

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24585 of 2018

=====

The Chairman, Madhya Bihar Gramin Bank, Head Office, Sri Vishnu Commercial Complex, Asochak Chowk, New Bypass Road, (N.H.30), Patna-800016.

... .. Petitioner

Versus

1. The Union of India, through the Ministry of Labour and Employment, New Delhi.
2. The Deputy Chief Labour Commissioner, (C)-cum-Appellate Authority under the payment of Gratuity Act 1972, Maurya Lok Complex, 2nd Floor, Patna-800001.
3. The Assistant Labour Commissioner-1 (C)-cum-Controlling Authority under the payment of Gratuity Act 1972, "A" Block, 2nd Floor, Room no.-17, Maurya Lok Complex, Dak Bunglaw Road, Patna-800001.
4. Shyam Bihari Singh, Son of late Suraj Nath Singh, dismissed officer, Madhya Bihar Gramin Bank, resident of Bank Colony, Bishnu Nagar, P.O.-Anaith, P.S. Nawada, District-Bhojpur, Ara.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. M.N. Parvat, Sr. Advocate Mr. Ved Prakash Srivastava, Advocate
For the Resp No.4	:	Mr. Jai Prakash Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date :23-02-2024

Heard M.N. Parvat, learned senior counsel, along with Mr. Ved Prakash Srivastava, learned counsel for the petitioner and Mr. Jai Prakash Singh, learned counsel for the private respondent no.4.

2. The petitioner, who is holding the post of Chairman, Madhya Bihar Gramin Bank, has filed the present writ petition under Article 226 of the Constitution of India, seeking quashing of the order dated 31.08.2017 (Annexure-4)



passed by the Assistant Labour Commissioner-1(C)-cum-Controlling Authority under the Payment of Gratuity Act, 1972 (for short “the Act of 1972”) to the extent by which the respondent no.4 has been found entitled to get the amount of gratuity as calculated by him for the entire period of his service along with the interest @10% per annum for the period in between 31.07.2010 to 05.05.2017 total amounting to Rs. 13,37,951/- within thirty days of the order. The petitioner further sought quashing of the order dated 17.09.2018 (Annexure-11) passed by the learned Deputy Chief Labour Commissioner, (C)-cum-Appellate Authority under the Act of 1972 by which the Appellate Authority has affirmed the afore-noted judgment/order dated 31.08.2017.

3. The necessary facts for appreciation of the issue is/are that the respondent no.4 was initially appointed as an officer of the Bank in the year 1981 in the then Bhojpur Rohtas Gramin Bank now known as Madhya Bihar Gramin Bank. While he was posted as Branch Manager at Dumraon Branch of Madhya Bihar Gramin Bank (for brevity “the Bank”), he was found involve in various irregularities, apart from serious lapses leading to reckless financing in 677 loans in various sectors. On account of these allegations, he was placed under suspension



vide order dated 12.07.2010 and the charge-sheet dated 20.07.2010 was served to him. In response thereto, the respondent no.4 submitted his reply denying the charges levelled against him. However, having found it not satisfactory, a departmental proceeding was initiated against him vide order dated 08.09.2010 and the Enquiry Officer and Presenting Officer were appointed.

4. It is to be noted that during the pendency of the departmental proceeding, the respondent no.4, attained the age of his superannuation on 31.07.2010. However, in view of the regulation 44 of the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2006 (for short “the Regulations, 2006”) which was prevalent at the relevant time, the departmental proceeding continued and after conclusion of inquiry, the inquiry report was submitted and most of the charges stand proved against him, resulting into major penalty of dismissal under regulation 39(1)(b)(v) of Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (for short “the Regulations, 2010”) vide order dated 18.09.2012. Apart from the dismissal, it was also ordered that the suspension period of respondent no.4 will be treated as period not spent on duty and no pay and allowances will be



payable to him, except the subsistence allowance already paid for the period of suspension.

5. It would be worth mentioning here that the respondent no.4, being aggrieved, had preferred appeal before the Appellate Authority, which came to be dismissed by the Appellate Authority vide order dated 18.02.2023 and subsequent thereto, he approached before this Court in C.W.J.C. No. 14329 of 2013, which also stood dismissed. Thereafter, the respondent no.4 filed an application under Sub Rule 1 of Rule 10 of the Payment of Gratuity (Central) Rules, 1972 on 27.07.2016 before the Assistant Labour Commissioner (C)-cum-Controlling Authority. The case was, thus, registered as 48/1(11)/2016/ALC-PT and notice was issued to the Bank.

6. In compliance therewith, the Bank entered its appearance and filed a detailed reply enclosing the order of punishment awarded by the disciplinary authority, denying its liability to pay gratuity amount, apart from question of limitation and filing such application by the respondent no.4.

7. The Assistant Labour Commissioner (C)-cum-Controlling Authority after condoning the delay vide his judgment/order dated 31.08.2017, allowed the application of the respondent no.4, holding therein that he was entitled to get the



amount of gratuity as calculated by him for the entire period of his service to the tune of Rs. 7,98,777/- along with the interest for the period 31.07.2010 to 05.05.2017 @ 10% i.e. 5,39,174/-, thereby totaling to Rs. 13,37,951/- and, thus, directed to pay the same within thirty days.

8. On being aggrieved by the order passed by the Controlling Authority, as noted hereinabove, the Bank preferred appeal bearing no. 36/2/2017-Appeal/Dy. CLC before the Deputy Chief Labour Commissioner(C)-cum-Appellate Authority under Sub Clause 7 of Section 7 of the Act of 1972 along with the demand draft of Rs. 13,37,951/- as required in law.

9. On notice having been issued by the Appellate Authority, the respondent no.4 had entered his appearance and filed rejoinder, objecting the grounds mentioned in the memorandum of appeal.

10. After hearing the parties, the Appellate Authority vide its judgment/order dated 17.09.2018, affirmed the order of the Controlling Authority (Annexure-11).

11. The Bank on being aggrieved by the judgment/order of the Controlling Authority as well as the Appellant Authority, has filed the present writ petition raising



various grounds of challenge.

12. Mr. M.N. Parvat, learned senior counsel, for the petitioner, while assailing the impugned order(s), has submitted that the application filed by the respondent no.4 before the Controlling Authority was hopelessly barred by limitation and was not fit to be entertained in contravention of provision of rule 7(5) of the Rules, 1972 and in absence of any application for condonation of delay should have been thus rejected on this ground alone. He further submitted that once it has been held by the disciplinary authority in the departmental proceeding that the services of the respondent no.4 will not be treated as the period spent on duty by him and also having the said finding become final due to affirmance of Appellant Authority as well as by this Court. The Assistant Labour Commissioner(C)-cum-Controlling Authority as well as the Deputy Chief Labour Commissioner (C)-cum-Appellate Authority under the Act of 1972 have acted illegally in holding that such a period cannot be treated as a breach of service of respondent no.4.

13. The impugned order(s) is not at all justified in passing the order for payment of gratuity and interest thereon without deciding disputed amount of last basic pay and DA received by the respondent no.4. He further submitted that the



impugned order(s) are in contravention of the provision of law as envisaged under Section 4(6)(b) and rule 7(5) of the Act of 1972 and are not tenable in the eyes of law, apart from illegal, arbitrary and prejudicial to the interest of management of the petitioner/Bank.

14. Learned senior counsel, further drew the attention of this Court to the Service Regulation for Regional Rural Banks as framed by the Central Government in exercise of the power vested in it under Section 17(1) second proviso of Regional Rural Banks Act, 1976 and Madhya Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010 and submitted that these regulations were applicable and binding on all the Officers and Employees of the Bank and, in fact, in terms of Section 32 of the said Regional Rural Banks Act, 1976 has overriding effect over the provisions of other laws. He next submitted that the Regulation 3 of Chapter II of Regulation, 2010 deals with the classification of “Officers and Employees” and the word employee does not cover Officers of the Bank. Referring to the attention of this Court to the regulation 72 of the Regulation, 2010, he vehemently submitted that from reading of the same, especially proviso of Regulation 72(2), it empowers the Bank to forfeit the gratuity of the officers, who



have been inflicted with the punishment of dismissal on account of misconduct.

15. Heavy reliance has been made on a judgment rendered by the Apex Court in **P. Rajan Sandhi v. Union of Inda and Another [(2010) 10 SCC 338]**, especially paragraphs 10 and 11 thereof, which are being reproduced hereinbelow:-

“10. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's 'Principles of Statutory Interpretation', Ninth Edition, 2004 pp. 133, 134.

11. The special law, i.e., Section 5(1)(a)(i) of the



Working Journalists Act, does not require any allegation of proof of any damage or loss to, or destruction of, property, etc. as is required under the general law, i.e., the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity.”

16. Further, learned senior counsel, for the petitioner made a reliance upon a judgment rendered by the High Court of Calcutta in **United Bank of India v. Sri Pranab Kumar Bhuiyan & Ors. [W.P. 15864(W) of 2014]**, especially paragraph-18 thereof.

17. *Per contra*, Mr. Jai Prakash Singh, learned counsel for the respondent no.4, has taken this Court to the relevant provisions of the Gratuity Act, 1972, firstly, Section 14 thereof and submitted at the Bar that the provision of this Act or any rule made thereunder shall have overriding 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. He, thus, submitted that from the reading of Section 14 of



the Gratuity Act, it leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act, vis-a-vis, any other enactment inconsistent therewith.

18. He further submitted that in an identical matter, wherein the Punjab National Bank, basing upon regulation 46 of the Punjab National Bank (Employees) Pension Regulations, 1995 withheld the gratuity of the delinquent officer(s), which provision, is in the humble submission of the respondent no.4, is *pari materia* to rule 72 of the Regulations, 2010. The said delinquent officer(s) on being aggrieved by the judgment/order of the Division Bench of the High Court, whereby it has been held that it was open to the Punjab National Bank not to pay to the appellant gratuity till the culmination of the proceeding pending against him and, as such, non-release of gratuity till the acquittal of the delinquent employee by the Special Judge, CBI Court, Chandigarh, cannot be faulted. The matter ultimately travelled up to the Hon'ble Apex Court in **Y. K. Singla v. Punjab National Bank & Ors. [(2013) 3 SCC 472]** Civil Appeal No. 9087 of 2012 and the Hon'ble Apex Court after highlighting the provision of Section 14 of the Gratuity Act, has been held that, "even if the provisions of 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(3A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/instrument other than the Gratuity Act.” It would be proper to quote para-21 of the judgment.

“21. 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 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 concerned employee 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. 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(3A) 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 has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision 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(3A) 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(3A) 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. 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 (3A) of Section 7 of the Gratuity Act. We, accordingly, direct the 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, i.e., interest at the rate of 8%. The PNB is directed, to pay the aforesaid interest to the appellant, within one month of the appellant's furnishing to the 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."

19. Further reliance has also been made on a Division Bench judgment of this Court in **The Food Corporation of India v. Kevala Devi & Others [2023(3) PLJR 825]**, wherein



this Court was also a part of the Bench and after examining the CDA Rules of 1978 and referring to various cases viz. **Jaswant Singh Gill vs. Bharat Coking Coal Limited, (2007) 1 SCC 663, State Bank of India vs. Ram Lal Bhaskar & Ors., (2011) 10 SCC 249, D.B. Kapoor vs. Union of India, (1990) 4 SCC 314 and State Bank of Patiala v. Ram Niwas Bansal, (2014) 12 SCC 106**, it was held that major punishment of dismissal could be inflicted on the employee and in order to recover the pecuniary losses to the organization, gratuity also could be forfeited wholly or partially.

20. In the afore-noted judgment, the right of an employer to withhold gratuity during the pendency of the disciplinary proceedings and the power to impose the penalty of dismissal upon an employee even after attaining the age of superannuation was affirmed. However, in the penultimate paragraph, the Court has held “there is no denying of the power of the Corporation to subject an employee to the major punishment of dismissal even after his superannuation and recovering the losses incurred provided such is the charge viz. that because of the misconduct, loss was suffered and after the quantum of such loss is assessed. A blanket order of complete forfeiture of gratuity is highly unjustified, uncalled for as it



depicts complete lack of application of mind.”

21. Further reliance has also been made on a judgment rendered by the Hon’ble Apex Court in **Jyotirmay Ray v. The Field General Manager, Punjab National Bank & Ors. [2023(4) PLJR 431 (SC)]**, especially para-18 thereof.

22. This Court has anxiously heard the learned counsel for the respective parties at length and also perused the materials available on record.

23. Before coming to the issue involved in the present writ petition, it would be worth mentioning here that the respondent no. 4 was holding the post of Branch Manager, Dumraon as an officer MMG-Scale II Grade. The definition of employee and the officer has been duly explained in Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010.

24. It is not in dispute that on account of serious irregularities, the respondent no. 4 was put to departmental proceeding and while the departmental proceeding was pending consideration in the meantime the respondent no. 4 attained the age of superannuation on 31.07.2010. Thus the departmental proceeding continued against him under regulation 44 of Regulation, 2006 which was prevailing at that time. After



having found most of the charges proved, the respondent no. 4 was served with second show cause and finally departmental proceeding culminated with the penalty of dismissal under regulation 39(1)(b)(v) of Regulations, 2010, vide order dated 18.09.2012 which is also the admitted fact that the order of penalty was put to challenge by the respondent no. 4 before the Appellate Authority which came to be dismissed. Aggrieved, the petitioner also filed CWJC No. 14329 of 2013 before this Court which also stood dismissed vide order dated 07.12.2017.

25. With the aforesaid facts, it is manifest that the order of dismissal stood affirmed by the High Court. For the first time, the respondent no. 4 filed a gratuity claim before the Assistant Labour Commissioner (Central), Patna on 27.07.2016 claiming gratuity amount though rule 7(1) of Payment of Gratuity (Central) Rules 1972 clearly prescribed time for filing such application within a period of one month. It is needless to observe that the competent authority has the discretion to condone the delay if there is reasonable and sufficient cause to be shown. However, in the case in hand, the application has been filed after a delay of six years, even after the date of superannuation and more than three years ten months of the date of dismissal though there is no discussion showing sufficient



caused shown by respondent no.4 for condonation of delay.

26. Now coming to the term 'gratuity' it refers to the amount that an employer pays his employee in return for service offered by him to the organization. In other word it can be said that the gratuity refers to an amount of money given as reward for service or as a token of appreciation for employee dedication and loyalty. The very object of granting gratuity to an employee after his retirement is to extend the financial help for recognition of continuous, meritorious service and sincere efforts by the employee towards the organization. In the case of **Delhi Cloth and General Mills Company Limited vs. Workmen & Ors., AIR 1970 SC 919**, the Hon'ble Supreme Court while defining the term 'gratuity' has observed that the etymological meaning of word 'gratuity' is a gift especially for services rendered or return for favours received but under Industrial law, it is now recognized as a legitimate claim which the workers may make and which may give rise to an industrial dispute. The object of providing a gratuity scheme is to provide a retiring benefit to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.

27. Gratuity as has been highlighted by the Apex



Court, is essentially a retiring benefit payable to a workman which as per the statute has been made payable on voluntary resignation as well. Gratuity is a reward for good, efficient and faithful service rendered for a considerable period [**Vide DTC Retired Employees' Association & Ors. vs. Delhi Transport Corporation & Ors., (2001)6 SCC 61**].

28. It is pertinent to mention here that respondent no. 4, who was an officer of the Madhya Bihar Gramin Bank and his service condition was subject to Bank (Officers and Employees) Service Regulations, 2006 and thereafter Regulations, 2010, framed in exercise of power conferred by Section 30 of Regional Rural Banks Act, 1976 and duly notified in the Extraordinary Gazette of India. The Regulations, 2010 deals with payment of gratuity in Clause 72 of regulation which reads as follows:

“ 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.

(emphasis supplied)

29. Sub clause (e) of regulation 72(2) clearly says that an officer or employee shall be eligible for payment of gratuity, either as per the provisions of Payment Of Gratuity Act or as per sub regulation 2, whichever is higher. It further says that every officer or employee shall be eligible for gratuity even on termination of service in any other way, except by way of punishment after completion of 10 years of service. The proviso thereof however further clarifies 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. From bare reading of the aforesaid regulation 72, there is no doubt that in any case where the termination of service is on account of punishment after completion of 10 years of service, the Bank is empowered to forfeit the gratuity of an officer of the Bank.

30. Now coming to the point as to whether in the case



of petitioner, the case of the petitioner shall be dealt with under the provisions of Gratuity Act, 1972 or the regulation framed by the Board of Directors of the Bank under the Regional Rural Banks Act, 1976. At the cost of repetition, this Court observed that the Regulations, 2010 has been framed by the Board of Directors of the Bank in exercise of power conferred by Section 30 of the Regional Rural Banks Act, 1976 which empowers the Board of Directors to make the regulation in consultation with the Punjab National Bank, namely, the sponsor bank with the previous sanction of the Central Government. These regulations are brought in force after its gazette publication. Nonetheless, Section 14 of the Payment of Gratuity Act, 1972, has overriding effect, if anything found inconsistent therewith in any enactment or any instrument or control, and it reads as under:

“Section: 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.”

31. It would be apposite to observe in the premise of settled legal position that the special law would prevail over the general act, more so, when it has not been found to be inconsistent. It would be worth noting that Section 4(6) of the



Gratuity Act, 1972 prescribes that situation, where the gratuity payable to an employee, may be forfeited, wholly or partially. The similar issue has cropped up before the Hon'ble Apex Court in the case of **P Rajan Sandhi Vs. Union of India & Anr.** reported in **2010(10) SCC 338** wherein dealing with similar issue in paragraph nos. 11 and 12 it has been held as follows:

“11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp. 133 and 134.

12. The special law i.e. Section 5(1)(a)(i) of the Working Journalists Act, does not require any allegation or proof of any damage or loss to, or destruction of, property, etc. as is required under the general law i.e. the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists



Act, he is not entitled to gratuity.”

32. Now coming to the impugned order passed by the Assistant Labour Commissioner (Central), Patna, the application of the respondent-applicant was allowed on the premise that the respondent applicant superannuated on 31.07.2010, though charges were fixed and departmental enquiry started on 12.07.2010, the date on which the petitioner superannuated, the master-servant relationship cease to exist, hence qualification for entitlement for gratuity under Section 4(1) is duly fulfilled by the respondent applicant. However, the learned controlling authority failed in taking note of regulation 45 of Regulation, 2010, which deals with the provisions contemplating disciplinary proceeding after retirement. Regulation 45(3) clearly says that the officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The aforesaid provision of the regulation 2010 has never been put to challenge rather the respondent-applicant submitted his jurisdiction before the disciplinary authority.

33. Fuhrer the observation of the controlling authority needs to be deprecated on account of its comment with regard to



the legality of the order of dismissal which stood affirmed by the Hon'ble Court and in this way, he exceeded his jurisdiction by observing that post superannuation, the dismissal is travesty of justice and abuse of power. Hence the controlling authority dismissed the contention of the non applicant and applicant's claim for gratuity is upheld. It has rightly been submitted by the petitioner that the controlling authority exercising power under the Payment of Gratuity Act, 1972 could not have given such observation as he is not the authority vested with the power to decide about the legality or illegality of an order of dismissal which had been passed in terms of the Regulation 2010 which was/is applicable and binding on respondent applicant.

34. Now coming to the reliance of the petitioner on the judgment rendered by the learned Division Bench in **Food Corporation of India** (supra) as well as the judgment of the Hon'ble Apex Court in the case of **Y. K. Singla vs. Punjab National Bank & Ors.** [AIR Online 2012 SC 469], this Court finds that the ultimate ratio decided in both the cases, virtually favours the contention of the petitioner. Learned Division Bench of this Court while affirming the order of the learned single Judge taking note of the various cases viz. **Jaswant Singh Gill vs. Bharat Coking Coal Limited, (2007) 1 SCC 663, State**



Bank of India vs. Ram Lal Bhaskar & Ors., (2011) 10 SCC 249, D.B. Kapoor vs. Union of India, (1990) 4 SCC 314 and State Bank of Patiala v. Ram Niwas Bansal, (2014) 12 SCC 106, it has held that the major punishment of dismissal could be inflicted on the employee and in order to recover the pecuniary losses to the organization, gratuity also could be forfeited wholly or partially. In the afore-noted judgment, the right of an employer to withhold gratuity during the pendency of the disciplinary proceedings and the power to impose penalty of dismissal upon an employee even after attaining the age of superannuation was affirmed.

35. Needless to observe that the order of forfeiture of gratuity was held to be unjustified on account of a blanket order depicting complete lack of application of mind, the learned Division Bench, where this Court was also a part, after holding the aforesaid proposition has found that no charge was framed causing pecuniary loss nor any effort was made by the Corporation to assess the damages arising out of wilful misconduct of the respondent employee thereby entitling the Corporation to recover such losses from the employee/respondent. In the aforesaid premise, the order of the learned single Judge has been affirmed.



36. In the case of **Y. K. Singla** (supra), the employee being dissatisfied with the action of the Punjab National Bank in not paying interest to him from the date of retiral benefit became due till their eventual release in a criminal case, has filed Civil Writ Petition on 06.04.2010 before the High Court of Punjab and Haryana at Chandigarh which came to be allowed with a direction to pay the employee interest @ 8% from the date retiral benefit had become due to the employee, till the actual payment thereof to him. However the order of the single Judge put to challenge by the Punjab National Bank in LPA No. 1950 of 2011 and vide order dated 29.11.2011, the learned Division Bench taking note of the provisions of 1995, Regulation has arrived at the conclusion that the appellant was not entitled to any interest on delayed payment of gratuity. The employee being aggrieved assailed the order before the Hon'ble Supreme Court. The Apex Court while setting aside the order of the learned Division Bench had affirmed the order of the learned single Judge in the premise that the provisions of the Punjab National Bank Officer Employees' Regulations are silent on the issue of payment of interest or even it debarred, the appellant would still be entitled to the benefit of Section 7(3A) of the Gratuity Act. It would be apposite to quote paragraph 21 thereof



which reads as follows:

“21. 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 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 concerned employee 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. 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(3A) 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 has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision 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(3A) 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(3A) 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. 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 (3A) of Section 7 of the Gratuity Act. We, accordingly, direct the 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, i.e., interest at the rate of 8%. The PNB is directed, to pay the aforesaid interest to the appellant, within one month of the appellant's furnishing to the 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."

37. It would further relevant to observe that the Apex Court while allowing the Civil Appeal has made emphasis on the overriding effect of Gratuity Act only in case where regulation is found to be inconsistent with the Gratuity Act or there is no such provision.



38. Now, so far the appellate order passed by the Deputy Chief Labour Commissioner (C), the appellate order dated 17.09.2018 under the Payment of Gratuity Act, 1972 is concerned, apart from cryptic, the same is entirely based upon the order of the controlling authority without application of any independent mind and meeting the points raised by the petitioner/Bank.

39. In view of the discussions made hereinabove and the settled position of law, this Court finds substance in the writ petition and set aside the impugned order dated 31.08.2017 (Anneuxre-4) passed by the learned Assistant Labour Commissioner-I(C)-cum- Controlling Authority as well as the order dated 17.09.2018 passed by the learned Deputy Chief Labour Commissioner (C)-cum- Appellate Authority under the Payment of Gratuity Act, 1972.

40. Accordingly, the writ petition stands allowed.

41. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/anjani-

AFR/NAFR	AFR
CAV DATE	02-02-2024
Uploading Date	23-02-2024
Transmission Date	

