**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

105 **CWP-3628-2025 (O&M)**
Date of decision : 28.02.2025

HARBANS SINGH

...... Petitioner

VERSUS

APPELLATE AUTHORITY, PAYMENT OF GRATUITY ACT, 1972 AND OTHERS

...... Respondents

2. **CWP-3648-2025 (O&M)**

SATINDER PAL SINGH

...... Petitioner

VERSUS

APPELLATE AUTHORITY, PAYMENT OF GRATUITY ACT, 1972 AND OTHERS

...... Respondents

3. **CWP-3657-2025 (O&M)**

LEKH RAJ

...... Petitioner

VERSUS

APPELLATE AUTHORITY, PAYMENT OF GRATUITY ACT, 1972 AND OTHERS

4. **CWP-3659-2025 (O&M)**

AJAY KUMAR SHARMA

...... Petitioner

VERSUS

APPELLATE AUTHORITY, PAYMENT OF GRATUITY ACT, 1972 AND OTHERS

...... Respondents

5. **CWP-3667-2025 (O&M)**

PAWAN KUMAR JETHI

...... Petitioner

VERSUS

APPELLATE AUTHORITY, PAYMENT OF GRATUITY ACT, 1972 AND OTHERS

...... Respondents

6. **CWP-5678-2025 (O&M)**

THE CHIEF MANAGING DIRECTOR, CENTRAL BANK OF INDIA AND ANOTHER

...... Petitioners

VERSUS

HARBANS SINGH AND OTHERS

...... Respondents

7. **CWP-5710-2025 (O&M)**

THE CHIEF MANAGING DIRECTOR, CENTRAL BANK OF INDIA AND ANOTHER

...... Petitioners

VERSUS

SATINDER PAL SINGH AND OTHERS

...... Respondents

8. **CWP-5712-2025 (O&M)**

THE CHIEF MANAGING DIRECTOR, CENTRAL BANK OF INDIA AND ANOTHER

...... Petitioners

VERSUS

AJAY KUMAR SHARMA AND OTHERS

...... Respondents

9. **CWP-5713-2025 (O&M)**

THE CHIEF MANAGING DIRECTOR, CENTRAL BANK OF INDIA AND ANOTHER

...... Petitioners

VERSUS

LEKH RAJ AND OTHERS

...... Respondents

10. **CWP-5714 of 2025 (O&M)**

THE CHIEF MANAGING DIRECTOR, CENTRAL BANK OF INDIA AND ANOTHER

...... Petitioners

VERSUS

PAWAN KUMAR JETHI AND OTHERS

...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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Present :- Mr. Sumeet Jain, Advocate with (through VC)
Ms. Nandita Grewal, Advocate
for the petitioners in CWP-3628-2025, CWP-3648-2025, CWP-3657-2025, CWP-3659-2025 and CWP-3667-2025 and for respondents in remaining cases.

Ms. Madhu Dayal, Advocate and
Mr. Prince Pushpinder Rana, Advocate
for the petitioners-Bank in CWP-5678-2025, CWP-5710-2025 CWP-5712-2025, CWP-5713-2025 and CWP-5714 of 2025 and for respondents in remaining cases.

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<u>Harsimran Singh Sethi, J. (Oral)</u>

1. By this common order, ten writ petitions, the details of which have been given in the heading, are being decided as all these petitions involve the same question of law on similar facts and challenge is to the same impugned order.

2. In the present bunch of petitions, the challenge is to the same orders passed by the authorities under the Payment of Gratuity Act, 1972 (hereinafter referred to as '1972 Act'). The petitioners-employees are claiming that their wages have not been assessed correctly while calculating the amount of gratuity which is contrary to the judgment of Hon'ble the Supreme Court of India in ***<u>Civil Appeal No.3355 of 1998 titled 'Indian Bank's Association Vs. Workmen of Syndicate Bank and others' decided on 13.02.2001</u>***, according to which, the commission being drawn by the workmen-Deposit Collectors of bank, is to be treated as a part of the wages

whereas, while passing the order under 1972 Act, the authorities, has not been included commission and only the fall back wages have been taken into account to calculate the entitlement of the Deposit Collectors qua the gratuity, which is arbitrary and illegal. The prayer of the petitioners-workmen is that their gratuity entitlement should be assessed by taking into account the fall back wages as well as the commission which they were getting over and above the fall back wages.

3. Learned counsel for the petitioners-workmen further submits that the petitioners are the Deposit Collectors who are bringing business to the respondent-bank and they are accordingly paid the commission on the said business brought to the bank, and the said commission not being treated as part of their wages as so as to calculate the amount of gratuity, is arbitrary and illegal.

4. Learned counsel for the petitioners submits that keeping in view the definition of wages, as envisaged under the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') commission is a part of wages and the same has to be taken into account for all intents and purposes, including for the computation of gratuity hence, the order passed by the authorities under the 1972, Act by taking into account only the fall back wages of Rs.14,000/- is incorrect and is contrary to the judgment of Hon'ble the Supreme Court of India.

5. Learned counsel for the respondent-Bank submits that once the Deposit Collectors have been paid the commission as per terms and conditions of their appointment as well as the rules governing the bank, their

claim for the gratuity under 1972 Act, is not admissible which fact has been ignored by the authorities while passing the impugned orders and hence, directing the bank to pay gratuity to the petitioners-workmen under 1972 Act by ignoring the rules governing the said aspect, is incorrect and the impugned orders passed in favour of the petitioners-workmen, are liable to be set aside, as the gratuity admissible to the petitioners-workmen under the rules governing the service of the Bank was already paid to them.

6. Learned counsel for the Bank submits that even the fall back wages paid to the workmen are actually a commission and not the minimum wages which is being paid to the Deposit Collectors hence, no gratuity is admissible to be paid to the petitioners-workmen.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The first issue which needs to be decided in the present bunch of petitions is, as to what is the definition of the wages according to which, the gratuity is to be paid to an employee under Payment of Gratuity Act, 1972.

9. It is a conceded fact that the definition of wages as given in Section 2(rr) of 1947 Act is different than the definition of wages as envisaged under the 1972, Act for the grant of gratuity. The Section 2(rr) of the 1947 Act is as under:-

> "*2. (rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-*
> *(i) such allowances (including dearness allowance) as the workman is for*

the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include-

(a) any bonus;

(b)any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;"

10. Further, the definition of wages under Section 2(s) of the 1972 Act is as under:-

> *"**wages**" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which arc paid or arc payable to him in cash and includes dearness allowance but does not include any bonus, **commission**, house rent allowance, overtime wages and any other allowance."*

11. A bare perusal of the above reproduction of the respective provisions would show that for the grant of wages to a workman, even the commission being paid to a workman, is to be taken into account as part of wages, in case any dispute arises to be decided under 1947 Act. Whereas, when a claim has been raised for the grant of gratuity under the Payment of Gratuity Act, the wages as defined under 1972 Act is to be taken into account according to which, the commission granted to a workman is to be excluded for computing the amount of wages so as to compute the gratuity admissible.

12. In the present petitions, the petitioners-workmen are not

claiming wages under the 1947 Act so as to claim the benefit of commission as well, the only claim raised by the workmen was under 1972 Act with regard to their entitlement of the payment of gratuity keeping in view the work which they have done with the respondent-bank. Once, the gratuity is to be calculated under the 1972 Act, the definition of wages envisaged under 1972 Act is to be taken into account for all intents and purposes and the definition of the wages as given in the 1947 Act cannot be brought into operation and the said definition cannot substitute the definition of wages as envisaged under 1972 Act. The 1972 Act and the 1947 Act operate in the different spheres for different purposes hence, once the legislature in its wisdom has defined different definition for 'wages' under 1947 Act and 1972 Act, the same have to be given meaning according to the definition brought into operation by the legislature by enacting two different act.

13. It may be noticed that 1947 Act was in existence when 1972 Act was enacted. The definition of wages were very much available with the legislature as given in 1947 Act. Once, there is a deviation by the legislature in the definition of wages as envisaged under 1972 Act, it has to mean that the legislature only wanted to give the gratuity on the basis of the definition of wages as envisaged under 1972 Act.

14. Keeping in view the said factual position, the argument of the learned counsel for the petitioners-workmen that the definition of wages as mentioned in 1947 Act has to be treated as a part and parcel of 1972 Act also and any benefit which the employee gets by the definition of wages under 1947 Act, has to be treated as available even for computing the gratuity

cannot be accepted.

15. The definition of the wages as envisaged under 1947 Act operates in a different sphere whereas, the definition of wages under 1972 Act is only to be taken account for calculating the gratuity admissible to a workman. The claim of the petitioners in the present petitions is only with regard to the computation of amount of gratuity and keeping in view the fact that the definition of wages under 1972 Act does not include the commission which is being paid to an employee and only the substantive wages and dearness allowance is to be taken into account for calculating the amount of gratuit payable. Hence, the argument of learned counsel for the petitioners-workmen that even the commission should have been taken into account as part of wages so as to calculate the gratuity admissible to them cannot be accepted in view of the clear definition of wages envisaged under 1972 Act.

16. Further, the judgment of Hon'ble the Supreme Court of India in ***Indian Bank's Association*** (supra) which is being relied upon by the counsel for the petitioner, does not deal with the payment of Gratuity Act, 1972 but only deals with the payment of Wages to an employee under the Industrial Disputes Act, 1947.

17. Learned counsel for the petitioners has not been able to dispute the said fact. Once, the judgment of Hon'ble the Supreme Court of India in ***Indian Bank's Association*** (supra) does not deal with the term wages as envisaged under 1972 Act, placing reliance upon the same to claim benefit under 1972 Act is not admissible. The petitioners-workmen is ignoring that the judgment of Hon'ble the Supreme Court of India which is being relied

upon operates in a different sphere and has only explained the term wages as envisaged under 1947 Act. Bringing the said judgment in operation in order to claim the gratuity also is not admissible as, the definition of wages under 1972 Act is entirely different hence, the judgment in ***Indian Bank's Association*** (supra) which is being brought into operation to claim that the total wages is to be taken into account by including the commission and other allowances also is not correct and is contrary to the definition of wages under 1972 Act and cannot be accepted hence, the computation of gratuity only on the basis of the fall back wages which is the minimum being paid to a Deposit Collector is perfectly valid and legal.

18. It may be noticed that petitioners-workmen are not challenging the definition of wages as given in the 1972 Act. Till the definition under 1972 excludes the commission from wages for the computation of gratuity, the claim of the petitioners that the same is arbitrary cannot be accepted. The Courts are to interpret the claim as per the definitions given in the 1972 Act only. In case the petitioners are aggrieved against the definition of wages as envisaged in the 1972 Act, so that the commission should also be included, they are free to avail their appropriate remedy before appropriate forum.

19. Learned counsel for the petitioners-workmen has also placed reliance upon the judgment of the Kerala High Court in ***Wa. No.549 of 2013 titled 'The South Malabar Gramin Bank Post Box No.10 Vs. The Regional Provident Fund Commissioner Bhavishyanidhi Bhavan' decided on 27.02.2019.*** The said judgment is not at all applicable in the facts and circumstances.

20. At this stage, learned counsel for the petitioners-workmen submits that the commission which is being paid to them is an incentive given to them and is not a commission hence, the same has to be treated as a part of the wages and is liable to be taken into account for computing the gratuity.

21. On being asked to show how, the same is being treated as incentive and not the commission which according to the terms and condition of the appointment is defined as 'commission' should be treated as incentive on the asking of the petitioner-workmen, learned counsel for the petitioners-workmen has not been able to rebut the fact that according to the terms and conditions of the appointment of the workmen, the said amount is being treated as commission and not incentive as being argued. Hence, the argument that the commission should be treated as incentive, is not correct as per conceded position with regard to the terms and conditions of the appointment.

22. Challenge of the bank to the same impugned orders is on the ground that the respondents are not the workmen as, only the employees who are on wages, can be granted the gratuity and in the present cases, the workmen are not being paid wages and are only being paid commission.

23. The said argument is not correct.

24. A bare perusal of the circular passed by the Central Bank of India dated 26.04.2017, they have given the fall back wages to their employees though the quantum of the fall back wages is different keeping in view the collection being done by the employee. The said fall back wages is

minimum which an employee gets over and above the commission.

25. From a bare perusal of the said circular dated 26.04.2017, which has been appended at page 76 of the paper book in CWP-3628-2025, it is clear that a minimum of Rs.750 is admissible to an employee as fall back wages. The said fall back wages increases upon the increase in collection. Once, the minimum fall back wages is admissible, and the commission is over and above the fall back wages, it cannot be said that the fall back wages is also a commission and not the wages. The respondents themselves have considered and termed the payment as 'fall back wages'.

26. Learned counsel appearing on behalf of the bank has not been able to controvert the same. Once, the minimum wages are admissible to a Deposit Collector, the same cannot be treated as a commission so as to even ignore the claim of the Deposit Collector on the ground that they are not even workmen and are not getting the wages.

27. The Hon'ble Supreme Court of India while passing order in ***Indian Bank's Association*** (supra) held that the Deposit Collectors are the workmen. Once, they are workmen, they are getting the wages. The said category of workmen are also entitled for the grant of gratuity also. Now taking a U turn by the bank that petitioners-workmen are not even the workmen as they are not being paid wages is incorrect and contrary to their own decision referred hereinbefore.

28. Keeping in view the totality of the circumstances, no ground is made out for any interference by this Court either on the asking of the workmen or the bank and and the writ petitions are accordingly dismissed.

29. Pending applications, if any, also stand disposed of accordingly.

30. A photocopy of this order be placed on the connected case files numbered above.

(HARSIMRAN SINGH SETHI)
JUDGE

28.02.2025
Rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No