

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7061-1991 (O&M)
Date of decision: 23.08.2023

CHANDER SHEKHAR SHARMA

....Petitioner

Versus

THE ADDITIONAL LABOUR COMMISSIONER-CUM-
APPELLATE AUTHORITY AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rahul Aggarwal, Advocate
for the petitioner.

HARSH BUNGER, J.

1. Petitioner (Chander Shekhar Sharma) has filed this petition under Articles 226/227 of the Constitution of India praying for a writ in the nature of *certiorari*, *mandamus* or any other writ, order or direction to quash the impugned order dated 18.03.1991 (Annexure P-2) passed by respondent No.1 (Appellate Authority under the Payment of Gratuity Act) whereby the appeal filed by respondent No.3 (M/s J.C.T. Electronics Ltd.) against the order dated 31.01.1990 (Annexure P-1) passed by respondent No. 2.(Controlling Authority under the Payment of Gratuity Act), was allowed and the petitioner was held not entitled to gratuity.

It is noted that vide order dated 31.01.1990 (Annexure P-1) passed by respondent No. 2 (Controlling Authority), an application filed by the petitioner for payment of gratuity was allowed and respondent No. 3 (M/s J.C.T. Electronics Ltd.) was directed to pay to the petitioner, an

amount of Rs. 3,465/- alongwith 10% interest with effect from 11.02.1988.

2. Briefly, the petitioner was employed by M/s J.C.T. Electronics Ltd. (Respondent No. 3), on 30.05.1982 and was drawing a salary of Rs.1001/- per month when he resigned from his job on 10.02.1988 and thus he served the respondent No. 3 for a period of 05 years 08 months and 20 days.

3. It is the case of the petitioner that after his resignation was accepted, he made a demand for payment of gratuity in terms of the Payment of Gratuity Act, 1972 (in short 'the Act, 1972') as the Respondent No. 3 (M/s J.C.T. Electronics Ltd.) had been paying gratuity to the employees who had resigned from their service after completing five years of continuous service in terms of Section 4(1)(b) of the Act, 1972. Petitioner claimed that one Sh. H.S. Kapoor, Junior Technical Assistant of Watch Assembly Unit and Sh. Mool Chand, TV Department, who resigned from job after completing five years of service, were paid gratuity by respondent No. 3.

4. It appears that respondent No.3 did not accept the request of the petitioner, whereupon he filed an application before the Controlling Authority under the Act, 1972, for payment of gratuity. The claim of the petitioner for payment of gratuity amount was contested by respondent No.3 (M/s J.C.T. Electronics Ltd.). From the pleadings of the parties, the following issues were framed:-

- 1) *Whether the application has been made within the prescribed time.*
- 2) *Whether the applicant is entitled for gratuity.*
- 3) *Relief.*

5. The Controlling Authority (under the Payment of Gratuity Act), allowed the application filed by petitioner for payment of gratuity vide order dated 31.01.1990 (Annexure P-1) and respondent No.3 (M/s J.C.T. Electronics Ltd.) was directed to pay an amount of Rs. 3,465/- alongwith 10% interest with effect from 11.02.1988.

6. Being dis-satisfied with the order dated 31.01.1990 (Annexure P-1) passed by the Controlling Authority; respondent No. 3 (M/s J.C.T. Electronics Ltd.) filed an appeal under sub-section (7) of Section 7 of the Payment of Gratuity Act before respondent No. 1 (Appellate Authority).

7. The Appellate Authority (respondent No.1) vide its order dated 18.03.1991 (Annexure P-2) allowed the appeal filed by respondent No.3 (M/s J.C.T. Electronics Ltd.) by setting aside the order dated 31.01.1990 (Annexure P-1) and as a consequence thereof, the application of the petitioner for payment of gratuity was dismissed.

8. In the above-mentioned circumstances, the petitioner has filed the instant writ petition before this court.

9. Upon issuance of notice in this case, no one appeared for the respondents despite service, accordingly, vide order dated 15.04.1998, they were proceeded ex-parte.

10. Learned counsel for the petitioner submits that the impugned order dated 18.03.1991 (Annexure P-2) passed by the Appellate Authority is against the law and facts on the file. It is submitted that the Appellate Authority had wrongly dismissed the application of the petitioner for payment of gratuity by placing reliance upon a judgment passed by this Court in *M/s Darshan Engineering Works Versus*

Controlling Authority and others, 1983(2) ILR (Punjab) 533, holding that where the worker himself resigns, then he is not entitled to the payment of gratuity under Section 4(1)(b) of the Act, 1972. Learned counsel for the petitioner submits that the view expressed by this Court in the case of *M/s Darshan Engineering Works (supra)* was not a good law in view of the judgment rendered by the Hon'ble Supreme Court in the case of *Management of Good Year India Ltd. Versus K.G. Devessar, 1985 AIR (Supreme Court) 1759 : 1985(4) SCC 45*. Learned counsel for the petitioner further submits that even otherwise the decision of this Court in the case of *M/s Darshan Engineering Works (supra)* was set aside by Hon'ble Supreme Court in *Bakshish v. M/s. Darshan Engineering 1994(1) S.C.T. 410*. It is therefore contended that the finding of the Appellate Authority that a person is not entitled to payment of gratuity on resignation, cannot be sustained.

11. Learned counsel for the petitioner next submits that the Appellate Authority has wrongly non-suited the claim of the petitioner on the ground that the application filed by him before the Controlling Authority was beyond the period prescribed under Rule 10 of the Payment of Gratuity (Punjab) Rules, 1973; thus the claim of the petitioner could be only entertained, in case, the petitioner had moved the application for condonation of delay by showing sufficient cause. It is contended that by virtue of the statutory prescription under Section 7 of the Act, 1972, the employer was bound to determine the quantum of gratuity payable on termination of the employment, irrespective of whether an application for payment of gratuity was filed by the employee or not. It is further contended that Rule 10 cannot control the statutory

prescription under Section 7 read with Section 4 of the Act. It is also submitted that even otherwise, a reading of the proviso to Rule 10 indicates that a separate application to condone the delay is not mandatory and the only requirement is that the authority must be satisfied that there is sufficient cause for the delay in presenting the application.

12. Learned counsel for the petitioner also contends that respondent No.3 has discriminated against the petitioner by denying gratuity to him whereas respondent No.3 had paid gratuity to some employees who had resigned, *moreso* when Controlling Authority had returned a specific finding that respondent No.3 has shown its inability to produce any record and refused to produce record regarding payment of gratuity to Sh. H.S. Kapoor, Sh. Mool Chand and Sh. Satpal. Therefore, it is submitted by learned counsel for the petitioner that the instant writ petition may be allowed by setting aside the impugned order dated 18.03.1991 (Annexure P-2) passed by the Appellate Authority and the order dated 31.01.1990 (Annexure P-1) passed by the Controlling Authority may be restored.

13. I have heard learned counsel for the petitioner and perused the paperbook with his able assistance.

14. A perusal of the impugned order dated 18.03.1991 (Annexure P-2) passed by the Appellate Authority would manifest that the claim of the petitioner to gratuity was non-suited, primarily on two grounds:

(i) The petitioner (worker) had filed his application under rule 10 in Form 'N' by delay of 63 days and that the same could be only entertained in

case the petitioner (worker) had moved an application for condonation by showing sufficient cause;

(ii) *The claim of the petitioner to gratuity after his resignation was rejected by relying upon the decision in case of M/s Darshan Engineering Works Versus Controlling Authority and others, 1983(2) ILR (Punjab) 533 and Victory Public Hill Motor Transport Co.(P) Limited v. Controlling Authority, 1986(4) SLR 687 and observing that where the worker himself resigns, then he is not entitled to the payment of gratuity under section 4(1)(b) of the Act, 1972.*

15. As regards the rejection of claim of the petitioner by the Appellate Authority on the ground that where the worker himself resigns, he is not entitled to gratuity under Section 4(1)(b) of the Act, 1972, it is observed that the said finding was recorded on the basis of a decision rendered by this Court in the case of ***M/s Darshan Engineering Works Versus Controlling Authority and others, 1983(2) ILR (Punjab) 533***, which was further followed in the case of ***Victory Public Hill Motor Transport Co.(P) Limited v. Controlling Authority, 1986(4) SLR 687***. However, the aforesaid judgment in the case of ***M/s Darshan Engineering Works (supra)*** was set aside by Hon'ble Supreme Court in ***Bakshish's*** case (supra) and it was held that the provisions for payment of gratuity contained in Section 4(1)(b) of the Act, 1972 are one of the minimal service conditions which must be made available to the employees notwithstanding the financial capacity of the employer to bear its burden. Accordingly, the validity of Section 4(1)(b) of the Act, 1972 was upheld.

16. In ***Bakshish's*** case (supra), Hon'ble Apex Court held as

under:

“...These two appeals one by the Union of India and the other by the aggrieved employee - are directed against the decision dated 24th March, 1983 of the Punjab and Haryana High Court whereby the High Court has struck down Section 4(1)(b) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act') as being violative of Article 19(1) (g) of the Constitution of India.

2. The admitted factual matrix of the case is in a narrow compass. Bakshish Singh, the appellant-employee joined the services of the respondent-M/s. Darshan Engineering Works as a Fitter on 2nd March, 1968 and resigned from service on 10th December, 1978 after a total period of continuous service of more than 10 years. His last drawn wages were Rs. 335/- per month. It is not disputed that at the time he joined the employment on 2nd March, 1968, his age was 54 years 3 months, his date of birth being 17th December, 1913. This was known to the respondent-employer.

3. The Act came into force w.e.f. 21st September, 1972. On the employee's resignation w.e.f. 10th December, 1978 which was accepted by the respondent- employer, he claimed gratuity under Section 4 (1)(b) of the Act. His claim not having been accepted, he approached the Controlling Authority under Section 7 of the Act. The claim was resisted by the employer on the ground firstly that the employee was entitled to gratuity only till the date he reached his superannuation age which was 58 years and since he had not completed 5 years of service by the time he attained 58 years of age, he was not entitled to gratuity under Section 4(1) of the Act. Secondly, it

was contended that in any case the amount of gratuity payable to the employee was only for the period upto the superannuation age and since he was drawing wages of Rs. 230/- per month on the day he attained the superannuation age, he was entitled to a sum of Rs. 460/- only, being the gratuity calculated at the rate of 15 days' salary per year of service till the date of superannuation.

4. Both the contentions were negated by the Controlling Authority by pointing out that Section 4[1] provided for payment of gratuity to the employee on the termination of his employment after he has rendered continuous service of not less than five years on the occurrence of any of three events viz., [a] on the employee reaching his superannuation age, or [b] on his retirement or resignation, or [c] on his death or disablement due to accident or disease. In case of the third events, the qualifying continuous service of five years is not necessary. The 'retirement' is defined by Section 2[q] of the Act to mean 'termination of the service of an employee otherwise than on superannuation.' The first two events are independent of each other. Since in the present case the employer had not chosen to superannuate the employee on his attaining 58 years of age and had continued him in service till the employee himself resigned on 10th December, 1978 by which date he had completed more than 10 years of service, the employee was entitled to the gratuity for the period of his entire service upto the date of his resignation. The Controlling Authority, therefore, calculated the amount of gratuity due to the employee as Rs. 1782/- at the rate of 15 days' wages per year of service for all the 10 years taking the last drawn wages of Rs. 335/- per month as the basis of the said

calculation. This order was challenged by the employer before the Appellate Authority under the Act. The Appellate Authority confirmed the finding of the Controlling Authority and dismissed the appeal. In the writ petition filed before the High Court under Articles 226 and 227 of the Constitution, the High Court confirmed the interpretation placed on Section 4[1] of the Act by the Controlling as well as the Appellate Authority and also held that the age of superannuation is irrelevant when the gratuity is payable under clause [b] of Section 4[1] on retirement or resignation, the said clause being independent of clause [a] of that section which provided for payment of gratuity on attaining the age of superannuation. However, the Court held that the provisions of section 4[1] (b) of the Act which entitles an employee to gratuity on his retirement or resignation after a continuous service of only 5 years was an unreasonable restriction on the employer to carry on his business and, therefore, violative of Article 19[1] (g) of the Constitution. We should have thought that on the facts of the present case the Court was not called upon to decide the alleged unreasonableness of the qualifying period of 5 years of service for entitlement to gratuity on retirement or resignation, since as pointed out above the employee had put in more than 10 years of service. The Court further not only went into the said question and struck down the provisions of section 4[1] (b) but for reasons which are not apparent to us, also denied the gratuity awarded to the employee by the lower authorities even after accepting the finding of the lower authorities that the employee had put in more than 10 years of service. It does not appear from the judgment of the High Court whether, although it found

that the five years' qualifying service was unreasonable, ten years' qualifying service would also be similarly unreasonable according to it. In fact, the High Court has not thought it necessary to indicate what according to it would be a reasonable qualifying period of service for entitlement to the gratuity in case of retirement or resignation by the employee. Further, if the alleged short period of 5 years was the reason for holding that the provision in question cast an unbearable burden on the employer so as to violate his fundamental right under Article 19[1] (g) of the Constitution, by the same reasoning the provision of Section 4[1] (a) of the Act, which lays down the same qualifying period to entitle the employee to the receipt of gratuity on superannuation had also to be, struck down.

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24. Coming now to the provisions of the present Act, it will be seen that the Act extends to the whole of India except to plantations and ports in the State of Jammu & Kashmir. The provisions of the Act apply uniformly to "[a] every factory, mine, oil field, plantation, port and railway company; [b] every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of ten preceding twelve months; and [c] such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf" as provided in sub-section [3] of Section 1 of the Act. It defines "retirement" under Section 2[q] to mean "termination of the service of an

employee otherwise than on superannuation". Section 2[s] defines "wages" to mean "all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment 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".

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27. It would thus be apparent both from its object as well as its provisions that the Act was placed on the statute book as a welfare measure to improve the service conditions of the employees. The provisions of the statute were applied uniformly throughout the country to all establishments covered by it. They applied to all employees drawing a monthly salary upto a particular limit in factories, shops and establishments etc. whether the employees were engaged to do any skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work. The provisions of the Act were thus meant for laying down gratuity as one of the minimal service conditions available to all employees covered by the Act. There is no provision in the Act for exempting any factory, shop etc. from the purview of the Act covered by it except those where, as pointed out above, the employees are in receipt of gratuity or pensionary benefits which are no less favourable than the benefit conferred under the Act. The payment of gratuity under the Act is thus obligatory being one of the minimum conditions of service. The non-compliance of the provisions of the Act is made an offence punishable with imprisonment or fine. It is settled law that the establishments which have no capacity to give to their workmen the minimum conditions of service

*prescribed by the Statute have no right to exist [vide **Bijay Cotton Mills Ltd. v. The State of Ajmer, [(1955) 1 SCR 752], M/s. Crown Aluminium Works v. Their Workmen, [(1958) SCR 65 and U. Unichoyi&Ors. v. State of Kerala, [(1962) 1 SCR 946].***

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30. The present Act is of the genre of Minimum Wages Act, the Payment of Bonus Act, the Provident Funds Act, Employees State Insurance Act, and other like statutes. These statutes lay down the minimum relevant benefits which must be made available to the employees. We have solemnly resolved to constitute this country, among others, into a socialist republic and to secure to all its citizens, which, of course, include workmen, social and economic justice. Article 38 requires the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which, among other things, social and economic justice shall inform all the institutions of the national life. Article 39 states that the State shall, in particular, direct its policy towards securing, among others, that the citizens have the right to an adequate means to livelihood and that the health and strength of workers are not abused. Article 41 of the Constitution directs the State to make effective provision, among others, for securing public assistance in old age and in other cases of undeserved want. Article 42 enjoins the state to make provision for securing just and humane conditions of work while Article 43 requires the State to endeavour to secure by suitable legislation to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the State shall regard the raising of the level of nutrition

and standard of living of its people and the improvement of public health as one of its primary duties.

31. Further, there is a restriction placed on the exercise of the fundamental right under Article 19(1) (g) by clause (6) of the said Article. That clause states that nothing in sub-clause (g) of clause (1) shall affect the operation of any existing law or prevent the State from making any law imposing in the interests of the general public reasonable restrictions on the exercise of the right conferred by that sub-clause. It cannot be disputed that the present Act is a welfare measure introduced in the interest of the general public to secure social and economic justice to workmen to assist them in their old age and to ensure them a decent standard of life on their retirement.

32. On both grounds, therefore, viz., that the provisions for payment of gratuity contained in Section 4[1] (b) of the Act are one of the minimal service conditions which must be made available to the employees notwithstanding the financial capacity of the employer to bear its burden and that the said provisions are a reasonable restriction on the right of the employer to carry on his business within the meaning of Article 19[6] of the Constitution, the said provisions are both sustainable and valid. Hence the decision of the High Court has to be set aside.

33. In the result, we allow the appeals, set aside the decision of the High Court and uphold the validity of Section 4[1] (b) of the Payment of Gratuity Act, 1972. The respondents to pay the costs...

17. Further, in the case of *Management of Good Year India Ltd. Versus K.G. Devessar*, 1985 AIR (Supreme Court) 1759: 1985(4)

SCC 45., the Hon'ble Supreme Court held as under:

“...The management of Goodyear India Limited are the appellants in this appeal by special leave of this court under Article 136 of the Constitution. The question relates to the gratuity payable to the respondent in relation to the period of his service from January 24, 1961 to December 31, 1974. With effect from September 1, 1972, he was drawing wages of more than Rs. 1000/- per month. The Payment of Gratuity Act, 1972 came into force on September 16, 1972. By section 4 of the Act, it was prescribed that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years - (a) on his superannuation or (b) on his retirement or resignation or (c) on his death or disablement due to accident or disease. An employee is defined by Section 2(e) of the Act as meaning a person employed on wages not exceeding one thousand rupees per mensem in any establishment etc. The figure Rs. 1000/- was later substituted by the figure Rs. 1600/- but during the relevant period, it was Rs. 1000/- only. The submission on behalf of the management was that both on the date when the Act came into force and on the date when the respondent retired from the service, he was drawing wages exceeding Rs. 1000/- and, therefore, he was not entitled to payment of any gratuity. The submission of the learned counsel was that if the definition of employee was read into Section 4 of the Payment of Gratuity Act, it would show that only those persons who are drawing wages of less than Rs. 1000/- on the date of superannuation, retirement, etc. would be entitled to payment of gratuity provided that such retirement.

superannuation, etc. was after the date of coming into force of the Act. We do not agree with the submission. The date of coming into force of the Act has relevance to the date on which gratuity becomes payable. Gratuity becomes payable on the termination of employment and therefore, in order to be eligible to payment of gratuity, the termination of employment whether it be due to superannuation or retirement or resignation or death or disablement, has to be after the date of coming into force of the Act. Once that condition is satisfied, the further question would be regarding the amount of gratuity payable. Gratuity will have to be paid to all those persons whose employment came to an end after the coming into force of the Act for that period during which he came within the definition of an employee within the meaning of Section 2(e) of the Payment of Gratuity Act. To hold otherwise may render a whole class of persons who all their lives got wages of less than Rs. 1000/- per month, but on the eve of their retirement started getting wages of Rs. 1000/- per month. Surely that could not have been the intention of Parliament. We think the only reasonable way of construing Section 4 in the light of the definition of employee in Section 2(e) is to hold that a person whose services are terminated for any of the reasons mentioned in Section 4(1), after the coming into force of the Act is entitled to the payment of gratuity, if he has rendered continuous service for not less than five years, for that period during which he satisfied the definition of employee under Section 2(e) of the Act. In that view, the appeal has to be dismissed and it is accordingly dismissed with costs...”

18. In *Rajasthan State Road Transport Corporation Ltd. v. Mohani Devi*, 2020(2) S.C.T. 632, Hon'ble Supreme Court held as under:-

*“13. The learned counsel for the respondent would submit that even if it is a case of resignation the deceased husband of the respondent was entitled to the payment of gratuity as he had put in the qualifying service. The learned counsel for the appellant would contend that the gratuity amount had been paid. In that regard, the reference made to para 9 of the writ appeal filed before the High Court would however indicate that though reference is made to the payment disbursed to the respondent's husband while accepting the resignation, the same does not disclose that the gratuity amount has been paid. Further, in the appeal filed before this Court the appellants have sought to justify the non-payment of the gratuity as the husband of the respondent had resigned from service. **As rightly pointed out by the learned counsel for the respondents, section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well.** In that view, if the gratuity amount has not been paid to the respondent's husband, the liability to pay the same would subsist and the respondent No.1 will be entitled to receive the same in accordance with the provisions of the Act. In that regard it is directed that the appellants shall accordingly calculate the gratuity and pay the same to the respondent No.1, if already not paid. Such payment shall be made within four weeks from this date...”*

19. In the instant case, there is no dispute that the petitioner had resigned from the service of respondent No.3 on 10.02.1988, after rendering service for a period of 05 years 08 months and 20 days, which is after the coming into force of the 1972 Act. Therefore, keeping in view the above mentioned authoritative judicial pronouncements and also in terms of Section 4(1)(b) of the Act, 1972, the petitioner is entitled to gratuity.

20. As regards the rejection of claim of the petitioner on the ground that the application for payment of gratuity was filed by petitioner beyond the time prescribed by Rule 10 of the Payment of Gratuity (Punjab) Rules, 1973, it would be apposite to refer to Sections 4 and 7 of the Payment of Gratuity Act, 1972 and also the Rule 7 and Rule 10 of the Payment of Gratuity (Punjab) Rules, 1973. Sections 4 and 7 of the Payment of Gratuity Act, 1972 read as under: -

4. Payment of gratuity.-(1) *Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a

minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation .-For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation .-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [such amount as may be notified by the Central Government from time to time].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced;

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

7. Determination of the amount of gratuity.-(1) *A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in

sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

[(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.]

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

[* *]*

[(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

[(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

[(e)] As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the [nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a Court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

Rule 7 and Rule 10 of the Payment of Gratuity (Punjab)

Rules, 1973, read as under:-

7. Application for Gratuity.-- *(1) An employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf,*

shall apply, ordinarily within thirty days from the date of gratuity became payable, in Form 'I' to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment or gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within thirty days from the date of the gratuity became payable to him, in Form 'J' to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within one year from the date of the gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act, before the commencement of these rules, the period of limitation specified in sub-rule (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgment due.

10.Application to controlling authority for direction-

(1) If an employer –

(i) refuses to accept a nomination or to entertain an application sought to be filed under Rule 7, or

(ii) issues a notice under sub-rule (1) of Rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under Rule 7 fails to issue any notice as required under Rule 8 within the time specified therein.

the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in form 'N' to the controlling authority of the area for issuing a direction under sub-section (4) of Section 7 with as many extra copies as are the opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgment due.

21. It is apposite to state here that the above extracted Rule 10 of the Payment of Gratuity (Punjab) Rules, 1973 is *pari materia* to Rule 10 of the Payment of Gratuity (Central) Rules, 1972.

22. The effect and consequence of filing of application for payment of gratuity beyond the time prescribed by Rule 10 of the Payment of Gratuity (Central) Rules, 1972 was considered by the Madras High Court in ***Muthukumaran Institute of Technology v. J. Rajalakshmi***, 2021 (3) CTC 107, wherein it has been held as under:

*“...When the employer fails to make or there is shortfall in payment of gratuity, the employee is entitled to make an application for payment of gratuity to the Controlling Authority under Section 7(4)(b) of the Act. **The scheme of the Act as per the amended provisions clearly reveal that there is no period of limitation restricting the right of the employee to make such application to the Controlling Authority.***

*4. The legal position is well settled that a provision for limitation cannot be made by way of subordinate legislation when the parent enactment does not contemplate the same as held by the Hon'ble Supreme Court of India in ***Bharat Barrel and Drum Mfg. Co. Ltd., v. ESI Corpn.***, [(1971) 2 SCC 860]. **Further, it is trite law that the subordinate legislation which is inconsistent with the parent enactment would be ultra vires and cannot have any effect.***

*5. It becomes evident that after the amendments made to the Act with effect from 01.10.1987, the period of limitation prescribed in Rule 10 of the Rules is in derogation of clauses (2), (3), (3-A) and (4) of Section 7 of the Act. **As a consequence thereof, it would necessarily follow that though the First Respondent condoned the delay in filing the application for payment of gratuity in terms of Rule 10 of the Rules, resort to that procedure was not actually warranted.***

This view is fortified by the decision of this Court in

M.Vairamuthu v. Regional Labour Commissioner (Order dated 21.10.2010 in W.P. (MD) No. 10377 of 2007 etc., batch), where it has been held as follows:-

*"7. Though initially the IRE Limited wanted to contend delay and laches on the part of the workmen in moving the authority under the Payment of Gratuity Act, however, no serious submissions were made on that score. Hence it is unnecessary to deal with the issue elaborately except when dealing with W.P.(MD)No.10377 of 2007. Even otherwise, **this court has already held that if there is unpaid gratuity, the workmen can move the authority and the prescription of limitation by rules is beyond the power conferred on the rule making authority.**"*

*6. The Bombay High Court in **H.Jayarama Shetty v. Sangli Bank Ltd., [(2005) 3 LLJ 637 (Bom)]** has elaborately discussed this aspect of the matter as follows:-*

"5. The second reason which weighed with the Appellate Authority was that the claim of the Petitioner for payment of gratuity was barred by limitation. The Petitioner submitted in his application that the breach on the part of the employer was of a continuous and recurring nature. The Petitioner, however, submitted that if the authority came to the conclusion that there was a delay, he would crave leave to file a separate application for the condonation. Counsel for the Petitioner has made a statement before the Court on instructions that there was no separate application for condonation.

6. section 4 of the Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on superannuation or, as the case may be, on retirement, resignation, death or disablement. Sub-section (1) of Section 7 provides that a person who is eligible for the payment of gratuity shall send a written application to the employer, within such time and in such form, as may be prescribed, for the payment of gratuity. Sub-section (2), however, lays down that irrespective of whether an application as provided in sub-section (1) has been made or not, the employer shall as soon as gratuity becomes payable, determine the amount of gratuity and give a notice in writing to the person to whom the gratuity is payable and to the Controlling Authority specifying the amount of gratuity so determined. Subsections (3) and (3A) of Section 7 were substituted by Amending Act 22 of 1987 with effect from 1st October 1987. Sub-section (3) provides that the employer shall arrange to pay the amount of gratuity within thirty days from the date on which it becomes payable to the person to whom gratuity is payable. Sub-section (3A) stipulates that if the amount of gratuity that is payable is not paid by the employer as specified in sub-section (3), the employer shall pay simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits. No interest is, however, payable if the

delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for delayed payment on that ground. Payment of interest on delayed payment of gratuity is the statutory norm and even if delay is due to the employee, the employer has to obtain permission of the Controlling Authority in writing on this ground without which gratuity must carry statutory interest. Sub-section (4)(a) then provides that if there is any dispute as to the amount of gratuity payable to an employee under the Act, or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity or as to the person entitled to receive the gratuity, the employer must deposit with the Controlling Authority such amount as he admits to be payable. Sub-section (4)(b) provides that upon there being a dispute with regard to any matter specified in clause (4)(a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. The Controlling Authority has thereupon been empowered to adjudicate upon the dispute.

7. These provisions of the Payment of Gratuity Act, 1972 provide a statutory elucidation of the nature of gratuity as a terminal benefit. Under Section 4 of the Act, payment of gratuity to an employee is a mandate of the statute, on the termination of employment after continuous service for not less than five years. This mandate is subject to the limited exception which is carved out in sub-section (6) of

Section 4 to which a reference would be made shortly hereafter. The employer is under a mandate and an obligation to determine the amount of gratuity that is payable as soon as gratuity becomes payable. The employer is under an obligation to arrange for the payment of the amount of gratuity within 30 days from the date on which it becomes payable to the person to whom it is payable. After the amendment of 1987, a statutory provision has been made for the payment of interest. The employer can avoid that obligation to pay interest only if the delay in payment is due to a fault of the employee and if employer is granted permission in writing by the Controlling Authority for the delayed payment on that ground. These provisions emphasise that the determination of the amount and the payment of gratuity is the obligation of the employer. The employer has to make a determination of the gratuity which is payable whether or not an application has been made by the employee. The employer has to arrange payment.

*8. These provisions have been interpreted by the Supreme Court in **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn Ltd.**, [(2003) 1 CLR 705], where the Court held as follows:*

"From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. ...

Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied."

The Supreme Court held that in view of the clear mandate of Section 7, no residual discretion vested in the High Court to relieve the obligation imposed on the employer of paying interest on account of the delayed payment of gratuity.

*9. On behalf of the Respondent, however, reliance was sought to be placed on the rules framed under the Payment of Gratuity Act, 1972. These Rules, it must be noted at the outset, were framed prior to the Amending Acts of 1984 and 1987. The Payment of Gratuity Act, 1972, it may be noted, has made no provision for a specified period for the submission of an application to the Controlling Authority in Section 7(4)(b) of the Act. As contra distinguished from this, Section 7(7) provides for a specific period of limitation of sixty days for preferring an appeal to the appropriate Government against the decision of the Controlling Authority under Section 7(4). In **Sitaram v. M.N.Nagrashana AIR 1960 Supreme Court 260**, the Supreme Court considered Section 10 of the Workmen's Compensation Act which provided a period of limitation to make a claim for compensation to the Commissioner but empowered the latter to condone delay for sufficient cause. This provision of the Act was held by the Supreme*

Court to be similar to Section 5 of the Limitation Act and the Court held that the explanation must cover the whole period of delay. In **Gurunath Vithal Tamse v. National Textile Corporation [2002] 1 CLR 809** this Court held that significantly, the legislature had advisedly not specified any particular period of limitation for moving the Controlling Authority under the Payment of Gratuity Act, 1972. But the submission before the Court now on behalf of the Respondent, is that the limitation which has been provided for in Rules 7 and 10 of the Rules framed under the Payment of Gratuity Act, 1972 was not brought to the attention of the Court in that case. Before dealing with this submission on first principle, it would be necessary to note that at least three High Courts have had occasion to consider the question. The Delhi High Court, in **M.C.D. v. Nand Kishore [2003 (97) FLR 158]**, dealt with the submission that the Controlling Authority had not taken into consideration the delay of the employee in filing an application under the Payment of Gratuity Act, 1972. The Delhi High Court held that "the grievance of the appellant is misconceived as the non- payment of gratuity due to the Respondent was a continuing wrong and there was no question of any delay in approaching the Controlling Authority. A Learned Single Judge of the Kerala High Court in **Neelakandan v. State of Kerala [2001 II CLR 448]** adverted to the provisions of Section 7 of the Act as amended and held that while Rule 7 of the Gratuity Rules provides that an application be filed within a

prescribed time, these provisions under the Rules "cannot of course, be taken as over reaching the provision of Section 7(2) of the Act". The Court held that perhaps the impact of the Amending Acts of 1984 and 1987 had not been taken notice of by the rule making body. **Upon the amendment of Section 7, it has now unambiguously been laid down that an employer has a duty to pay gratuity whether or not an application is filed. The Payment of Gratuity Act is a piece of beneficial legislation and a liberal interpretation would have to be adopted since an employee, it was held, may not at times be aware of his rights. The Act imposes an obligation on the employer and it would not be open to the employer to benefit from a delay in making an application for the payment of gratuity.** The Karnataka High Court in **General Secretary, Vokkaligara Sangha, Bangalore v. R. Chandramouli [2002 II CLR 1070]** noted that Rule 7(5) permits the entertainment of the applications for payment of gratuity after the expiry of the period specified and claim shall not be invalid merely because the claimant failed to present the application within the specified period.

10. The Rules framed under the Payment of Gratuity Act, 1972 provide for two separate periods of time in relation to the making of an application. The first under Rule 7 is an application to the employer within 30 days from the date on which gratuity becomes payable. Rule 7(5), however, provides that an application for payment of gratuity filed after the expiry of the period specified shall also be

entertained by the employer if the applicant adduces sufficient cause for delay and no claim for gratuity shall be invalid merely because the claimant failed to present his application within the specified period. This must be in a juxtaposed with Section 7(2) which requires the employer to make a determination of gratuity payable and to furnish a notice to the employee and to the Controlling Authority as soon as gratuity becomes payable whether or not an application under Section 7(1) has been made. Clearly therefore, the employer cannot set up limitation as a defence on the ground that the application to him was not presented within thirty days. The clear answer to such a defence, if it is set up is that the employer is obliged to determine and make arrangement to pay gratuity whether or not an application is made. The second time period that is prescribed is under Rule 10. Rule 10 inter alia provides a period of 90 days for making an application before the Controlling Authority upon the employer failing to issue a notice as required under Rule 8 upon the receipt of an application from the employee under Rule 7. The delay under Rule 10 can be condoned by the Controlling Authority on sufficient cause being shown.

11. The rules which were framed in 1972 must be read in a manner which is consistent with the statutory provisions of Section 7 particularly after the amendments that were introduced by Amending Act 25 of 1984 (with effect from 1st April 1984) and by Amending Act 22 of 1987 (with effect from 1st October

1987). The provisions of Section 7 emphasise that the obligation is that of the employer to determine and to make arrangements for the payment of gratuity and upon his failure to do so, to pay interest at the rate which is statutorily prescribed. Even if the period that is prescribed in the Rules is taken into consideration, the Rules themselves lay down that the delay on the part of the employer, if any, can be condoned if sufficient cause is shown. A breach of the employer to comply with his obligation under section 7 provides a recurring and continuous cause of action. The Act is a piece of social welfare legislation and the employer cannot be permitted by reason of his own default in complying with his obligation to defeat the just entitlement of the employee. Finally, it may be noted that the employer has to determine and pay gratuity whether or not an application is filed to him.

The filing of an application before the employer is not a condition precedent. Rule 7 makes procedural provisions for such an application.

On receipt of an application under Rule 7, the employer has to issue a notice under Rule 8 either admitting the claim or to specify the reasons why he holds the claim inadmissible. It is thereafter that time is prescribed in Rule 10 for an application to the Controlling Authority.

The making of an application under Rule 7 therefore invokes a chain of events in Rules 8 and 10. Once the making of an application to the employer is not mandatory under the provisions of Section 7(2) of the substantive provisions of the act, the limitation under the

Rules which is triggered upon the filing of the application under Rule 7 can obviously not defeat the claim of the employee."

23. In the case of the ***Kerala State Co-operative Bank Ltd v. Court of Deputy Labour Commissioner, 2021(1) KLT 466***, Kerala High Court has held as under:

"8. Though petitioner retired on 30.06.2010, the notice Ext.P1 asking him to show cause as to why disciplinary proceedings shall not be initiated was dated 29.06.2010, which is claimed by the petitioner to have been served only on 30.06.2010-the date of retirement. Thus petitioner had not been terminated from service by virtue of any act, wilful omission or negligence causing damage or loss or such other conditions as specified in Section 4(6) of the Act. The only method in which gratuity due to an employee can be detained or refused is by virtue of Section 4(6) of the Act. Section 4 read with Section 7 of the Act creates an obligation upon the employer to pay the gratuity due to an employee on the date of termination of his employment after carrying out the quantification. This is a statutory duty vested upon the employer. This statutory duty cannot be abdicated by an employer on the ground that the employee has not preferred an application as contemplated under Rule 10 of the Payment of Gratuity (Central) Rules, 1972.

9. Section 4 of the Act expositis the obligation upon an employer to pay the gratuity due to an employee on termination of his employment. The quantification and other modalities of the said obligation are specified in Section 7. When Section 4 is read along with Section 7 of the Act, it is explicit that even without an application made by the employee, the employer is

bound to quantify and pay the gratuity on termination of his employment.

*10. Payment of gratuity is a statutory obligation and is not made dependent on an application. The Act does not contemplate the payment of gratuity to be dependent on an application by the employee. This is all the more evident from Section 7(2) of the Act, which specifies that, as soon as the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity. **Rule 10 cannot control Section 4 or Section 7(2) of the Act as it is only a subordinate legislation.***

It is elementary that the rules cannot control the terms of a statute. Hence the delay in preferring an application under Rule 10 of the Rules cannot be detrimental to the entitlement of gratuity due to the 2nd respondent...”

24. Considering the entire scheme of the Payment of Gratuity Act alongwith the Rule(s) as reproduced above, this Court is in agreement with the views expressed by the Madras High Court in ***Muthukumaran Institute of Technology (supra)***. and the Kerala High Court in ***Kerala State Co-operative Bank Ltd. (supra)***.

25. Further, in ***Nataraja Pillai vs Regional Joint Labour Commissioner 1993(1) CLR 927***, it was held by Kerala High Court that a reading of the proviso to Rule 10 indicates that a separate petition to condone the delay is not mandatory and the only requirement is that the Authority must be satisfied that there is sufficient cause for delay in presenting the application.

26. In the instant case, the Controlling Authority had held issue No.1 i.e. whether the application has been made within the prescribed

time, in favour of the petitioner herein by observing that the case of gratuity of employees should not be rejected on mere technical pleas. Thus, once the Controlling Authority in the facts of this case had entertained the application of petitioner under the Act, 1972, which was filed merely after 63 days; the Appellate Authority was not justified in non-suiting the claim of the petitioner on the ground of delay.

27. It is well settled that the payment of Gratuity Act is an enactment for the welfare of the workman/employees and is a welfare legislation; therefore, the interpretation to such a statute cannot be against the interest of the workmen.

28. In view of the above discussion and also the legal position as indicated above, it would be apparent that both the grounds on which the claim of the petitioner was non-suited by the Appellate Authority; are not sustainable in law. Therefore, the impugned order dated 18.03.1991 (Annexure P-2) passed by the Appellate Authority is accordingly set aside. Consequently, the order dated 31.01.1990 (Annexure P-1) passed by the Controlling Authority is restored.

29. The instant writ petition is disposed of in aforesaid terms.

30. All pending applications, if any, shall stand closed.

August 23rd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No