IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.02.2025	17.03.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.14428 OF 2012
W.P. NOS. 10057 & 10058 OF 2014
AND
M.P. NOS. 1 & 2 OF 2014

W.P. NO.14428 OF 2012

1. C.N.Dayalan
2. E.Duraisamy
3. N.Jayabalan
4. E.Appadurai
5. G.Ramalingam
6. P.Krishnasamy
7. A.Sampath
8. N.Ramalingam
9. K.Balasubramaniyam
10. A.Kannivelu
11. A.Devarajan
12. V.Rajamani
13. K.M.Annamalai
14. V.Periyathambi
15. B.Janakiraman
16. V.K.Kotteswaran
17. P.T.Parasuraman
18. C.R.Kamalanathan
19. C.V.Srinivasan

20. T.R.Murugan
21. A.Perumal
22. V.Chinnasamy
23. D.Govindaraj
24. M.Ponnambalam
25. A.S.Srinivasan
26. K.thiruvenkadam
27. Smt. S.Navaneetham
28. K.S.Srinivasan
29. K.Subramaniyan
30. Smt. G.Varalakshmi
31. K.Kanni Sah
32. M.D.Narayanasami
33. T.P.Gangadharan
34. S.Natarajan
35. Smt. G.Mallika
36. M.R.Kothandam
37. K.Shanmugam
38. D.Ravi
39. D.Krishnan
40. K.Nithyanandan
41. N.Vijayaraghavan
42. Smt. S.Indhumathi
43. A.B.Mani
44. P.R.Bakthan
45. K.Chandrasekaran
46. P.Gopal Reddy
47. C.M.Veeramani
48. K.Vasudevan
49. M.Narayanan
50. D.Srinivasan
51. G.Arulanandam
52. C.Arumugam
53. A.Palani
54. C.P.Jayachandran

55. R.Devarajan
56. Smt. G.Sampooranam
57. Smt. T.Lakshmi
58. S.Deenadayalan
59. Smt. N.Gowri
60. S.Chandrasekaran
61. R.Shanmugam
62. Smt. L.Anusuya
63. K.Alagesan
64. V.Devakumaran
65. G.Kumaravel
66. D.Selvaraj
67. G.Arumugam
68. K.Dharuman
69. D.Manivarman
70. V.Karthikeyan
71. G.Veeraraghavan
72. V.Namasivayam
73. M.Hariharappan
74. Smt. R.Kamini
75. M.B.Natarajan
76. M.Jagadeesan
77. E.Vajravel
78. M.V.Govindasamy
79. M.Paramasivam .. Petitioners

- Vs –

1. The Management of
Kancheepuram Central Co-op. Bank Ltd.
15-G, Chetpet North Street
Kancheepuram 631 501.

2. The Joint Commissioner of Labour Chennai
Appellate Authority under the Payment of

Gratuity Act, 6th Floor, Labour Welfare Board Buildings, Teynampet, Chennai 600 018.

3. The Assistant Commissioner of Labour & Controlling Authority under the Payment of Gratuity Act, 6th Floor, Labour Welfare Board Buildings, Teynampet, Chennai 600 018. .. Respondents

W.P. NO. 10057 OF 2014

The Kancheepuram Central Co-op. Bank Ltd.
Rep. By its General manager
15-G, Sheikpet North Street
Kancheepuram 631 501. .. Petitioner in WP 10057 & 10058/2014

- Vs –

1. The Appellant Authority
(Payment of Gratuity Act)
Joint Commissioner of Labour
6th Floor, DMS Compound
Teynampet, Chennai.

2. The Controlling Authority
(Payment of Gratuity Act)
Asst. Commissioner of Labour
O/o Asst. Commissioner of Labour
2nd Floor, DMS Compound
Teynampet, Chennai. .. RR-1 & 2 in WP 10057 & 10058/2014

3. C.N.Dayalan
4. E.Duraisamy
5. N.Jayabalan
6. E.Appadurai Naidu
7. G.Ramalingam

8. P.Krishnasamy
9. A.Sampath
10. A.Vedarajan
11. V.Periyathambi
12. B.Janakiraman
13. V.K.Kotteeswaran
14. C.V.Srinivasan
15. A.Perumal
16. V.Chinnasamy
17. M.Ponnambalam
18. Smt. S.Navaneetham
19. K.Subramaniyan
20. Smt. G.Varalakshmi
21. M.D.Narayanasami
22. D.Krishnan
23. K.Nithyanandan
24. N.Vijayaraghavan
25. Smt. S.Indhumathi
26. A.B.Mani
27. K.Chandrasekaran
28. C.M.Veeramani
29. K.Vasudevan
30. C.Arumugam
31. A.Palani
32. R.Devarajan
33. Smt. G.Sampooranam
34. Smt. T.Lakshmi
35. R.Shanmugam
36. K.alagesan
37. V.Devakumaran
38. G.Kumaravel
39. D.Selvaraj
40. D.Manivarman
41. V.Karthikeyan
42. V.Namasivayam

43. M.Hariharappan
44. Smt. R.Kamini
45. M.B.Natarajan
46. M.Jagadeesan
47. E.Vajiravel
48. M.V.Govindasamy .. Respondents 3 to 49 in
49. M.Paramasivam WP 10057/2014

1. N.Ramalingam
2. K.Balasubramaniyam
3. A.Kannivelu
4. V.Rajamani
5. M.Annamalai
6. P.T.Parasuraman
7. C.R.Kamalakannan
8. T.R.Murugan
9. D.Govindaraj
10. A.S.Srinivasan
11. K.thiruvenkadam
12. K.Srinivasan
13. K.Kannisah
14. T.P.Gangadharan
15. S.Natarajan
16. Smt. G.Mallika
17. M.R.Kothandam
18. K.Shanmugam
19. D.Ravi
20. P.R.Bakthan
21. P.Gopal Reddy
22. M.Narayanan
23. D.Srinivasan
24. G.Arulanandam
25. C.V.Jayachandran
26. S.Deenadayalan
27. Smt. N.Gowri

28. S.Chandrasekaran
29. Smt. L.Anusuya
30. G.Arumugam
31. K.Dharuman
32. G.Veeraraghavan

.. Respondents 3 to 34 in WP 10058/2014

W.P. No.15528/2012 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the common order dated 25.08.2011 made in PGA Case No.3/2010 to PGA Case No.81 of 2010 on the file of the 2nd respondent and quash the same.

W.P. No.10057 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the impugned order of the 1st respondent dated 25.08.2011 and quash the same in P.G.A. Nos.3 to 9, 13, 16 to 18, 21, 23, 24, 26, 29, 31, 32, 34, 41 to 45, 47, 49, 50, 54, 55, 57 to 59, 63, 65 to 68, 71, 72 and 74 to 81 of 2010 is concerned insofar as directing payment of gratuity without ceiling limit.

W.P. No.10057 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the impugned order of the 1st respondent dated 25.08.2011 and quash the same in P.G.A. Nos.10 to 12, 14, 15, 19, 20, 22, 25, 27, 28, 30, 33, 35 to 40, 46, 48, 51 to 53, 56, 60 to 62, 64, 69, 70 and 71 of 2010 is concerned, insofar as directing payment of gratuity without ceiling limit.

For Petitioners : Mrs. D.Geetha for PP-1, 4, 6, 7, 9, 10, 13, 14, 16, 19, 20, 22, 25, 26, 28, 29, 31, 32, 33, 35 to 43, 46, 48, 50, 51, 54, 58 to 60, 62 to

68, 70, 71 & 73 to 79 in WP No. 14428/12
Mr. T.Sathyamoorthy for PP-2, 3, 5, 8, 11, 12, 15, 17, 18, 21, 23, 24, 27, 30, 34, 44, 45, 47, 49, 52, 52, 55 to 57, 61, 69, 72 in WP No.14428/12
Mrs. G.Thilagavathi, SC, for Mr. R.Gopinath in WP Nos.10057 & 10058/14
Mr. K.Surendaran, AGP for RR-2 & 3 in WP 14428/2012, for RR-1 & 2 in WP 10057 & 10058/14

For Respondents : Mrs. G.Thilagavathi, SC, for Mr. R.Gopinath for R-1 in WP No.14428/12
Ms. D.Geetha for RR-4, 5, 7, 10, 12, 15, 17, 18, 20, 27,28, 30, 31 to 35, 40 & 42 in WP 10057/14 & for RR-3, 6, 8, 9, 11, 17, 22 & 24 in WP No.10058/14
Mr. T.Sathyamoorthy for RR-3, 6, 8, 9, 11, 14 , 16, 21, 23, 2, 25, 29, 36, 37, 39, 41 & 44 to 49 in WP No.10057/14 & for RR-4, 7, 10, 12, 16, 25, 27 to 34 in WP No.10058/14
No Appearance for RR-13, 19, 22, 26, 38 & 43 in WP 10057/2014
No Appearance for RR-20 & 21 in WP 10058/2014
RR-18 & 19 – Not Ready in Notice in WP 10058/2014

COMMON ORDER

The order in and by which the appellate authority had granted certain benefits under the Payment of Gratuity Act to the workmen while negativing a portion of the claim made on the basis of the settlement u/s 12 (3) of the Industrial Dispute Act is assailed by the workmen as well as the Bank by filing the respective petitions challenging that particular portion of the order which has gone against them.

2. The workmen are retired employees of the Bank, who have since retired and have also received their terminal benefits, which was pending the settlement talks relating to wage revision. The Government of Tamil Nadu had appointed a committee to streamline the pay scale and service condition of various categories of staff in the District Central Cooperative Banks in Tamil Nadu and upon receipt of the recommendations and after carefully considering the same, G.O. Ms. No.161, Co-operation, Food, Consumer Protection Department, dated 5.9.1996 was issued streamlining the wage structure. In the said report, one of the

recommendation related to gratuity and for the purpose of calculation of gratuity, it was agreed that 26 days will be reckoned as a month not only for arriving at the pay, but also for calculation of length of service, which recommendation was accepted by the Government.

3. It is the further case of the parties that pursuant to the recommendations, the Bank entered into settlement u/s 12 (3) of the Industrial Disputes Act (for short 'the Act') on 19.3.1997 covering the wages and service conditions of the employees of the Bank and the settlement was given retrospective effect from 1.7.1994 with a duration of 5 years till 30.06.2009 and after 30.6.2009, till such time the settlement is altered/revised by yet another settlement the same to be continued. The said settlement also provided for reckoning 26 days as a month not only for arriving at the pay but also for calculation of length of service, which was mutually agreed between the Bank and the workmen.

4. The workmen, who had attained the age of superannuation between 1.7.1994 and 19.3.1997 requested the Bank to provide them with enhanced

gratuity in terms of the settlement u/s 12 (3) of the Act by reckoning 26 days as one month for the purpose of calculation of length of service. However, without providing any breakup details of the gratuity payable to each of the workman, the Bank deposited a consolidated amount in the respective bank account of the workman. Since the 1st respondent had not paid the requisite gratuity in terms with the terms of the settlement entered u/s 12 (3) of the Act and as the Bank failed to pay the same, the workmen filed the respective petitions before the Controlling Authority under the Payment of Gratuity Act.

5. The Bank, before the Controlling Authority contended that the maximum sum provided for under the Payment of Gratuity Act is only Rs.2,50,000/-, which has been paid and, therefore, no further sum would be payable to the workmen.

6. The Controlling Authority, vide common order dated 7.2.2009, allowed the application filed by the workmen and directed the Bank to pay the balance gratuity in terms of the Settlement entered to us 12 (3) of the Act within a period of 30 days. Aggrieved by the said order, the Bank preferred appeal before the

Appellate Authority assailing the said order and the Appellate Authority, vide common order dated 25.8.2011 allowed the appeal in part by holding that the model by-laws providing for 26 days to be reckoned as a month has not been issued and in the absence of such by-laws the better terms of gratuity as 26 days as a month cannot be implemented and as the terms of agreement relating to gratuity are confusingly worded, the same cannot be interpreted by the Controlling Authority or the Appellate Authority and directed the parties to obtain clarification u/s 36 (A) of the Act, and directed the Bank to pay gratuity as per the Gratuity Act without any ceiling.

7. It is the further averment of the workmen that the recommendation of the Streamlining Committee has already been accepted culminating in the approval of the model by law by the Registrar of Co-operative Societies with a direction to the respective Co-operative Societies to adopt the model by-law. It is the further averment of the workman that the Bank is bound to adopt the model by-law and act upon it and the delay on the part of the Bank cannot be put against the workmen, more so, when the adoption of model by-law is only a procedural formality as the Bank had accepted to provide for better terms of

gratuity in the 12 (3) Settlement and the same is binding on the Bank. It is the further averment of the workmen that once the Bank had entered into the settlement u/s 12 (3) it is bound to honour the same by paying gratuity as per the terms of the settlement and it cannot turn back to the Payment of Gratuity Act (for short 'Gratuity Act') to claim that gratuity is payable only to the extent of Rs.3,50,000/- as stipulated u/s 4 (3) of the Gratuity Act. The settlement has to be implemented in letter in spirit, inclusive of reckoning 26 days as a month and to that extent, the order passed by the Appellate Authority is against the letter and spirit of the 12 (3) Settlement. Therefore, to ventilate their grievance against the said portion of the order, the workmen have filed W.P. No.14228/2012.

8. Countering the aforesaid stand of the workmen, the Bank, in their writ petitions, has averred that the appellate authority left the terms of the settlement open for adjudication and interpretation by the appropriate forum, but, however, proceeded further to extend the benefits of gratuity without reference to the ceiling limit contemplated under the Act. Curiously, the appellate authority has blown both hot and cold by holding on the one hand that

interpretation cannot be given, while on the other hand extending the benefit of higher gratuity under the Gratuity Act.

9. It is the further averment of the Bank that the interpretation of the settlement u/s 12 (3) of the Act is always as per the ceiling limit contemplated under the Gratuity Act and the interpretation given by the workmen before the authority that the beneficial amount of the two between the Settlement and the Gratuity Act would enure to the benefit of the workmen is wholly unsustainable and unreasonable, as it would be nothing but siphoning off the cash reserves of the Bank and would be against the spirit of the Act.

10. It is the further averment of the Bank that merely because that there is an allegation that some of the workmen have been paid more by way of a wrong calculation, the same cannot be equated and claimed by the other workmen herein as the gratuity cannot exceed the ceiling limit contemplated under the Gratuity Act. The direction to pay the gratuity on the basis of the actual years of service rendered without reference to the ceiling limit prescribed under the Gratuity Act is wholly arbitrary, unreasonable and perverse and to that extent the

order passed by the authority, impugned herein, deserves interference and, therefore, claiming the aforesaid relief, the present petitions have been filed.

11. Learned counsel appearing for the respective workmen submitted that when it has been mutually agreed between the Bank and the workmen in the Settlement that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at the pay but also for calculation of length of service on receipt of model by-laws, it is for the bank to immediately codify the by-laws and the act of the Bank in keeping silent without codifying the by-laws cannot be put against the workmen to deny the benefit of higher gratuity by calculating the length of service in consonance with the settlement.

12. It is the further submission of the learned counsel that when the appellate authority had clearly read the 12 (3) Settlement, the authority ought to have directed the Bank to notify the by-laws and provide the gratuity as per the terms of settlement as no interpretation was required once the by-laws is notified. However, erroneously the appellate authority has gone on to hold that the interpretation of the provisions of the Gratuity Act vis-a-vis the terms of

Settlement ought to be decided by the appropriate forum is against the spirit of the labour laws and is nothing but an act to defeat the rights that has accrued to the workmen on the basis of the settlement between them and the Bank.

13. It is the further submission of the learned counsel that the fault of the management in not adopting the by-laws, even though it was accepted by the Registrar of Co-operative societies is nothing but defeating the rights of the innocent workmen as the benefit conferred upon them under a statutory settlement is sought to be negated through the clever tactics adopted by the Bank. When the workmen are entitled to opt for better terms which is available under the settlement or the Gratuity Act, the beneficial option should be passed on to the workmen, as it has been the consistent view of the courts that gratuity is not a bounty, but a benefit conferred on the workmen for the service rendered by them.

14. It is the further submission of the learned counsel that Section 4 (2) of the Gratuity Act provides for calculation of one day pay by dividing the monthly salary by 26. This has been done only to provide better terms of gratuity and it

was agreed in the 12 (3) Settlement), which is valid in accordance with Section 4 (5) of the Gratuity Act and the authority ought to have read the Gratuity Act harmoniously with the settlement and granted the benefit to the workmen. Therefore, the said order to the extent of it not granting the benefit beneficial to the workmen as per the settlement u/s 12 (3) of the Act deserves to be interfered with.

15. Per contra, learned counsel appearing for the Bank submitted that when the Gratuity Act has prescribed a ceiling, the gratuity payable would be as per the ceiling and any settlement arrived at between the parties would be subject to the provisions of the Gratuity Act. When there is a clear prescription that the maximum gratuity payable is only Rs.3,50,000/- as per the Act, any settlement entered into between the Bank and the workmen would be subject to the provisions of the Act.

16. It is the further submission of the learned counsel that the mere fact that some persons have been given higher gratuity due to wrong calculation cannot be the basis to extend the very same error to other as well, as the

payment of gratuity cannot exceed the ceiling limit prescribed under the Gratuity Act.

17. It is the further submission of the learned counsel that even if an interpretation is to be given that the Settlement u/s 12 (3) of the Act prescribing the manner in which gratuity is to be calculated will supercede the provisions of the Gratuity Act, such an interpretation ought to be given only by the appropriate forum and it cannot be deliberated by the authority under the Payment of Gratuity Act.

18. When the authority has held that the interpretation insofar as 26 days of the month to be reckoned as a month and gratuity would be payable as per the settlement has to be interpreted only by the appropriate forum, in the same stretch, the authority ought to have left the issue with regard to the application of better terms between the settlement and the Gratuity Act to the appropriate authority. However, without following the same, the authority had directed payment of gratuity in terms of the settlement, though ceiling is contemplated

under the Gratuity Act, which is unsustainable and unreasonable and, therefore, the said portion of the order deserves interference at the hands of this Court.

19. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the relevant portion of the Settlement u/s 12/3 of the Act as also the relevant provisions of the Payment of Gratuity Act.

20. Two issues fall for consideration in the present petitions, viz.,

i) *Whether gratuity is to be paid to the workmen on the basis of the ceiling limit provided under the Gratuity Act or on the basis of the Settlement entered into u/s 12 (3) of the Act.*

ii) *Whether the workmen are entitled for having the month reckoned as 26 days for the purpose of computing Gratuity in terms of the Settlement entered into u/s 12 (3) of the Act.*

21. Before adverting to answer the aforesaid issues, it is but necessary to look into Section 4 of the Gratuity Act as also the relevant terms of the Settlement, entered into between the Bank and the workmen, which have a bearing on deciding the issue on hand.

22. Section 4 of the Gratuity Act relates to payment of gratuity, which provides the following :-

*"**4. Payment of Gratuity :***

(1) Gratuity shall be payable to an employee on the termination of his employment afterhe 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 :

Provided that the completion of continuous service of five years shall not be necessarywhere 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 shallbe paid to his nominee or, if no nomination has been made, to his heirs, and where anysuch nominees or heirs is a minor, the share of such minor, shall be deposited with thecontrolling authority who shall invest the same for the benefit of such minor in such bankor other financial *institution, as may be prescribed, until such minor attains majority.*

Explanation.- For the purposes of this section, disablement means such disablement asincapacitates an employee for the work which he was capable of performing before theaccident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, theemployer shall pay gratuity to an employee at the rate of fifteen days' wages based on therate of wages last drawn by the employee concerned :

Provided that in the case of a piece-rated employee, daily wages shall be computed on theaverage of the total wages received by him for a period of three months immediatelypreceding the termination of his employment, and, for this purpose, the wages paid forany overtime work shall not be taken into account :

Provided further that in the case of an employee who isemployed in a seasonalestablishment and who is not so employed throughout the year, the employer shall paythe 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 becalculated by dividing the monthly rate of wages last drawn by him by twenty-six andmultiplying the quotient by fifteen.

(3) <u>The amount of gratuity payable to an employee shall not exceed three lakhs and fiftythousand rupees</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 hisdisablement shall be taken to be the wages received by him during that period, and hiswages for the period subsequent to his disablement shall be taken to be the wages as soreduced.

(5) <u>Nothing in this section shall affect the right of an employee to receive better terms ofgratuity 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, wilfulomission or negligence causing any damage or loss to, or destruction of, propertybelonging to the employer, shall be forfeited to the extent of the damage or loss socaused;

(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 disorderlyconduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutesan offence involving moral turpitude, provided that such offence is committed by him inthe course of his employment."

(Emphasis Supplied)

23. A bare reading of sub-section (3) of Section 4 would reveal that the amount of gratuity payable to an employee shall not exceed the amount as notified by the Central Government from time to time. Equally, sub-section (5) of Section 4 of the Act secures the right of an employee to receive better terms of gratuity on the basis of any aware or agreement or contract with the employer.

24. From the above, it is clear that where there is no award or contract or agreement between the employer and the employee, then sub-section (3) of Section 4 would come into play to fix the gratuity payable on the basis of the notification issued by the Central Government, which, according to the parties, at the relevant point of time, was Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only). Therefore, so long as there is no agreement or contract between the parties, then the gratuity payable would be as per the notification of the Central Government.

25. It is the admitted case of the parties that a settlement was arrived at between the workmen and the Bank dated 19.3.1997 with retrospective effect

from 1.7.1994. Therein, in the said settlement, Clause 32 pertained to gratuity, in and by which the workmen and the Bank had agreed on certain mutually accepted terms and for better appreciation, the same is quoted hereunder :-

> *"32. Gratuity :*
>
> *It is mutually agreed that the Bank will continue to implement the Gratuity Linked Insurance Scheme in collaboration with the LIC of India.*
>
> *It is also mutually agreed that for purpose of calculation of gratuity, 26 days will be reckoned as a month not only arriving at pay but also for calculation of length of service on receipt of model by-laws provided for this in accordance with the provisions of the Gratuity Act, 1972."*

26. From the above agreement entered into between the workmen and the Bank, while gratuity will be paid by the insurer on behalf of the Bank, the calculation will be on the basis of the length of service and a month being reckoned as 26 days, which will come into force on receipt of the model by-laws and will be governed by the provisions of the Gratuity Act.

27. Only in this backdrop, the entire issues have arisen, as the Bank relies that it will be guided by the provisions of the Gratuity Act, while the workmen claim that it will be on the basis of the calculation, as is provided in the model by-laws, which will be on the basis of reckoning 26 days as one month.

28. There could be no quarrel with the fact that the settlement had been entered into between the workmen and the Bank having retrospective effect from 1.7.1994. Once a settlement is entered into which provides for payment of gratuity on terms, which have been mutually agreed, sub-section (5) of Section 4 of the Gratuity Act would stand attracted, which clearly prescribes that the employee gets the right to receive the better terms of the gratuity, if available under the award or agreement or contract with the employer or else fall back on to sub-section (3) of Section 4 of the Gratuity Act to receive the maximum gratuity as fixed by the Central Government by notification.

29. Therefore, on a harmonious interpretation of sub-section (5) of Section 4 and clause 32 of the settlement dated 19.3.1997, the right is on the employee

to opt for better gratuity and it does not fall on the head of the employer to determine as to the gratuity that would be entitled for an employee.

30. According to the employee, the better gratuity would be available to the employee on the basis of sub-section (2) of Section 4 of the Gratuity Act, as 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. Therefore, the employee, by applying sub-section (2) to Section (4), if receives a better gratuity than what has been the ceiling limit fixed under sub-section (3) of Section 4, then the employee would be entitled to receive the better gratuity as prescribed under sub-section (2) to Section 4, which is precisely what is provided for in clause 32 of the Settlement, which provides the calculation of gratuity.

31. If really the intention between the parties was that the ceiling limit alone would be payable or upon computation, if amount of gratuity so computed is higher than the ceiling limit, then the amount prescribed in the ceiling limit alone would be payable, then definitely, there would have been a clear

prescription in clause 32 that upon calculation, if gratuity arrived at is beyond the ceiling limit, then the ceiling limit alone would be applicable. However, such is not the case as in clause 32, there is a further prescription that for reckoning a month, 26 days is taken as a month. If the ceiling limit prescribed in sub-section (3) of Section 4 alone would be payable, then there is no scope for any calculation, that too reckoning 26 days as a month.

32. The provisions under Section 4 have to be read harmoniously along with clause 32 of the Settlement, more specifically, sub-section (5) of Section 2 and 5 of Section 4, as that alone will fit in all contingencies relating to payment of gratuity. Further, the Industrial Disputes Act as also the Payment of Gratuity Act are benevolent legislations, which are aimed at safeguarding the interests of the workmen and construction, which is beneficial to the workmen has to be made and the provisions should not be read to the detriment of the workmen. Such being the case, the construction placed by the authority that the workmen would be entitled for calculation of gratuity in terms of clause 32 of the Settlement would alone satisfy all the provisions of the Payment of Gratuity Act and the benevolence in the said Gratuity Act would stand extended to the workmen,

which aspect has been rightly appreciated by the authority while passing the direction with regard to payment of gratuity.

33. Further one other aspect which also requires to be taken into consideration is the fact that sub-section (5) of Section 4 provides for a non obstante provision within Section 4, barring all acts when the application of sub-section (5) comes into play. When the workmen, through sub-section (5) have been provided with the choice to opt for better gratuity in view of the settlement, they could take recourse to sub-section (2) r/w the terms of settlement and the application of sub-section (4) would not come in the way of the workmen from exercising their right to beneficial and better gratuity in terms of the settlement u/s 12 (3) of the Act.

34. The contention of the Bank that the authority has interpreted sub-section (3) and sub-section (5) of Section 4, which is impermissible, is wholly misconceived, as interpretation arises only when there is ambiguity. However, neither in the provisions of the Gratuity Act nor in clause 32 of the Settlement, there is any ambiguity, which requires an interpretation and it is only a

harmonious reading, which had been undertaken by the authority while coming to the conclusion that clause 32 of the Settlement would prevail over sub-section (3) of Section 4 in view of sub-section (5) of Section 4 of the Act, which is the right right manner to read the aforesaid provision and, therefore, the order for payment of gratuity by following clause 32 of the Settlement is perfectly in order and the same does not require any interference. **The first issue is answered accordingly**.

35. Insofar as the 2nd issue is concerned, clause 32 of the Settlement provides that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at pay but also for calculation of length of service on receipt of model by-laws provided for this in accordance with the provisions of the Gratuity Act.

36. Sub-section (2) of Section 4 of the Gratuity Act provides for computation of gratuity to an employee based on the length of service, which shall be fifteen days' wages for every completed year of service or part thereof in excess of six months. Therefore, for the purpose of calculating the gratuity of an

employee, based on the aforesaid settlement, 26 days has to be reckoned as a month for computing the length of service of an employee. There could be no quarrel with the said fact.

36. However, the above computation is attendant on two factors, viz., that firstly it will come into force after receipt of the model by-laws and secondly it will be in accordance with the provisions of the Gratuity Act.

37. Though fixation as to how a month should be reckoned is provided under clause 32, however, it should not be lost sight of that for reckoning a month as 26 days, the same could be given effect to only when the model by-laws are notified. In the absence of the notification of the model by-laws, recourse could be taken only to sub-section (2) of Section 4 of the Gratuity Act, as could be evident from the second limb of clause 32 of the Settlement, which provides that when the model by-laws are notified, it has to be worked out on the basis of the settlement, which would be in accordance with sub-section (2) of Section 4 of the Gratuity Act. Where the model by-laws have not been notified, then the workmen cannot take recourse to the benevolence in clause 32 of the

settlement, but their gratuity would be guided by the provisions of the Gratuity Act, meaning thereby that sub-section (2) of Section 4 of the Act would stand squarely attracted for the purpose of calculation of gratuity.

38. There can be no quarrel that model by-laws are to be provided for by the Bank and the employees would not have any say in the matter, meaning thereby that upon entering into the contract/agreement/settlement with the employee, the Bank is bound to make the model by-laws ready. The Government had accepted the recommendations of the Streamlining Committee with regard to amending the special by-laws of the Bank relating to service conditions of the employees and had issued G.O. Ms. No.212 CF & CP Department dated 4.7.1995 accepting the proposal. The Registrar of Co-operative Societies had also approved the model special by-laws relating to the service conditions of the employees of the co-operative institutions. Once the recommendations for amending the model special by-laws had been accepted by the Government and the model by-laws had been amended and had also been approved by the Registrar of co-operative Societies, it becomes necessary for the Bank to adopt the model by-laws. However, it is to be noted that till date, the model by-laws

have not been notified, meaning thereby, that the model by-laws have not come into force. Such being the case, the first limb of clause 32 of the Settlement is not satisfied and when there is no complete satisfaction, then necessarily, advert has to be made to sub-section (2) of Section 4 of the Gratuity Act for the purpose of computation of gratuity.

39. Further, the authority had held that interpretation as to how the reckoning of a month to be made, whether it should be on the basis of the settlement or should be in terms of the provisions of the by-laws, could be interpreted only by the appropriate forum and not by the authority cannot be found fault with, as in the absence of the by-laws being notified, there is no mechanism in and by which the settlement entered into u/s 12 (3) of the Act could be given effect to.

40. Further, one other aspect which is also required to be taken into consideration is the fact that certain workmen have been extended higher gratuity than what has been given to the workmen herein. Though the Bank claims that it is due to erroneous computation, however, no steps have been

taken by the Bank to recover the same from the said workmen. In this backdrop, it is the claim of the workmen herein that while the said persons have been granted the benefit based on the settlement, however, they have not been given the better benefit for reasons best known.

41. It is to be pointed out that on the basis of Gratuity Linked Insurance Scheme with Life Insurance Corporation of India, gratuity is being paid to the workmen. There is no outflow of monetary consideration from the hands of the Bank and it is only from the insurer, who has undertaken to pay the gratuity.In such a scenario, necessarily, the provisions of the Gratuity Act, more particularly sub-section (2) r/w (5) of Section 4 of the Gratuity Act alone could be invoked by harmoniously reading clause 32 of the Settlement to the extent of extending the better benefit to the workmen as any other interpretation, in the absence of notification of the model by-law, would defeat the very purpose of the settlement u/s 12 (3) of the Act.

42. It is to be pointed out that when the Bank as well as the workmen, with open eyes, have entered into the settlement, both the Bank and workmen ought

to have been clear in the application of the Gratuity Act as Gratuity Act is a benevolent legislation, enacted to provide for monetary consideration in lieu of their satisfactory service upon the age of superannuation. Gratuity is a creation of a statute, which enures on the employee upon certain contingencies, as provided for in sub-section (1) of Section 4 and it is not any benevolent gesture extended by the Bank on the workmen. Such being the case, merely because the Bank has kept silent by not notifying the model by-laws as approved by the Registrar of Co-operative Societies, which the workmen have also not thought of calling upon the Bank for notification, both the workmen and the Bank have to equally shoulder the burden equally and one cannot try to transpose their burden on the shoulder of the other. Therefore, no fault can be found with the order passed by the appellate authority extending the benefit of sub-section (2) of Section 4 of the Act on the workmen by directing the Bank to pay the gratuity over and above ceiling limit as provided for under sub-section (2) of Section 4 of the Act and this Court is in agreement with the same. The 2nd issue is answered accordingly.

42. For the reasons aforesaid, this Court finds no error or perversity in the order passed by the appellate authority, impugned herein, and all the writ petitions are liable to be dismissed confirming the order passed by the appellate authority. Accordingly, all the writ petitions are dismissed confirming the order passed by the appellate authority. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

17.03.2025

Index : Yes / No

GLN

To

1. The Joint Commissioner of Labour Chennai
Appellate Authority under the Payment of
Gratuity Act, 6th Floor, Labour Welfare Board
Buildings, Teynampet, Chennai 600 018.

2. The Assistant Commissioner of Labour &
Controlling Authority under the Payment of
Gratuity Act, 6th Floor, Labour Welfare Board
Buildings, Teynampet, Chennai 600 018.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO. 14428 OF 2012
AND
W.P. NOS. 10057 & 10058 OF 2014

Pronounced on

17.03.2025