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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) CWP-19879-2020
Date of Decision:05.12.2024

THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LTD.
.... Petitioner

Versus

PREM KUMAR AND ORS ..... Respondents

2) CWP-12987-2021

PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING FEDERATION LIMITED AND ANR
…..Petitioners

Versus

HARJIT SINGH AND ORS ..... Respondents

3) CWP-1105-2021

THE PUNJAB STATE CO-OP SUPPLY AND MARKETING FEDERATION LTD
..…..Petitioner

Versus

DEPUTY CHIEF LABOUR COMMISSIONER AND ANR
.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. T.S. Sidhu, Advocate
for the petitioner in CWP-19879-2020.

Mr. Rajan Bansal, Advocate
for the petitioners in CWP-12987-2021.

Mr. Rishabh Gupta, Advocate
for the petitioner in CWP-1105-2021.

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Mr. Aman Dhir, DAG, Punjab.

Mr. Shiv Kumar, Advocate
for respondent No.1 in CWP-19879-2020,
for respondent No.2 in CWP-12987-2021 &
CWP-1105-2021.

Mr. Piyush Khanna, Advocate
for respondents No. 2 and 3 in CWP-12987-2021.

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-19879-2020, CWP-12987-2021 and CWP-1105-2021 are disposed of since issues involved in the captioned petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-19879-2020.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 30.11.2018 (Annexure P-3) passed by Controlling Authority and order dated 11.06.2020 (Annexure P-5) passed by Appellate Authority whereby authorities have directed it to pay gratuity alongwith interest @ 10% p.a. to the respondent.

3. The husband of respondent No.1 joined petitioner on 08.03.1971 and retired on 31.10.2008. He retired on attaining the age of superannuation. The petitioner on the basis of letter dated 17.08.2009 of Punjab Government decided to enhance upper limit of gratuity from 3.5 lakh to 10 lakh. The enhanced limit was made applicable w.e.f. 01.01.2006. The respondent-employee was governed by Punjab State Co-operative Supply and Marketing Federation Employees (Common Cadre) Service Rules, 1990 (for short ‘1990 Rules’). There was dispute between

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employees and the petitioner with respect to applicability of 1990 Rules *qua* gratuity. The said issue came to be settled by judgment dated 31.10.2014 passed by this Court in CWP 15363 of 2011 wherein it was held that employees of Markfed are covered by 1990 Rules and they are entitled to enhanced gratuity w.e.f. 01.01.2006. If an employee has retired during 2006-2010, he would be entitled to enhanced amount of gratuity. The relevant extracts of judgment dated 31.10.2014 are reproduced as below:-

> "*13. Coming now to the second argument of learned counsel for respondent-MARKFED, though, without doubt, MARKFED being an independent entity, the instructions and policies of the Punjab Government can only be made applicable to it upon adoption by MARKFED itself, however, the stand taken by the respondents in their reply itself is contrary to the letter dated 09.10.2011, which has been produced in Court and has not been denied by the respondents, even after the matter was adjourned on 17.10.2014.*
>
> *The letter reads as under: -*
>
> *"The Punjab State Cooperative Supply and Marketing Federation Limited Sector-35-B Chandigarh*
> *(PERSONNEL DEPARTMENT)*
>
> *No.EST/EAG-6/11/4120 Dated 19/10/2011*
>
> *1. All the Officers of Markfed at H.O. Chandigarh.*
> *2. All the District Managers, Markfed in the Punjab State*
> *3. All General Managers/Managers, Markfed Plants/Units in the State*
> *4. O.S.D. (C), Markfed, Bathinda*
> *5. Liaison Officer, Markfed, C-212, Defence Colony, New Delhi*

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Sub: Amendment in Rule 4.6 in Markfed Common Cadre Rules 1990.

Dear Sir(s),

I am directed to address you on the subject noted above and to inform that as per decision taken by Board of Directors of Markfed vide agenda item No.4 in its meeting held on 17.2.2011 and as approved by Registrar Cooperative Societies Punjab vide memo no.RSS/MANDI/MS- 45-B/13163 dated 13.09.2011 following amendment is being made in Rule 4.6 of Markfed Common Cadre Rules 1990/-

Existing Provision	***Amended Provision***
On one's retirement, under Rule 2.21 of these Rules or death an employee shall be granted gratuity of an amount equal to one month's wages for each completed year of service or part thereof in excess of six months with the Markfed provided that the total amount of gratuity shall not exceed 15 times the amount of wages last drawn	*On one's retirement, under Rule 2.21 of these rules or death an employee shall be granted retirement-cum-death gratuity as per rules/instructions in force and amended from time to time applicable to Punjab Govt. employees.*

The above decision is applicable from the date of approval of Registrar, Cooperative Societies Punjab i.e. w.e.f. 13.09.2011. However the instructions issued by the State Govt. vide No.3/33/09/3FPPC/879 dated 17.08.2009 with regard to enhancement of maximum limit of payment of gratuity from Rs.3.50 lacs to Rs.10.00 lacs will be applicable w.e.f. 1.1.2006.

Thanking you,
Yours faithfully,
sd/-
Establishment Officer (C),
For Managing Director.

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Thus, even though the decision was applicable w.e.f. 13.09.2011, i.e. the amended provisions came into effect from that date, upon approval by the Registrar, yet, by a conscious decision taken, the enhancement in the amount of gratuity payable, upon the retirement of an employee, was made applicable from 01.01.2006, for employees of MARKFED, to whom the Common Cadre Rules apply.

Hence, it is obvious that once the Common Cadre Rules have been held by this Court to be applicable to the petitioners, the letters of the Punjab Government, Annexures P1 to P3 would also apply to them, in terms of MARKFEDs' own letter dated 19.10.2011, issued by respondent No.2.

14. As to why the respondents chose to file a reply contrary to the conditions of service given in the appointment letters of the petitioners and countrary to the decision taken by its own Board of Directors and as approved by the Registrar, Cooperative Societies, Punjab, is something which this Court cannot even begin to understand, except to say that either the reply has been filed in an extremely callous manner or, due to lack of funds or other reasons, MARKFED is now trying to backtrack on its decision, without any decision to the contrary taken by the competent authority, after 19.10.2011.

15. Thus, in the face of, first, the terms and conditions of the petitioners' appointments and then in the face of a specific decision amending Rule 4.6 of the Common Cadre Rules, by which retirement-cum-death gratuity payable to employees of MARKFED was to be on the same terms as the Punjab Government employees, and still further, with the decision of the Punjab Government dated 17.08.2009 having been made specifically applicable from 01.01.2006 to the employees of MARKFED, the stand of the respondents, taken

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in the Court, is to be rejected and is, in fact, depreciable. Consequently, this writ petition is allowed.

4. The respondent No.1 retired on 31.10.2008 and was entitled to enhanced amount of gratuity in terms of 1990 Rules. It is apt to notice that limit of 3.5 lakh prescribed under Payment of Gratuity Act, 1972 (for short '1972 Act') was enhanced w.e.f. 24.05.2010. The said limit was enhanced by way of amendment carried out in 1972 Act. The respondent had retired prior to 24.05.2010, however, was entitled to enhanced amount of gratuity in terms of 1990 Rules because State Government as well as petitioner-Markfed made enhanced limit applicable w.e.f. 01.01.2006.

5. The petitioner released gratuity to respondent at the time of his retirement to the tune of Rs.4,27,350/-. The said amount was determined as per 1990 Rules. The respondent vide application dated 27.04.2018 approached Controlling Authority which vide order dated 30.11.2018 held the employee entitled to gratuity to the tune of Rs.6,24,588/- along with interest @10% p.a. The interest was made payable from the date of retirement i.e. 31.10.2008.

6. The petitioner preferred an appeal before Appellate Authority which came to be dismissed vide impugned order dated 11.06.2020.

7. Learned counsels for the petitioners submit that respondent retired in 2008 and at that point of time Punjab State Co-operative Supply and Marketing Federation Employees (Common Cadre) Service Rules, 1990 (for short '1990 Rules') were more beneficial than 1972 Act. There

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was dispute with respect to applicability of 1990 Rules to Mechanics. Different Mechanics approached this Court by way of ***Civil Writ Petition No.15363 of 2011*** titled as ***'Nathu Ram and others Vs. State of Punjab and others'***, wherein it was held that Mechanics are entitled to gratuity as payable under 1990 Rules. The petitioner in the case of respondent, assessed gratuity as per Rules applicable on the date of his retirement. The respondent accepted the payment and approached Controlling Authority after a gap of 10 years. The action of respondent was barred by limitation. Rule 10 of Payment of Gratuity (Central) Rules, 1972 (for short '1972 Rules') provides limitation of 90 days to file application before Controlling Authority. The application was hopelessly barred by limitation. The Controlling Authority mechanically condoned the delay and allowed claim of the respondent. The respondent was not covered by 1972 Act, thus, application itself was not maintainable under 1972 Act. Sections 4 and 7 of 1972 Act read with Rule 10 of 1972 Rules are applicable to an employee who is governed by 1972 Act whereas respondent was governed by 1990 Rules.

8. *Per contra*, Mr. Shiv Kumar, Advocate submits that 1972 Act is a piece of beneficial legislation. The Controlling Authority has condoned delay and thereafter assessed gratuity under 1972 Act. The provisions of 1972 Act were more beneficial, thus, respondent was entitled to gratuity as per 1972 Act instead of provisions of 1990 Rules or Factories Act, 1948 (for short '1948 Act'). The petitioner at the time of respondent's retirement was not applying 1990 Rules whereas 1972 Act was applied. Section 4(5) of 1972 Act provides for option of payment of gratuity under any award or settlement, if terms and conditions of

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award/settlement are more beneficial than provisions of 1972 Act.

9. I have heard the arguments of learned counsel for the parties and perused the record.

10. The conceded position emerging from the record is that respondent retired from office of petitioner on 31.10.2008. He had completed service of 38 years. No departmental proceeding was pending against him. The petitioner assessed his gratuity as per 1990 Rules. At that point of time, there was no ceiling under 1990 Rules like 1972 Act. The 1990 Rules came to be amended by way of letter dated 19.10.2011 whereby petitioner adopted Rules and Regulations relating to gratuity applicable to employees of Punjab Government. In view of adoption of Punjab Government Rules, the ceiling of Rs.10 lakh became applicable w.e.f. 01.01.2006.

11. Section 4 of 1972 Act provides for payment of gratuity. In the said section, manner of calculation of gratuity has been prescribed. There is an outer limit of the gratuity in the said section. By sub-section (5), employee has been given opportunity to opt for better terms of gratuity under any award or agreement or contract with the employer. Section of 4 of 1972 Act is reproduced as below:

> "***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:*

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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) <u>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:</u>

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.

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(3) <u>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.</u>

(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) <u>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.</u>

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

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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."

[Emphasis Supplied]

12. Section 7 provides that a person who is eligible for payment of gratuity shall in writing apply to the employer within such time and in such form as may be prescribed. Sub-section (2) of Section 7 enjoins that employer as soon as employee retires determine the amount of gratuity and give notice in writing to the person to whom it is payable. Sub-

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section (3) provides that employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Sub-section (4) provides that if there is any dispute as to the amount of gratuity, the employer shall deposit with Controlling Authority the admitted liability. Section 7 of 1972 Act is reproduced as below:

> *"**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*

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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

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right of the applicant to receive the amount of gratuity.

5, 6 & 7 xxxx xxxx xxxx xxxx"

13. The Central Government in exercise of power conferred by Section 15 of 1972 Act has framed 1972 Rules. As per Rule 7, an employee who is eligible for the payment of gratuity shall apply within 30 days to the employer from the date of his superannuation or retirement. Rule 8 provides that employer shall make the payment within 15 days of receipt of application under Rule 7. Rules 7 and 8 are reproduced as below:

"***7. Application for gratuity**.—(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the 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 of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within thirty days from the date the gratuity became payable to him, in Form 'J' to the employer:

Provided that an application on 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

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date 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 periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencements.

(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 acknowledgement due.

***8. Notice for payment of gratuity**.—(1) Within fifteen days of the receipt of an application under Rule 7 for payment of gratuity, the employer shall—*

(i) if the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or

(ii) if the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible.

In either case a copy of the notice shall be endorsed to the controlling authority.

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(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (i) of sub-rule (1) shall be re-fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim as the case may be. In that case the time-limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.

(4) A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due.

(5) A notice under sub-section (2) of Section 7 shall be in Form 'L'.

14. Rule 10 of 1972 Rules provides that if gratuity is not paid, an employee may make an application within 90 days of occurrence of the cause for the application to the Controlling Authority. Rule 10 of 1972 Rules is reproduced as below:

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

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(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 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 acknowledgement due."

15. From the perusal of afore-cited Rules, it is evident that there is limitation period to file application before employer seeking release of gratuity and in case of inaction on the part of employer, the employee may approach Controlling Authority within specified period.

16. In the case in hand, the employee retired in 2008 and he was paid gratuity in the same year. He without protest accepted the same, however, approach Controlling Authority after the expiry of almost 10 years. The Controlling Authority condoned the delay and ordered to pay differential amount alongwith interest @ 10% p.a. from the date of retirement.

17. Under 1972 Act prior to 2010, there was a ceiling of Rs.3.5 lakh which was increased to Rs.10 lakh after 24.05.2010. The respondent was paid gratuity as per unamended 1990 Rules. There was ceiling in the

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1990 Rules by way of multiplying factor. The petitioner adopted Rules and Regulations applicable to State Government employees by way of letter dated 19.10.2011. This Court in ***Nathu Ram (supra)*** has held that employees of MARKFED were entitled to gratuity as per amended 1990 Rules. The amended Rules came into force w.e.f. 19.10.2011, however ceiling of Rs.10 lakh was made applicable w.e.f. 01.01.2006. The respondent retired in 2008, thus, he was entitled to gratuity as per amended 1990 Rules. The petitioner did not apply amended Rules because amended Rules were made applicable by way of letter dated 19.10.2011. There was confusion whether employees who had retired prior to said date are entitled to gratuity as per amended 1990 Rules or as per existing provisions. This Court in ***Nathu Ram (supra)*** made it clear that employees of MARKFED are entitled to gratuity as per amended 1990 Rules. The Court directed to apply enhanced limit of gratuity i.e. Rs. 10 lakh w.e.f. 01.01.2006. It was made clear that if a lesser amount of gratuity is due on account of calculable gratuity then actual amount would be paid to the parties. The respondent, at the time of his retirement, was entitled to gratuity as per 1990 Rules. The method of calculation of gratuity, at the time of his retirement, was more beneficial than provisions of 1972 Act. As per 1972 Act, there was a ceiling of Rs.3.5 lakh, thus, he was entitled to maximum gratuity of Rs.3.5 lakh whereas petitioner applying 1990 Rules assessed gratuity to the tune of Rs.4,27,350/-. The 1972 Act was amended w.e.f. 24.05.2010. The respondent by the said date had already retired and was even paid gratuity. He cannot be permitted to claim benefit of 1972 Act on the ground that after 2010 provisions of 1972 Act became more beneficial

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than 1990 Rules. Section 4(5) of 1972 Act clearly provides that employee has option to accept gratuity as per award, settlement or contract if terms of the award, settlement or contract are better than 1972 Act. The respondent retired in 2008 and at that point of time terms and conditions of 1990 Rules were better than 1972 Act. This was the reason which gave impetus to respondent to accept payment as per 1990 Rules instead of 1972 Act. He could not turn around after couple of years on the ground that there is amendment in the 1972 Act and provisions of 1972 Act are better.

18. The respondent accepted gratuity assessed by petitioner in the year 2008. No grievance was raised by respondent. He approached Controlling Authority in 2018. Limitation period to approach employer as well as Controlling Authority has been prescribed under 1972 Rules. Section 7 (1) provides that person eligible for payment shall apply within such time and in such form as may be prescribed. Section 7(3A) provides for interest. It provides that employer shall pay interest from the date on which the gratuity becomes payable to the date on which it is paid. Government by way of notification has prescribed 10% p.a. rate of interest. The Controlling Authority in the instant case has granted interest from the date of retirement. The respondent was paid gratuity at the time of retirement though it was calculated as per unamended 1990 Rules. The respondent accepted payment without demur and approached Controlling Authority after the expiry of 10 years. The Controlling Authority taking lenient view condoned the delay though it was exorbitant. The period prescribed to approach authority was 90 days whereas respondent approached after 10 years. The delay could be condoned, however,

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respondent could not be given benefit of his own mistake by way of interest. The interest is compensatory in nature and by way of Section 7(3A), the legislature has made it statutory. The interest at the most could be paid from the date of filing of application before Controlling Authority. The respondent could not be granted interest for the delay which had occurred on account of lapse on his part. The petitioner had assessed gratuity as per applicable Rules and Regulations. There was neither any wrong calculation nor *mala fide* intention on the part of Management, thus, petitioner could not be subjected to interest from 2008 to 2018.

19. In the wake of above findings, it is hereby held that respondent was entitled to gratuity as per 1990 Rules. If there was any calculation error or on account of amendment of 1990 Rules from retrospective effect, the respondent became eligible to higher amount, the petitioner could not deny said benefit. The petitioner is liable to pay differential amount, if any, arising on account of retrospective amendment of 1990 Rules. The respondent is at liberty to submit his calculation as per amended 1990 Rules and petitioner would determine its liability within 30 days from the date of receipt of calculation. If the petitioner finds that as per amended 1990 Rules, the respondent was entitled to higher amount of gratuity, the differential amount would be paid within one month from the date of submitting calculation. The interest @ 10% p.a. shall be payable from the date of implementation of amended 1990 Rules.

20. The impugned orders are hereby modified in terms of above findings.

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21. The parties after dictation of judgment pointed out that gratuity assessed by Controlling Authority has already been released. If the amount of gratuity alongwith interest, as assessed by authority, has already been released to the respondent, this order would not entitle the petitioner to recover the differential amount except to adjust against arrears, if any, of the respondent.

(JAGMOHAN BANSAL)
JUDGE

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No

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