

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (L) No.4029 of 2008

Steel Authority of India Limited, Bhilai Steel Plant, Bhilai, Through
the Managing Director

---- Petitioner

Versus

1. Appellate Authority under Payment of Gratuity Act / Dy. Labour Commissioner, Raipur (C.G.)
2. Controlling Authority under Payment of Gratuity Act & Asstt. Labour Commissioner, Durg.
3. Smt. Dileshwari Bai Soni, W/o Late J.P. Soni, Address: Block No.2-D, Street No.18, Zone-1, Kursipar, Bhilai, Distt. Durg (C.G.)

---- Respondents

For Petitioner:	Mr. Ashish Surana, Advocate.
For Respondent No.3:	None present.
<i>Amicus Curiae</i> :	Mr. R.N. Pusty, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/07/2018

1. Shri Jagdish Prasad Soni, while working in Steel Authority of India Limited (SAIL), was granted House Building Advance to the extent of ₹ 2,78,000/- in three installments up to 28-1-1999 by the petitioner (SAIL), however, before the loan amount could be liquidated he died leaving an outstanding amount of ₹ 2,67,546/- in favour of the SAIL. An amount of gratuity payable to him i.e. ₹ 1,56,812/- was also adjusted towards House Building Advance which was questioned by his wife – respondent No.3 by filing an application before the Controlling Authority under the Payment of Gratuity Act, 1972 (for short, 'the Act of 1972') and it has been held to be unauthorised deduction by the said authority and directed for

payment of said amount which was questioned by the SAIL in appeal before the appellate authority under the Act of 1972, but that was also dismissed leading to filing of writ petition before this Court.

2. Mr. Ashish Surana, learned counsel appearing for the petitioner SAIL, relying upon the Hindustan Steel Gratuity Rules, 1966 (for short, 'the HSG Rules of 1966'), would submit that by virtue of second proviso to Rule 4 of the said HSG Rules of 1966, the petitioner Company had a right to deduct from the Gratuity payable and admissible under the HSG Rules of 1966 to an employee, such amount as may be due from the employee and, therefore, both the authorities are absolutely unjustified in directing payment of gratuity to respondent No.3 which was deducted towards House Building Advance. He would further rely upon a decision of the Jharkhand High Court in the matter of Bokaro Steel Limited v. Shri Ram Naresh Singh and others¹ and a decision of the Supreme Court in the matter of Secretary, ONGC Ltd. and another v. V.U. Warriar² to buttress his submission.
3. Mr. R.N. Pusty, learned *amicus curiae* assisting the Court, would submit that the HSG Rules of 1966 applicable to the petitioner are non-statutory rules and the provisions of the Act of 1972 contained in Section 4(6)(a) and (b) would be applicable and the Act of 1972 will prevail over the non-statutory rules framed by the SAIL and, therefore, both the authorities are absolutely justified in directing payment of gratuity.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the

¹ 2014 SCC OnLine Jhar 163

² (2005) 5 SCC 245

record with utmost circumspection.

5. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incident thereto.
6. In the matter of **Bakshish Singh v. M/s. Darshan Engineering Works and others**³, Their Lordships of the Supreme Court have analysed number of judgments dealing with the concept of gratuity and it has been observed that the Act was placed on the statute book as a welfare measure to improve the service conditions of the employees. Their Lordships further held that the Payment of Gratuity Act is of the genre of Minimum Wages Act, the Payment of Bonus Act, the Provident Funds Act, Employees State Insurance Act and other like statutes. In this judgment, Their Lordships referred to Article 38 of the Constitution of India and mentioned that the requirement of the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which, among other things, social and economic justice shall inform all the institutions of the normal life. Reference was also made in the aforesaid case to Articles 39 and 41 of the Constitution.
7. In the matter of **D.V. Kapoor v. Union of India and others**⁴, Their Lordships of the Supreme Court have categorically held that in order to deprive an employee of the amount of pension as well as of gratuity, deprivation should be in accordance with the procedure

³ AIR 1994 SC 251

⁴ (1990) 4 SCC 314

established by law and also held that right to gratuity is also a statutory right. Their Lordships observed as under: -

“10. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under [Article 41](#) of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.”

8. The aforesaid statement of law clearly indicates that the Payment of Gratuity Act, 1972 is a welfare legislation and the amount of gratuity can be withheld only in accordance with the procedure established by law.
9. At this stage, it would be appropriate to notice Section 13 of the Act of 1972 which states as under: -

“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.

10. A focused glance of the aforesaid provision would show that gratuity payable under this Act cannot be attached in execution of any decree or order of any civil, revenue or criminal court. Likewise, Section 14 of the Act of 1972 provides that the provisions

of the Act or any rule made thereunder shall have overriding effect and is a provision inconsistent therewith. Section 14 of the Act of 1972 reads as follows: -

“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.”

11. Sections 13 and 14 of the Act of 1972 came-up for consideration before the Supreme Court in the matter of **Calcutta Dock Labour Board and another v. Smt. Sandhya Mitra and others**⁵. In this case, the Supreme Court has held that once gratuity was payable to an employee in accordance with the Act of 1972, he is entitled for immunity by virtue of the provisions contained in Section 13 of the Act and observed as under: -

“In absence of any notification within the meaning of Section 5 of the Act the amendment is not relevant for consideration. Section 14 has overriding effect and Section 13 gives total immunity to gratuity from attachment. The preamble of the Act clearly indicates the legislative intention that the Act sought to provide a scheme for payment of gratuity to all employees engaged in, inter alia, ports and under this Act gratuity was payable to workers like Md. Safiur Rehman. The gratuity which was payable to him squarely came within the purview of the Act and, therefore, became entitled to immunity under Section 13 thereof.”

12. In the matter of **Jaswant Singh Gill v. Bharat Coking Coal Ltd. and others**⁶, the Supreme Court has held that the provisions of the Act of 1972 will prevail over the non-statutory rules framed by Bharat Coking Coal Ltd. and Rule 34.3 of the Coal India Executives' Conduct, Discipline and Appeal Rules, 1978 should be read subject to the provisions of the Act, and observed as under: -

⁵ (1985) 2 SCC 1

⁶ (2007) 1 SCC 663

“9. The Rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of Respondent 1.

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

11. Power to withhold penalty (*sic* gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefor is rendition of five years' continuous service.”

13. Not only this, the Supreme Court in the matter of Y.K. Singla v. Punjab National Bank and others⁷, while considering the Punjab National Bank (Employees) Pension Regulations, 1995 relying upon Section 14 of the Act of 1972 held that a superior status has been vested to the provisions of the Gratuity Act vis-a-vis any other enactment inconsistent therewith, and observed as under: -

“22. In order to determine which of the two provisions (the [Gratuity Act](#), or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to [Section 14](#) of the Gratuity Act, which is being extracted hereunder:-

“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.”

(emphasis supplied)

⁷ (2013) 3 SCC 472

A perusal of [Section 14](#) leaves no room for any doubt that a superior status has been vested in the provisions of the [Gratuity Act](#) vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the [Gratuity Act](#), the legislature having vested superiority to the provisions of the [Gratuity Act](#) over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the [Gratuity Act](#) cannot be ignored. The term “instrument” and the phrase “instrument or contract having the force of law” shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.

23. Based on the conclusions drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of [Section 4](#) of the Gratuity Act that an employee has the right to make a choice of being governed by some alternative provision/instrument other than the [Gratuity Act](#), for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the [Gratuity Act](#). This protection has been provided through [Section 4\(5\)](#) of the [Gratuity Act](#).

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.”

14. At this stage, it would be appropriate to notice Rule 4 contained in the HSG Rules of 1966 promulgated by the petitioner (SAIL) i.e. “Conditions for the Grant of Gratuity”, the second proviso of which reads as under: -

“4. Conditions for the Grant of Gratuity :

...

(ii) Provided further, that the company will have always a right to deduct from the Gratuity payable and admissible under these rules to an employee, such amount as may be due from the employee.”

15. After having noticed the aforesaid principles of law flowing from the decisions of the Supreme Court and the HSG Rules of 1966, reverting to the facts of the present case, it is quite vivid that the HSG Rules of 1966 authorising the company and giving right to deduct from the gratuity payable and admissible to an employee, such amount as may be due from the employee, are non-statutory in character and they are in apparent conflict with the provisions contained in Section 4(6)(a) and (b) of the Act of 1972, which clearly provides that termination of service for any causes enumerated in Section 4(6) is imperative. Therefore, in the light of Section 14 of the Act of 1972 and as held by the Supreme Court in Jaswant Singh Gill (supra) and Y.K. Singla (supra), the Act of 1972 will prevail over the HSG Rules of 1966 of the SAIL and the said Rules have to give way to the Act of 1972 as such, in terms of Section 4(6) of the Act of 1972, the Act of 1972 will prevail over the

non-statutory HSG Rules. Therefore, the amount of House Building Advance cannot be recovered from the gratuity of the employee / respondent No.3, as such, both the authorities are absolutely justified in granting the amount of gratuity to respondent No.3.

16. The decisions cited by learned counsel for the petitioner SAIL i.e. Shri Ram Naresh Singh's case (supra) and V.U. Warriar's case (supra), are clearly distinguishable on facts in the light of finding recorded herein-above.
17. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed upholding the order passed by the controlling authority affirmed by the appellate authority. The amount of gratuity would be paid along with 8% interest from the date of non-payment till the date of actual payment, if the amount is not already paid to respondent No.3. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.4029 of 2008

Steel Authority of India Limited

Versus

Appellate Authority under Payment of Gratuity Act / Dy. Labour
Commissioner and others

Head Note

House Building Advance cannot be deducted by Steel Authority of India Limited from the gratuity payable to its employee.

भारतीय इस्पात प्राधिकरण मर्यादित (स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड) द्वारा अपने कर्मचारी के प्रति देय उपदान में से गृह निर्माण अग्रिम राशि की कटौती नहीं की जा सकती।