IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

MS. JUSTICE RITU BAHRI, C.J.
AND
MR. JUSTICE RAKESH THAPLIYAL, J.

Reserved On : 10.04.2024

Delivered on: 29.04.2024

WRIT PETITION (M/B) NO. 75 OF 2023 (1)

Babu Ram Kashyap .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate Bank) ...Respondent

WRIT PETITION (M/S) NO. 396 OF 2022 (2)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Laxmi Kant Sharma ...Respondent

WRIT PETITION (M/S) NO. 401 OF 2022 (3)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Sheo Shanker Pandey ...Respondent

WRIT PETITION (M/S) NO. 406 OF 2022 (4)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Ravindra Kumar Chauhan ...Respondent

WRIT PETITION (M/S) NO. 413 OF 2022 (5)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Chandra Prakash Bisht ...Respondent

WRIT PETITION (M/S) NO. 415 OF 2022 (6)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Rakesh Kumar Bhatnagar ...Respondent

WRIT PETITION (M/S) NO. 418 OF 2022 (7)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Ghanshyam Singh Dhami ...Respondent

WRIT PETITION (M/S) NO. 419 OF 2022 (8)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Rajendra Singh Rawat ...Respondent

WRIT PETITION (M/S) NO. 420 OF 2022 (9)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Om Pal Singh ...Respondent

WRIT PETITION (M/S) NO. 423 OF 2022 (10)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Babu Ram Kashyap ...Respondent

WRIT PETITION (M/S) NO. 424 OF 2022 (11)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Sushil Kumar Grover ...Respondent

WRIT PETITION (M/S) NO. 429 OF 2022 (12)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Rajeshwar Sharma ...Respondent

WRIT PETITION (M/S) NO. 430 OF 2022 (13)

Canara Bank Erstwhile Syndicate Bank Regional Office

.....Petitioner.

Versus

Jagat Ram ...Respondent

WRIT PETITION (M/S) NO. 432 OF 2022 (14)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Krishna Kant Rastogi ...Respondent

WRIT PETITION (M/S) NO. 437 OF 2022 (15)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Rakesh Kumar Agarwal ...Respondent

WRIT PETITION (M/S) NO. 858 OF 2022 (16)

Canara Bank Erstwhile Syndicate Bank Regional Office
.....Petitioner.

Versus

Raj Kumar Bhasin ...Respondent

WRIT PETITION (M/B) NO. 97 OF 2023 (17)

Sheo Shanker Pandey .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).
...Respondent

WRIT PETITION (M/B) NO. 98 OF 2023 (18)

Laxmi Kant Sharma .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).
...Respondent

WRIT PETITION (M/B) NO. 99 OF 2023 (19)

Rajeshwar Sharma .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).
...Respondent

WRIT PETITION (M/B) NO. 100 OF 2023 (20)

Rakesh Kumar Agarwal .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

WRIT PETITION (M/B) NO. 101 OF 2023 (21)

Krishna Kant Rastogi .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

WRIT PETITION (M/B) NO. 102 OF 2023 (22)

Ghanshyam Singh Dhami .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

WRIT PETITION (M/B) NO. 103 OF 2023 (23)

Chander Prakash Bist .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

WRIT PETITION (M/B) NO. 104 OF 2023 (24)

Ravindra Kumar Chauhan .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

WRIT PETITION (M/B) NO. 105 OF 2023 (25)

Sushil Kumar Grover .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

WRIT PETITION (M/B) NO. 107 OF 2023 (26)

Raj Kumar Bhasin .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

&

WRIT PETITION (M/B) NO. 108 OF 2023 (27)

Om Pal Singh .....Petitioner.

Versus

Canara Bank (Erstwhile Syndicate bank).

...Respondent

Counsel for the petitioners	:	Mr. Vipul Gupta, learned Senior Counsel assisted by Mr. A.M. Saklani, learned counsel for the petitioner in WPMB No. 75 of 2023. Mr. Siddharth Sah, learned counsel for the petitioner in WPMS Nos. 396, 401, 406, 413, 415, 418, 419, 420, 423, 424, 429, 430, 432, 437, 858 of 2022 and WPMB Nos. 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108 of 2023.
Counsel for the respondents	:	Mr. Ashish Joshi, learned counsel for the respondent in WPMB No. 75, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108 of 2023. Mr. Shashank Upadhyay, learned counsel for the respondents in WPMS Nos. 396, 401, 406, 413, 415, 418, 420, 423, 424, 429, 430, 432, 437, and 858 of 2022.

Upon hearing the learned Counsel, the Court made the following

JUDGMENT : (per Ms. Ritu Bahri, C.J.)

Since a common issue is involved in this bunch of writ petitions, it is being disposed of by a common judgment.

2. For the sake of brevity, the facts of WPMB No. 75 of 2023 *Babu Ram Kashyap Vs. Canara Bank (Erstwhile Syndicate Bank)* are being taken-up for consideration.

3. The petitioner has challenged the order dated 29.11.2021 passed by the Appellate Authority / Deputy Chief Labour Commissioner (Central), Dehradun under Payment of Gratuity Act, 1972 (hereinafter referred to as the PG Act).

4. The petitioner preferred a claim for grant of Service Gratuity after seeking VRS on 10.11.2014 in terms of the Bank after completing active service of 36 years 3 months and 12 days, but his claim for gratuity was not decided and he approached the Controlling Authority for issuing appropriate direction to the Bank for deciding the claim. The Bank decided the claim vide order dated 06.05.2019 (Annexure PA-1) and an amount of Rs. 11,87,100.00 (Rs. Eleven Lacs Eighty Seven Thousand One Hundred Only) was granted as the Service Gratuity. It was stated that it has been calculated as per Syndicate Bank Officers Service Regulations, 1979 (for short "SBOSR"). The calculation of the gratuity has been done by observing in the order dated 06.05.2019 as under:-

> "*For purpose of calculating Gratuity as per Syndicate Bank Officers Service Regulation, the eligible component of pay are: Basic Pay + Stagnation Pay + Basic components of EPP + PQP + other allowances (ranking for PF only) shall be considered.*

Further we wish to inform you that "The Regulation 46(2) of Syndicate Bank (Officers) Service Regulation, 1979, read as the amount of gratuity payable to Officer shall be one month "pay" for every completed year of service subject to maximum of 15 months of pay. Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for additional amount @ on half of months pay for each completed year of service beyond 30 years. Therefore, it is relevant to peruse the definition of "Pay" and "salary" which defines "Pay" as basic pay including stagnation increment and "Salary" means the aggregate of the pay and DA."

5. The Bank has, vide impugned order dated 06.05.2019, declined the claim of 45 days additional amount of pension for each completed year of service after completion of 30 years' service and has allowed only 15 days additional amount for each completed year of service after completion of 30 years' service by the officer. Against the impugned order dated 06.05.2019 (Annexure P-1), the petitioner approached the Controlling Authority after registration. The registered case number is Case No. D-36(32)/2019-ALC.

6. As per the order, the gratuity was awarded to the tune of Rs. 15,22,042/-. The claim of the petitioner for additional sum of 45 days for each completed year after completion of service of 30 years was not allowed

and a final order was passed by the Controlling Authority, which is as under:-

> "*Final Order"*
>
> *In view of the above mentioned legal points, I am of considered opinion that the appellant Sh. Babu Ram Kashyap is entitled to receive total gratuity of 15,22,042/- (Rupees Fifteen Lakh Twenty Two Thousand & Forty Two Only) as the higher amount of gratuity as per the service Regulations of the bank. As the applicant has already received Rs. 11,87,100/-, he need to be paid further amount of gratuity equivalent to Rs. 3,34,942/- (Rupees Three Lakh Thirty Four Thousand Thirty & Nine Hundred & Forty Two Only), by the Respondent (The General Manager, Syndicate Bank, Head Office, Manipal) within 30 days from receipt of this order along with simple interest @ 7% p.a. from 12.10.2014.*"

7. With respect to length of service, the gratuity was calculated for a period of three years beyond 30 years i.e. till 33 years. The petitioner, in the present case, has put in service of 36 years, three months and twelve days. The petitioner is also aggrieved that the benefit of six of years of service beyond thirty years has been wrongly denied.

8. The petitioner was communicated the claim order vide order dated 28th February, 2020 (Annexure PA-2). Against the order dated 28.02.2020, the petitioner filed an Appeal under Section 7(7) of PG Act (Annexure P-3). The Bank also filed an Appeal against the order dated 28.02.2020 passed by the Controlling

Authority. Both the Appeals were decided by the Appellate Authority by a common order dated 29.11.2021 (Annexure P-4).

9. In the impugned order, while interpreting Clause-46 of SBOSR, the Appellate Authority held as under:-

> "Now after noting the above findings, I conclude that the respondent is entitled to be paid additional amount of gratuity over and above what has already been paid to him but not as per calculation arrived at by the CA. The CA should include the component of DA only with Basic Pay and calculate the amount of payable gratuity accordingly. The CA should further calculate interest @ 5% only upon the difference of amount of gratuity paid and payable."

10. The Appellate Authority has not given the benefit of calculation of gratuity beyond thirty years of service i.e. 36 years three months and twelve days, which was given by the Controlling Authority as per Regulation 46 of Syndicate Bank (Officers') Service Regulations, 1979. Hence, this writ petition has been filed now. The challenge has been made on two grounds:-

(I) The CA reduced the interest from 7% p.a. to 5% p.a. which is against the Circular of the Reserve Bank of India dated 6th March, 2020 (Annexure No. 5 to the writ petition), which

prescribes payment of interest at the rate of 10% till the date of making payment.

(II) Clause 46 of SBOSR has been misread and misinterpreted by only including Dearness Allowance as part of pay and not including Emoluments as part of pay.

INTEREST:-

11. Counsel for the petitioner has referred to the judgments of the ***Hon'ble Supreme Court in Y.K. Sigla vs. Punjab National Bank & Ors. (Civil Appeal No. 9087 of 2012,*** decided on 14.12.2012) and ***D.D. Tiwari vs. Uttar Haryana Bizli Vitran Nigam Ltd. (Civil Appeal No. 7113 of 2014)***, wherein the Hon'ble Supreme Court has held that Controlling Authorities (CA) have no discretion to award interest on delayed payment other than the rate of interest as is provided under the statute in terms of Sub Section (3A) of Section 7 of Payment of Gratuity Act, 1972.

12. In another judgment of the Hon'ble Supreme Court in ***Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota vs. Shukla & Brothers (2010) 4 SCC 785***, it has been held that the rate of interest cannot be reduced by the

Controlling Authority once it was granted as per the prevalent rules of banking.

DEFINITION OF WORD 'PAY':-

13. The Hon'ble Supreme Court in the case of ***The Regional Provident Fund Commissioner (II) W.B. vs. Vivekanand Vidhya Mandir & Ors. (Civil Appeal No. 6221 of 2011,*** decided on 28.02.2019) held that the basic principle is where the wage is universally, necessarily and ordinarily paid to all employees across the board, such emoluments are basic wages. It is not denied by the respondent-Bank that Special Allowance is being paid to all the officers working in the Bank at the rate based on their scale of pay. Therefore, exclusion of Special Allowance from the component of Basic Pay is not permissible for the purpose of calculating gratuity. Therefore, the same shall be taken as part of basic pay for calculating the gratuity payable to the officers of the respondent-Bank but no reason has been assigned by the learned AA with regard to exclusion of Special Allowance. In the said judgment with regard to addition of Dearness Allowance, the Hon'ble Supreme Court has observed as under:-

“9. Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of dearness allowance finds inclusion in Section 6. The test adopted to determine if any payment was to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is one of universality. The employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee’s salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. The aforesaid provisions fell for detailed consideration by this Court in Bridge & Roof (supra) when it was observed as follows:-

> “7. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with s. 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exceptions to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term "basic wages", and these are contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance

with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to clause (ii). It excludes dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment. This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of "basic wages". It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment. It was admitted by counsel on both sides before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from clause (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by employees in accordance with the terms of the contract of employment. Having excluded "dearness allowance" from the definition of "basic wages", s. 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in s. 6 which lays down that contribution shall be 6-1/4 per centum

of the basic wages, dearness allowance and retaining allowance (if any). We must therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance (for any) in s. 6. It seems that the basis of inclusion in s. 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose, of contribution under s. 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution. Dearness allowance (for examples is payable in all concerns either as an addition to basic wages or as a part of consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and is therefore included in s. 6; but house rent allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken out of the definition of "basic wages", even though the basis of payment of house rent allowance where it is paid is the contract of employment. Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment; but because it may not be earned by all employees of a concern it is excluded from "basic wages". Similarly, commission or any other similar allowance is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned by all employees of the

> same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that the basis for the exclusion in clause (ii) of the exceptions in s. 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in clause (ii) is an exception. But that exception has been corrected by including dearness allowance in s. 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the propose of contribution by s. 6 and the real exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through S. 6."

14. Original Pension Regulation of 1995 is still in force and no amendment has yet been made in such Regulation regarding exclusion of Special Allowance. The definition of 'Pay' as defined in Reg. 3(k) is inclusive definition, which means that the basic pay not only includes stagnation increment, but also other component of basic pay as held by the ***Hon'ble Apex Court in Vivekanand Vidyamandir*** case (supra) and the Madhya Pradesh High Court in ***Madhyanchal Gramin Bank and others vs. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018***, decided on 26.02.2019).

15. In a recent judgment rendered by the High Court of Kerala at Ernakulam in ***Muralee Mohanan K.T. and others vs. Corporation Bank and others (WP (C) No. 32386 of 2015 (W)***, decided on 15.10.2019), the Kerala High Court condemned the exclusion of special allowance payable to bank employees / officers. For ready reference, the relevant Paragraphs 8 and 9 of the said judgment are reproduced herein below:-

> *"8. However, in **Bank of Baroda v. G.Palani and others**, the Apex Court drew a distinction where the aggrieved employees are officers who retired from the Bank in question. It was held that the provisions of the Industrial Disputes Act, 1947 are not applicable to such officers. It was held that the Pension Regulations framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 are statutory in character. In the circumstances, in view of the definition of average emoluments at Regulation 2(d), Pay at Regulation 2(s) and the provision for calculating pension at Regulation 35, it was held that employees are to be paid pension as provided in the Regulations and no reduction from the same is possible, relying on the provisions of a Joint Note, which has no statutory force, unless the Regulations are appropriately amended. It was held in paragraph 28 of the judgment as follows:-*
>
> > *"28. Thus joint note/agreement could not have been in derogation of the existing statutory Regulations and regulation 2(s)(c) could not have been given retrospective effect. It is also apparent from the decisions of this Court in P.Sadagopan vs.Food Corporation of India [(1997) 4 SCC 301], that executive instructions cannot be issued in derogation of the statutory Regulations. The settled position of law is that no*

Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. In Dr.Rajinder Singh v. State of Punjab & Ors (2001) 5 SCC 482, this Court had reiterated that the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In K.Kuppuswamy & Anr.v. State of Tamil Nadu (1998) 8 SCC 469, this Court has observed that statutory rules cannot be overriden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules, does not mean that the rule stood obliterated. Till the rule is amended, the rule applies."

The amendment to Regulation 2(s) of the Pension Regulations was struck down as arbitrary and repugnant to Regulation 2(d), 35 and 38(1) and (2).

9. In the above view of the matter, I am of the opinion that the prayers sought for in the writ petition are liable to be allowed. The petitioners are entitled to pension in terms of the Pension Regulations especially Regulation 2(d) and 35 thereof. The respondents are directed to revise the basic pension of the petitioners in accordance with the provisions of the Corporation Bank (Employees) Pension Regulation, 1995 by taking into account the Special Allowances introduced in Exhibit P6 as part of pay for the purpose of Basic Pension. There will be a direction to the 2nd respondent to recalculate the commutation pension of the petitioners on the basis of the revised basic pension by including the special allowance introduced vide Exhibit P6 and to refund the pension arrears recovered from the petitioners as per Exhibits P5. P5(a),P5(b) and P5(c). The necessary shall be done within a period of three months from the date of receipt of a copy of this judgment."

16. So far as inclusion of DA is concerned in the definition of 'Pay', both the CA as well as AA

categorically held in view of binding precedents that DA shall be part of basic pay. There appears no illegality in such finding.

How the gratuity is to be calculated after serving for a period beyond thirty years:-

17. Recently, the High Court of Rajasthan in ***Rajasthan Marudhara Gramin Bank, Jodhpur vs. The Appellate Authority (S.B. Civil Writ Petition No. 7359 of 2019***, decided on 16.10.2020) has considered this aspect of the matter and in the light of the facts narrated in Paragraph 4 has made its observation in Paragraph 22. Relevant Paragraphs 4 and 22 read as under:-

> "*4. The brief facts of the case as noticed by this Court are that all these writ petitions relate to the dispute of computation of gratuity of the retired Bank Officers. The petitioner bank is a Regional Rural Bank which has been constituted by amalgamation of Marudhara Gramin Bank and Mewar Anchalik Gramin Bank on 01.04.2014. The retired Bank Officers-private respondents filed their respective applications before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming the differential amount of gratuity with interest with effect from 01.12.2017 based on the basic + dearness allowance + PQP + FPP components of the last pay drawn for the calculation of amount of gratuity payable to such officers. The petitioner-Bank vehemently objected their applications but the same were allowed and the petitioner-Bank was directed to pay the additional amount of gratuity along with simple interest at the rate of 10% with effect from*

01.12.2017 till the date of payment made by the petitioner-Bank. The petitioner being aggrieved by the order of the Controlling Authority filed appeals under Section 7 Sub-Section 7 of the Payment of Gratuity Act 1972, before the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Ajmer. The petitioner being under a legal obligation deposited the difference of the amount to the Government before filing the appeals. The Appellate Authority partly allowed the appeals with a direction to pay lesser amount along with simple (31 of 83) [CW-7359/2019] interest at the rate of 10% per month with effect from 01.12.2017 only on the ground of the ratio of the monthly addition of gratuity after completion of 30 years while upholding the broader issue laid down by the Controlling Authority. The bank officers have also made cross-objections against the Appellate Authority's order in certain writ petitions whereby the calculations as per Clause 72(3) of the regulation have been made and reduced by the Appellate Authority and seeking of counting 30 days + 15 days i.e. one and a half months' salary for the basic computation.

22. In view of the above, the writ petitions are allowed. The impugned orders passed by the Appellate Authority are quashed and set aside and the orders passed by the Controlling Authority in the case of the contesting respondents are restored. Accordingly, the petitioner Bank is found not liable to pay any further amount towards gratuity to the contesting respondents as they admittedly received the amount of Rs.10,00,000/- from the petitioner Bank immediately upon their superannuation." This Court is of the opinion that the judgment in Madhyanchal Gramin Bank (supra) rendered by the Hon'ble Madhya Pradesh High Court and upheld by the Hon'ble Apex Court is the correct view and also binding upon this Court on count of the same having been upheld by the Hon'ble Apex Court. Moreover, the Regulations of 2010 clearly define in Clause 2(1)(i) that emoluments means aggregate of salary and allowances and in Clause 2(1)(m) pay means basic pay drawn per month by the officer

or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these Regulations. As per the Clause 72(1) of the Regulations, for the purpose of gratuity, an officer or employee shall be eligible either as per the provision of Payment of Gratuity Act, 1972 or as per the Sub-Regulation (2), whichever is higher and thus, for the beneficial legislation of a welfare law, the benevolent connotation ought to have been accepted by this Court. There is no reason why this Court should take a different view than the one taken by the Hon'ble Madhya Pradesh High Court and affirmed by the Hon'ble Apex Court. The cross-objections made by the Officers do not warrant any interference by this Court because on a bare reading (82 of 83) [CW-7359/2019] of Clause 72(3) of the Regulations, it is clear that the Statute required the petitioner to pay half month's pay for each completed year of service beyond 30 years. Clause 72(3) of the Regulations reads as follows:-

> *"(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:*
>
> *Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:*
>
> *Provided that in respect of an officer the gratuity is payable based on the last pay drawn:*
>
> *Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."*

Regulation 72(3) has an optimum gratuity prescribed upto maximum of 15 months' pay and the concession given is only for the officers who have completed more than 30 years of service by making them entitled for an additional amount of one half of month's pay for each completed year of service beyond 30 years, which is an exception to the maximum of 15 months' pay gratuity rule and thus, the exception has to be read strictly. It is thus clear that the Appellate Authority has rightly arrived at a conclusion that the Officers who have completed more than 30 years of service shall be eligible by way of gratuity for the (83 of 83) [CW-7359/2019] additional amount at the rate of one half month's pay for each completed service beyond 30 years. Thus, once the statute is clear, there is no question of expanding the meaning. It is one thing to choose one of the beneficial conditions amongst two and it is another thing to expand the ambit of benefits which are strictly prescribed. Accordingly, the cross objections are dismissed. In light of the aforementioned observations, the legal issues, facts and grounds raised by the petitioners do not call for interference by this Court. Accordingly, all these writ petitions are dismissed and the orders of the Appellate Authority are upheld. The consequential benefits shall be released to the respondent officers within a period of three months starting from 1st December, 2020. All pending applications stand dismissed accordingly. All the interim orders stand vacated."

18. The judgment of the Rajasthan High Court has been upheld by the Hon'ble Supreme Court.

19. In the facts of the present case, as per proviso to Regulation 46(2) of the SBOSR, the calculation of the gratuity is done. Regulation 46(2) of the SBOSR reads as under:-

"***Gratuity***:

46.(2) The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an officer who ceased to be in service during the period 1-7-1993 to 31-10-1994 shall be with regard to scale of pay as specified in sub-regulation (1) of regulation 4.

Provided also that pay for the purpose of Gratuity of an Officer who ceased to be in service during the period 1-4-1998 to 31-10-1999 shall be with regard to scale of pay as specified in sub-regulation (2) of Regulation 4.

Note:

If the fraction of service beyond completed years of service is 6 months or more, gratuity will be paid pro-rata for the period."

21. The judgment of Rajasthan High Court is applicable to the facts of the present case, which made it clear that for the purpose of calculation of gratuity beyond thirty years, which is an exception, the additional amount at the rate of one half month's pay for each completed year of service beyond 30 years has to be calculated. The Rajasthan High Court has held that the officers, who have completed more than thirty

years of service, shall be eligible by way of gratuity for the additional amount @ one half month's pay for each completed service beyond thirty years. Thus, once the statute is very clear, there is no question of expanding the meaning.

22. In the present case as well, as per the proviso to Regulation 46(2) of the SBOSR, if an officer has completed more than thirty years he is eligible by way of gratuity for an additional amount at the rate of one half month's salary for each completed year of service beyond thirty years. Hence, for the purpose of calculation of gratuity, the salary of 45 days has to be taken into account for each completed year beyond thirty years.

23. In the writ petitions filed by the Canara Bank, counsel for the Bank has referred to the judgment of the Hon'ble Supreme Court in the case of ***Beed District Central Cooperative Bank Ltd. vs. State of Maharashtra and others (2006) 8 SCC 514*** has been referred to on the preposition that when an Scheme of employer has been offered, the workman can opt for the best terms of Statute, and the nature of gratuity scheme and agreement of the parties cannot

be changed subsequently to take better benefits under the Payment of Gratuity Act, 1972.

24. He has further referred to another judgment of the Calcutta High Court in ***Paschim Banga Gramin Bank and others vs. Chinmay Majumdar & others (F.M.A. 657 of 2020,*** decided on 04.02.2021***)***, wherein the Calcutta High Court has held that once the employee has accepted the terms and conditions of the Regulations for the purpose of definition of the word 'pay' and calculation of gratuity, then they are restrained from seeking modification of definition of the word 'pay' and mode of calculation of gratuity.

25. He further states that in this judgment, the respondents were claiming the benefit of Dearness Pay to be treated as part of pay. However, the High Court allowed the appeal filed by the Bank and restricted the meaning of the words as per the Regulations of the Bank. The Regulation made a clear distinction between an officer and an employee and in the matter of calculation of gratuity. Regarding the employees, the 'basic pay' included only allowances and not 'dearness allowance' and the appeal of the Bank was allowed.

26. In the present case, as per the impugned order dated 17th December, 2021 (Annexure-4), the Appellate Authority had partly allowed the Appeal of Shri Babu Ram Kashyap by **including Basic Pay and DA for the purpose of calculation of gratuity and awarded 5% interest**.

27. In the judgment of the Hon'ble Supreme Court in the ***Regional Provident Fund Commissioner (II) W.B.*** (supra), while dealing with the employees of the Bank, it has been held that the definition of 'pay' was an inclusive definition, which means that the Basic Pay not only includes stagnation increment but also other component of the Basic Pay, i.e. the Special Allowance. Similarly, the Madhya Pradesh High Court in ***Madhyanchal Gramin Bank and others*** (supra) and the Kerala High Court in ***Muralee Mohanan K.T. and others*** (supra) have held that exclusion of Special Allowances payable to the bank employees / officers for calculating gratuity was not correct, and the petitioners were held entitled to pension in terms of the Pension Regulations by taking into account the Special Allowances.

28. In the present case, as per the Regulations of the Bank, the definition of '*emoluments*' is in Regulation 3(e), which reads as under:-

> "e) "Emoluments" means the aggregate of salary and allowances if any."

29. The definitions of words 'pay' and 'salary' are given in Regulation 3(k) and Regulation 3(l) of the Regulations of the Bank respectively, which read as under:-

> "k) "Pay' means basic pay including stagnation increment.
>
> l) "Salary" means the aggregate of the pay and dearness allowance."

30. Applying the ratio of the above said judgments, the definition of 'pay' is inclusive of special allowances, emoluments, dearness allowance and stagnation increments. Hence, the petitioners (employees) are entitled to include the Special Allowances as part of Pay for the purpose of calculation of gratuity by including Dearness Allowance as well.

31. The second ground taken by the writ petitioner is that the payment of interest could not be reduced from 10% to 5%. Even on this aspect, the

Hon'ble Supreme Court in ***Y.K. Sigla vs. Punjab National Bank & Ors. (Civil Appeal No. 9087 of 2012,*** decided on 14.12.2012) and ***D.D. Tiwari vs. Uttar Haryana Bizli Vitran Nigam Ltd. (Civil Appeal No. 7113 of 2014*)** and ***Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota vs. Shukla & Brothers (2010) 4 SCC 785*,** has consistently held that the rate of interest cannot be reduced once it was granted by the prevalent rules of banking. Hence, in the present case, the petitioners (employees) are entitled for interest at the rate of 7%.

32. The judgment, referred to by the counsel for the Canara Bank, which is ***Beed District Central Cooperative Bank Ltd. vs. State of Maharashtra and others (2006) 8 SCC 514,*** will not be applicable to the facts of the present case as in that case the Supreme Court was not examining the definitions of special allowances, emoluments, pay and salary of the Bank employees. It was examining the option exercised by an employee of the Bank. The Hon'ble Supreme Court was examining the provisions of the Banking Regulations, which had been opted by the employee at

the time of joining the Cooperative Bank. It was held therein that the employees, thereafter, could not claim the benefit of calculation of gratuity under the Payment of Gratuity Act, 1972.

33. The Canara Bank, in the present case, is bound by their Regulations for the purpose of calculation of gratuity and that is not being disputed by the Bank employees.

34. The judgment of the Calcutta High Court in ***Paschim Banga Gramin Bank and others vs. Chinmay Majumdar & others (F.M.A. 657 of 2020,*** decided on 04.02.2021***)*** cannot be made applicable in the facts of the present case as the Calcutta High Court in that case was dealing with the definition of 'pay' as per the Regulations with respect to officers and employees in the matter of calculation of gratuity and it was held that once the employee had accepted the entitlement under the Regulations, in that case, they could not claim the benefit of definition of 'pay' which was applicable to officers. Even this judgment is not applicable as in this judgment, the Calcutta High Court was not examining the definition of 'pay' for the purpose of calculation of gratuity and this aspect has

been considered in detail in the judgment of the Hon'ble Supreme Court in ***The Regional Provident Fund Commissioner (II) W.B. vs. Vivekanand Vidhya Mandir & Ors. (Civil Appeal No. 6221 of 2011,*** decided on 28.02.2019), in the judgment of the Madhya Pradesh High Court in ***Madhyanchal Gramin Bank and others vs. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018***, decided on 26.02.2019), the SLP against which was dismissed by the Supreme Court, and in the judgment of the Kerala High Court in ***Muralee Mohanan K.T. and others vs. Corporation Bank and others (WP (C) No. 32386 of 2015 (W)***, decided on 15.10.2019).

35. All the writ petitions, filed by the employees, are being allowed, and a direction is given to the Bank to recalculate their gratuity after calculating the pay, including Dearness Allowance and emoluments, along with 7% interest. All the writ petitions filed by the Canara Bank are dismissed.

RITU BAHRI, C.J.

RAKESH THAPLIYAL, J.

Dt: 29th April, 2024
Rathour