IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2025

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THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.25548 of 2023

and

W.M.P.No.24941 of 2023

R.Tara
W/o.G.Srinivasan ... Petitioner

vs.

1. Union of India
Ministry of Labour
Represented by Secretary
Shram Shakti Bhawan, Rafi Marg
New Delhi - 110 001.
2. The Deputy Chief Labour Commissioner (Central)
5th Floor, Shastri Bhawan
Chennai-600 006.
3. The General Manager
State Bank of India
LHO St.Marks Road
Bangalore - 560 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders of the respondent No.2 in G.A.No.46/2022 dated 20.04.2023 and G.A.No.45(15)2019-B4 dated 29.09.2022 and quash the same and consequentially, direct the respondent No.3 to pay the petitioner, the remaining entitled Gratuity amount of Rs.23,83,711/- along with compound interest @ 10% on arrears of Gratuity payable with effect from her date of entitlement @ 01.05.2017 based on the last drawn salary drawn by the petitioner in April 2017 till the date of final settlement.

For Petitioner	:	Mr.G.Srinivasan
For Respondents	:	Dr.D.Simon Senior Central Government Standing Counsel, R1 & R2 Mr.S.Mukesh, for R3

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ORDER

The captioned Writ Petition (hereinafter referred to as "the Writ Petition" or "WP" for the sake of brevity, convenience, and clarity) has been filed seeking issuance of a Writ of Certiorarified Mandamus, to quash the order dated 29.09.2022 passed by the Controlling Authority and Assistant Labour Commissioner (Central), Chennai in G.A. No. 45(15)2019-B4, and the order dated 20.04.2023 passed by the Appellate Authority in G.A. No. 46/2022.

2. By the aforesaid orders, the claim made by the petitioner in Form 'N' under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act, 1972") seeking enhanced payment of gratuity and interest on delayed payment, came to be rejected.

3. The brief facts of the case are as follows:

3.1. The petitioner joined the services of the State Bank of Mysore on 21.07.1984 and retired on 30.04.2017 after opting for Voluntary Retirement under the Voluntary Retirement Scheme (VRS) floated by the Bank. Upon retirement, the petitioner was paid a sum of Rs.10,00,000/- towards gratuity, in addition to other terminal benefits.

3.2. Aggrieved by the limitation of gratuity payment to Rs. 10,00,000/-, the petitioner preferred an application before the Controlling Authority under the provisions of the Act, 1972, seeking a direction to the third respondent to pay the differential gratuity amount as per the applicable service regulations of the Bank.

3.3. The third respondent entered appearance and filed a detailed objection statement contending, *inter alia*, that the petitioner was entitled only to a maximum gratuity of Rs.10,00,000/-, as prescribed under sub-section (3) of Section 4 of the Act, 1972, which represents the ceiling limit notified by the Central Government.

3.4. After affording opportunity of hearing to both parties, the Controlling Authority, by order dated 29.09.2022, dismissed the petitioner's claim holding that the ceiling limit prescribed under Section 4(3) of the Act, 1972, would apply to the petitioner, and hence, the petitioner was not entitled to any amount over and above Rs. 10,00,000/-.

3.5. Aggrieved by the same, the petitioner preferred an appeal before the Appellate Authority, which also came to be dismissed by order dated 20.04.2023. The petitioner has, therefore, approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India.

4. Mr. G. Srinivasan, learned counsel appearing for the petitioner, contended that the service regulations of the third respondent–Bank, namely, the State Bank of Mysore (Payment of Gratuity to Employees) Regulations, 1975 [hereinafter "said Regulations" for the sake of brevity, convenience and clarity], provide for more beneficial terms of gratuity as compared to the provisions of the Act, 1972.

5. He submitted that, in terms of sub-section (5) of Section 4 of the Act, 1972, nothing in the said section shall affect the right of an employee to receive better terms of gratuity under any award, agreement, or contract with the employer. Therefore, the ceiling prescribed under sub-section (3) of Section 4 cannot restrict the gratuity payable to the petitioner, as the Bank's service regulations constitute a more beneficial scheme.

6. In support of his contention, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in ***Y.K. Singla v. Punjab National Bank and Others, Civil Appeal No. 9087 of 2012***, wherein it was held that the ceiling prescribed under Section 4(3) of the Act, 1972, would not restrict payment of higher gratuity if the service conditions or regulations of the employer provide for better terms.

7. Per contra, Mr. S. Mukesh, learned counsel appearing for the third respondent–Bank, submitted that the petitioner's gratuity entitlement was computed strictly in accordance with the Act, 1972, and the relevant Government notifications issued thereunder.

8. He contended that, as per the notification issued by the Ministry of Labour and Employment, Government of India, the maximum gratuity payable under Section 4(3) of the Act, 1972, is restricted to Rs. 10,00,000/- with effect from 24.05.2010, and the said limit was in force as on the date of the petitioner's retirement. Therefore, the Bank rightly limited the gratuity payment to Rs. 10,00,000/-.

9. Learned counsel further submitted that the petitioner had, at the time of retirement, opted to receive gratuity in terms of the Act, 1972, and therefore, cannot subsequently claim higher benefits by invoking sub-section (5) of Section 4 of the Act.

10. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in ***Beed District Central Co-operative Bank Ltd. v. State of Maharashtra and Others, Civil Appeal No. 4327 of 2006,*** wherein it was held that where the employee has received gratuity as per the Act, he cannot subsequently claim higher gratuity under any other scheme, unless expressly reserved.

11. The rival contentions of the parties and the materials available on record have been carefully considered.

12. Admittedly, the petitioner was initially employed with the State Bank of Mysore, which later merged with the State Bank of India. Consequently, the petitioner’s service conditions continued to be governed by the said Regulations, which are in *pari materia* with the provisions of the the Act, 1972, but do not prescribe any ceiling limit on the gratuity payable to the employees.

13. It is pertinent to note that sub-section (2) of Section 4 of the Act, 1972, stipulates that 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.

14. The expression “wages” as amended is defined under Section 2(s) of the Act, 1972, to mean all emoluments earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment, and which are paid or payable to him in cash, including dearness allowance, but excluding any bonus, commission, or other similar payments. However, the respondent-Bank has not carried out any

corresponding amendment to the definition of "wages" or "pay" in its Service Regulations. Nevertheless, in the counter affidavit filed by the Bank, it has been specifically stated that the Bank has adopted the amendments made to the Act 1972, from time to time.

15. Therefore, the mere omission to formally amend the definition of "pay" in the Service Regulations in pari materia with the statutory definition will not disentitle the petitioner from claiming inclusion of dearness allowance within the meaning of "pay" for the purpose of computation of gratuity. The substantive right conferred by the Statute cannot be defeated by the Bank's failure to make a corresponding amendment in its internal regulations.

16. The inclusion of dearness allowance within the definition of wages was introduced by Amending Act 25 of 1984, which came into effect on 01.07.1984. In the present case, it appears that the third respondent–Bank, while calculating the gratuity amount, excluded dearness allowance and other admissible allowances from the computation. This action is contrary to the statutory definition of wages under Section 2(s) of the Act, 1972, as well as to the deemed adoption of the said amendment under the Bank's own regulations.

17. As a result, the amount of gratuity paid to the petitioner stands considerably reduced. The comparative computation of gratuity payable to the petitioner, both under the Act, 1972, and under the said Regulations, has been tabulated by the Controlling Authority in the impugned order, which reads as follows:

Gratuity Calculation:

As per Bank Regulation		***As per Payment of Gratuity Act***	
Entitlements	Rs.P	Entitlements	Rs.
Basic pay	51490.00	Basic Pay	51490.00
Special Pay	Nil	Special Pay	Nil
FPA-Basic	1310.00	FPA	1310.00
PQA-Basic	670.00	FPA-DA	143.00
		PQA	670.00
		PQA-DA	314.23
		DA	24148.81
	53470.00 x 16 (yrs factor)		78076.04 x 32 yrs x 15 / 26
	855520.00		1441404.00
		Maximum payable	1000000.00

18. The payment of gratuity in the present case has been confined to Rs.10,00,000/- on the ground that sub-section (3) of Section 4 of the Act, 1972, prescribes the maximum amount of gratuity payable as notified by the Central Government. However, sub-section (5) of Section 4 of the Act 1972 expressly stipulates that nothing contained in this section shall affect the right of an employee to receive better terms of gratuity under any award, agreement, or contract with the employer.

19. In the instant case, the regulation governing payment of gratuity under the third respondent–Bank does not restrict the maximum gratuity payable to the petitioner, nor does it incorporate the ceiling prescribed under sub-section (3) of Section 4 of the Act 1972. Accordingly, sub-section (3) of Section 4 of the Act 1972 cannot be made applicable to the petitioner.

20. Therefore, the decision relied upon by the learned counsel for the second respondent in ***Beed District Central Cooperative Bank Ltd. v. State of Maharashtra & Others*** is distinguishable on facts. In the said case, it was held that either the contract or the Statute must be given effect to in its entirety, as the provisions of the Act envisage a single self-contained scheme that cannot be selectively applied. Sub-section (5) of Section 4 of the Act 1972 does not contemplate that a workman can simultaneously claim the

benefit of a better contractual term while also invoking certain portions of the statutory scheme.

21. In the present case, the petitioner, at the time of employment, was governed by the regulations of the third respondent–Bank, and he had specifically opted to receive gratuity under those regulations. The Hon'ble Supreme Court in ***Y.K. Singla v. Punjab National Bank & Others (Civil Appeal No. 9087 of 2012)***, at paragraph 20, held that to determine which provision either the Act 1972 or the relevant service regulations would apply to an employee's claim, it is necessary to refer to Section 14 of the Gratuity Act.

22. The Apex Court further ruled that Section 14 leaves no room for doubt that the provisions of the Gratuity Act have an overriding effect over any other enactment. However, where an employee's gratuity is not regulated under the Act, and where superior terms are available under an award, agreement, or regulation, the employee has the statutory right under Section 4(5) to opt for such better terms. The expression "instrument" or "contract having the force of law" must necessarily include the relevant service regulations, such as the 1995 Regulations in that case, which governed payment of gratuity to the employees. Thus, the Supreme Court

clarified that an employee has a statutory choice to be governed by an alternative provision that offers better terms, and such an option is fully protected under the Act.

23. In the light of the principles laid down by the Hon'ble Supreme Court and the decisions referred to above, this Court holds that the petitioner is entitled to the benefit of better terms of gratuity under sub-section (5) of Section 4 of the Act 1972. The authorities concerned, however, have erroneously applied sub-section (3) of Section 4 of the Act 1972. Consequently, this Court is of the considered view that the petitioner is entitled to the benefit of gratuity in accordance with the regulations of the third respondent–Bank. The impugned orders passed by the authorities concerned, therefore, cannot be legally sustained and are liable to be set aside.

24. Accordingly, the captioned WP stands allowed. The impugned orders dated 29.09.2022 passed by the Controlling Authority and the Assistant Labour Commissioner (Central), Chennai, in G.A. No. 45(15)/2019-B4, and dated 20.04.2023 passed by the second respondent in G.A. No. 46/2022, are hereby set aside.

25. It is admitted that the petitioner has already received a sum of Rs.10,00,000/- towards gratuity. However, he is entitled to an additional sum of Rs.4,41,404/-, as computed and admitted by the third respondent–Bank, which is extracted in the order of the Controlling Authority.

26. The third respondent–Bank is directed to pay the said additional amount of Rs.4,41,404/- to the petitioner, together with interest at the rate of 6% per annum from 01.01.2021 until the date of actual realization. The said exercise shall be completed within two months from the date of uploading of this order in the official website of this Court.

27. Consequently, the connected Miscellaneous Petition stands closed. There shall be no order as to costs.

06.11.2025

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-speaking

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To

1. Union of India
   Ministry of Labour
   Reprsented by Secretary
   Shram Shakti Bhawan, Rafi Marg
   New Delhi - 110 001.
2. The Deputy Chief Labour Commissioner (Central)
   5th Floor, Shastri Bhawan
   Chennai-600 006.
3. The General Manager
   State Bank of India
   LHO St.Marks Road, Bangalore - 560 001.

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and W.M.P.No.24941 of 2023

HEMANT CHANDANGOUDAR, J.,

The captioned writ petition is listed today under the cause list caption 'FOR BEING MENTIONED' at the instance of learned counsel for the third respondent.

2. Mr.S.Makesh, learned counsel for the third respondent is before this Court.

3. Learned counsel for third respondent submitted that an error has crept into the appearance portion and paragraph No.7 of the order dated 06.11.2025, in and by which the captioned writ petition was allowed. Learned counsel submits that his name was erroneously typed as Mr.S.Mukesh, instead of Mr.S.Makesh.

4. In the light of above submission, in the appearance portion and in paragraph No.7 of the order dated 06.11.2025, the name ***“Mr.S.Mukesh”*** should be read as ***“Mr.S.Makesh”***.

5. In all other aspects, the order dated 06.11.2025 remains the same. This order will now be uploaded as an 'ADDENDA' to / along with order made by this Court on 06.11.2025 and the Registry is directed to carry out necessary and consequential corrections and issue certified copies accordingly.

23.01.2026

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<u>HEMANT CHANDANGOUDAR, J.,</u>

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W.P.No.25548 of 2023

23.01.2026