$~113 to 116

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ W.P.(C) 5942/2018 & C.M. APPL.36630/2022

RAGHUNATH SINGH AND ORS. .....Petitioners

Through: Mr. Kamlesh Kumar Mishra and Mr. Naved Khan, Advocates.

Versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Varun Pratap, Mr. Ranjeev Khatana and Mr. Moulik Khurana, Advocates for UOI.

Mr. Sanjay R. Hegde, Senior Advocate with Mr. Anil Mittal, Mr. Shaurya Mittal, Mr. Atul Chauhan, Mr. Visesh Kalra, Mr. Shahrukh Ali and Mr. Ankit Tiwari, Advocates for R-3 and 4/CEL.

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\+ W.P.(C) 11790/2019

PRASANNA KUMARI .....Petitioner

Through: Mr. Kamlesh Kumar Mishra and Mr. Naved Khan, Advocates.

Versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Ravi Prakash, CGSC for UOI.

Ms. Shiva Lakshmi, CGSC with Mr. T. Hari Hara Sudhan, Advocate for UOI.

Mr. Sanjay R. Hegde, Senior Advocate with Mr. Anil Mittal, Mr. Shaurya Mittal, Mr. Atul Chauhan, Mr. Visesh Kalra, Mr. Shahrukh Ali and Mr. Ankit Tiwari, Advocates for R-3 and 4/CEL. with Mr. Bheem Singh.

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\+ W.P.(C) 980/2019 & CM APPL. 2063/2021, 31388/2021

MAHARAJ SINGH AND ORS. .....Petitioners

Through: Mr. Kamlesh Kumar Mishra and Mr. Naved Khan, Advocates.

Versus

UNION OF INDIA AND ORS. .....Respondents
Through: Mr. T.P. Singh, Senior Central Government Counsel for R-1, R-2 and R-5.
Mr. Sanjay R. Hegde, Senior Advocate with Mr. Anil Mittal, Mr. Shaurya Mittal, Mr. Atul Chauhan, Mr. Visesh Kalra, Mr. Shahrukh Ali and Mr. Ankit Tiwari, Advocates for R-3 and 4/CEL. with Mr. Bheem Singh.

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\+ W.P.(C) 13132/2022 & C.M. APPL.15216/2023

RAJESH KUMAR JAIN .....Petitioner
Through: Mr. Kamlesh Kumar Mishra and Mr. Naved Khan, Advocates.

Versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Ravi Prakash, CGSC for UOI.
Ms. Shiva Lakshmi, CGSC with Mr. T. Hari Hara Sudhan, Advocate for UOI.
Mr. Sanjay R. Hegde, Senior Advocate with Mr. Anil Mittal, Mr. Shaurya Mittal, Mr. Atul Chauhan, Mr. Visesh Kalra, Mr. Shahrukh Ali and Mr. Ankit Tiwari, Advocates for R-3 and 4/CEL. with Mr. Bheem Singh.

**CORAM:**
**HON'BLE MS. JUSTICE JYOTI SINGH**

**O R D E R**

**% 17.09.2024**

1. These writ petitions have been filed by the Petitioners under Article 226 of the Constitution of India for a direction to Respondents No. 3 and 4/ Central Electronics Ltd. (‘CEL’) to pay to the Petitioners enhanced gratuity amount of Rs.20 lacs with interest in terms of O.M. dated 03.08.2017 issued by Department of Public Enterprises (‘DPE’) and provisions of Payment of Gratuity Act, 1972 (‘1972 Act’) as amended on 29.03.2018 as well as in

terms of judgment of High Court of Uttarakhand at Nainital in a batch of petitions dated 13.09.2019 against which SLPs filed before the Supreme Court were dismissed. Since these writ petitions involve common questions of law, they were heard together and are being disposed by this common order.

2. Factual matrix emerging from reading of the writ petitions is that Petitioners are employees of CEL who retired after rendering decades of service on different dates after 01.01.2017 and before 29.03.2018. 1972 Act was enacted on 16.09.1972 as a welfare legislation and envisages payment of lump sum amount to an employee at the time of retirement in view of the years of service rendered by the employee with the concerned employer/establishment. Under Section 4(3) of 1972 Act, the amount of Gratuity is to be paid as per the ceiling limit notified from time to time by the Central Government. The 1972 Act admittedly applies to employees of CEL. On 24.05.2010, the 1972 Act was amended by the Payment of Gratuity (Amendment) Act, 2010 and the limit of Gratuity payable was enhanced from Rs.3.5 lakhs to Rs.10 lakhs w.e.f. 24.05.2010.

3. On 19.11.2015, Report of the 7$^{th}$ CPC was submitted to the Central Government wherein number of recommendations were made with regard to the pay structures, retiral benefits etc. of the Central Government employees. In line with the recommendations, the Central Government decided to review and revise the existing structure of salary and emoluments of employees working as Executives in various Central Public Sector Enterprises ('CPSEs') and in this view, appointed 3$^{rd}$ Pay Revision Committee (PRC) on 09.06.2016 headed by Justice Satish Chandra (Retd.) to consider the 7$^{th}$ CPC recommendations.

4. Government of India issued an O.M. dated 04.08.2016 vide which various modifications were made qua Central Government employees governed by CCS (Pension) Rules, 1972, whereby *inter alia* Gratuity limit was enhanced from Rs.10 lakhs to Rs.20 lakhs retrospectively w.e.f. 01.01.2016. On 21.11.2016, the 3rd PRC submitted its report to the Central Government i.e. Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises and in view of the report, Government issued O.M. dated 03.08.2017 whereby, in addition to revised pay scales, the ceiling of Gratuity of Executives and non-unionised Supervisors of CPSEs was to be raised to Rs.20 lakhs w.e.f. 01.01.2017. Clause 12.1 of the O.M. is as follows: -

> *"12.1 The ceiling of gratuity of the executives and non-unionised supervisors of the CPSEs would be raised from Rs. 10 lakhs to Rs. 20 lakhs with effect from 01.01.2017 and the funding for the entire amount of gratuity would be met from within the ceiling of 30% of BP plus DA. Besides, the ceiling of gratuity shall increase by 25% whenever IDA rises by 50%."*

5. As per Clause 3, the revised pay scales were to be implemented subject to 'affordability' of the concerned PSU and Clause 3 is as follows: -

> *"**3. Affordability:** The revised pay scales would be implemented subject to the condition that the additional financial impact in the year of implementing the revised pay-package for Board level executives, Below Board level executives and Non-Unionized Supervisors should not be more than 20% of the average Profit Before Tax (PBT) of the last three financial years preceding the year of implementation."*

6. By an Office Order dated 21.03.2018, CEL carried out pay revisions of executives w.e.f. 01.01.2017 in terms of Presidential directive received from Ministry of Science and Technology/Respondent No. 1 vide letter dated 15.03.2018 based on guidelines issued by DPE dated 03.08.2017. After the pay revision, executives were paid arrears of wages of 14 months on 31.03.2018. As far as the aspect of gratuity was concerned, CEL

mentioned in the order that the same shall be dealt with as per the amendment in 1972 Act.

7. In the meantime, considering the inflation and wage increase in case of employees in the private sectors, Central Government decided that entitlement to Gratuity should be revised even in respect of employees covered under the 1972 Act and initiated the process for amending the 1972 Act to increase the maximum limit of Gratuity to such an amount as may be notified by the Central Government from time to time and accordingly, Payment of Gratuity (Amendment) Bill, 2018 was passed followed by Notification dated 29.03.2018, enhancing the limit of Gratuity to Rs. 20 lakhs. Respondent No. 2/Department of Scientific and Industrial Research ('DSIR') issued one Request for Proposal dated 07.11.2017 for selection of Asset Valuer for Strategic Disinvestment of CEL and invited bids upto 28.11.2017.

8. It is further averred that the amendment to 1972 Act was notified on 29.03.2018 and was given prospective effect as a result of which employees such as Petitioners who retired after 01.01.2017 and before 29.03.2018 were excluded from the benefit of enhanced gratuity. Petitioners sent a written representation on 09.04.2018 to all the Respondents aggrieved by their exclusion. On 24.04.2018, CEL issued a letter stating that payment of enhanced gratuity of Rs.20 lacs will be effective from 29.03.2018, which led to filing of these writ petitions.

9. Common contentions of the Petitioners in the writ petitions are that Respondents have failed to comply with the directive in the DPE O.M. dated 03.08.2017, for pay revision of the executives of CPSEs, after accepting the 3$^{rd}$ PRC report, according to which, maximum gratuity payable stands enhanced from Rs.10 lacs to Rs. 20 lacs w.e.f. 01.01.2017. While issuing

Office Order dated 21.03.2018, Respondents have erroneously carved out an exception with respect to gratuity leading to a situation where those executives retiring between 01.01.2017 and 28.03.2018 have been deprived of their valuable right to receive enhanced gratuity with no justifiable or plausible reason to exclude them.

10. It is further argued that Petitioners have retired after dedicatedly serving CEL for decades without a blemish and cannot be arbitrarily denied benefit of enhancement of gratuity which is a reward for good, efficient and faithful service rendered by an employee for long years and as held by the Supreme Court in ***Som Prakash Rekhi v. Union of India and Another, (1981) 1 SCC 449***, welfare benefits such as pension, provident fund, gratuity etc. are in fulfilment of directive principles. In ***State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another, (2013) 12 SCC 210***, the Supreme Court has held that pension and gratuity are not bounty but property of an employee under Article 300-A of the Constitution of India and that attempt of an employer to take away a part of gratuity or pension without any statutory provision under umbrage of administrative Instruction cannot be countenanced. It is urged that Petitioners are entitled to receive better terms of gratuity under DPE Guidelines as in terms of Section 4(5) of 1972 Act.

11. By virtue of Clause 12 of O.M. dated 03.08.2017 issued by the Central Government, CEL is bound to enhance the gratuity upto the ceiling limit of Rs.20 lakhs w.e.f. 01.01.2017. Petitioners cannot be deprived of the enhanced Gratuity in the garb of 'affordability' stipulated in the Clarificatory O.M. dated 10.07.2018 in view of the fact that CEL has no financial crunch and in fact, implemented the revised pay scales under the same O.M. It is ironical that CEL had enough 'affordability' for 10% hike in

salary, against 5% vide Clause 3(ii) of O.M. dated 03.08.2017 as well as for enhancement in various perks but takes the defence of financial crunch only for giving enhanced gratuity to the Petitioners. 100% shares of CEL are owned and controlled by the Government of India. CEL has been a profit-making concern in the last 8 years which is reflected from its financial statements in the two years preceding the filing of the writ petitions. All similarly placed Public Sector Undertakings such as Indian Oil Corporation, National Hydroelectric Power Corporation Limited, Bharat Petroleum Corporation Limited, National Seeds Corporation Limited and even Reserve Bank of India have paid enhanced Gratuity to their employees w.e.f. 01.01.2017. It is a settled law that Gratuity is not the bounty of the State and Courts have repeatedly held that retiral and terminal benefits of an employee must be released without any delay. Relying on the judgment of the Uttarakhand High Court in ***Nawab Khan v. Union of India & Others, Writ Petition (M/S) No. 891/2016*** and connected matters decided on 13.09.2019, it is submitted that while dealing with enhancement of gratuity upto Rs.10 lacs w.e.f. 01.01.2007, the High Court after examining provisions of the 1972 Act and the DPE O.M. in question held the Petitioners therein entitled to the enhanced gratuity observing that if the public sector enterprise was in a financial health to enhance the pay scales of its employees, it was financially stable to bear the burden of additional expenditure and could not deny the benefit of gratuity on the sole ground that it was in a bad financial health and that the judgment squarely covers the case of the Petitioners herein.

12. Learned Senior Counsel appearing for CEL, *per contra,* submits that gratuity with enhanced ceiling of Rs.20 lacs has been paid by CEL to its employees who retired, resigned, died or were disabled for any reason on or

after 29.03.2018 as per the Presidential directive and amendment in sub-Section (3) of Section 4 of 1972 Act whereby ceiling was enhanced to Rs.20 lacs. By O.M. dated 10.07.2018, DPE has clarified that it is not mandatory to pay enhanced gratuity before the cut-off date of 29.03.2018 and for the period between 01.01.2017 to 28.03.2018, concerned CPSEs are empowered to pay gratuity with enhanced ceiling subject to their 'affordability' in terms of DPE O.M. dated 03.08.2017. It is further argued that implementation of pay revision which includes enhanced gratuity is subject to 'affordability' as defined under Clause 3 of O.M. dated 03.08.2017, which provides that pay revision will be implemented only if additional financial impact in the year of implementing the revised pay package does not go beyond 20% of average Profit before Tax (PBT) of last 3 Financial Years, preceding the year of implementation. If the concerned CPSE does not have the required affordability, pay revision need not be implemented at all. However, an exception to the above rule has been carved out in Clause 3 itself regarding the 'Fitment Benefit' to the effect that even if the concerned CPSE is not in a position to afford, Fitment Benefit would be provided unless the additional financial impact goes beyond 40% of average PBT of last 3 Financial Years. Thus, the discretion to examine the affordability, according to Mr. Hegde, learned Senior Counsel is inherent in the amendment to the Act.

13. Elaborating on the financial health of CEL, Mr. Hegde draws the attention of the Court to a specific filed in this behalf wherein it is stated that 20% of average PBT of last 3 Financial Years of CEL i.e. 2014-15, 2015-16 and 2016-17 preceding the year of implementation comes to Rs. 247.17 lacs and the additional financial impact of implementing pay revision for 15 months i.e. 01.01.2017 to 31.03.2018 comes to Rs.311.59 lacs, which is 25% of average PBT of preceding three Financial Years. It is explained that

additional financial impact of Rs.311.59 lacs was achieved without considering the enhanced gratuity and by considering the Fitment Benefit of 10% only with perks at the rate 5% of Basic Pay only, whereas O.M. dated 03.08.2017 allows perks upto ceiling of 35% of Basic Pay. Therefore, if CEL would have implemented the pay revision in its entirety, the additional financial impact would have reached much beyond 20% of average PBT and to that extent CEL would not have been in a position to implement pay revision at all.

14. Mr. Hegde further states that the Board of Directors of CEL, vide resolution dated 12.09.2017 approved the implementation of pay revision as per the guidelines of O.M. dated 03.08.2017 and keeping in view the affordability of CEL and additional financial impact on it, it was decided to give Fitment Benefit of 10% only with perks and allowances under cafeteria approach at 5% of Basic Pay and payment of Gratuity at enhanced ceiling of Rs 20 lakhs was to operate only from the notified date. By letter dated 15.02.2018, Ministry of Science and Technology asked CEL to submit the revised proposal adhering to Clause 3(iii) of OM dated 03.08.2017 regarding stipulation that if the additional financial impact, after allowing full/part fitment, exceeds 20% of average PBT, then Performance Related Pay (PRP) payout/allowances should be reduced so as to restrict the impact of pay revision within 20%. Thus, even the Ministry accepted the proposal of CEL to pay enhanced Gratuity post 29.03.2018. By a letter dated 19.02.2018, CEL submitted its revised additional financial impact and removed the PRP for the year 2016-2017, which amounted to Rs 80 lakhs and hence the additional financial impact of pay revision stood at Rs 247.15 lakhs, which was within the 20% of average PBT of last 3 years, i.e., Rs 247.17 lakhs.

15. Mr. Hegde strenuously argues that insofar as the claim of non-executives is concerned, the same is barred by estoppel as they have entered into a Wage Revision Memorandum of Understanding dated 18.07.2018, through the Union with CEL wherein they have wilfully agreed under clause 15.0 that the ceiling of Gratuity for would be enhanced from Rs 10 lakhs to Rs 20 lakhs with effect from 29.03.2018 and in this context he draws the attention of the Court to the Memorandum which is filed on record.

16. It is further contended that the entire case of the Petitioners is based on DPE O.M. dated 03.08.2017, which provides for enhancement of Gratuity to executives and non-unionised Supervisors of CPSEs. In fact, the said O.M. having been issued by DPE in relation to CPSEs did not take note of the fact that Gratuity in respect of CPSEs employees is governed by 1972 Act and until amendment takes place in the said Act, directions issued by DPE will be only recommendatory and not mandatory. In fact, realising this position, DPE itself issued a Clarificatory O.M. dated 10.07.2018 making payment of Gratuity subject to affordability of the CPSEs concerned for the period 01.01.2017 to 28.03.2018, since on or after 29.03.2018 payment of enhanced Gratuity is mandatory in light of the amendment to 1972 Act.

17. After an extensive hearing, at this stage, Mr. Kamlesh Kumar Mishra, learned counsel for the Petitioners submits that no doubt a detailed affidavit has been filed by CEL bringing forth the reason for denying enhanced gratuity to the Petitioners in the wake of its financial health taking refuge under the affordability clause stipulated in O.M. dated 03.08.2017, however, none of these reasons find mention in the impugned orders rejecting the representations of the Petitioners made from time to time. Moreover, case of the Petitioners is covered by the judgment of the High Court of Uttarakhand in ***Nawab Khan (Supra)***, wherein it is held that when an organisation is able

to discharge its liability of pay revision, its financial health is stable and gratuity which is not a bounty of the State cannot be denied on this score. He submits that over a period of time, even otherwise, there has been change in the financial condition of CEL and therefore without entering into merits, these writ petitions be disposed of permitting the Petitioners to make a comprehensive representations to CEL with a direction to the said Respondent to reconsider the issue in light of provisions of 1972 Act, judgment of the High Court of Uttarakhand in ***Nawab Khan (Supra)*** and the primordial contention of the Petitioners that having implemented the wage revision with enhancement in allowances etc., CEL has the financial viability to pay gratuity to the Petitioners who retired post 01.01.2017 but before 29.03.2018.

18. In view of the limited relief now sought by the Petitioners and without entering into the merits of the *inter se* disputes, these writ petitions are disposed of leaving it open to the Petitioners to make a comprehensive representation(s) to CEL for reconsideration of the decision denying enhanced gratuity of Rs.20 lacs to the Petitioners in light of the submissions that may be made in the said representations and keeping in backdrop the judgment of the High Court of Uttarakhand in ***Nawab Khan (Supra)*** which was upheld by the Supreme Court. As and when the representation(s) are received, the same shall be decided by CEL within a period of 3 months from the date of receipt and a reasoned and speaking order shall be passed thereon. Needless to state Petitioners will be at liberty to take recourse to legal remedies in case of any surviving grievance.

19. Pending applications also stands disposed of.

**JYOTI SINGH, J**

**SEPTEMBER 17, 2024/shivam**