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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 55 of 2020****Reserved on 25.08.2020****Delivered on 31.08.2020**

Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev
Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner**Versus**

1. Meghraj Pathak S/o Late Dhanraj Pathak R/o At H.No. 15, Sai Baba Layout, Aghanpur, Jagdalpur, District Bastar, Chhattisgarh
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents**WPL No. 56 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner**Versus**

1. Mohd. Azam Hussain S/o Late Akbar Hussain, R/o At- Flat No. 104, Gulshan Apartment, Raja Talab, Raipur, District Raipur Chhattisgarh. 492001
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents

WPL No. 21 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013 ---- **Petitioner**

Versus

1. Abdul Mateen S/o Abdul Mannan, R/o H. No. 76, Near Saint Joseph Church, Behind Laxmi Gas Agency, Byron Baazar, District Raipur Chhattisgarh. 492001
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh ---- **Respondents**

WPL No. 23 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner**Versus**

1. Shri Pramod Kumar Upadhyay S/o Chandu Lal Upadhyay R/o Shiva Parisar, Kanchangan Ganga Colony, Phase-2, District- Raipur, Chhattisgarh, 492010
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents**WPL No. 24 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013 ---- **Petitioner**

Versus

1. Mohd. Faruque Khan S/o Late Abdul Razzak R/o At Piyali Foundation,
In Front Of Old Dhanvantari Hospital, Near Tondon Dairy, New Shanti
Nagar, District Raipur Chhattisgarh, 492001
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy
Labour Commissioner (C), Government of India, Ministry of Labour &
Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C)
Raipur, Chhattisgarh

---- Respondents**WPL No. 25 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev
Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner**Versus**

1. Laxmikant Sahu R/o At Qtr. No. 12/1040, Siddheswari Temple Marg,
Kota Raipur, Po – Pt. R.S. University, District Raipur, Chhattisgarh.
492010
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy
Labour Commissioner (C), Government of India, Ministry of Labour &
Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C)
Raipur, Chhattisgarh

---- Respondents**WPL No. 26 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev
Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner**Versus**

1. Arun R. Katyayani S/o Shri R. R. Katyayani, R/o 313/39, Near Rani Laxmi Bai Chowk, Behind Kela Badi Shopping Complex, Kela Badi, Durg, District Durg, Chhattisgarh. 491001
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents

WPL No. 27 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner

Versus

1. Arun Phansalkar S/o Late Vasant Phansalkar, R/o Plot No. 34, Rajnigandha Colony, Vidyut Nagar, Durg, District Durg, Chhattisgarh
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents

WPL No. 28 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner

Versus

1. Shri Krishna Lal Singh R/o – At B-202, Housing Board Colony, G.E. Road, Girls College, District – Durg, Chhattisgarh, 491001

2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents

WPL No. 29 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner

Versus

1. Shri Mohan Lal Kosre S/o Late G.R. Kosre R/o Subhash Nagar, Ward No-42, Near Shiv Mandir, District- Durg, Chhattisgarh, 490020
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Assistant Labour Commissioner (C) Raipur, Chhattisgarh

---- Respondents

WPL No. 30 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur, CG 492013

---- Petitioner

Versus

1. Shri Hari Pradhan S/o Late Keshav Prasad, R/o Quarter No. 642/ B, Street No. 36, Smriti Nagar, Post Office- Nehru Nagar, Bhilai, District- Durg, Chhattisgarh. 490020
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh

3. The Controlling Authority and the Assistant Labour Commissioner (C)
Raipur, Chhattisgarh

---- Respondents

WPL No. 60 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman Mahadev
Ghat Road, Sunder Nagar, Raipur, Chhattisgarh

---- Petitioner

Versus

1. Rohit Kumar Chandrakar S/o Late Bhukan Lal Chandrakar R/o At L.I.G.
349/A, Padmanabhpur, Durg, District Durg.
2. The Appellate Authority Under The Payment Of Gratuity Act and The
Deputy Labour Commissioner (C), Government Of India, Ministry Of
Labour And Employment Raipur, Chhattisgarh
3. The Controlling Authority And The Assistant Labour Commissioner (C)
Raipur, Chhattisgarh

---- Respondents

WPL No. 61 of 2020

Chhattisgarh Rajya Gramin Bank Through The Chairman Mahadev
Ghat Road, Sunder Nagar, Raipur Chhattisgarh 492013

---- Petitioner

Versus

1. Hasan Mohammed Quraishi S/o Jan Hond. Quraishi R/o At 49/66,
Kasaridih, Durg District Durg Chhattisgarh 491001
2. The Appellate Authority Under The Payment Of Gratuity Act and The
Deputy Labour Commissioner (C), Government Of India, Ministry Of
Labour And Employment, Raipur Chhattisgarh

3. The Controlling Authority and the Assistant Labour Commissioner (C)
Raipur Chhattisgarh

---- Respondents

WPL No. 62 of 2020

Chhattisgarh Rajya Gramin Bank Through The Chairman Mahadev
Ghat Road, Sunder Nagar, Raipur Chhattisgarh 492013, District :
Raipur, Chhattisgarh

---- Petitioner

Versus

1. Sashikant Awadhut S/o Late S L Awadhut R/o At Lig 6, Housing Board
Colony, Bodhghat, Jagdalpur, District Bastar Chhattisgarh
2. The Appellate Authority Under The Payment Of Gratuity Act And The
Deputy Labour Commissioner (C), Government Of India, Ministry Of
Labour And Employment, Raipur Chhattisgarh
3. The Controlling Authority And The Assistant Labour Commissioner (C)
Raipur Chhattisgarh

---- Respondents

WPL No. 69 of 2020

Chhattisgarh Rajya Gramin Bank Through The Chairman Mahadev
Ghat Road, Sunder Nagar, Raipur Chhattisgarh 492013

---- Petitioner

Versus

1. Kishwar Khan W/o Late Mr. Arif Ahmed Khan (Retired), R/o C/o Shri S.
A. Khan, C-57, Gayatri Nagar, Shankar Nagar, Raipur Chhattisgarh
2. The Appellate Authority, Under The Payment Of Gratuity Act And The

Deputy Labour Commissioner (C), Government Of India, Ministry Of
Labour And Employment, Raipur, Chhattisgarh

3. The Controlling Authority And The Assistant Labour Commissioner (C)
Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Kishore Bhaduri, Advocate
For Respondent no.1	:	Mr. N. K. Vyas, Advocate

WPL No. 31 of 2020

1. Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev
Ghat Road, Sunder Nagar, Raipur, CG 492013
2. The Regional Manager, Chhattisgarh Rajya Gramin Bank, Regional
Office, Raigarh, Mithumude Road, Kabir Chowk, Raigarh, Chhattisgarh.
496001.

---- Petitioners

Versus

1. Lakhan Lal Pandey R/o- Railway Banglapara, District- Raigarh,
Chhattisgarh, 496001
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy
Labour Commissioner (C), Government of India, Ministry of Labour &
Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Regional Labour Commissioner (C)
Bilaspur, Chhattisgarh

---- Respondents

WPL No. 22 of 2020

1. Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev
Ghat Road, Sunder Nagar, Raipur, CG 492013
2. The Regional Manager, Chhattisgarh Rajya Gramin Bank, Regional
Office, Raigarh, Mithumude Road, Kabir Chowk, Raigarh, Chhattisgarh,
496001.

---- Petitioners

Versus

1. Ravikant Pandey R/o Sanjay Maidan, Rambhata, District Raigarh Chhattisgarh, 496001
2. The Appellate Authority under the Payment of Gratuity Act & the Deputy Labour Commissioner (C), Government of India, Ministry of Labour & Employment, Raipur, Chhattisgarh
3. The Controlling Authority and the Regional Labour Commissioner (C) Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Kishore Bhaduri, Advocate
For Respondent no.1	:	Mr. K. N. Nande, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

1. Since the issue involved in the bunch of writ petitions and the cause of action also being the same, all these writ petitions are being decided by this common order.
2. In all these writ petitions the challenge is to the order passed by the Appellate Authority under the Payment of Gratuity Act rejecting the appeal preferred by the petitioner Bank thereby affirming the order passed by the Controlling Authority under the Payment of Gratuity Act. (Since the date of passing of the orders by the two authorities i.e. the Appellate Authority & the Controlling Authority are different, the dates are not being deliberately mentioned, the contents of all the orders are identical.)
3. The common facts running all these writ petitions are that the respondent no.1 in all these writ petitions were officers of the petitioner

Bank. After serving the Bank for a considerable period of time, all the respondent no.1 officers stood retired on attaining the age of superannuation on different dates. After their retirement, in the process of settling their retiral dues, the Bank paid certain amount towards Gratuity to each of the respondent officers which according to the respondent no.1/officers was erroneously calculated. According to the respondent officers, they were entitled for much more than what was calculated by the petitioner Bank. The respondent no.1/officers accordingly filed a claim application under the provisions of the Payment of Gratuity Act for the difference of gratuity before the Controlling Authority under the Payment of Gratuity Act i.e. the Assistant Labour Commissioner (Central).

4. After due consideration of the pleadings and contentions put forth on either side, the learned Controlling Authority vide its order dated 20.02.2019 allowed the application holding that the applicants therein are entitled for much more gratuity than what has been granted to them and passed an order. The amount of gratuity in each of the cases is different that is why this Court is not referring to any fixed amount.
5. The order dated 20.02.2019 passed by the Controlling Authority was subjected to challenge before the Appellate Authority i.e. the Dy. Chief Labour Commissioner (Central) located at Raipur. The Appellate Authority also, after due consideration of the contentions put forth on either side, affirmed the order of the Controlling Authority thereby rejecting the appeal of the petitioner Bank. It is these two orders passed by the Appellate Authority and the Controlling Authority which is under challenge in these bunch of writ petitions.

6. The main dispute in all the writ petitions so also before the authorities concerned was, as to what would be the pay which would be taken into consideration for calculating the amount of gratuity.
7. On consideration of the submissions made by either party to the dispute, the core issue which needs consideration in these bunch of writ petitions is whether in the process of quantifying the amount of gratuity payable to the respondent no.1 officers, the dearness allowance would be treated as part of pay or not.
8. There are two provisions of law which need to be considered in the process of deciding the issue involved in these cases. First is the Payment of Gratuity Act, 1972 which is a central Act (hereinafter referred as "the Act of 1972"). Second is the Chhattisgarh Rajya Gramin Bank (Officers & Employees) Service Regulations, 2013 (hereinafter referred as "the Regulations of 2013").
9. Initially when all the respondent no.1 officers retired from service, the Bank gave them gratuity of rupees ten lakhs as that was the ceiling limit under the Act of 1972. Since the provisions under the Act of 1972 as also the Regulations of the petitioner Bank envisaged a clause that the Officers shall be entitled for the benefits under that provision which is more beneficial between the two. Based upon that when the petitioner Bank calculated the payment of gratuity payable to each of the respondent no.1 officers, the calculation made under the Regulations of 2013 came to be more than the ceiling limit, therefore, the Bank decided to pay gratuity to the respondent no.1 officers as per the calculation under the Regulations of 2013. It is here that the dispute arose.

- 10.** According to the respondent no.1 officers, while calculating the total amount of gratuity payable under the Regulations 2013 the petitioner Bank ought to have taken the dearness allowance received by the respondent no.1 officers as part of pay which would have enhanced the total amount substantially.
- 11.** The sole contention raised by the petitioner Bank is that the respondent no.1 officers can have the option of getting gratuity either as per the calculation under the Payment of Gratuity Act with a ceiling of rupees 10 lakhs or they may avail the gratuity in terms of the Regulations of 2013. According to the petitioner Bank, there cannot be a situation where the respondent officers can claim the benefit under both the provisions of law. In other words, the contention of the petitioner bank is that if the respondent officers contend that they would get gratuity under the Act of 1972, the mode of calculation would be as provided under the said Act and taking into consideration the definition of wage as provided under the Act of 1972. In the alternative if the respondent officers choose and opt to have the benefit of the Regulations of 2013, the gratuity will be paid to them strictly in accordance to the mode and method of calculation as provided under clause 72 of the Regulations of 2013.
- 12.** Learned counsel for the petitioner Bank does not dispute the fact that as per Sub Section 5 of Section 4 of the Act of 1972, an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. This in other words means if there is a scheme more beneficial framed by the employer, the officer/employee shall be entitled for gratuity strictly in accordance to the provisions of that beneficial legislation which in this case is the Regulations of 2013.

13. Referring to Clause 72 of the Regulations of 2013 it was vehemently contended by the learned counsel for the petitioner that the said provision provides for grant of gratuity to an officer @ one month pay for every completed year of service and in the event the employee has more than 30 years of service, he shall also be entitled for an additional amount @ one half of a months pay for each completed year of service beyond 30 years.
14. For understanding what actually the 'pay' means, we will have to take the assistance of the definition as provided under Clause M of Section 2 which defines pay. According to the petitioner, the definition of pay under the Regulations of 2013 strictly means basic pay drawn per month in addition stagnation increments and any part of emoluments which may specifically be classified as "pay" under the Regulations. It is also the contention of the petitioner that when the definition of pay means only basic pay with stagnation increments and emoluments specifically classified as pay, it means there is a deliberate exclusion of dearness allowance and therefore, dearness allowance cannot be taken into consideration for quantifying the amount of gratuity payable to the respondent No.1 officers.
15. In support of his contention, the learned counsel for the petitioner Bank heavily relied upon the decision of the High Court of Bombay in the case of **Vidarbha Konkan Gramin Bank v. the Appellate Authority and another, 2020 SCC on line Bombay 17** wherein the Single Bench of the Bombay High Court has allowed the petition of the Bank setting aside the order passed by the Appellate Authority and the Controlling Authority under the Payment of Gratuity Act and has also held that the

expression “pay” as provided under the Regulations of 2013 does not include dearness allowance along with basic pay. In addition, the learned counsel for the petitioner also relied upon the judgment of the Allahabad High Court in the case of **Baroda Uttar Pradesh Gramin Bank v. the Appellate Authority** in Misc. Single No. 7163 of 2012 decided on 15.10.2019. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Beed District Central Cooperative Bank Ltd. v. State of Maharashtra & others**, 2006 (8) SCC 514 wherein the golden rule of interpretation of statute was considered and it was held that even if the laws are beneficial legislation or welfare legislation, it does not contemplate that the claimant can have the liberty of obtaining the benefits both under the Act as well as under the Regulations. Referring to paragraph-14 of the said judgment counsel for the petitioner submitted that under the said ratio or principle of law laid down, the employee/officer can have the benefit of only the provision of law which he opts for and he cannot have the benefit under both laws.

16. Per contra, learned counsel appearing for the officers opposing the petitions submits that the Central Act i.e. the Payment of Gratuity Act itself provides for an employee to receive gratuity under the more beneficial scheme if any framed by the employer. In the instant case, according to the counsel for the respondent no.1, since there is a Regulation framed i.e. the Regulations of 2013 and there is a mode of calculation provided, the calculation of gratuity has to be made strictly in accordance with the provisions of Clause 72 of the Regulations of 2013. According to him, the term “pay” used in Clause 72 of the Regulations of 2013 includes the basic pay with dearness allowance, increment and

also emoluments which have been specifically classified as part of pay. According to the counsel for the respondent no.1 officers, on a conjoint reading of the two definitions of 'emolument' and 'pay', under the Regulations 2013 it includes basic pay plus dearness allowance.

17. In support of his contention learned counsel for the officers heavily relied upon the judgment of the Madhya Pradesh High Court in the case of **All India Gramin Bank Pensioners Organization Unit Rewa v. Madhyanchal Gramin Bank and Another**, WP No. 9182 of 2017 and connected writ petitions decided on 06.09.2018. The said judgment was further tested before the Division Bench which too affirmed the same in Writ Appeal No. 1318 of 2018 and other connected writ appeals decided on 26.02.2019. According to the counsel for the respondent officers, both these judgments of the Madhya Pradesh High Court was further taken to the Supreme Court who have also given a stamp of approval by dismissing the SLP preferred by the Bank. It was also the contention of Shri Vyas that the order of the Madhya Pradesh High Court has also recently been followed by the High Court of Telengana in the case of **B. N. Nageswara Rao v. Sapthagin Grameena Bank & another** decided on 07.02.2020.

18. Having heard the arguments put forth on either side it would be relevant at this juncture to refer to certain provisions of Regulation of 2013 which is germane for the adjudication of the present dispute. Before going into the definition of the different terminologies it would be trite at this juncture to refer to the Clause 72 of the Regulation of 2013 which deals with the Gratuity:

“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 months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay :

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

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

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."

19. Plain reading of the aforesaid provisions of law what reflects is that even the aforesaid clause also clearly stipulates that an officer or an employee of the Bank shall be entitled for gratuity either under the Payment of Gratuity Act, 1972 or as per the Sub-Clause 2 of the Clause 72 of the Regulation of 2013 whichever fetches more monetary benefits to an employee or an officer.

20. Now coming to the mode of calculation as per the sub clause 3 of the Regulation of 2013 the term “Pay” has been used for the purpose of calculating the gratuity to an officer. As we can see that it is mentioned that it shall be **one Month's pay for every completed year of service.** That it would be relevant at this juncture to take note of the fact that so far as the third proviso to Sub Clause 3 of Clause 72 envisages that for the purpose of calculating the gratuity in respect of an employee pay for the calculation shall be average of Basic pay, Dearness allowance and special allowances and officiating allowances payable during the last 12 month's of the service. What is note worthy at this juncture is that the framers of the said provisions has clearly mentioned that in the case of an employee it shall be the basic pay with Dearness allowance and special allowance which means so far as calculation of gratuity for an officer is concerned, there is no break up of the definition of pay provided and it is the general term of “Pay” which has been used for calculating the gratuity. As in the case of an employee the framers of the regulation could have also specifically said that the calculation of gratuity for an officer would be one month's of basic pay and other specific allowance. The fact that they have not specifically held that it would be one month of ‘basic pay’ rather it is one month of ‘pay’ means there is a deliberate and conscious exclusion of term ‘basic pay’ from Sub Clause 3 of Clause 72 so far as officers are concerned.

21. To further put things straight it would be relevant at this juncture to refer to the definition of the term ‘pay’, ‘emoluments’ and ‘salary’ under Regulations 2013.

2(m) “Pay” means basic pay drawn per month by the officer or employee

in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations;

2(i) *“Emoluments” means aggregate of salary and allowances, if any*

2(o) *“Salary” means aggregate of pay and dearness allowance “*

22. As regards, the calculation of gratuity of an officer is concerned it is the terminology which has been used for quantifying the gratuity which is relevant. Reading of the definition of ‘pay’ again does not restrict itself to the basic pay alone. It clearly indicates that term pay includes basic pay of an officer including stagnation increment and is also inclusive of any part of the emoluments which may be specifically classified as pay under these regulations. This means the emoluments that an officer was drawing would also have to be treated as part of pay. Now what the term emolument means, has to be construed from the definition of emoluments as provided in Clause 2(i) of the Regulation of 2013. Clause 2(i) again while defining emoluments clearly means the aggregate of salary and allowances. Now to know what is the aggregate of salary for deciding the emoluments which could be classified as pay it becomes necessary for us to know the definition salary as provided under 2(o) of the Regulation of 2013. As per the 2(o) the term salary means aggregate of pay and Dearness Allowance.

23. Now from the reading of the Clause 2(i) defining emoluments and 2(o) defining salary, the adjective “**aggregate**” has been used. The term aggregate in common parlance means something which is formed by combining many. Thus, it would clearly mean that term emolument used in 2(m) means it is not the one singular component but a combination of a few or many.

24. Now what is also to be taken note of at this juncture is that the present writ petition is at the third stage of litigation before reaching the High Court two other forums or at two other stages firstly before the Controlling Authority under the Payment of Gratuity Act and also before the Appellate Authority under the Payment of Gratuity Act the issue involved in the case has been considered.

25. Neither in the present bunch of writ petitions nor before the Controlling Authority or before the Appellate Authority the petitioners have not been able to show any document by which it could be established that Dearness Allowance firstly is not an emolument and secondly if at all if it is an emolument it is not one which has been specifically classified as pay under Regulation, 2013. The definition of pay under the Regulations specifically envisages that an emolument unless it may specifically be classified as pay under these regulations it would not be part of Pay for calculating Gratuity. This would clearly mean that petitioner Bank when they decided to pay certain emolument to officers or a category of an officer or an employee it would simultaneously decide whether it would form part of pay or not. No such document whatsoever has been produced by the petitioner Bank in the three stages of litigation.

26. Another aspect which needs to be considered is the fact that if the framers of the regulation intended that gratuity for the officer were to be calculated based upon their basic pay alone it would have been simply reflected in Sub Clause 3 of Clause 72 one month's basic pay for every completed year of service as is specifically mentioned in the other proviso of Sub clause 3 for the purpose of calculating gratuity for an employee. The fact that term pay has been used itself gives sufficient

indication that framers of the regulation intended the general term pay and it was not just confined to the basic pay alone. This also has to be seen as a deliberate exclusion of basic pay while framing sub Section 3. In other words, the framers of the regulation had taken the term pay in broader perspective rather than giving it restrictive or narrow meaning confined to the term basic pay.

27. It is hear that judgment of the Madhya Pradesh High Court rendered by the Single Bench in the case of **All India Gramin Bank Pensioners Organisation, Rewa**. which needs a reference. Learned Single Bench of the M.P. High Court while deciding the said case in paragraph 19 to 24 has held as under :-

“(19) The parties are at loggerheads on the meaning of the word “pay”.

The officers contended that the word “pay” must be read with “emoluments” & “salary”, whereas, as noticed, the employer’s stand is that only such part of emolument can be treated as “pay” which is specifically classified as pay. Clause 2(m) shows that “pay” means basic pay of the officers/employees which includes stagnation increments and any part of emoluments which may specifically be classified as “pay” under these Regulations. The definition of “emoluments” shows that it is aggregate of salary and allowance. “Salary” includes aggregate of pay and DA.

(20) A microscopic reading of Regulations show that there exists no provision whereby any part of emolument may specifically be classified as pay. This expression– any part of emoluments which specifically be classified as pay needs interpretation. In my view, a conjoint reading of definition of “pay”, “emoluments” & “salary” is required for proper interpretation of the meaning of “pay” or the said highlighted expression. It is important to note that “emoluments” is aggregate of salary and allowance and “salary” is aggregate of pay

and dearness allowance. Thus, said three definitions are deeply interlinked and correct meaning of said expression can be drawn by combined reading of said three provisions. The definition of “pay” refers about emolument, whereas emolument includes salary which includes pay and dearness allowance. Thus, dearness allowance is specifically classified and must form part of pay because the said definitions are closely interwoven. Otherwise, expression leads to an absurdity and impossibility. Absurdity, inconsistency and impossibility because in the Regulations there exists no provision for undertaking such exercise of specially classifying an emolument as pay.

(21) The settled law is that if the grammatical construction leads to some absurdity or inconsistency with the rest of instruments, it may be departed from so as to avoid the absurdity and inconsistency. {See: AIR 1952 SC 324, [Shamrao vs. District Magistrate, Thana]; 1996 (2) All ER 23, [Imperial Chemicals Industries vs. Colmer] & 2009 (2) SCC 1, [Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India]. Similar view is taken by Supreme Court in AIR 1998 SC 1070, [R. Rudraiah vs. State of Karnataka] and AIR 2000 SC 1261, [Molar Mal vs. Kay Iron Works]]. Justice CORDOZO said “A judge must think of himself as an artist, who although he must know the handbooks, should never trust to them for his guidance; in the end he must rely upon his almost instinctive sense of where the line lay between the word and the purpose which lay behind it.” {See: Mr. Justice Cordozo by Learned Hand, 52 Harvard Law Review, pp. 361-63}.

(22) This is trite law that statute should not be construed as theorems of Euclid, but it should be construed with some imagination of the purposes which lie behind them. It is said by Judge LEARNED HAND in Lehigh Valley Coal v. Yensavage, 218 Fed 547, pp. 552, 553 : 235 US 705 (1915). In the words of Justice Chhinappa Reddy, J “Interpretation must depend on the text and the context. They are

the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.” {See: Reserve Bank of India vs. Pearless General Finance and Investment Co., reported in 1987 (1) SCC 424}. Iyer, J opined “to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of ‘deha’ and ‘dehi’ of the provision.” {See: AIR 1977 SC 965, [Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee]}. In view of principles laid down in the said authorities, the definition, clauses and Regulation 72 must be read conjointly to draw the meaning of second proviso of Regulation 72 and, more particularly, meaning of “last pay”. As per the text and in the context the aforesaid expression relied upon by learned senior counsel is used, in my judgment “pay” includes dearness allowance as it exists as a classification in the definition of “salary” which has a direct nexus/relation with “emoluments” and “pay”.

(23) The matter may be viewed from another angle. The provision relating to grant of gratuity is a beneficiary provision. It must be considered on the anvil of beneficent rule of construction. It is trite law that in the matter of welfare legislation, especially involving the work force, the terms of contract and the provisions of law should be liberally construed in favour of weak. {See: Workmen of Binny Ltd. v. Management of Binny Ltd., reported in 1985 (4) SCC 325; Indian Bank vs. K. Usha, reported in AIR 1998 SC 866.}.

(24) In view of aforesaid analysis, in the considered opinion of this Court the respondents have erred in not including DA while calculating gratuity under the Regulations. Thus, respondents are directed to include DA and recalculate the gratuity of the petitioners and pay the difference arising thereto to the petitioners within 60

days from the date of communication of this order. Since, employer has not taken into account the DA for calculating gratuity because of a genuine interpretation problem which is not based on any other reasons like lethargy or inaction, I am not inclined to grant interest on such payment of gratuity to the petitioners.”

28. This judgment of the Single Bench has been further tested before the Division Bench of the M.P. High Court and Division Bench also has put a stamp of approval by dismissing the Writ Appeal. The bank had also challenged the two judgments before the Supreme Court in an S.L.P. where the S.L.P. also got dismissed in limine. The dismissal of the S.L.P. further makes it clear that Hon'ble Supreme Court also did not find any absurdity or illegality in the two judgments rendered by the M.P. High Court which led to the dismissal of the S.L.P. in limine.

29. From the pleadings that have been made by the petitioner-Bank and also on considering the submissions made on either side, what is not in dispute is the fact that both the petitioner as well as the respondents accept the fact that the officers are entitled for gratuity amount whichever is higher in between the calculation that is made on comparison between the two i.e. under the Payments of Gratuity Act or under the Regulation, 2013.

30. The real controversy between the parties is as to the basis of calculation of the amount of gratuity payable. Since there is no upper ceiling or cap provided in the regulations like under the Payment of Gratuity Act, the officers insisted that they be paid gratuity under the Regulations by including DA as a component within the expression Pay as defined under Clause-2M of the Regulations, 2013. The fact which requires consideration also is that there is no exclusion of DA reflected in the definition of Pay under the Regulations, 2013. It is here that the definition of emolument becomes more relevant. The emolument under the definition under 2-I of the Regulations means aggregate

of salary and allowances and what exactly is salary is also defined under 2-O of the Regulations, 2013 which clearly holds that salary means aggregate Pay and DA.

- 31.**What needs to be considered now under the given circumstances is, can expression of Pay as is reflected under the definition clause 2-M of the Regulations, 2013 mean inclusive of DA or excluding DA ?
- 32.**If we read the definition Clause 2-M of the Regulations, it clearly reflects that the framers of the said Regulations were of the view that Pay means Basic Pay plus the emoluments which is classified as Pay. Now what are emolument which can be classified as Pay. The Bank has not produced any documentary proof to show what are those emoluments which according to the Bank is specifically classified as Pay. Under the circumstances, it becomes necessary to take the definition of emolument and the definition of salary together into consideration to decide whether the DA would be part of Pay for the purpose of calculating gratuity.
- 33.**It is here that the Single Bench of MP High Court has clearly held that the expression Pay, Emolument and Salary are interlinked, interconnected, interwoven and supplementing each other. This court fully endorses the view taken by the Single Bench of MP High Court. The view of this court gets further strengthened from the plain reading of Sub Clause-3 and the three provisos provided under Clause-72 of the Regulations, 2013.
- 34.**If the framers of the Regulations were of the view that for calculating gratuity for officers DA was not to be taken into consideration, they would have simply clarified it in the proviso as has been done in the case of 'employees' which is reflected in the 3rd proviso where in respect of an employee it has been specifically held that the gratuity shall be the average of basic pay plus DA and special allowances, whereas, so far as the officers are concerned, in the second proviso it has been specifically mentioned that the gratuity shall be

payable based upon the last pay drawn. Emphasis has been given on Pay. The authorities could have simply held that it would be payable on the basic pay and those allowances which are part of Pay under the Regulations. Having not done so, the term Pay would have to be given a broader and wider interpretation and the said interpretation should always be tilting towards the weaker section i.e. officers as payment of gratuity is one of those beneficial legislation enacted for the benefit of the employees and officers.

35.As regards the judgments of Bombay High Court which has been heavily relied upon by the petitioner-Bank, true it is that the Bombay High Court has taken a different view than what has been taken by the MP High Court. It is also undisputed legal position that when there are two conflicting views available for a court in deciding the matter and if the two conflicting views are of the same High Court, the option left for this court is for referring the matter to a larger Bench. However, in case if the conflicting views are of different High Courts, the Bench has an option of testing and then to endorse a view from among the two that which is more probable and justifiable. This court finds the judgment of MP High Court to be more probable in the factual matrix of the case. Moreover, the judgment of MP High Court has also been tested before the Division Bench as also before the Supreme Court and before both the higher forums it has got the stamp of acceptance, unlike in the case of Bombay High Court where it is not known whether the judgment of the Bombay High Court has been subjected to challenge further or not. The same principle also applies so far as judgment of Allahabad High Court is concerned.

36.There is yet another ground on which this court is reluctant to entertain the writ petition i.e. the scope of judicial review in exercise of the writ jurisdiction, while testing an order passed by the quasi judicial authorities, Tribunal and Labour Courts. It is settled position of law that under Article 226 of the

Constitution of India while hearing a matter arising out of the Labour Court, Tribunal and Quasi Judicial Authority, the High Court does not sit as an appellate authority. It has only the power of superintendence over those Courts, Tribunals and Authorities.

37. The judicial review does not mean to re appreciate the whole dispute afresh and reach to a different conclusion when the authorities below has himself given reasons for reaching to the conclusion that he has arrived at. The interference by this court in exercise of its power under Article 226 would confine itself to the extent of testing the order passed by the appellate authority and find out whether there is an error of jurisdiction or whether there is an excess of jurisdiction and also whether there is any perversity in the findings given by the authority whose order is under challenge.

38. The power of superintendence or the supervisory powers or the power of judicial review in a petition where the order of Labour Court, Quasi Judicial Authority or Tribunal is under challenge, has to be sparingly exercised that too only in the event of there being any error of law. A finding of fact arrived at with reasons and justification given cannot be upset only because the High Court finds that there is another view possible. The jurisdiction under Article 226 cannot be used as revisional power or as appellate powers as the order under challenge does not arise out of question of violation of the fundamental rights or violation of any of the constitutional rights, more particularly when there are provision of appeal provided under the statute and the appellate authority also has considered these aspects in exercise of its appellate powers.

39. In case of Swaran Singh and Another Vs. State of Punjab & Others, 1976(2)SCC868, the Supreme Court discussing on the power of writ court under Article 226 in paragraphs 12 and 13 has held as under :

“12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the

jurisdiction of the High Court in writ proceedings under Article 226. It is well-settled that Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra) "this limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be."

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends, only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

40. The said principle of law has been reiterated many a times thereafter and the said view still holds the field.

41. In yet another recent decision in *Heinz India Private Limited and Another Vs. State of Uttar Pradesh and Others*, 2012(5)SCC443, reiterating the same principle in paragraphs 66 and 67 it was held as under :

"66. That the Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the Court does not supplant 'the feel of the expert' by its own review, is also fairly well-

settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. [See *Union of India v. S.B. Vohra*, (2004) 2 SCC 150, *Shri Sitaram Sugar Co. Ltd. v. Union of India*, (1990) 3 SCC 223, and *Thansingh Nathmal and Ors. v. Supdt. of Taxes and Ors.*, Dhuri, AIR 1964 SC 1419].

67. In *Dharangadhra Chemical Works Ltd. v. State of Saurashtra and Ors.*, AIR 1957 SC 264, this Court held that decision of a Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in *Thansingh Nathmal's case* (supra) where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce which the writ is claimed.”

42. This view further has been followed in *Pepsico India Holding Private Limited Vs. Krishna Kant Pandey*, 2015(4)SCC 270.

43. Since the dispute involved in the present case has already been thrashed out before the Controlling Authority who has elaborately discussed the contentions put forth on either side and based on the material produced before the Controlling Authority has given an order which has also been affirmed by the appellate authority under the Act, the scope of judicial interference gets reduced substantially except on the ground of an error of jurisdiction or excess of jurisdiction which in this case is not a ground of challenge.

44. In view of the aforesaid facts and circumstances of the case, this court is of the opinion that no strong case has been made out by the petitioners calling for an interference to the impugned order under challenge.

45. As a consequence all these writ petitions thus being devoid of merits deserve to be and are accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**