

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.21456 and 23449 of 2013

W.P.No.21456 of 2013:

The Management,
Coimbatore District Central Co-operative Bank Ltd.,
rep. By its General Manager,
Bank Road, Coimbatore. Petitioner

vs.

1. The Joint Commissioner of Labour,
Coimbatore.
2. The Assistant Commissioner of Labour,
O/o.Deputy Commissioner of Labour,
Coimbatore.
3. K.S.Rajasekaran
4. K.Subburaj
5. K.Krishnan
6. R.Duraisamy
7. S.Rajeswari
8. N.Saraswathi
9. P.S.Dhandapani
10. P.Subbarayan
11. K.Govindasamy ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records relating to the common order passed by the first Respondent in A.G.A.Nos.194/2011 to 202/2011, dated 12.05.2013, confirming the order passed by the 2nd Respondent in G.A.No.229/2003, G.A.No.228/2003, G.A.No.224/2002, G.A.No.372/2002, G.A.No.218/2002, G.A.No.360/2002, G.A.No.373/2002 and G.A.No.35/2002, and quash the same.

W.P.No.23449 of 2013:

The Management,
Coimbatore District Central Co-operative Bank Ltd.,
rep. By its General Manager,
Bank Road, Coimbatore.

... Petitioner

vs.

1. The Assistant Commissioner of Labour,
(Controlling Authority Under Payment of Gratuity Act),
O/o. Deputy Commissioner of Labour,
Coimbatore.
2. K.Srimathi
3. V.R.Jayalakshmi
4. M.Balakrishnan
5. P.Vivekanandan
6. P.Mani
7. P.Rathinasamy
8. R.Jayalakshmi
9. R.Praveena
10. B.Sangameswaran
11. R.Pappammal
12. D.Murugesan
13. S.Sivaram
14. C.N.Venugopal
15. N.Sundari
16. R.C.Ganeshamoorthi
17. R.Shanmugasundaram
18. V.Paramanantham
19. P.Krishnasamy
20. M.Indirani
21. S.Duraiswamy
22. R.J.B.Leo Raj
23. S.Chandra Mohan
24. R.Narayanasamy
25. R.Radhabai
26. N.Krishnasamy
27. Su.Radhakrishnan
28. G.Palaniswamy
29. K.Pechiannan
30. A.Muthuswamy
31. P.Chandrasekaran
32. U.P.Natarajan
33. M.Maniammal
34. G.Radhakrishnan
35. A.Renganathan

36. A.Krishnasamy
37. A.Balasubramaniam
38. R.Shenbagaponnammal
39. K.M.Shiek Mohammed
40. M.Rathinam
41. S.Indirani
42. M.P.Saraswathy

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records relating to the impugned common order passed by the first Respondent dated 12.07.2013 in G.A.No.83/2011, G.A.No.107/2011 to G.A.No.122/2011, G.A.Nos.317 & 318/2011, G.A.No.322/2011, G.A.No.323/2011, G.A.No.325/2011, G.A.No.62/2012 to G.A.No.70/2012, G.A.No.107 to 111/2012, G.A.No.121/2012 and G.A.No.122/2012, and quash the same.

For Petitioner in both W.Ps. : Mr.D.Shanmugaraja
Sethupathi

For Respondents 1 & 2 in : No appearance
W.P.No.21456/2013 and 1st
Respondent
in W.P.No.23449/2013

For Respondents 3 to 11 in : Mr.C.Murugesan
W.P.No.21456/2013 and Respondents
2 to 11 & 13 to 42 in
W.P.No.23449/2013

For 12th Respondent in : Dismissed vide order dated
W.P.No.23449/2013 15.12.2014

COMMON ORDER

Coimbatore District Central Co-operative Bank Limited has come up with Writ Petition No.21456 of 2013, seeking to quash the common order dated 12.05.2013, passed by the 1st Respondent/Appellate Authority, in A.G.A.Nos.194/2011 to 202/2011, confirming the order passed by the 2nd Respondent/Controlling Authority in G.A.No.229/2003, G.A.No.228/2003, G.A.No.224/2002, G.A.No.372/2002, G.A.No.218/2002, G.A.No.360/2002, G.A.No.373/2002 and G.A.No.35/2002, and W.P.No.23449 of 2013, seeking to quash the common order dated 12.07.2013 passed by the 1st Respondent in G.A.No.83/2011, G.A.No.107/2011 to G.A.No.122/2011, G.A.Nos.317 & 318/2011, G.A.No.322/2011, G.A.No.323/2011, G.A.No.325/2011, G.A.No.62/2012 to G.A.No.70/2012, G.A.No.107 to 111/2012, G.A.No.121/2012 and G.A.No.122/2012.

2. While the order of the Appellate Authority confirming the order passed by the Controlling Authority, is under challenge in W.P.No.21456 of 2013, the order passed by the Controlling Authority is directly under challenge in W.P.No.23449 of 2013.

3. Since the issue involved in these Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

4. According to the Petitioner-Bank, Respondents 3 to 11 in W.P.No.21456 of 2013 and Respondents 2 to 42 in W.P.No.23449 of 2013 were employees of the Petitioner-Bank and they had retired from service on attaining superannuation on various dates. It is further stated that the retired employees received entire gratuity due to them, as per the Settlement dated 26.02.1997, without any limitation, either fixed by the Act or under the Group Gratuity Scheme. However, they filed Applications before the Assistant Commissioner of Labour, Coimbatore, claiming that, they are entitled to receive further amount of gratuity, notwithstanding the claim made already, as per the Settlement dated 26.02.1997.

5. It is the case of the Petitioner-Bank that, in both Writ Petitions, the Controlling Authority, without considering the Settlement dated 26.02.1997 in a proper perspective, accepted the claim of the retired employees, as also the method adopted by them in calculating the length of service, and ordered to pay the difference of gratuity amount, with interest at the rate of 10% from the date of Applications.

6. According to the learned counsel for the Petitioner-Bank, in terms of Section 4(5) of the Gratuity Act, workmen cannot be permitted to adjudicate their remedy before the Controlling Authority, and their rights are elsewhere. Having signed the Settlement with open eyes, and having enjoyed the benefits of the linked Insurance Scheme and received the gratuity amount, retired employees herein cannot adjudicate the issue, more particularly, before the Authority under the Gratuity Act.

7. Learned counsel for the Petitioner-Bank went on to state that, as per the linked Gratuity Scheme adopted by virtue of the Settlement dated 26.02.1997, an employee is entitled to get 15 days' wages for every completed year, as gratuity, subject to a maximum of the amount equalling to 20 months' salary. Further, as per the terms of the Settlement, for the purpose of calculation of Gratuity, 26 days will be reckoned as

a month not only for arriving at pay, but also for calculation of length of service.

8. Learned counsel drew the attention of this Court to the Explanation clause inserted in Section 4 of the Gratuity Act, which reads that "In case of a monthly-rated employee, the 15 days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by dividing 26 and multiplying the quotient by 15." Thus, according to the learned counsel, the terms of the Settlement dated 26.02.1997 were incorporated, in conformity with the Explanation inserted in Section 4 of the Gratuity Act, for the purpose of calculating one day salary, and 20 months' salary, which is the maximum ceiling during the relevant period.

9. Learned counsel for the Petitioner-Bank pointed out that, the employees herein misconstrued the terms of the Settlement, as if, every 26 days will form a month and as such, the calculation of length of service would be long than the actual working years. According to him, if such method is adopted, then, a year with 365 days would have 14 months, and the same would lead to absurdity.

10. In support of his stand, learned counsel for the Petitioner-Bank has relied on the following:

- (i) an Apex Court decision in the case of Allahabad Bank vs. All India Allahabad Bank Retired Employees Association, 2010 (2) SCC 44

"43. The scheme envisaged under Section 7 of the Act is that in case of any dispute as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity, etc. the employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute, the parties may make an application to the Controlling Authority for deciding the dispute who 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 to the employee.

44. Sub-section (7) of Section 7 provides for an appeal against the order of the Controlling Authority. The Act nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.

45. Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (Old) offered by the Bank is more beneficial since the amount of money the pensioners got under the pension scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that sub-section (5) of Section 4 of the Act protects the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under Section 4 of the Act. There can be no comparison between a pension scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act."

(ii) a decision of this Court in the case of Venugopal vs. The Joint Commissioner of Labour, Appellate Authority under the Payment of Gratuity Act, Madurai, (2012) (IV) LLJ 625

"10. He further relied on the judgment of the Calcutta High Court reported in 1982 (II LLJ 324 [Eastern Coal Fields Ltd., v. Regional Labour Commissioner]. In paragraph 6, it was observed as follows:-

"6. ...It also appears to me the Payment of Gratuity Act in a beneficial legislation intended to give benefits to the employees and the provisions of the Act should be construed liberally in a way so that the beneficial intention is not frustrated by any strict and narrow interpretation but the benefit under the Act reaches the maximum possible employees. In my view, the provisions of Section 4(5) of the act has authorised the Controlling Authority to grant a higher quantum than quantum of gratuity under the Act in view of favourable conditions of service, although in the absence of such favourable conditions, such higher quantum could not have been decided by the Controlling Authority. In my view, 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. In the facts of the case, it does not appear that the Tribunals below have acted beyond the jurisdiction and/or have made adjudications not warranted in law. Hence no interference is called for in the constitutional writ jurisdiction and the writ petition is dismissed without any order as to costs."

(iii) another decision of this Court in the case of the Management, Virudhunagar District Central Co-operative Bank vs.

The Assistant Commissioner of Labour, Virudhunagar, (2013 (1) LLJ 745)

"11. According to the petitioner Bank, the first respondent, authority under the Payment of Gratuity Act, has no jurisdiction to decide the disputes, on the interpretation of 12(3) settlement, in view of Section 36(A) of the Industrial Disputes Act, which contemplates that if any difficulty or doubt arises as to interpretation any provision or any award or settlement, the appropriate Government shall refer the question to such Labour Court, Tribunal or National Industrial Tribunal, as it may think fit. For the aforesaid reasons, the petitioner bank has sought for quashment of the common order, dated 22.04.2009.

16. Though several contentions have been raised on merits, for and against the impugned order, this Court deems it fit to address the preliminary issue, raised in this writ petition, as to whether the Assistant Commissioner of Labour, Madurai, has jurisdiction to entertain the dispute, under the Payment of Gratuity Act. The factual dispute as could be deduced from the pleadings is whether the computation of the period for calculating gratuity should be on the basis of wages for 26 days in a month, though the number of days in a month is 30. Whether such dispute attracts the provision under Section 7 (4) of the Payment of Gratuity Act, empowering the controlling authority to adjudicate the dispute, and whether the terms of the settlement under Section 12(3) of the Industrial Disputes Act, can be subject matter of a dispute, falling under Section 7(4) of the Payment of Gratuity Act."

(iv) a Gujarat High Court decision in the case of Gujarat State Road Transport Corporation vs. Chandrakant Tapubhai Vyas, 2004 (3) LLJ 86

"9. However, the peculiar circumstance has arisen in the present group of cases inasmuch as it was required under the law pending the appeals, the amount as ordered by the Controlling Authority is already deposited by the petitioner-Corporation with the

authority, and the said amount is of course including the interest. Pending the petitions, the said amount has remained with the controlling authority, and pursuant to the interim order passed by this Court in the petition concerned, withdrawal was stayed. However, in view of the aforesaid statement made by Mr. Rawal during the course of the hearing, when the Corporation has also taken a decision for admissibility of the gratuity and its payment thereof by instalment, as on today, it cannot be said that the gratuity to the employees concerned would not be admissible. Since the matter is pertaining to payment of gratuity by way of retiral dues to the employees and when the payment has already been deposited with the controlling authority under the Act and in view of the declaration made by Mr. Prajapati for the employees concerned that they are not insisting for the interest if the principal amount deposited with the controlling authority is permitted to be withdrawn by the employees concerned, I find that no useful purpose would be served in remanding the matters to the appellate authority and/or controlling authority for the purpose of reconsidering the issue again. As such on account of the above referred subsequent change in the circumstances, the admissibility of gratuity amount is admitted on account of subsequent decision of the Corporation itself. Further, if the matters are remanded to the appellate authority for reconsideration of the issue and to render a decision afresh in view of the aforesaid change in the circumstances, the only consequence would be that the Corporation may get back the amount which thereafter will be required to be paid by installments as per its decision. Had it been a case where the liability to pay the gratuity were not in existence, the matter would have been viewed differently, but when the Corporation itself has taken a decision to pay gratuity but by installments, I find that considering the peculiar facts and circumstances, no serious prejudice will be caused to the Corporation if the employees concerned is allowed to withdraw the principle

amount of gratuity lying with the controlling authority and the amount forming interest can be ordered to be refunded to the Corporation."

(v) yet another Gujarat High Court decision in the case of Gujarat State Export Corporation Ltd. vs. Madhusudan L.Khandwala, 2004 (II) LLJ 389

"13. In the present case the Controlling Authority could have directed the petitioner corporation to grant benefit to the extent the same was flowing from the provisions of the Act and should have restrained itself from ordering payment on the basis of private scheme. When the private scheme provides for payment of one month salary for each completed year of service it has reason to provide for maximum limit also. If the provisions of the private scheme are less beneficial, then under the provisions of the Act an employee can approach the Controlling Authority and the Controlling Authority can order enforcement of rights flowing from the Act. In the present case the respondent in Special Civil Application No.8285 of 2001 is concerned he has put in 32 years of service. Under the provisions of the Act he is entitled to get 16 months' salary. To that extent his claim for payment of 16 months' salary deserves to be allowed.

14. In the result, petitions succeed. The judgements and orders of the Controlling Authority as confirmed by the appellate authority in all these petitions are hereby quashed and set aside. However, the petitioner corporation is directed to pay the amount of gratuity to the respondents on the basis of private scheme as it stood on the day when the right accrued in favour of the employees or on the basis of Payment of Gratuity Act whichever is more beneficial to the employee. Rule is made absolute to the aforesaid extent only. No order as to costs."

(vi) a Kerala High Court decision in the case of Ayyappan vs. Joint Labour Commissioner, 1999 (2) LLJ 1351

"4. Section 7 of the Act enables an employee to approach the controlling authority for determination of the amount towards

gratuity. Section 7 can be invoked only by "a person who is eligible for payment of gratuity under this Act." The gratuity claimed by the petitioner is not under this Act but under Ext. P2. Under the Act the petitioner is entitled only to the rate as mentioned in Sub-section 2 of Section 4. The amount granted in Ext. P4 is equal to that rate. Therefore, limiting of the gratuity payable to the petitioner under the Act to 15 days' wages for every completed year as contained in Ext. P4 is justified though on a different ground. On that basis, the petitioner cannot challenge the quantum of gratuity directed to be paid in Ext. P4. Therefore, Ext. P4 to that extent alone is upheld. But the finding that Ext. P2 is not applicable to the petitioner is set aside and left open."

(vii) another Kerala High Court decision in the case of Sivaraman Nair vs. The Plantation Corporation, 2005 (1) KLT 1

"13. Therefore, the Controlling Authority could have determined a claim as exclusively coming under the Act alone. Of course, a claim for gratuity other than that coming within the purview of the Act could have been adjudicated under Section 33-C(2) of the Industrial Disputes Act, by a Labour Court. In such a case also, possibly the adjudication could have been only as prescribed by the settlement, and simultaneously taking notice of the ceiling as it always was to operate as a package deal. In short, the petitioners had to face restrictions at one point or another, viz., at the rate prescribed by the Government Orders, and with a ceiling prescribed by the order, or purely under the Act. The claims as presented therefore were ambitious, but without legal backing."

(viii) yet another Kerala High Court decision in the case of Thomas Kurian vs. Idukki District Co-operative Bank Ltd., (2003) III LLJ 1026

"6. ... The petitioner filed objections contending that he was entitled to furthermore amount in view of the provisions in the revised service regulations. As the petitioner was not ready to repay the excess amount collected by

him, the bank filed arbitration proceedings before the arbitrator and thereafter the petitioner filed exhibit P-12 application before the Controlling Authority constituted under [Section 3](#) of the Gratuity Act claiming further amount. Learned counsel for the first respondent submitted that the maximum amount payable under Sub-section (3) of [Section 4](#) of the Gratuity Act is Rs. 3.5 lakhs and the bank is not disputing the petitioner's claim for Rs. 3.5 lakhs. The Controlling Authority constituted under the [Gratuity Act](#) can consider the claim of an employee in accordance with the provisions of the [Gratuity Act](#) and can sanction the maximum amount or Rs. 3.5 lakhs prescribed under Sub-section (3). In view of [Section 5](#) of the Act, the Controlling Authority can allow in excess of the maximum prescribed under Sub-section (3), if there, was any provision in the bye-law or any agreement with the employer entitling for higher amount. But in the present case, by exhibit P-1 circular, the gratuity payable to an employee was limited to the amount payable under the [Gratuity Act](#). The Controlling Authority constituted under the [Gratuity Act](#) is incompetent to consider the legality or propriety of exhibit P-1 circular as he does not have any authority or jurisdiction to consider the same. When the right to get the maximum amount of gratuity under the [Gratuity Act](#) is not disputed by the bank, the Controlling Authority has no jurisdiction in adjudicating the dispute regarding the excess amount paid to the employee. As the dispute is relating to the payment of an amount in excess of the amount prescribed under Sub-section (3) of [Section 4](#) of the Gratuity Act and that being a dispute between the employer and employee, it has to be adjudicated by the arbitrator under [Section 69](#) of the Co-operative Societies Act. The [Co-operative Societies Act](#) envisages a dispute between the employer and the former employee also to be decided by arbitration. Hence, exhibit P-8 proceedings initiated by the bank before the arbitrator is in accordance with law and has to be proceeded with. In the present case, the Controlling Authority cannot have any

jurisdiction in the matter, as the dispute relates to the claim regarding the excess amount paid which is beyond the purview of the Gratuity Act. Hence, the reliefs prayed for in this original petition cannot be allowed."

(ix) another Apex Court decision in the case of Shri Digvijay Woollen Mills Ltd. vs. Shri Mahendra Prataprai Buch, (1980 (4) SCC 106)

"5. The view expressed in the extract quoted above appears to be legitimate and reasonable. Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse. It is not necessary to consider whether another view is possible. The High Court summarily dismissed the petition of the appellant in both the appeals before us and upheld the decision of the authorities under the Act. We are not inclined to interfere with the decision of the High Court because it seems to us that the view taken by the authorities is not in any way unreasonable or perverse. Incidentally, to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown, we may refer to a passage from the judgment of this Court in Delhi Cloth and General Mills Company Ltd. v. Workmen [AIR 1970 SC 919 : (1969) 2 SCR 307 : (1969) 2 LLJ 755 : 36 FJR 247] which disposed of several appeals arising out of an award made by the Industrial Tribunal, Delhi. In the award, schemes were framed relating to the payment of gratuity. The expression "average of the basic wage" occurring in the schemes was explained by this Court as follows:

"It was also urged by Mr Ramamurthi that the expression 'average of the basic wage', in the definition of 'wages' in clause 4 of the schemes is likely to create complications in the implementation of the schemes. He urged that if the wages earned by a workman during a month are divided by

the total number of working days, the expression 'wages' will have an artificial meaning and especially where the workman is old or disabled or incapacitated from rendering service, gratuity payable to him will be substantially reduced. We do not think that there is any cause for such apprehension. The expression 'average of the basic wages' can only mean the wage earned by a workman during a month divided by the number of days for which he has worked and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable. Counsel for the employers agree to this interpretation."

(x) yet another Apex Court decision in the case of Jeewanlal Ltd. vs. Appellate Authority under the Payment of Gratuity Act, 1984 (4) SCC 356

"11. In construing a social welfare legislation, the court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none.

13. ...The quantum of gratuity payable

under sub-section (2) of Section 4 of the Act has to be fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or more in excess of six months' subject to the maximum of 20 months' wages as provided by sub-section (3) thereof. The whole object is to ensure that the employee concerned must be paid gratuity at the rate of fifteen days' wages for 365 days in a year of service. The total amount of gratuity payable to such employee at that rate has to be multiplied by the number of years of his service subject to the ceiling imposed by sub-section (3) of Section 4 of the Act viz. that such amount shall not exceed 20 months' wages. The construction of sub-section (2) of Section 4 of the Act adopted by the learned Single Judge of the Andhra Pradesh High Court in Associated Cement Company case [(1976) 1 LLJ 222 (AP)] and later approved by a Division Bench of that Court in Swamy case [(1978) 52 FJR 138 (AP)] would make it utterly unworkable. If the determination of the amount of gratuity payable under sub-section (2) of Section 4 depends on the number of calendar days in a month in which the services of the employee concerned terminates, the quantum of gratuity payable would necessarily vary between an employee and an employee, belonging to the same class, drawing the same scale of wages, with like service for the same number of years. Obviously, this could not have been the legislative intention.

14. The next question is: whether a month cannot mean 26 working days for purposes of sub-section (2) of Section 4 of the Act and 30 days for purposes of sub-section (3) thereof. It is said that if a month under sub-section (2) connotes 26 working days in a month for purposes of calculating the amount of gratuity, then the rule of harmonious construction requires that the words "20 months' wages" in sub-section (3) thereof must mean wages for 520 working days taking the actual working days in 20 months and not 600 days taking that a month consists of 30 days. The contention is wholly misconceived. Sub-sections (2) and (3) of

Section 4 of the Act are designed to achieve two separate and distinct objects and they operate at two different stages. While sub-section (2) provides for the mode of calculation of the amount of gratuity, sub-section (3) seeks to impose a ceiling on the amount of gratuity payable at 20 months' wages. It is meant to provide an incentive to employees to serve for the period of 30 years or more. By no rule of construction, sub-section (2) of Section 4 of the Act which uses the words "fifteen days' wages" and not half a months wages, be called in aid for construction of the words "20 months' wages" appearing in sub-section (3) of Section 4 of the Act."

(xi) yet another Apex Court decision in the case of Beed District Central Co-operative Bank Ltd. vs. State of Maharashtra, (2006 (8) SCC 514

"13. We, however, are of the opinion that the said doctrine cannot be said to have any application whatsoever in the instant case. Undoubtedly, the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. However, it is also trite that only because a statute is beneficent in nature, the same would not mean that it should be construed in favour of the workmen only although they are not entitled to benefits thereof. (See Regional Director, ESI Corpn. v. Ramanuja Match Industries [(1985) 1 SCC 218 : 1985 SCC (L&S) 213 : AIR 1985 SC 278] .)

14. Applying the "golden rule of interpretation of statute", to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. When better terms are offered, a workman takes it as a part of the package. He may volunteer therefor, he may not. Sub-section (5) of Section 4 of the 1972 Act provides for a right in favour of the workman. Such a right

may be exercised by the workman concerned. He need not necessarily do it. It is the right of individual workman and not all the workmen. When the expression "terms" has been used, ordinarily it must mean "all the terms of the contract". While interpreting even a beneficent statute, like, the 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 be lost. ..."

12. Learned counsel for the Petitioner - Bank, has also relied on the following unreported judgments of this Court:

(i) T.Rajarajan vs. The Appellate Authority, Joint Commissioner of Labour, Trichy, (order dated 12.12.2018 passed in W.P.Nos.5794, 6021, 6042, 6107, 6166 and 6291 of 2018)

"2. It is not in dispute that the writ petitions are not trying to enforce the statutory liability of the Management to settle the gratuity dues of the employees. On the other hand, what is sought to be enforced are the terms of a settlement entered into under Section 12(3) of the Industrial Disputes Act. Of course, as rightly pointed out by the learned counsel appearing for the employees, the employer can always confer better terms of gratuity under any Award or Agreement. The question is whether the Controlling Authority was right in entertaining the Applications filed by the Petitioners herein.

3. The issue is no longer res integra. The learned counsel for the Management has filed number of case laws in his compilation set. One is the case reported in 2012 (IV) LLJ

625 (Venugopal vs. Joint Commissioner of Labour), wherein, it was held that the jurisdiction of the controlling authority would be attracted only if there is statutory liability to pay the amount of gratuity. In this case, admittedly, the writ petitioners are not trying to enforce the statutory liability of the employer to pay the amount of gratuity, but the better terms conferred on them by way of settlement entered under Section 12(3) of the Act."

(ii) The Management, Madurai District Central Co-operative Bank Ltd. vs. The Joint Commissioner of Labour, Madurai (order dated 26.10.2010 passed in W.A.No.675 of 2007)

"10. There is Group Gratuity (Cash Accumulation) Scheme linked with Life Insurance Corporation of India in the Appellant Bank. As per the Scheme, an employee is entitled to get 15 days wages as gratuity for every year of service, subject to a maximum of the amount equivalent to 20 months salary. According to Appellant Bank, since the gratuity amount was more beneficial to the employees than the Act, in the Settlement dated 17.02.1997 under Section 12 (3) of Industrial Disputes Act, in the Settlement dated 17.02.1997 under Section 12 (3) of Industrial Disputes Act, it was agreed to continue the Group Gratuity Scheme. So the existing practice of payment of Gratuity under Group Gratuity Scheme has been continued as per the Settlement. In the subsequent Section 12(3), Settlement dated 05.12.2003 also, it has been reiterated that the existing benefit of payment of gratuity as per the Group Gratuity Scheme would continue.

16. Section 4(A) of Payment of Gratuity Act is mandatory in nature, which prescribes that every year employer shall obtain insurance in the manner prescribed for his liability for payment towards gratuity under the Act from the Life Insurance Corporation of India. Section 4(A) of Payment of Gratuity Act, reads as under:

"4A. Compulsory Insurance - (1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer of an Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India, established under the Life Insurance Corporation of India Act, 1956 (31 of 1966), or any other prescribed insurer.

As per the mandatory requirements of Section 4(A), the Appellant Bank has framed the Scheme - Group Gratuity (Cash Accumulation) Scheme linked with Life Insurance Corporation of India. When the Group Gratuity Scheme is linked with Life Insurance, it cannot be said that the Scheme is not binding on the employees.

17. As pointed out, Group Gratuity Scheme is linked with Life Insurance Corporation of India and as per the Scheme, employees to get 15 days wages as gratuity for every year of service subject to a maximum of the amount equivalent to 20 months salary. As per Clause 1(xiv), in the case of monthly rated employees, a day's wage has to be calculated as "1/26" of the monthly salary. As per clause 10 of the Settlement, the employee after completion of five years of service will be entitled to 15 days salary for each year of service subject to maximum of 20 months."

(iii) D.Somasundaram vs. The Management, Madurai District Central Co-operative Bank Ltd. (order dated 14.03.2018 made in Review Application (MD) No.77 of 2014 in W.A.No.675 of 2007)

"3. After hearing the arguments of the counsel for the petitioner, we find that there are no grounds to review the impugned

judgment. A Review Application is not an appeal in disguise. The appellant seeks to re-argue the appeal which is impermissible. In the instant case, in the absence of any error apparent on the face of the judgment, we are not inclined to entertain the review application."

13. In the light of the Apex Court decision in Allahabad Bank's case (cited supra), learned counsel for the Petitioner-Bank submitted that any benefit claimed under the linked Insurance Scheme, in terms of Section 4(5) of the Gratuity Act, would dis-entitle the Controlling Authority to decide the issue, and the authority ought not to have tried the same and granted the relief sought by the employees.

14. Though, according to the employees herein, in terms of clause 30 of the Settlement dated 26.02.1997, one year period is about 14 months' and not 12 months', the period of 14 months' is taken into account for arriving at a year and thereafter, gratuity demanded for the excess year has been granted by the Controlling Authority, which, according to the learned counsel for the Petitioner, is illegal.

15. Learned counsel for the Petitioner-Bank, drawing reference to the Apex Court decision in Jeewanlal's case (cited supra), submitted that the Apex Court has considered as to how gratuity has to be payable to an employee, based on the number of working days in a month. According to him, even assuming for the sake of argument that the calculation arrived at by the employees in the case on hand, is 14 months' a year, and that, the number of years is more than what the employee had actually served, it cannot be beyond 20 months, in terms of the linked Insurance Scheme.

16. In reply, learned counsel appearing for the Respondents/employees herein submitted that, the Petitioner-Bank paid lesser gratuity to the employees at the time of their retirement, and hence, on the basis of clause 30 of the Settlement, dated 26.02.1997, employees filed Petitions before the Controlling Authority under the Gratuity Act, for payment of the balance gratuity amount.

17. Learned counsel for the Respondents/employees drew the attention of this Court to clause 30 of the Settlement dated 26.02.1997, which reads as under:

"The present system of linked Insurance Scheme in collaboration with the

Life Insurance Corporation of India, will continue. Arrears of Gratuity, if any, payable to the employees arising out of this Settlement, shall be paid by the Bank.

It is mutually agreed that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at pay, but also for calculation of length of service. The existing benefit of gratuity without any limitation will be continued."

18. In view of clause 30 of the Settlement, learned counsel appearing for the Respondents/employees submitted that, for the purpose of calculation of gratuity, 26 days will be reckoned as a month, not only for arriving at pay, but also for calculation of length of service, and that the existing benefit of gratuity without any limitation has to be continued.

19. It is further submitted by the learned counsel appearing for the Respondents/employees that the Controlling Authority was perfectly justified in arriving at a different length of service, based on the Settlement and that, the Gratuity Act has to be read in toto, without excluding Section 4 (5) of the Act, as the said provision deprives the authorities concerned, from trying the issue with regard to better benefits to the employees.

20. According to the learned counsel for the Respondents/employees, it is admitted by the Petitioner-Bank that there is a linked Insurance Scheme in collaboration with LIC based on which, gratuity is payable for a period of 20 months, and it is mandatory on the part of the Petitioner-Bank to pay premium to the Scheme, and pay the gratuity amount as claimed by the employees.

21. To substantiate his stand, Mr.C.Murugesan, learned counsel appearing for the employees in both Writ Petitions, has relied on the following decisions of the Apex Court.

(i) Chief Officer vs. State of Gujarat, (2008) III LLJ 206

"16.2 The Delhi High Court in case of Municipal Corporation of Delhi v. Smt. V.T. Naresh and Anr. reported in 1986-I-LLJ-323 relying upon the decision of Apex Court in case of State of Punjab v. Labour Court of Jullundur and Ors. reported in 1981-I-LLJ-354, it is held that a Corporation and/or

local authority like Municipal Commissioner of Delhi is an establishment governed by Payment of Gratuity Act, 1972. The word 'establishment' in the Gratuity Act is not controlled by any type of establishment and it will include commercial, public sector establishment.' Relevant observations in the aforesaid decisions are in Para.6 and 7 which are quoted as under:

7. ... If the scheme framed by the Corporation gives higher benefit to the extent the employee obtains benefit under the 'Payment of Gratuity Act, to that extent those benefits will be adjusted while claiming benefit under the Scheme of Regulations/pensions framed by the Corporation. The employee cannot have complete benefit under both the Payment of Gratuity Act as well as under the Scheme of regulations/pensions. To the extent the benefit has been granted to him under the Payment of Gratuity Act, only to that extent the benefit will be adjusted while enforcing the scheme of regulations/pension framed by the Corporation. Similarly, if under a Scheme framed by the Corporation the benefit is less than that which is available in the Payment of Gratuity Act, the employee will be entitled to claim difference under the Payment of Gratuity Act. No other point was argued. The petition, therefore, fails and is dismissed. Since nobody has put in appearance on behalf of the respondent, parties are left to bear their own costs."

(ii) Y.K.Singla vs. Punjab National Bank, (2013) 3 SCC 472

"16. Sub-Section (5) of section 4 of the Gratuity Act permits an employee to be regulated for purpose of gratuity, under an alternative provision/arrangement (award or

agreement or contract), other than the Gratuity Act. In such an eventuality, sub-section (5) aforesaid, assures the concerned employee, "...to receive better terms of gratuity under any award or agreement or contract with the employer..." Since the appellant's claim for gratuity is regulated, under the 1995, Regulations, it is evident, that his claim for gratuity is liable to be determined by ensuring his right to better terms than those contemplated under the Gratuity Act. In the instant process of consideration, the aforesaid conclusion, namely, that an employee who receives gratuity under a provision, other than the Gratuity Act, would be entitled to better terms of gratuity, will constitute one of the foundational basis, of determination. Having examined section 4 of the Gratuity Act, we may unhesitatingly record, that none of the other sub-sections of section 4 of the Gratuity Act, as well as, the other provisions of the Gratuity Act, have the effect of negating the conclusion drawn hereinabove."

(iii) State of Punjab vs. Labour Court, Jullunder, (1980) 1 SCC 4

"6. The third contention raised by the appellant is that the employee-respondents were not entitled to apply under Section 33-C(2) of the Industrial Disputes Act, 1947 for payment of the gratuity, and should have, if at all, applied under the provisions of the Payment of Gratuity Act. It is urged that the Payment of Gratuity Act is a self-contained code incorporating all the essential provisions relating to payment of gratuity which can be claimed under that Act, and its provisions impliedly exclude recourse to any other statute for that purpose. The contention has force and must be accepted. A careful perusal of the relevant provisions of the Payment of Gratuity Act shows that Parliament has enacted a closely knit scheme providing for payment of gratuity. A controlling authority

is appointed by the appropriate Government under Section 3, and Parliament has made him responsible for the administration of the entire Act. In what event gratuity will become payable and how it will be quantified are detailed in Section 4. Section 7(1) entitles a person eligible for payment of gratuity to apply in that behalf to the employer. Under Section 7(2), the employer is obliged, as soon as gratuity becomes payable and whether an application has or has not been made for payment of gratuity, to determine the amount of gratuity and inform the person to whom the gratuity is payable specifying the amount of gratuity so determined. He is obliged, by virtue of the same provision, to inform the controlling authority also, thus ensuring that the controlling authority is seized at all times of information in regard to gratuity as it becomes payable....

9. In the circumstances, it is not necessary to notice the further submission on behalf of the appellant that where a serious dispute exists in regard to the basis of a claim for payment of gratuity, no proceedings will lie under Section 33-C(2) of the Industrial Disputes Act. "

(iv) Allahabad Bank vs. All India Allahabad Bank Retired Employees Association, (2010) 2 SCC 44

"42. Section 7 deals with procedure for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides that once the gratuity becomes payable, the employer shall, whether an application 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 and arrange to pay the amount of gratuity to the person to whom the gratuity is payable.

43. The scheme envisaged under Section 7 of the Act is that in case of any dispute as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity, etc. the employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute the parties may make an application to the Controlling Authority for deciding the dispute who 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 to the employee."

(v) SC 919 Delhi Cloth & General Mills Co. vs. Workmen, AIR 1970

"35. Determination of gratuity is not based on any definite rules. In each case it must depend upon the prosperity of the concern, needs of the workmen and the prevailing economic conditions, examined in the light of the auxiliary benefits which the workmen may get on determination of employment. If all over the country in the textile centres payment of gratuity is related to the basic wages and not on consolidated wages, any innovation in the Delhi region is likely to give rise to serious industrial disputes in other centres all over the country. The award if confirmed would not ensure industrial peace: it is likely to foment serious unrest in other centres. If maintenance of industrial peace is a governing principle of industrial adjudication, it would be wise to maintain a reasonable degree of uniformity in the diverse units all over the country and not to make a fundamental departure from the prevailing pattern. We are, therefore, of the view that the Tribunal's award granting gratuity on the basis of consolidated wage cannot be upheld. This modification will not, however, affect the

existing benefits which are available under the schemes framed by the D.C.M. and S.B.M. insofar as those two units are concerned.

36. Mr Ramamurthi for the workmen also contended that in the matter of relating gratuity to wages--consolidated or basic the principle of region-cum-industry should be applied and an "overall view of similar and uniform conditions in the industry in different centres" should not be adopted. It was also urged that the basic wage is very low and the class of wage to which gratuity was related played a very important part in the determination of gratuity. The basic wage is however low in all the centres and if it does not play an important part in other centres, we see no reason why it should play only in the Delhi region a decisive part so as to make vital departure from the scheme in operation in the other centres in the country. We are strongly impressed by the circumstance that acceptance of the award of the Tribunal in the present case is likely to create conditions of great instability all over the country in the textile industry. In that view, we decline to uphold the order of the Tribunal fixing gratuity on the basis of consolidated wages inclusive of dearness allowance.

38. A similar view was expressed in Remington Rand of India Ltd. case [(1968) 1 LLJ 542] . In Calcutta Insurance Company Ltd. case [(1967) 11 LLJ 1] however protest was raised against acceptance of this rule without qualification. Mitter, J., observed at p. 9 that it was difficult to concur in principle with the opinion expressed in the Garment Cleaning Works case [(1961) 1 LLJ 513] . Mitter, J., observed:

"We are inclined to think that it (gratuity) is paid to a workman to ensure good conduct throughout the period he serves the employer. Long and meritorious service, must mean long and unbroken period of service meritorious to the end. As the period

of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would, under the general law, have a right of action against the employee for the loss caused, and making a provision for withholding payment of gratuity where such loss was caused to the employer does not seem to aid to the harmonious employment of labourers or workmen. Further, the misconduct may be such as to undermine the discipline in the workers – a case in which it would be extremely difficult to assess the financial loss to the employer."

22. Learned counsel for the Respondents/employees has further relied on the following unreported judgments of this Court:

(i) The Management of the Coimbatore District Central Co-operative District Central Co-operative Bank Limited vs. Joint Commissioner of Labour (W.P.Nos.38830 of 2003, dated 30.03.2010)

"12. ... The fact remains that no mutual settlement was arrived at between the Management and the workmen under Section 12 (3) of the Industrial Disputes Act, varying or modifying clause 30 of the erstwhile Settlement arrived at between the parties.

13. In this context, it is relevant to refer to the decision of the Supreme Court in the Life Insurance Corporation of India vs. D.J.Bahadur and others, AIR 1980 SC 2181, wherein, it has been held that even after notice under Section 9A of the Industrial Disputes Act, 1947, was issued putting the employees on notice, the intention of the Management to terminate a particular clause found in the erstwhile Settlement, the Settlement remains operative till the same is replaced by a fresh Settlement."

(ii) a Division Bench decision of this Court in the case of the Management of Coimbatore District Central Co-operative Bank Ltd. vs. The Joint Commissioner of Labour, Coimbatore (W.A.Nos.1200 to 1202 of 2010, dated 29.07.2011)

"7. Admittedly, there was a Settlement under Section 12(3) on 26 February, 1997, giving certain benefits to the employees. Though the appellant has issued a notice under Section 9-A proposing variation of the said Settlement, the fact remains that there was no such variation and as such, the 12(3) Settlement still holds good. Unless and until the said Settlement is modified by another Settlement, the Appellant cannot deny the benefits to the employees. This issue was considered by the original authority as well as the appellate authority, being the fact finding authorities and ultimately by the writ Court and answered the issue against the appellant. Therefore, it is not open to the appellant to maintain these appeals on a totally new ground. We do not find any merit in the contention raised by the appellant."

(iii) The Management, Virudhunagar District Central Co-operative Bank Ltd. vs. The Joint Commissioner of Labour, (W.P. (MD) No.14097 of 2014, dated 06.02.2018)

"4. In the present case, the third respondent claimed gratuity on the basis of settlement under Section 12(3) of the Industrial Disputes Act, 1947. This Court is of the view that the orders impugned in the writ petition deserves to be sustained. The learned counsel appearing for the third respondent drew the attention of this Court to the order dated 25.11.2009 passed by this Court in WP.Nos.2069 of 2005 and 2364 of 2009. In the said case also, the Court was concerned with the expression 'for purposes of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at pay, but also for calculation for length of service. It is similar to the case on hand. This Court allowed the writ petition filed by the workman and dismissed the writ petition filed by the management. The Management namely, Erode District Central Co-operative Bank filed

WA.Nos.1200 & 1221 of 2010. But, the Hon'ble Division Bench by order dated 29.10.2013 dismissed the appeals. The Hon'ble Supreme Court also dismissed the SLPs filed by the Erode District Central Cooperative Bank by order dated 05.05.2014.

5. Section 4(5) of the Payment of Gratuity Act, 1972 states that nothing in Section 4 shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. In this case, the settlement entered into between the management and the workman provides for better terms. This Court can only observe that the object in incorporating such a clause is intended to reward a long length of service. It is clear and categorical that the settlement states that 26 days will be reckoned as a month not only for arriving at pay, but also for calculation for length of service.

6. This expression will have to be understood in its plain meaning. By applying the said clause, even though the third respondent has put in only 36 years of service, his total length of service will be reckoned for the purpose of computing gratuity as 42 years. It may sound illogical. But, then when such a beneficial consequence flows out of the plain meaning of the terms of the Group Gratuity Scheme, it is not for this Court to hold otherwise."

23. According to the learned counsel appearing for the Respondents/employees, though the Madurai Bench of this Court in the case of T.Rajarajan vs. The Appellate Authority, Joint Commissioner of Labour, Trichy, in W.P.(MD) Nos.5794 of 2018, batch of cases, by an order dated 12.12.2018, has held that the Controlling Authority has no jurisdiction to adjudicate the issue, if the relief is sought under Section 4(5) of the Gratuity Act, the very same Court, in a decision rendered in the case of the Management, Virudhunagar District Central Co-operative Bank Ltd. vs. The Joint Commissioner of Labour, Madurai, vide order dated 06.02.2018 made in W.P.(MD) No.14097 of 2014, has categorically held that, as per the 12(3) Settlement, 26 days will be reckoned as a month not only for arriving at pay, but also for calculation of length of service.

24. In Virudhunagar District Central Co-operative Bank Ltd (cited supra), it was observed that, when such a beneficial consequence flows out of the plain meaning of the terms of the Group Gratuity Scheme, it is not for this Court to hold otherwise. In the said case, though the employee had put in 36 years of service, his total length of service will be reckoned, for the purpose of computing gratuity as 42 years.

25. In view of the same, learned counsel for the Respondents/employees submitted that the Controlling Authority has got jurisdiction to adjudicate the issue on hand, and it is open to the Petitioner-Bank to deposit the gratuity amount before the Controlling Authority, in cases, where no appeal has been filed, provided, it is within 120 days, and the employee can canvass the issue before the authority concerned on merits, but, not on jurisdiction. Thus, according to the learned counsel, the Writ Petitions are liable to be dismissed.

26. Heard the learned counsel for the parties and perused the material documents available on record.

27. Two issues arise for consideration in the case on hand. The first issue is, whether the Controlling Authority has jurisdiction to entertain a dispute falling under Section 4(5) of the Gratuity Act and the second issue is, whether the interpretation given by the Controlling Authority with regard to the length of service of an employee, for the purpose of computation of gratuity, based on Clause 30 of the Settlement entered into between the parties, is correct.

28. Even though this Court has dictated the order in the open Court, dismissing the above Writ Petitions as regards the first issue, and referring the matter to the Division Bench with regard to the second issue, this Court recalls the same, as this Court has taken a different view on both the issues. Any order passed in the open Court is not final before signing, in the light of the Apex Court decision rendered in Kushalbhai Ratanbhai Rohit and others vs. State of Gujarat reported in (2014) 9 SCC 124. Relevant portion of the said decision, as regards recalling a judgment before signature, is extracted below:

10. In Sangam Lal v. Rent Control and Eviction Officer [AIR 1966 All 221] , while dealing with the rent control matter, the Court came to the conclusion that until a judgment is signed and sealed after delivering in court, it is not a judgment and it can be changed or

altered at any time before it is signed and sealed.

11. This Court has also dealt with the issue in *Surendra Singh v. State of U.P.* [*Surendra Singh v. State of U.P.*, AIR 1954 SC 194 : 1954 Cri LJ 475], observing as under: (AIR pp. 196-97, para 12)

"12. Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus paenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full-fledged judgment and become operative. It follows that the Judge who 'delivers' the judgment, or causes it to be delivered by a Brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to

chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a Brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light dawn upon him before the delivery of judgment."

29. Admittedly, the private Respondents in the above Writ Petitions, were employees of the Petitioner-Bank and they received gratuity at the time of their retirement. It is not in dispute that the private Respondents herein are employees, as defined under Section 2(e) of the Gratuity Act.

30. As regards the first issue, it is seen that the purpose of the enactment of Gratuity Act, 1972, more particularly, in the light of Section 4(5), is to ensure that the employees are entitled to better benefits. The Apex Court in Allahabad Bank's case (cited supra), has held that the Controlling Authority cannot deal with any issue under sub-section (5) of Section 4 of the Payment of Gratuity Act.

31. This Court has no other option except to follow the dictum laid down by the Supreme Court in Allahabad Bank's case (cited supra), and it is for the employees to agitate before the Apex Court, in view of the ratio laid down by the Apex Court in the case of General Manager, Telecom vs. A.Srinivasa Rao, reported in (1997) 8 SCC 767, that, judicial discipline requires a Bench of lesser strength to follow the judgment of the Larger Bench, unless the same is distinguishable on facts. This Court is bound by the said dictum.

32. In Padma Sundara Rao Vs. State of Tamil Nadu, reported in 2002 (3) SCC 533, the Apex Court has held that 'Courts should not place reliance on decisions without discussing as to how the

factual situation fits in with the fact situation of the decision on which reliance is placed'. But, in the case on hand, the legal issue with regard to Section 4(5) of the Gratuity Act, has been considered and decided, and this Court cannot give a helping hand to the employees herein, unless a Larger Bench of the Apex Court takes a different view than the one rendered in Allahabad Bank's case.

33. Thus, in view of the decision rendered by the Apex Court in Allahabad Bank's case (cited supra), this Court has no other option except to allow the Writ Petitions as regards the first issue, on the principle that the remedy lies elsewhere and not before the authority under the Gratuity Act.

33a. This Court is not inclined to render any finding on the contention that this Court can direct the Management to pay its employees the gratuity amount, as Co-operative Society is amenable to the Writ jurisdiction of this Court, in view of the 97th amendment to the Constitution of India. The maintainability of the Writ Petitions by an employee against a Co-operative Society is left open, as no Writ Petition has been filed by the employees before this Court, seeking gratuity.

34. Insofar as the second issue is concerned, the interpretation given by the Madurai Bench of this Court in Virudhunagar District Central Co-operative Bank Limited (cited supra), as regards the length of service, is correct. It has been categorically held therein that, the total length of service will have to be reckoned for the purpose of computing gratuity as 42 years, for those employees who have completed 36 years of service. But, the employee will have to claim the amount before the appropriate forum and not before the Controlling Authority, unless the Larger Bench of the Apex Court takes a different view to that of the view taken in Allahabad Bank's case (cited supra).

35. Normally, no Writ Petition would lie against the order passed by the Controlling Authority, as the workman has got an appellate remedy. It is the duty cast upon the employer to deposit the amount before the Controlling Authority and file an Appeal, in the light of the decision of this Court rendered in the case of Onward Trading Company vs. Deputy Commissioner of Labour, Madras, reported in (1989) II LLN 672, which has been confirmed by the Division Bench of this Court, reported in (1989) II LLN 673 (DB), failing which, Appeal will not be entertained. But, in this case, as the Controlling Authority and Appellate Authority have no jurisdiction, this Court has to entertain the Writ Petitions against the order of the

Controlling Authority, with regard to the length of service of the employees. The second issue is answered accordingly.

36. Thus, in the light of the decision rendered by the Madurai Bench of this Court in Virudhunagar District Central Co-operative Bank Limited (cited supra), as regards calculation of length of service and also taking into account that the 12(3) Settlement, dated 26.02.1997 has not been superseded, it is open to the employees herein to file a complaint under Section 29 of the Industrial Disputes Act, for prosecuting the Officials falling under Section 32 of the Act, for violation of Settlement. The authorities shall also take into account, the decision rendered by the Apex Court in the case of Raj Kumar Gupta vs. Lieutenant Governor, Delhi reported in 1997 (1) LLJ 994, for sanctioning prosecution, so that the issue is brought to a logical end. Once this case lands up in the jurisdictional Court, the Court shall proceed with the matter without adjourning the same beyond 15 working days at any point of time, so as to bring the issue to a logical end, on merits, as the total length of service have to be reckoned as 42 years, for the purpose of determination of gratuity, and that, there is violation of 12(3) Settlement, as mentioned supra.

In view of the foregoing, both Writ Petitions are allowed. No costs. Consequently, connected M.P.Nos.1 and 1 of 2013 in both Writ Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner of Labour, Coimbatore.
2. The Assistant Commissioner of Labour,
(Controlling Authority Under Payment of Gratuity Act),
O/o. Deputy Commissioner of Labour, Coimbatore.

+2cc to M/s.D.Shanmugarajsethupathi, Advocate,
SR.Nos.64464 & 64465

AKM/25.10.19/34P-5C /

Common Order in
W.P.Nos.21456 & 23449 of 2013