

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

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

WPA 15386 of 2025

UCO Bank
vs.
Union of India & Ors.

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

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

Hearing concluded on : 23.07.2025

Judgment on : 04.08.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the order dated 30.11.2023 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 24.03.2025 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 06.10.1964 and superannuated on 20.12.1999 after serving for a period of 35 years 02 months and 15 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. 3,50,000/-. It is further stated that the ceiling limit under the Payment of Gratuity Act, 1972 as on 20.12.1999 was Rs. 3.5 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 22 years from the date of his retirement applied for additional gratuity before the Bank in Form-I dated 22.05.2021, claiming gratuity to the tune of Rs. 1,56,160 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 in the component of pay/wages for the purpose of calculations of gratuity under the Bank's regulation. Hence, the determination of gratuity is considered below as per the revised calculation sheet of gratuity given to the applicant in the month of August 2002 (Ref. No. PER/ER/GF/02/993 dated 19/08/2002).

1. Date of appointment: 06-10-1964
2. Date of superannuation: 20-12-1999
3. Length of service rendered: 35 Years, 02 months & 15 days.

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

4. Last wages drawn

- a) Basic pay = 15760.00
- b) Dearness Allowance = 2996.55
- c) Fixed Personal Pay (FPP) = 380.00
- d) Professional Qualification Pay (PQP) = 360.00

Total (Last Salary/Wages drawn) = 19496.55

Gratuity payable as per P.G. Act = 393680.33

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

Subject to maximum limit gratuity payable as the ceiling limit was 3.5 lakh only at the time of superannuation of the applicant).

5. **Amount of Gratuity payable as per OSR, 1979**

(a) Up to 30 years $(19496.55 \times 15) = 292448.25$

(b) Above 30 years $(19496.55 / 2 \times 5) = 48741.37$

Total (a+b) = 341189.62

6. Amount of Gratuity already paid = 350000.00

7. Differential amount of gratuity to be paid = NIL

In view of above. I am of the opinion that the management/non-applicant has already paid a sum of Rs. 3.5 Lakh towards gratuity to the applicant as such the applicant is not entitled for additional gratuity as claimed in Form-N. Hence, the instant claim application is dismissed.

Issued under my hand and seal on 30th November 2023.

Sd/-
Assistant Labour Commissioner (Central)”

8. Vide an order dated 24.03.2025, under challenge in the appeal preferred, 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. 19496.55. 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. 15,760/- +Rs. 380/- +Rs.360/- = Rs. 16,500/-

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. 16,500/-. 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. 16,500 X 15= Rs. 2,47,500/-

*For 5 years of additional service beyond 30 years:-
Rs. 16,500 X 1.5 X 5 = 1,23,750/-*

*Therefore, total gratuity payable:- Rs. 2,47,500/- +
Rs. 1,23,750/- =Rs. 3,71,250/-*

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 Kumar Sankar Sengupta is as given below:-

Upto 30 years:-Rs. 16,500 X 15 = Rs. 2,47,500/-

For 5 years of additional service beyond 30 years:- Rs. 16,500 X 1.5 X 5 = Rs. 1,23,750/-

Therefore, total gratuity payable:-

Rs. 2,47,500/- + Rs. 1,23,750/- = Rs. 3,71,250/-

With regard to the above it is hereby directed that the order of the Controlling Authority be set aside and the payment of Rs. 21,250/- be paid in addition to Rs. 3,50,000 (rounded off figure) already paid to the claimant Shri Kumar Sankar Sengupta within 30 days of receipt of this order under intimation to this Authority.

This is my order on this day of 24th day of March, 2025.

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

9. Admittedly, the petitioner/Bank paid the maximum amount of gratuity permitted under the act and more beneficial. The only difference in the order under challenge is the mode of calculation of gratuity.
10. 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.
11. **WPA 15386 of 2025 stands dismissed.**

12. 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.
13. Consequently, connected applications, if any, also stand disposed of.
14. Interim order, if any, stands vacated.
15. There will be no order as to costs.
16. 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.)