

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul), J.

WPA 12532 of 2025

UCO Bank
vs.
Union of India & Ors.

For the Petitioner : Mr. Anniruddha Saha Roy,
Mr. Sourjya Roy.

For the Respondent No. 4 : Mr. Subhas Chandra Sarkar.

Hearing concluded on : 22.07.2025

Judgment on : 04.08.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the order dated 31.10.2023 passed by the respondent no. 2, the Assistant Labour Commissioner (Central), Kolkata and the Controlling Authority under the Payment of Gratuity Act, 1972 and further the order dated 17.03.2025 passed by respondent no. 3, the Deputy Chief Labour Commissioner (Central) Kolkata and the Appellate Authority under the Payment of Gratuity Act, 1972.

2. The petitioner's case is that it is a banking company and a nationalized bank operating within India.
3. The petitioner states that the employee being the respondent no. 4 herein joined the service of the petitioner Bank on 01.10.1980 and superannuated on 31.07.2016 after serving for a period of 34 years and 09 months and 30 days.
4. It is further stated that the service of the respondent No. 4 was governed by the UCO Bank (Officers') Service Regulation, 1979 and upon superannuation the respondent No. 4 was paid gratuity in terms of the said Regulations to the tune of Rs. 11,48,106.66/-. It is further stated that the ceiling limit under the Payment of Gratuity Act, 1972 as on 31.07.2016 was Rs. 10 lakhs. Therefore, the respondent No. 4 was paid gratuity in better terms than that of the Payment of Gratuity Act, 1972.
5. The respondent No. 4 accepted such gratuity without any demur or reservations whatsoever.
6. The respondent No. 4, after a lapse of about 5 years from the date of his retirement applied for additional gratuity before the Bank in Form-I dated 31.08.2021, claiming gratuity to the tune of Rs. 15,01,038 and ultimately filed a claim before the respondent No. 2 in Form-N dated 21.09.2021.
7. The respondent no. 2 being the Controlling Authority, on hearing the parties determined the gratuity as per OSR which is as follows:-

“DETERMINATION OF GRATUITY AS PER OSR

Through discussion, in a nutshell, it is apparent that the calculation of the gratuity for service rendered by the applicant in the opponent's establishment should be based on the last salary drawn, including DA and special allowance. Hence, the determination of gratuity is given below.

1. Date of appointment: 01-10-1980
2. Date of superannuation: 31-07-2016
3. Length of service rendered: 34 Years, 09 months & 30 days.

(i.e. 35 years as per section 4 (2) of the PG Act.)

Last wages drawn.

- a) Basic pay = 64270.00
- b) Dearness Allowance = 26993.40
- c) Fixed Personal Pay (FPP) = 1650.00
- d) Professional Qualification Pay (PQP) = 00.00
- e) Special Allowance = 6427.00
- f) Special Allowance with DA = 2699.34

Total Salary Wages = 102039.74

Gratuity payable as per P.G. Act = 2060417.82

(Last wages drawn x 15/26 x Length of Service)

Subject to maximum limit gratuity payable: = (Ten lakh only)

1. Amount of Gratuity payable as per OSR, 1979

(a) Up to 30 years $(102039.74 \times 15) = 1530596.10$

(b) Above 30 years $(102039.74 / 2 \times 5) = 255099.35$

Total (a+b) = 1785695.45

2. Amount of Gratuity already paid = 1148070.00

3. Differential amount of gratuity to be paid = 637625.45

The issue of the ceiling limit of payable gratuity under the Payment of Gratuity Act does not arise in this case because the applicant has chosen to pay gratuity under the officer's regulations. As a result, the gratuity ceiling will not be applicable because the applicant is entitled to a higher gratuity if the same is found to be higher. The payment of gratuity in officers' regulations shall be made if the aforesaid calculation is higher.

ORDER

*The application is allowed in the circumstances mentioned above and I hereby direct the non-applicant to pay the balance amount of gratuity amounting to Rs.637625.45 to the applicant **Rabi Sankar Dasgupta** within 30 days of receipt of this order under intimation to this Authority.*

Issued under my hand and seal on 31st October 2023.

Sd/-
Assistant Labour Commissioner (Central)”

8. The petitioner then challenged the order dated 31.10.2023 passed by the Controlling Authority.
9. **Vide an order dated 17.03.2025, under challenge, the Appellate Authority** considering the challenge to the order of the Controlling Authority on its own specific findings and calculations came to the following findings:-

“.....To sum up basic of the claimant is calculated as Rs. 1,02,039.74. However, in the OSR, Special allowance and Special allowance with DA is not included while calculating Gratuity.

On going through the OSR 1979, para-1,

1) Pay is defined as basic pay inclusive of stagnation increment.

*2) In the Memorandum of Joint Note it is clear that for calculation of gratuity among other retirement benefits, components to be included for calculation are basic pay, stagnation increment, PQP, FPP. **Therefore, the calculation of gratuity as per OSR includes the following components for calculation:-***

1) Basic pay which is inclusive of Stagnation increment,

2) FPP,

3) PQP.

Quantifying the above components, the basic pay derived at for computation of gratuity amount is as below:-

Rs. 64,270/- +Rs. 1650/- +Rs.00.00/- = Rs. 65,920/-

Thus, the Basic pay with components as stated in the OSR is wrongly calculated by the Controlling Authority. The Basic pay derived at for Payment of Gratuity is thus Rs. 65,920/-. Therefore, the calculation of gratuity as per OSR keeping in view the components allowed as per the OSR is as below:-

Upto 30 years:- Rs. 65,920 X 15= Rs. 9,88,800/-

*For 5 years of additional service beyond 30 years:-
Rs. 65,920 X 1.5 X 5 = 4,94,400/-*

*Therefore, total gratuity payable:- Rs. 9,88,800/- +
Rs. 4,94,400/- =Rs. 14,83,200/-*

As per the OSR the employee is entitled to 15 days salary for 30 years of service and for the years of service beyond 30 years, he is entitled to additional 15 days of salary per year of work.

If interpreted in normal layman language the amount of gratuity payable to an officer shall be one month pay for every completed year of service subject to a maximum of 15 months of pay. In other words payment up to 30 years is the same as calculation of gratuity as per Payment of Gratuity Act i.e. 15 day salary per year of work.

It is clear that the OSR was drafted for giving a better gratuity benefits to the claimant in comparison to the Payment of Gratuity Act. Therefore, when the OSR has specified that an officer having completed more than 30 years of services shall be eligible for Gratuity for an additional amount @ 1/2 of a month's pay for each completed years of service beyond 30 years. It clearly indicate for an addition to the one month's pay to be given to an Officer per year of work for which first 30 years irrespective of the restriction of 15 months pay as gratuity, 15 days salary will be added towards calculation of gratuity in case of the officer who has worked beyond 30 years. This calculation is to be made for the year in which

the officer has served in the organization beyond 30 years. This is the logic which restricts the calculation of OSR from the calculation of Payment of Gratuity as per the Payment of Gratuity Act which says that for the each year of service beyond 30 years the calculation shall be made by giving gratuity @ 1 & 1/2 month per year work beyond 30 years. Hence the calculation of the gratuity as per OSR for the claimant Shri Rabi Sankar Dasgupta is as given below:-

Upto 30 years:-Rs. 65,920 X 15 = Rs. 9,88,800/-

For 5 years of additional service beyond 30 years:- Rs. 65,920X 1.5 X 5 = Rs. 4,94,400/-

Therefore, total gratuity payable:-

Rs. 9,88,800/- + Rs. 4,94,400/- = Rs. 14,83,200/-

With regard to the above it is hereby directed that the order of the Controlling Authority be set aside and the payment of Rs. 3,35,130/- be paid in addition to Rs. 11,48,070/- (rounded off figure) already paid to the claimant Shri Rabi Sankar Dasgupta within 30 days of receipt of this order under intimation to this Authority.

This is my order on this day of 17th day of March, 2025.

***Sd/-
Dy. Chief Labour Commissioner (Central)
Kolkata and Appellate Authority under
the Payment of Gratuity Act, 1972.”***

- 10.** The appeal was preferred by the petitioner/Bank herein being dissatisfied with the order of the Controlling Authority.
- 11.** Admittedly, the petitioner/Bank paid the gratuity as per OSR, which was more than the maximum amount permitted under the act and more beneficial. The only difference in the order under challenge is the mode of calculation of gratuity.

12. On perusal of the orders under challenge and the specific findings of the appellate authority, it appears that the appellate authority rightly calculated the gratuity entitlement of the workman keeping in mind the OSR 1979 and other provisions of the Act. The calculation of the appellate authority is specific, clear and in accordance with law and this Court finds no reason to interfere with the same.
13. **WPA 12532 of 2025 stands dismissed.**
14. The petitioner is directed to make the payment to the workman as directed by the appellate authority within 30 days from the date of communication of this order.
15. Consequently, connected applications, if any, also stand disposed of.
16. Interim order, if any, stands vacated.
17. There will be no order as to costs.
18. Urgent certified photostat copy of this Judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Shampa Dutt (Paul), J.)