

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 12.01.2021

Judgment Delivered on : 28.01.2021

WA No. 436 of 2020

(Arising out of common judgment dated 31.07.2018 passed in W.P.(S) No. 790 of 2013 & connected cases passed by the learned Single Judge)

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar, Raipur Chhattisgarh 492013

---- Appellant

Versus

1. Arun Phansalkar S/o Late Vasant Phansalkar, R/o Plot No. 34, Rajnigandha Colony, Vidyut Nagar, Durg 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

WA No. 445 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar, Raipur, Chhattisgarh 492013

---- Appellant

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

WA No. 10 of 2021

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

---- Appellants

Versus

1. Santosh Kumar Pare R/o Railway Banglapara , Near Vivekanand School Raigarh Chhattisgarh 496001.

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 Regional Labour Commissioner (C) Bilaspur District Bilaspur Chhattisgarh.

---- Respondents

WA No. 446 of 2020

- Chhattisgarh Rajya Gramin Bank Through Chairman, Mahadevghat Road, Sunder Nagar, Raipur Chhattisgarh. 492013

---- Appellant

Versus

1. Meghraj Pathak S/o Late Dhanraj Pathak R/o Ath, No. 15, Sai Baba Layout , Aghanpur, 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

WA No. 447 of 2020

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

---- Appellant

Versus

1. Pramod Kumar Upadhyay S/o Shri 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 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, District : Raipur, Chhattisgarh

---- Respondents

WA No. 448 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar, Raipur, Chhattisgarh 492013

---- Appellant

Versus

1. Mohd. Faruque Khan, S/o Late Abdul Razzak, R/o - At - Piyali Foundation, Infront Of Old Dhanvantari Hospital, Near Tondon Dairy, New Shanti Nagar, District Raipur Chhattisgarh, 492001.
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

WA No. 449 of 2020

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

---- Appellant

Versus

1. Mohd. Azam Hussain S/o Late Akbar Hussain R/o At Flat No. 104, Gulashan Apartment, Raja Talab District 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

WA No. 451 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar, Raipur, Chhattisgarh 492013

---- Appellant

Versus

1. Krishna Lal Singh R/o B-202, Housing Board Colony, G.E. Road, Girls College, 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

WA No. 455 of 2020

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

---- Appellant

Versus

1. Laxmikant Sahu R/o Quarter No. 12/1040, Siddheshwari Temple Marg, Kota Raipur, P. O. - Pt. R. S. University, Raipur Chhattisgarh 492010.
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

WA No. 457 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar, Raipur Chhattisgarh. 492013

---- Appellant

Versus

1. Kishwar Khan W/o Late Mr. Arif Ahmed Khan, 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

WA No. 459 of 2020

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

---- Appellant

Versus

1. Shri Abdul Mateen S/o Shri Abdul Mannan R/o H.No. 76, Near Saint Joseph Church, Behind Laxmi Gas Agency, Byron Baazar, Raipur (Chhattisgarh), 492001
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

WA No. 460 of 2020

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar, Raipur, Chhattisgarh. 492013

---- Appellant

Versus

1. Arun R. Katyayani R/o 313/39, Near By Ranilaxmi Bai Chowk, Behind Kelabadi Shopping Complex, Kelabadi, Durg (Chhattisgarh) 492001
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**WA No. 461 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar , Raipur Chhattisgarh 492013.

---- Appellant**Versus**

1. Hasan Mohammed Quraishi S/o Shri Jan Mohd. Quarishi R/o At 49/66, Kasaridih, 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 Contrlling Authority And The Assistant Labour Commissioner (C) Raipur , Chhattisgarh.

---- Respondents**WA No. 465 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Road, Sunder Nagar , Raipur Chhattisgarh 492013.

---- Appellant**Versus**

1. Mohan Lal Kosre S/o Late G.R. Kosre R/o Subhash Nagar, Ward No. 42, Near Shiv Mandir , Durg 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

WA No. 469 of 2020

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

---- Appellants**Versus**

1. Ravikant Pandey R/o Sanjay Maidan, Rambhata, District Raigarh Chhattisgarh, 496001.
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 Regional Labour Commissioner (C) Raipur Chhattisgarh

---- Respondents**WA No. 471 of 2020**

1. Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadev Ghat Road, Sunder Nagar, Raipur Chhattisgarh 492013
2. Regional Manager Chhattisgarh Rajya Gramin Bank, Mahadev Ghat Road, Sunder Nagar, Raipur Chhattisgarh 492013

---- Appellants**Versus**

1. Rudra Narayan Sharma R/o 9/107, Madhuwah Modipara, Near Vivekanand School Ward No. 9, Raigarh Chhattisgarh 496001
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**WA No. 472 of 2020**

- Chhattisgarh Rajya Gramin Bank Through The Chairman, Mahadevghat Raod, Sunder Nagar, Raipur, Chhattisgarh 492013

---- Appellant

Versus

1. Sashikant Awadhut S/o Late Mr. SI 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

For Appellants	: Shri Kishore Bhaduri and Shri Sabyasachi Bhaduri, Advocates
For Respondent No.1	: Shri N. K. Vyas and Shri K.N. Nande, Advocates

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

CAV JUDGMENT

Per, P. R. Ramachandra Menon, Chief Justice

1. ***Whether the Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulations, 2013 (hereinafter referred to as 'the Regulations'), envisage to treat the class of 'Officers' and the class of 'Employees' of the Employer-Bank differently in claiming the quantum of 'Gratuity' payable under the Regulations with reference to their "Pay" and the mode of calculation ?***
2. This is the question re-framed by us, after considering the core issue raised by the Appellant / Writ Petitioner-Bank and the point considered by the learned Single Judge as to whether the pay for computation of Gratuity in the case of 'Officers' of the Bank would take in the Dearness Allowances as well or not; as being done in the case of 'Employees' of

the Bank, dealt with under the two separate provisos to Regulation 72(3) of the Regulations.

3. All these appeals arise out of a common judgment passed by the learned Single Judge dealing with the grievance projected in different writ petitions of similar nature.
4. Heard Mr. Kishore Bhaduri, the learned counsel appearing for the Appellants in all cases and Mr. N.K. Vyas, the learned counsel, who appeared for the party/private Respondents. There is no factual dispute and the point to be considered is purely a legal question, in connection with the interpretation of "Pay", as defined under Regulation 2(m) of the Regulations; in the light of definition of the terms "Salary" under Regulation 2(o) and "Emoluments" under Regulation 2(i) of the Regulations.
5. The Respondents-'Officers' were serving the Appellant-Bank and on attaining the age of superannuation, they came out of the service; when the Gratuity payable was worked out and paid to them. After accepting the said amount, the above said 'Officers' putforth a claim that the calculation made by the Employer-Bank was quite wrong and that they were entitled to get more amounts in terms of the Regulations; by virtue of the statutory mandate under Section 4(5) of the Payment of Gratuity Act, 1972 (for short, 'the Act'), stipulating that nothing in Section 4 shall affect the right of an employee *{the term 'employee' defined under Section 2(e) of the Act also constitutes an*

'officer' as well, having not been separately defined, unlike the Regulations, where separate definition exists} to receive better terms of Gratuity under any award or agreement or contract with the Employer and the extent of the Gratuity payable to an Employee *(constituting both the 'Officer' and 'Employee' having not been separately defined under the Act)*, as specified under sub-Section (6) of Section 4 of the Act.

6. The prayer in the claim petition filed before the Controlling Authority was opposed from the part of the Employer-Bank, contending that the Pay to be reckoned for calculation of Gratuity to an 'Officer' was different from that of 'Employee', by virtue of the difference in the mode of calculation, as clearly provided under the 'Regulations' and hence that whatever payable to the 'Officers'/Claimants, had already been calculated strictly in terms of the relevant provisions of law and satisfied. However, the contention of the Appellant/Employer-Bank was repelled and the Controlling Authority held that the Pay in the case of 'Officers'/Claimants will take in the Dearness Allowance as well and accordingly a finding was rendered, giving appropriate directions to have the balance amount paid with interest as specified. Though, this was subjected to challenge before the Appellate Authority, at the instance of the Appellant/Employer-Bank, it did not turn to be fruitful, leading to the writ petitions filed before the learned Single Judge.
7. It is seen from the judgment under challenge that the rival contentions were appreciated with reference to the relevant provisions in the

Regulations and also in the Act. After placing reliance on the verdict passed by the Madhya Pradesh High Court, which stood in favour of the 'Officers'/Claimants and observing that the SLP preferred there from has been dismissed by the Apex Court (in turn, holding that it “showed the acceptance of the legal proposition”), the learned Single Judge sought to give a wider interpretation to the term 'Pay'; virtually reading the definition of the terms 'Emoluments' / 'Salary' into the definition of the term 'Pay' under Regulation 2(m) of the Regulations and dismissed the writ petitions. The learned Judge further observed that the power of the Court to have a scrutiny with regard to the nature of challenge raised under Article 226 of the Constitution was quite limited and further that the Controlling Authority and the Appellate Authority under the statute having given their findings on the question, the jurisdiction was rather of 'supervisory' in nature. Correctness of said verdict is put to challenge in these appeals.

8. The learned counsel appearing for the parties on both the sides conceded that there was no factual dispute and that the issue involved was purely a legal question. In the said circumstance, as agreed by the parties on both the sides, we heard the matter on merits. Writ Appeal No. 436 of 2020 is taken as the lead case and the parties and proceedings are referred to as given there, except where it is separately mentioned with reference to the context.
9. Mr. Kishore Bhaduri, the learned counsel for the Appellant submits that the Appellant-Bank is a Government owned Scheduled Bank

sponsored by the State Bank of India and it was established under the relevant provisions of the Regional Rural Bank Act, 1976. It is also pointed out that, the Competent Authority, **with the prior approval of Central Government**, have framed the Regulations in accordance with the relevant provisions of law, which has been duly notified in the official gazette. The Regulations, dealing with the various service conditions, also provide for payment of Gratuity under Regulation 72. Under sub-Regulation 3 of Regulation 72, the Gratuity is to be computed, adopting different modes of calculation in the case of an 'Officer' and an 'Employee', who have been separately defined. In the case of an Officer, it has to be with reference to 'Pay' i.e. the last drawn pay i.e. basic pay, whereas in the case of an 'Employee' (dealt with under separate proviso), it is on the basis of average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the preceding 12 months, as specified.

10. According to the learned counsel, the Controlling Authority and the Appellate Authority have gone wrong in reckoning the dearness allowance also as part of 'Pay' for computing the Gratuity, which is clearly contrary to the provisions in the Regulations and against Annexure-A/2 Notification issued by the Central Government to the effect that special allowance and officiating allowance payable during the preceding 12 months shall not be reckoned for the purpose of computation of retirement benefits including the Gratuity as given in the 'Note'. Since the provisions in the Regulations are quite categoric with

regard to the 'Pay' to be reckoned and as to the mode of calculation, it was not correct or proper for the Controlling / Appellate Authorities to have added something more as part of the 'Pay', contrary to the scheme of the Regulations. The learned counsel submits that the said Authorities have virtually widened the term 'Pay' in the case of the 'Officers' by reading something more into it (w.r.t. the term 'Emoluments' / 'Salary'); seeking to sustain the same in view of the definition of the term 'Wages' under Section 2(s) of the Act, which is quite wider. It is the case of the Appellant that the Claimants are entitled to get payment of Gratuity either in terms of the Act or in terms of the Regulations, whichever is higher, but the mode of calculation cannot be altered, picking out only the best from both the streams, which is not permissible, in view of the law laid down by the Apex Court in ***Beed District Central Co-operative Bank Ltd. v. State of Maharashtra and Others*** reported in **(2006) 8 SCC 514** (paragraphs 12, 13 and 14), holding that it has to be taken as a package. The above vital distinction was unfortunately not highlighted before the Division Bench of the Madhya Pradesh High Court in Writ Appeal No. 1318 of 2018; which came to be followed by the learned Single Judge of this Court, while dismissing the writ petitions filed by the Appellant-Bank and hence not correct. The learned counsel further submits that the verdict passed by the Division Bench of the Madhya Pradesh High Court was considered in the recent ruling rendered by a learned Judge of the Bombay High Court in ***Vidarbha Konkan Gramin Bank v.***

Appellate Authority reported in **2020 SCC OnLine Bom 17** (paragraph 11 onwards) and the legal position with reference to the similar term in the relevant Regulations has been answered in favour of the Employer-Bank. It is added by the learned counsel that dismissal of the SLP preferred against the verdict passed by the Division Bench of the Madhya Pradesh High Court does not put a seal of the Apex Court to the legal proposition, as there is no merger, as held by the Apex Court in **Khoday Distilleries Ltd. v. Shri Mahadeshwara Sahakara Sakkare Karkhane Ltd.** reported in **(2019) 4 SCC 376**.

11. Mr. N. K. Vyas, the learned counsel representing the Respondents/ Claimants seeks to support the verdict passed by the learned Single Judge and submits that the Claimants are entitled to get higher benefit flowing from the Regulations by virtue of the mandate under sub-Section (5) of Section 4 of the Act. The learned counsel submits that there is no dispute to the legal proposition (when the Claimants are entitled to get the benefit either under the Act or under the Regulations whichever is higher) that there cannot be any mixing up by taking the reckonable factors from both the streams (Act or the Regulations) simultaneously. According to the learned counsel, the Regulations are self-contained and the meaning of the relevant terms, as envisaged by the framers, has to be given effect to the definition of the term 'Pay' under Regulation 2(m) of the Regulations, particularly, in the light of the definition of the terms 'Salary' under Regulation 2(o) and 'Emoluments' under Regulation 2(i) of the Regulations. The learned counsel submits

that the words "***any part of the Emoluments which may specifically be classified as pay under these Regulations***", given under Regulation 2(m) defining the terms 'Pay', will be meaningless as held by the learned Single Judge of the Madhya Pradesh High Court and affirmed by the Division Bench, if the interpretation sought to be made by the Appellant-Bank is given effect to, to exclude the same from part of the 'Pay'. This is more so, since no other provision is there referring to any part of the 'Emoluments' which may specifically be classified as 'Pay' under these Regulations, as correctly observed by the learned Single Judge of the Madhya Pradesh High Court in paragraph 20 and as affirmed by the Division Bench, which got finality by virtue of dismissal of the SLP by the Apex Court. Going by the definition of the terms 'Emoluments' and 'Salary' under Regulations 2(i) and (2(o) respectively of the Regulations, it is quite wider in terms and as such, when it comes to calculation under Regulation No.72(3), the wider inclusive meaning has to be given to the term 'Pay', especially in view of the clarity discernible from the 2nd proviso to the sub-Regulation (3) as to mode of calculation of Gratuity payable to the Employee, taking the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the preceding 12 months. It is pointed out by the learned counsel that the verdict passed by the learned Single is not assailable under any circumstance and that a similar view has been taken by the learned Judges of the Telengana High Court in ***B.N. Nageswara Rao v. Sapthagin Grameena Bank &***

another decided on 07.02.2020, the Rajasthan High Court (Jodhpur Bench) in ***Writ Petition No.7359/2019 {Rajasthan Marudhara Gramin Bank v. The Appellate Authority and Others}*** and the Calcutta High Court in ***W.P. 18488 (W) of 2019 {Arup Kumar Basubal & Ors. v. Bangiya Gramin Vikash Bank & Ors.}***.

12. As mentioned already and as admitted by the learned counsel for the parties on both the sides, by virtue of the mandate under Section 4(5) of the Act, the Claimants are entitled to get Gratuity either under the Act or under the Regulations, whichever is higher. As declared by the Apex Court in ***Beed District Central Co-operative Bank Ltd.*** (supra) and as fairly conceded by the learned counsel for the Respondents, benefits cannot be computed by picking out the best from two different baskets (Act / Regulation) simultaneously. Since the dispute is in relation to the Gratuity payable under the Regulations, it has to be computed strictly in terms of the Regulations and not on the basis of the definition of any other term or as to the mode of calculation given elsewhere.
13. The first point to be noted is that the Regulations deal with the service conditions of both the 'Employees', and the 'Officers', treating them as two separate class and as defined under Regulation Nos. 2(j) and 2(l) respectively; as extracted below:

“2(j) “*Employee*” means an employee of the Bank as classified under clauses (b) and (c) of sub-regulation (1) of regulation 3, and includes such employee whose services are lent to other organizations under regulation 75;

2(l) “*Officer*” means an officer of the Bank as classified under Clause (a) of sub-regulation (1) of regulation 3;”

14. The above definitions make a clear reference to the classification of Officers and Employees under Regulation No.3, which is to the following effect :

"3. Classification of officers and employees. - (1)
The officers and employees of the Bank shall be classified as follows, namely,-

- (a) Group 'A' - Officer
 - Junior Management
 - (i) Scale I (Assistant Manager)
 - Middle Management
 - (ii) Scale II (Manager)
 - (iii) Scale III (Senior Manager)
 - Senior Management
 - (iv) Scale IV (Chief Manager)
 - (v) Scale V (Assistant General Manager)

Explanation. - For the purpose of these regulations, the Chairman may designate the officer, as Branch Manager, Regional Manager or General Manager, depending on the work or functions assigned and the scale of the officer.

- (b) Group 'B'- Office Assistants (Multipurpose).
- (c) Group 'C' - Office Attendants (Multipurpose)."

15. It is in the said background that further analysis has to be made with regard to the scope of Regulation 72, dealing with payment of Gratuity to both the classes of Officers and Employees, as dealt with therein. For convenience of reference, we find it appropriate to extract Regulation 72 of the Regulations, as given below :

"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."

16. Sub-Regulation (1) makes a general declaration *{which is similar to Section 4(5) of the Act}* to the effect that an 'Officer' or 'Employee' shall be eligible for payment of Gratuity either as per the provisions of the

Act or under the Regulations, whichever is higher. The circumstance under which an Officer or an Employee shall become eligible for Gratuity are mentioned under 'Clauses (a) to (e)' of sub-Regulation (2). This however is subject to the proviso mentioned therein, that, in respect of an 'Employee' there shall be no forfeiture of Gratuity for dismissal on account of the misconduct except in cases where such misconduct causes financial loss to the Bank and in that case, to that extent only. The proviso gives a clear idea as to the distinction sought to be drawn in respect of an 'Employee' (unlike an Officer) by the framers of the Regulations, while putting some restrictions as to forfeiture of Gratuity except to the extent as mentioned therein. This benefit, as such, is not given in the case of an 'Officer', who is rather governed by Clause (e) of the Regulation 72(2); which dis-entitles him in toto from getting Gratuity on termination from service by way of punishment, as specified. To put it more clear, in the case of an 'Employee', the rider under Clause (e) of Regulation 72(2), (dis-entitling an 'Officer' to claim Gratuity on termination of service by way of punishment) is not applicable as such, unless, it is for dismissal on account of misconduct causing financial loss to the Bank and in such cases, only to the said extent of loss resulted to the Bank. This is a clear indication to the fact that the framers of the Regulations did never envisage to treat an 'Officer' and an 'Employee' of the Bank, placing on the same / similar pedestal; whereas some wider benefit / concession was given in case of 'Employees', treating them differently.

from the category of 'Officers'. Computation of Gratuity under Regulation 72 (3) has to be analysed in the above context.

17. Sub-Regulation (3) of Regulation 72 makes the general declaration that the Gratuity payable to an 'Officer' or 'Employee' shall be one month's 'Pay' for every completed year of service or part thereof in excess of six months, subject to maximum of 15 month's Pay. The 1st proviso speaks about the eligibility of both the category of Officers and Employees to get a higher computation benefit, by reckoning one and a half month's of pay for each completed year of service beyond 30 years. The remaining two provisos under the said Regulations as to the computation of Gratuity deal with the above two classes (Officer / Employee) separately, providing different mode of calculation. In the **2nd proviso** dealing with the case of 'Officers', it is mentioned that the Gratuity is payable based on the last pay drawn; whereas the **3rd proviso** dealing with the 'Employees' stipulates that Pay has to be calculated on the basis of the average of the basic pay (100%), dearness allowance, special allowance and officiating allowance payable during the preceding 12 months. Here again, the conscious attempt made by the framers of the Regulations is quite evident in the stipulation that one month's pay for every completed year of service of the Officer in excess of six months subject to a maximum of 15 month's pay as mentioned in sub-Regulation (3) has to be on the basis of the last pay drawn in the case of an 'Officer' as given in the 2nd proviso, whereas the position is different when it comes to the case of an

'Employee' as dealt with under the 3rd proviso, taking something more to be reckoned as 'Pay' for the purpose of calculation, which includes the average of the basic pay (100%), dearness allowance, special allowance and officiating allowance during the preceding 12 months. The rationality or the circumstances under which such distinctions were sought to be made by the framers of the Regulations, whether it be with regard to the extent of forfeiture of Gratuity in the case of an 'Officer' compared with the 'Employees' or the quantum of Gratuity based on the mode of calculation with reference to the last pay drawn by the 'Officers' (2nd proviso) and the Pay including such other allowances, applicable to the 'Employees' (3rd proviso), cannot be a subject matter of scrutiny before any Court, as it is exclusively within the wisdom of the framers of the Regulations, being a 'policy matter'.

18. Now comes the question of actual computation. It will be worthwhile to note the definition of the terms 'Pay', 'Salary' and 'Emoluments' as given under Regulation 2(m), 2(o) and 2(i) of the Regulations.

“2. Definitions. - (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;

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

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

19. If we look at the definitions as above, it is in the form of a 'pyramid' or a triangle with 'Pay' at the top, 'Salary' at the middle and 'Emoluments' at

the bottom. Definition of the term 'Pay' under Regulation 2(m) says that, it means basic pay drawn per month by the Officer or Employee (covering both) in a pay-scale, including stagnation increments; of course, with liberty to add on any part of the 'Emoluments', which may specifically be classified as 'Pay' under these Regulations. So, three things are important, which are applicable to both the Officer segment as well as the Employee segment, when we consider the definition of the term 'Pay'. First of all, it means the basic pay drawn per month in a pay-scale. When the terminology used is 'means', it is an 'exclusive' definition and is not an inclusive one. It cannot be anything other than basic pay, except to the extent as sought to be included or added on. **Stagnation increment** is one such instance, which is taken in and the next instance is as spoken in the last limb i.e. **any part of the emoluments which may specifically be classified as pay under these Regulations**.

20. Here, it may be noted that definition of the term 'Salary' under Regulation 2(o) speaks about the aggregate of 'Pay' and 'Dearness Allowance'. When we come to definition of the term 'Emoluments' under Regulation 2(i), it is still wider, whereby it takes in 'Salary' (pay and dearness allowance) and other allowances, if any, as well. It is for this reason, that we mentioned that the term 'Pay', 'Salary' and 'Emoluments' are situated in the form of a 'pyramid'; with 'Pay' at the top and 'Emoluments' at the bottom, placing 'Salary' in the middle. Going by the last limb of the definition of the term 'Pay' under

Regulation 2(m), if at all any portion of the 'Emoluments' is to be added on, alongwith the basic pay, to reckon the 'Pay' defined under Regulation 2(m), it has to be: (i) specifically classified as 'Pay'; (ii) under these Regulations. Hence only those portions of the 'Emoluments', if at all any extent is specifically classified to be reckoned as 'Pay' under the Regulations, it can be reckoned as 'Pay' to workout the Gratuity. Correctness of the observation of the learned Single Judge of the different High Courts (Madhya Pradesh High Court, this Court, Telengana High Court, Rajasthan High Court (Jodhpur Bench) and Calcutta High Court) that the last limb of the definition of the Regulation 2(m) defining the term 'Pay' i.e., “**any part of the 'Emoluments' which may specifically be classified as 'Pay' under these Regulations**” will be rendered otiose; if the interpretation sought to be made by the Employer-Bank is accepted, as there is “no other provision in the Regulations” to treat any part of the 'Emoluments' to be added on to the basic pay and constitute the 'Pay' as defined therein has to be considered in the said context.

21. On turning back to Regulation 72(3), when the core provision says that the amount of Gratuity payable to both the Officer or Employee shall be one month's Pay for every completed year of service or part in excess of six months, subject to maximum of 15 month's pay; the 2nd proviso clearly stipulates that in the case of an 'Officer', the Gratuity is payable based on the last pay drawn, whereas the 3rd proviso stipulates that in the case of an 'Employee', it is something more i.e., the pay for

purpose of calculation of the Gratuity shall be the average of the basic pay (100%), dearness allowance, special allowance and officiating allowance payable during the preceding 12 months. This shows that there is a vital distinction as envisaged by the framers of the Regulations that in the case of 'Officer', the expression used is only 'Pay' which means the basic pay; whereas in the case of 'Employee', the 'Pay' is further qualified by stipulating to take the average of the basic pay (100%), dearness allowance, special allowance and officiating allowance payable during the preceding 12 months. This is a conscious decision taken by the framers to treat the 'Officers' and 'Employees' as of different segments, placing them on two different pedestals and to have the calculation effected adopting the two different methods. Considering this in the light of definition of the term 'Pay' under Regulation 2(m), in the case of the 'Officers', since 'Pay' is the basic pay and nothing can be added on to the basic pay, the calculation has to be exclusively on the basis of the last pay drawn i.e. the last basic pay; whereas in the case of the 'Employees', the last limb of Regulations 2(m) comes into operation, whereby something else by way of dearness allowance, special allowance and officiating allowance (average during the preceding 12 months), are provided to be added on to the basic pay, (average of preceding 12 months) to constitute the 'Pay' / 'reckonable element' as provided in the 3rd proviso to Regulation 72(3). This being the position, the stipulation given as to the mode of calculation separately in the case of 'Officers' and 'Employees' under

the 2nd and 3rd provisos to Regulation 72(3) is in conformity with the provision to give effect to the definition of the term 'Pay', as defined under Regulation 2(m) of the Regulations.

22. In this context, it is worthy to note that there is a clear distinction when we come to the provisions of the Payment of Gratuity Act, 1972. The Preamble of the Act says that, it is to provide for a scheme for payment of Gratuity to 'Employees', engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The term 'Employee' is defined under Section 2(e) of the Act, which is to the following effect :

“2(e) “employee” means any person (other than an apprentice) employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

There is no separate definition to the term 'Officer' under the Act.

In other words, Section 2(e) takes in both the Employees as well as the Officers.

23. Section 2(s) of the Act defines the term 'Wages' in the following terms :

“2(s) “wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent

allowance, overtime wages and any other allowance.”

24. From Section 2(e) and 2(s) and the scheme of the statute, particularly, with reference to the 'preamble' it is quite clearly discernible that the provisions in the Act are applicable on equal measures to both the Officers and Employees who are not intended to be distinguished or treated separately. In other words, the 'wages' (defined under 2(s) of the Act) earned by the Employee under the different heads are treated as the amount reckonable for the purpose of computation of Gratuity under Section 4 of the Act, on an equal footing, whether the beneficiary be an Officer or a General worker or such other Staff. Unlike this, insofar as the 'Regulations' separately define the terms 'Employee' and 'Officer' under Regulation 2(j) and 2(l) respectively and draws a distinction with regard to the extent of 'Forfeiture of Gratuity' as given under Regulation 72(2)(e), read with the proviso thereunder and the different 'Modes of calculation' with reference to the 'Pay' reckonable in the case of 'Officers' and 'Employees' (dealt with separately under the 2nd and 3rd provisos to Regulation 72(3), the definition of the term 'Pay' under Regulation 2(m) cannot be widened beyond the explicit terms as given therein, by reading something more into it. This exercise done by the Controlling Authority, the Appellate Authority and the learned Single Judge of this Court as discussed above, in our view, is not correct. We respectfully disagree with the view taken by the Division Bench of the Madhya Pradesh High Court and the learned Judges of Telengana, Rajasthan (Jodhpur Bench) and Calcutta High Courts; while concurring

with the view expressed by the learned Single Judge of the Bombay High Court in this regard.

25. It is settled law of interpretation that when the statute / provision of law is clear and there is no ambiguity, it has to be taken as it is. It is not within the realm of this Court to question the wisdom of the law makers, for the distinction they have sought to make with reference to the classification of the workforce, placing the 'Officers' and Employees' on different platforms and providing different modes of calculation. Option is always given to the Claimants to claim Gratuity either under the Act or under the Regulations, but never under both. When the calculation has to be made under the Regulations, each and every provision therein has to be given effect to, which cannot be widened by adding something more, taking it from elsewhere, whether it be with reference to the inclusive definition of the term 'wages' under Section 2(s) of the Act or definition of the terms 'Salary' under Regulation 2(o) or 'Emoluments' defined under Regulation 2(i) of the Regulations. This is absolute, irrespective of the fact whether the provision / law is a welfare legislation or not.
26. In the above circumstances, the observations of the learned Single Judge in 'paragraph 20' of the judgment under challenge that “***as in the case of an 'Employee', the framers of the Regulations 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***” and so also, “***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 Regulation 72 of the Regulations, so far as Officers are concerned", are not correct or sustainable. We also record our disapproval with the observation made by the learned Single Judge in 'paragraph 22' that "the emoluments that an officer was drawing would also have to be treated as part of the pay"; for the reason that the qualifying words under the 3rd limb of the definition 'Pay' under Regulation No.: 2(m): **"which may be specifically classified as 'pay' under these Regulations"** have been left out {which, in fact, is contained in case of 'Employees' under the 3rd proviso of the Regulation 72(3)}; but conspicuously absent in the case of 'Officers' under the 2nd proviso to the same Regulation. For the very same reason, the observation made by the learned Single Judge in 'paragraph 26' that "the framers of the Regulations had taken the term 'Pay' in broader perspective rather than giving it restrictive or narrow meaning confined to the term basic pay" does not reflect the correct position. Same is the case with regard to the observations as to the intention of the framers of the Regulations as given in 'paragraph 34' of the judgment.

27. With regard to the scope of judicial review, the writ petitions were filed under Article 226 of the Constitution of India raising a serious question of law as to the computation of Gratuity payable under the Regulations. There is no dispute on facts and the challenge is only w.r.t. the

question of law and its correct interpretation. The scope and extent of power of this Court under Article 226 of the Constitution of India is wide enough to decide the 'lis'. The very same ruling of the Apex Court in ***Sawarn Singh & Another vs. State of Punjab & Others*** reported in **(1976) 2 SCC 868** relied on and extracted in 'paragraph 39' of the judgment passed by the learned Single Judge holds in unequivocal terms (last sentence in paragraph 12) that **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. The way how the issue has to be approached, analysed and appreciated, even in a case where the writ petition has been filed wrongly marking it as under Article 227, or by showing both Articles 226 and 227, has been discussed in detail by this Court in the recent judgment dated 14.09.2020 passed in Writ Appeal No. 316 of 2020. We hold that the writ petitions filed by the Appellant-Bank as well as these appeals are quite maintainable in all respects.

28. In the light of the above discussion, we find that the orders passed by the Controlling Authority and the Appellate Authority impugned in the writ petitions and the common verdict passed by the learned Single Judge are not liable to be sustained. They are set aside accordingly and the Claim Petitions stand dismissed. The Writ Appeals are allowed. No costs.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge