial in comparison to the provisions of the Gratuity Act. The Officers of the Bank have not even been exempted from the operation of the provisions of the Gratuity Act. According to him, Section 14 of the Gratuity Act gives an overriding effect to the provisions contained in the Gratuity Act in case of any inconsistency with any other provision contained in any enactment or in any instrument or contract. To that extent, those provisions would be inconsequential. He submitted that in view of Section 7(3-A) of the Gratuity Act, the employer is liable to pay interest over delayed payment of gratuity. He urged that withholding of gratuity on account of pendency of disciplinary proceeding is not justified and, thus, the Controlling Authority and the Appellate Authority rightly directed the petitioner to pay to the respondent no.3 his gratuity from the date it became payable and to pay interest over it



till the date of actual payment.

5. On inquiry, Mr. Prashant Vedasen, learned counsel for the petitioner admitted that the officers/employees of the Bank have not been exempted from the operation of the provisions of the Gratuity Act. He clarified that an officer or employee of the Bank would be entitled to receive gratuity only in terms of Regulation 72 of the Regulations and clause (e) of para 2 of Regulation 72 clearly stipulates that in case of termination of service an officer or employee would not be entitled to receive payment of gratuity.

6. I have heard learned counsel for the parties and perused the record.

7. Before appreciating the rival submissions, it would be proper to briefly record the admitted facts of the case of the petitioner.

8. Respondent No.3, an Officer Grade Scale-I of the Bank while posted and working as Branch Manager of Garatal Branch was served with charge-sheet dated 19.02.2014 and corrigendum to charge-sheet dated 01.09.2014 by the Disciplinary Authority and a departmental proceeding was initiated against him in respect of alleged misconduct in terms of Regulation 39 of the Regulations. He was also served with a letter dated 19.02.2014 from



the competent authority whereby Regulation 45 of the Regulations was invoked and, by said letter, he was informed that since he was going to superannuate on 28.02.2014 and the disciplinary proceeding initiated against him was not likely to be completed till the said date, the said disciplinary proceeding would continue against him in the same manner as if he was in service of the Bank till conclusion of the said proceeding. He was also conveyed that in terms of Regulation 45 of the Regulations, he will not receive any pay or allowances after the age of superannuation and will not be entitled for the payment of retirement benefits until the completion of the proceeding except his contribution to provident fund.

9. The departmental proceeding initiated against respondent no. 3 was concluded on 27.12.2014. He was visited with the punishment of compulsory retirement after the charge framed against him was found to be proved.

10. While the departmental proceeding was pending, the respondent no.3 filed an application before the Controlling Authority under the Gratuity Act for payment of gratuity amount. The Controlling Authority after noticing the parties, vide order dated 18.05.2014, held that the respondent no.3 is entitled to get the amount of gratuity for the entire period of his service. The Bank was also directed to make payment of interest for the period from



01.03.2014 to date of payment at the rate of 10% upon the gratuity due.

11. Being aggrieved by the order passed by the Controlling Authority, the Bank filed an appeal before the Appellate Authority under sub-section (7) of Section 7 of the Gratuity Act. However, the Appellate Authority upheld the order dated 18th May, 2015 passed by the Controlling Authority and the Bank was directed to make payment of gratuity together with interest to the respondent no.3.

12. As noticed above, the case of the petitioner, relying upon the provisions of Regulation 45 (4) and 72(2) of the Regulations is that gratuity is not payable during pendency of the disciplinary proceeding against an officer/employee of the Bank and during pendency of the proceedings, the Bank is entitled to withhold gratuity and no interest can be awarded to an officer/employee of the Bank even if subsequently the Bank would decide to make payment of gratuity to the concerned officer/employee.

13. In order to appreciate the rival submissions of the parties, at this stage, it would be fruitful to reproduce the relevant Regulations.

14. Regulation 45 of the Regulations which deals with disciplinary proceedings against an officer or employee of the



Bank reads as under:-

“45. Disciplinary proceedings after

retirement. –(1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) the officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund



(CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority.

15. Regulation 72 of the Regulations which deals with payment of gratuity in case of an officer or employee of the Bank 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, or

(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 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:

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."

16. The Regulations of the Bank have been framed in



exercise of power conferred by Section 30 of Regional Rural Bank Act, 1976 by the Board of Directors of the Bank after consultation with the Central Bank of India being the Sponsor Bank and National Bank for Agriculture and Rural Development Officers and employees of the Bank are governed under the provisions of the regulations framed therein.

17. From a reading of Regulation 45 (4) of the Regulations, it would be manifest an officer or employee against whom disciplinary proceeding has been initiated will not be entitled to receive any pay or allowances after the date of superannuation. He will also not be entitled for payment for retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to contributory Provident Fund. The explanation given to para 4 of the said Regulation 45 further stipulates that gratuity may be withheld till the completion of disciplinary proceeding and passing of final order by the competent authority and release of benefits would depend on the final order of the competent authority. Regulation 72(1) of the Regulations stipulates that an officer or employee shall be eligible for payment of gratuity either as per the provisions of the gratuity Act or as per the sub-regulation (2) whichever is higher. Sub-regulation (2) of Regulation 72 of the Regulations stipulates 5 conditions under which



an officer or an employee would be entitled to receive gratuity. The proviso to Regulation 72(2) provides that in respect of an employee, there shall be no forfeiture of gratuity for dismissal on account of misconduct, except in case where such misconduct causes financial loss to the Bank.

18. Thus, evidently the provisions of Gratuity Act have not been excluded so far as the Regulations governing the service conditions of an officer or employee of the Bank is concerned rather it makes it clear that in case the provisions of the Gratuity Act are more beneficial/higher, the same would be applicable in case of officer/employee of the Bank.

19. At this stage, it would also be relevant to extract Sections 4(5), 4(6), 5, 7, 13, and 14 of the Gratuity Act, which read as under:-

“Section 4(5). Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Section 4(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or



loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Section 5. Power to exempt.- (1) 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 respect of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in 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, such employee or class of employees are in respect of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.

Section 7. Determination of the amount of gratuity.- (1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the gratuity is payable.



(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable 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 that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the 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.

4(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim or, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine



the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit –

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a Court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;



(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate



authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

Section 13. Protection of gratuity. – No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal Court.

Section 14. Act to override other enactments, etc. – The provisions of this Act or any rule made thereunder 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.”

20. From a reading of the aforesaid provisions of the Gratuity Act, it would be manifest that sub-section (5) of section 4 of the Gratuity Act allows an employee to be regulated for the purpose of Gratuity under an alternative provision (award or agreement for contract) with the employer. However, the necessary condition for the same is that the employee must receive better terms of gratuity. Since the claim of respondent no. 3 for gratuity is regulated under the Regulations, it is evident that his claim for



gratuity is liable to be determined by ensuring his right to better terms of the Gratuity Act than those contained in the Regulations.

21. Sub-section (6) of Section 4 of the Gratuity Act stipulates the pre-condition for forfeiting the gratuity is the termination of the services of the employee for the serious misconduct or termination on the ground of riotous or disorderly conduct or any other violation on his part or any act, which constitutes an offence including moral turpitude committed in course of employment.

22. Admittedly, respondent no. 3 has not been terminated from service rather the contention of the petitioner is that on completion of the disciplinary proceeding, he has been visited with the punishment of compulsory retirement. Neither the Regulations of the Bank nor the Gratuity Act empowers the employer to forfeit the gratuity of an officer/employee, if he has not been visited with the punishment of termination. Thus, any of the requirements for withholding gratuity in case of respondent no. 3 are not attracted in the present case.

23. Further, section 5 of the Gratuity Act confers power upon the appropriate government to exempt any establishment by notification or operation of the provisions of the Gratuity Act. It is not the case of the Bank that it has been exempted



from the operation of the provisions of the Gratuity Act rather the Regulations of the Bank itself provide for payment of gratuity as per the provisions of the Gratuity Act.

24. In **Municipal Corporation of Delhi vs. Dharam Prakash Sharma and Another [(1998) 7 SCC 221]**, the appellant-Municipal Corporation of Delhi had adopted the CCS (Pension) Rules, 1972, which covered both pension and gratuity payments. However, the respondent-employee was awarded an extra amount of gratuity by order of the authority under the Gratuity Act. The appellant-Municipal Corporation of Delhi filed a writ petition challenging the order, contending that the Act was not applicable to its employees. The Division Bench of the Delhi High Court dismissed the appellant's writ petition. Against which, an appeal was filed before the Supreme Court. After hearing the parties, the Supreme Court held as under:-

“...The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the



Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.



Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.”

25. In **Allahabad Bank and Another vs. All India Allahabad Bank Retired Employees Association [(2010) 2 SCC 44]**, the Supreme Court after taking into consideration of Section 5 of the Gratuity Act held as under:-

“A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government”.

26. The Supreme Court further held as under:-

“Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on



superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act”.

27. In view of the above binding precedents of the Supreme Court, there is no room for any doubt that since the Bank has not been exempted from the operation of Gratuity Act, it cannot escape from the liability of paying gratuity to the petitioner.

28. Sub-section (3-A) of Section 7 of the Gratuity Act prescribes that in case gratuity is not released to an employee within 30 days from the date same becomes payable under sub-section (3) of Section 7, the employee would be entitled to receive interest from the date on which gratuity becomes payable to the date on which it is paid.

29. In **H. Gangahanume Godwa vs. Karnataka Agro Industries Corporation Ltd.** [(2003) 3 SCC 40], the appellant while in service of the respondent-Karnataka Agro



Industries Corporation Ltd. was kept under suspension from 15.03.1999. He filed writ petition before the High Court challenging the suspension order. The respondent thereby withdrew the suspension by an order dated 21.05.1999. The High Court thereafter disposed of the petition as having become infructuous, however, reserving liberty to the petitioner to approach it for seeking appropriate relief, if necessary. The appellant reached the age of superannuation on 01.01.2000 and retired. The respondent-Karnataka Agro Industries Corporation Ltd. did not pass any order regarding regularization of the suspension period and settlement of salary and allowances payable to him on retirement. The appellant therefore approached the High Court seeking payment of full salary and allowances for the period of suspension, gratuity, cash equivalent of earned leave together with interest thereon @ 18% per annum and settlement of provident fund dues. During the pendency of the writ petition, however, the respondent settled the provident dues. The learned Single Judge of the High Court granted relief to the appellant except interest on belated payment of gratuity. He denied the interest on delayed payment of gratuity only on the ground that there was doubt whether the appellant was entitled to gratuity during pendency of enquiry. On appeal, a Division Bench of the High Court found that the appellant was entitled to payment of



interest on the belated payment of gratuity, but held that the discretion exercised by the Single Judge in denying interest was not arbitrary. On appeal, after taking note of the provisions of the Gratuity Act, the Supreme Court while holding that the appellant was entitled to receive interest on delayed payment of gratuity having due regard to Section 7(3-A) of the Gratuity Act observed as under:-

“9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, 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. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

10. 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. The appeal is allowed accordingly with cost quantified at Rs. 10,000/-.”

30. Thus, in view of the above binding precedents, in the present case, the respondent no.3, who attained the age of superannuation on 28.02.2014 became entitled to receive the payment of gratuity on 1st of March, 2014. Since the payment of gratuity was not made to him within 30 days from the date gratuity became payable under sub-section (3) of Section 7, he became entitled to receive interest over it from the date on which the same became payable to the date of actual payment.

31. Furthermore, it would be manifest from a reading of Section 14 of the Gratuity Act that the Act has an overriding effect with respect to any inconsistency in any enactment other than the Gratuity Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

32. Thus, any of provision of Regulations cannot be interpreted in any manner to debar payment of interest on account of delayed payment of gratuity to the respondent no.3 even if there is any inconsistency with the provisions of the Gratuity Act.

33. It has rightly been submitted by Mr. Satyavrat Verma, learned Central Government counsel that even if there is any



such provision under the Regulations, the same would be inconsequential in view of the overriding effect of Section 14 of the Gratuity Act.

34. In **Y.K. Singla vs. Punjab National Bank and Others [(2013) 3 SCC 472]**, while interpreting the mandate of Section 14 of the Gratuity Act, the Supreme Court held as under:-

“24. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995, Regulations, had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under section 7(3-A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/instrument other than the Gratuity Act. This is so because, the terms of payment of gratuity under the alternative instrument have to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the provision concerned is silent on the issue. This is so because the instant situation is not worse than the one discussed above, where there is a provision



expressly debarring payment of interest in the manner contemplated under Section 7(3-A) of the Gratuity Act. Therefore, even though the 1995, Regulations, are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3-A) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in section 14 of the Gratuity Act, deliberated in detail hereinabove would stand negated.”

35. Keeping in mind the ratio laid down by the Supreme Court in the abovenoted decisions, this Court is of the considered opinion that there is no merit in the challenge to the impugned orders passed by the Controlling Authority and the Appellate Authority.

36. Accordingly, the writ petition being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.05.2018
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