



W.P.No.34289 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on : 06..06..2023

Orders Pronounced on : 15..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

W.P.No.34289 of 2014

and

M.P.No.1 of 2014

The Chairman & Managing Director,
UCO Bank, Head Office, No.10,
Bilapalani Tralokya Maharaj Sarani
Kolkata 700 001, represented by its
Deputy General Manager, Zonal Office
328, Thambu Chetty Street,
Chennai – 600 001.

..... **Petitioner**

-Versus-

- 1.The Appellate Authority Under
Payment of Gratuity Act, 1972 and
Regional Labour Commissioner (Central)
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.
- 2.The Controlling Authority Under
Payment of Gratuity Act, 1972 and
The Assistant Labour Commissioner (Central)
26, Haddows Road, Shastri Bhavan,
Chennai – 600 006.

3.Mr.R.Govindarajan

..... **Respondents**



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the 1st respondent herein vide order dated 27.08.2014 in G.A.No.13/2013, confirming the order dated 28.08.2013 made in G.A.No.45/2012 B3 on the file of the 2nd Respondent herein.

For Petitioner : *Mr.Srinath Sridevan,*
Senior Counsel for
Ms.S.Vindhya Vasini

For Respondents : *Mr.R.R.Mohan Raja for R3*

No Appearance for RR1 & 2

ORDER

This writ petition challenges the order of the 1st respondent dated 27.08.2014 in G.A.No.13/2013 which confirmed the order of the 2nd respondent dated 28.08.2013 made in G.A.No.45/2012 B3.

2. The case of the petitioner bank is that the 3rd Respondent (R.Govindarajan) was its employee. During the course of employment, he has sanctioned cash credit facilities to an aggregate sum of Rs.150,00,000/- to one Sri.Meenakshi Tex against the immovable properties. These were to be utilized as collateral security, stocks and letter of credit from Bank of Baroda. Subsequently, the letter of credit was found to be false. The title to the immovable property was also found to be dubious. Therefore, the petitioner bank through its Deputy General Manager lodged a complaint with the Central



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Bureau of Investigation (CBI). The CBI filed a case before the 11th Additional Special Court, Chennai where it was numbered as C.C.No.32 of 2004. In the said proceedings, the 3rd respondent and the borrowers were charged with entering into a criminal conspiracy for submission of false documents.

3. Shortly thereafter, departmental proceeding was initiated against the 3rd respondent. An order was passed on 09.11.2009. As per the said order, the 3rd respondent was held to be responsible for the loss of Rs.90.98 lakhs. Subsequently, on 31.07.2011, the 3rd respondent attained the age of superannuation and he was permitted to retire. On his retirement, he made a claim for gratuity under the provisions of the Gratuity Act, 1972.

4. The petitioner bank, on the strength of Regulation 46 of UCO Bank (Employees') Pension Regulations, 1995 [for short **“the Regulations 1995”**], took a decision to withhold the gratuity amount till the disposal of the Criminal Case. As his request was not considered, the 3rd respondent filed an application with the authority under the Payment of Gratuity Act on 21.12.2011.

5. Prior to this, the petitioner claims that it had communicated to the 2nd respondent that it was withholding the gratuity in view of the pendency of the criminal case. This was in and by way of a letter of the petitioner bank dated 29.08.2011.



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6. The 2nd respondent, on being moved by the 3rd respondent, issued a notice to the petitioner bank as well as the 3rd respondent employee. The petitioner bank appeared before the 2nd respondent and pointed out that as the criminal case was pending, they had withheld the gratuity. The 2nd respondent is said to have orally directed the petitioner bank to pay the gratuity. Accordingly, gratuity was released on 16.04.2012.

7. The dispute, which has to be resolved, arose thereafter. The petitioner bank released the gratuity alone but did not pay any interest on the gratuity. The petitioner bank took a stand that till the culmination of proceedings it would not pay any interest. To that end, it relied upon the judgment of the Supreme Court of ***Y.K.Singla V. Punjab National Bank [(2013) 2 SCC 472]***. Despite the objections of the writ petitioner, the 2nd respondent directed payment of interest on gratuity from the date of superannuation till the date of payment of gratuity.

8. Aggrieved by the order of the 2nd respondent, the petitioner bank preferred an appeal before the 1st respondent. The same issues urged before the 2nd respondent were urged before the 1st respondent. They were rejected. Aggrieved by the same, the present writ petition has been preferred.



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9. It is the case of the 3rd respondent employee that the case registered against him in C.C.No.32 of 2004 on the file of the XI Additional Special Court, Chennai, ended in acquittal on 23.03.2016 and that the said order has become final. Insofar as the departmental enquiry was concerned, the punishment that was imposed was reduction of basic pay for two stages for a period of one year. He would further state that as early as 12.07.2011, he had applied for payment of gratuity. But, in terms of Regulation 46(1) of the Regulations 1995, the petitioner bank had given him only provisional pension. It was only after his acquittal, the provisional pension was revised to normal pension.

10. Mr.R.R.Mohan Raja, learned counsel for the 3rd respondent would refer to sub-sections (3) of Section 7, sub-section (3-A) of Section 7 and Section 4 of the Payment of Gratuity Act, 1972 and would argue that if the employer had failed to pay the gratuity within a month from the date of superannuation, the employer will have to pay the interest on the amount. He would also argue that in case there is dispute in amount, the employer has to deposit the amount with the controlling authority under the Act and only thereafter, contest the litigation. He would point out that the petitioner bank had not complied with any of the conditions under the Payment of Gratuity Act,



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11. Relying upon Section 14 of the Payment of Gratuity Act, 1972, the 3rd respondent would submit that the Regulation 46(1) of the Regulations 1995 cannot override the provisions of the Payment of Gratuity Act, 1972 and that such a plea is untenable.

12. Mr.Srinath Sridevan, learned senior counsel appearing on behalf of Ms.S.Vindhya Vasini, learned counsel on record for the petitioner bank would submit that Regulation 46 of the Regulations 1995 would supersede Section 14 of the Payment of Gratuity Act and would rely upon the judgement of this court in **M.Azeez v. Indian Bank [2012 SCC OnLine Mad 1490]**. The learned senior counsel would further submit that interest payable under sub-section (3-A) of Section 7 of the Payment of Gratuity Act, 1972 would commence 30 days after the date of retirement and would not be payable immediately on the date of retirement.

13. Mr.R.R.Mohan Raja, learned counsel appearing for the 3rd respondent employee would, on the other hand, rely upon the judgement of the Supreme Court in **Y.K.Singla V. Punjab National Bank [(2013) 3 SCC 472]** and argue that Section 14 of the Payment of Gratuity Act, 1972, would supersede any other provision, if it restricts the right to gratuity or any other right conferred



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under the Act.

WEB COPY 14. I have carefully considered the arguments of either side.

15. The issue involved in the instant case is very simple, but an interesting one. There is no dispute that the 3rd respondent was an employee of the petitioner bank. It was also not in dispute that the employees of the petitioner bank are entitled to gratuity as per the provisions of the Payment of Gratuity Act, 1972. The only dispute is with respect of the interest payable for the delayed payment of gratuity. Here is a case where the 3rd respondent employee had moved the Assistant Commissioner of Labour by way of an application under Form-N. He is the controlling authority under the Payment of Gratuity Act. The Assistant Commissioner had passed an order on 28.08.2013 in favour of the 3rd respondent employee directing the petitioner bank to pay an amount of Rs.70,833/- as interest for the delayed payment of gratuity.

16. Aggrieved over the same, the petitioner bank had preferred an appeal before the appellate authority under sub-section (7) of Section 7 of the Act.

17. The 3rd respondent was paid gratuity only on 07.04.2012. He retired on 31.07.2011. Therefore, in terms of sub-section (3) of Section 7 of the Payment of Gratuity Act, the payment of gratuity should have been made on or before 30.08.2011. Thus, there is a delay in payment. According to the



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petitioner bank, Regulation 46 of the Regulations, 1995 would supersede the Payment of Gratuity Act, 1972 and Section 14 of the said Act will not affect its application.

18. Mr.Srinath Sridevan, learned senior counsel is right in his contention that a reading of the judgement in **M.Azeez v. Indian Bank [2012 SCC OnLine Mad 1490]** would be in his favour. However, in the said judgement, the learned single Judge had held that Regulation 46 of the Regulations, 1995 being a subordinate level legislation, framed in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 would be a “law” within the meaning of Article 13 of the Constitution of India and therefore, would supersede Section 14 of the Payment of Gratuity Act, 1972. It is necessary to note that the language of Article 13 of the Constitution of India reads as follows:-

“13. Laws inconsistent with or in derogation of the fundamental rights.-

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void;

(2) The State shall not make any law which takes



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away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas;

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality.”

19. The definition of “law” under Article 13 of the Constitution of India is confined to interpretation of laws which come under Articles 13(1) and 13(2) of the Constitution of India. One fact to be noticed is that in the order of priorities of laws, the Constitution comes first, followed by the laws made by the Parliament and State Legislature, which are superior to subordinate legislations and finally after statutory rules / subordinate legislations comes the administrative instructions and circulars which affect / benefit the populace.



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Just like a law, which is contrary to the Constitution is void and a regulation

which is contrary to a statute would also have to be equally invalid. A subordinate level legislation cannot supersede a Parliamentary legislation. If the judgement of this court in **M.Azeez's case** [cited supra] is to be read that a subordinate level regulation viz., Regulations, 1995 made in terms of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, should be treated on par with the parliamentary legislation, viz., the Payment of Gratuity Act, 1972. I am not willing to do so. That also does not seem to be the purport of the judgement.

20. I have been saved the trouble of dealing with Section 14 of the Payment of Gratuity Act, 1972 in detail by virtue of the judgement of the Supreme Court in **Y.K.Singla Vs. Punjab National Bank** [cited supra] wherein while dealing with Section 14 of the Payment of Gratuity Act, the court was pleased to hold as follows:-

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

“14. Act to override other enactments, etc.—The provisions of this Act or any rule made thereunder shall



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have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.” (emphasis supplied)

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

23. Based on the conclusions drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act that an



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employee has the right to make a choice of being governed by some alternative provision/instrument other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4(5) of the Gratuity Act.

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



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would be the same when the provision concerned is silent on the issue. This is so because the instant situation is not worse than the one discussed above, where there is a provision expressly debarring payment of interest in the manner contemplated under Section 7(3-A) of the Gratuity Act. Therefore, even though the 1995 Regulations are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3-A) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under Section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in Section 14 of the Gratuity Act deliberated in detail hereinabove would stand negated.

25. We, therefore, have no hesitation in concluding that even though the provisions of the 1995 Regulations are silent on the issue of payment of interest, the least that the appellant would be entitled to are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest on account of delayed payment of gratuity (as has already been concluded above). We therefore hold that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-section (3-A) of Section 7 of the Gratuity Act.



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26. We, accordingly, direct PNB to pay to the appellant, interest at "... the rate notified by the Central Government for repayment of long-term deposits". In case no such notification has been issued, we are of the view, that the appellant would be entitled to interest, as was awarded to him by the learned Single Judge of the High Court vide order dated 4-5-2011 [Y.K. Singla v. Punjab National Bank, CWP No. 6469 of 2010, order dated 4-5-2011 (P&H)] i.e. interest @ 8%. PNB is directed to pay the aforesaid interest to the appellant within one month of the appellant's furnishing to PNB a certified copy of the instant order. The appellant shall also be entitled to costs quantified at Rs 50,000, for having had to incur expenses before the writ court, before the Division Bench, and finally before this Court. The aforesaid costs shall also be disbursed to the appellant within the time indicated hereinabove."

21. A reading of the above paragraphs make it clear that Section 14 of the Payment of Gratuity Act, 1972, is given an overriding effect. The provision has a *non-obstante* clause and the provision has been given an *overriding effect over any enactment other than the Payment of Gratuity Act, 1972 itself or any instrument or contract having effect by virtue of any other enactment other*



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than this Act. For ready reference, I am extracting hereunder the provision in

Section 14 of the Payment of Gratuity Act, 1972:-

“14. Act to override other enactments, etc., - The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

Therefore, if any instrument is inconsistent with the Payment of Gratuity Act, 1972, then, that instrument has to be read down in the light of Section 14 of the Payment of Gratuity Act, 1972.

22. Mr.Srinath Sridevan, learned senior counsel very fairly brought to my notice two judgements of the Patna High Court, which have taken a similar view as mine. In **Shambbu Sharan Singh v. The Chairman and Managing Director, UCO Bank, Kolkata-1 [2010 SCC OnLine Pat 1293]** wherein, while dealing with the very same regulations, a learned single Judge of Patna High Court had held as follows:-

“10. In this connection references may be made to a decisions of Apex Court in the case of Somprakash Rekhi Vs. Union of India and Others reported in (1981) 1 SCC 449, it was held to the effect that the pension, gratuity



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and provident fund all the three are different and independent to each other. The provision contrary to Gratuity Act must fail as invalid in view of section 14 of the Act. The other decision of the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and another as reported in (1998) 7 SCC 221 held to the effect that payment of Gratuity Act prevails vis-à-vis CCS (Pension) Rule 1972 adopted by Municipal Corporation.

11. The paragraph 2 of Municipal Corporation of Delhi case is quoted below:-

"The short question that arises for consideration is whether the employee of the MCD would be entitled to payment of gratuity under the payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules") whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD the provisions of payment of gratuity under the payment of gratuity Act cannot be held applicable. We have examined carefully the provisions of the pension Rules as well as the provisions of the Payment of gratuity Act. The Payment of Gratuity Act being a special provision for



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



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have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules".

12. From the above decisions of the Apex Court it is manifest that the provision of the Gratuity Act for the purpose of payment of gratuity has to be given effect in case of any conflict with any of the provisions contained in any other Enactment, Regulation or an Act which are inconsistent with the provisions of Gratuity Act. As such, any provision with regard to the payment of gratuity in the Pension Regulations of the bank which are inconsistent with the provision of the Act can have no effect in law and therefore, the decision of the bank withholding the payment of gratuity of the petitioner in absence of any of grounds as mentioned in sub-Section 6 of Section 4 of the Gratuity Act is not sustainable in law. Moreover, the Rules of the Bank for payment of gratuity as brought by the respondent - Bank on the record vide Annexure-F to its supplementary counter affidavit virtually states only those grounds for forfeiting of the gratuity which are mentioned in Section 4(6) of the Gratuity Act. The rule 10 (a) (b) of the aforesaid UCO Bank (Employees) Gratuity Fund Rules (Annexure-F) are quoted below:

(a) "The gratuity of an employee to all employee shall be widely forfeited if the services have been terminated on account



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of any misconduct resulting in financial loss or damage to the bank, shall be forfeited to the extent of the damage or loss so caused.

(b) The gratuity payable to an employee shall be wholly forfeited if the services of such employee have been terminated for any act which constitution of offence involving moral turpitude provided, that such offence is committed by him in the course of his employment".

13. Therefore, in the opinion of this court, it is the Payment of Gratuity Act vis-à-vis Regulation 46 (2) of the Pension Regulation shall have effect with respect to the withholding/forfeiting the gratuity. The pre-condition for forfeiting/withholding the gratuity under the Gratuity Act, the employees must have been terminated on the ground mentioned therein and since petitioner is admittedly not terminated from service of the Bank the gratuity cannot be forfeited/withheld. Moreover the ground for withholding the gratuity is pendency of a criminal case which is pending for trial for more than 25 years cannot be justified in law and that too while construing the beneficial legislation in respect to the payment of gratuity of the retired employee."

23. The aforesaid judgement was appealed against in L.P.A.No.219 of 2011 and the same was dismissed on 11.03.2011. From a subsequent



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judgement in **Triveni Rai v. The Chairman & Managing Director, UCO**

Bank, Kolkata-1 [2015 SCC OnLine Pat 8186], authored by Justice

Ahsanuddin Amanullah (as His Lordship then was), it comes to light that the said judgement was appealed against before the Supreme Court and the Special Leave Petition was also dismissed. The said judgement also records that a review of the said order was sought for and the review petition was also dismissed. Therefore, the view that has to be taken is that Regulation 46 of the Regulations, 1995, does not override the payment of Gratuity Act, 1972, and when in conflict with the Payment of Gratuity Act, 1972, the latter will have to be given precedence.

24. Another judgement which would be relevant for the interpretation of Section 14 would be **Jeevan Lal Ltd v. Appellate Authority [AIR 1984 SC 1842]**. The said judgement had held that Section 14 of the Payment of Gratuity Act, 1972, will have over ride effect over the other laws. The law having been clearly laid down , I am merely applying the judgements of the Supreme Court to the facts of the present case.

25. Moving on to the next point, on the date of which liability occurs to pay interest, Sections 7 (3) and 7 (3-A) of the Payment of Gratuity Act, 1972, are important which read as follows:-



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“7. Determination of the amount of gratuity.-

(1)

(2)

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

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee **and** the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.”

26. In this case, it has to be noted that as required under proviso to Section 7(3A) of the Payment of Gratuity Act, no written permission has been obtained from the controlling authority for withholding the gratuity. Further, these two provisions make it clear that the gratuity will have to be paid within



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writ petition and the same deserves to be dismissed.

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In the result, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected MP is closed.

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Index : yes / no
Neutral Citation : yes / no
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To

- 1.The Appellate Authority Under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central) 26, Haddows Road, Shastri Bhavan, Chennai – 600 006.
- 2.The Controlling Authority Under Payment of Gratuity Act, 1972 and The Assistant Labour Commissioner (Central), 26, Haddows Road, Shastri Bhavan Chennai – 600 006.



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V.LAKSHMINARAYANAN, J.

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Pre Delivery Order
in
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