



CWP-30579-2025(O&M)

-1-

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

(246)

CWP-30579-2025(O&M)

Date of Decision :16.03.2026

Jaswinder Singh & ors.

.. Petitioners

Versus

**Punjab State Water Resources Management
and Development Corporation Ltd.**

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Walia, Advocate
for the petitioners.

Mr. Rahul Verma, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondent to make payment of balance amount of gratuity payable above Rs.10,00,000/- upon enhancing the maximum limit of gratuity from existing Rs.10.00 lakhs to Rs.20.00 lakhs w.e.f. 29.03.2018 with interest @ 9% per annum.

2. Learned counsel for the petitioners *inter alia* contends that the issue involved in the present petition is squarely covered by the judgment passed by this Court in **CWP No.22009 of 2022 titled as 'Som Nath Vs. Punjab State Water Resources Managment and Development Corporation Limited'**, decided on 02.04.2025 and also in view of the amendment carried out vide notification No.S.O-1420(E), dated 29.03.2018

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entitled the petitioners to receive the enhanced payment of gratuity under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'Act 1972').

3. Learned counsel for the petitioners submits that the petitioners have retired from the respondent-Corporation on attaining the age of superannuation between the year 2018-2025 as is discernable from Annexures P-1 to P-5. Initially, they were paid a gratuity amount of Rs.10.00 lacs each, in view of the provisions of Act 1972, which governs the payment of gratuity as provided in Rule 18 of the Punjab Water Resources Management and Development Corporation Employees Service Bye Laws, which was amended vide notification dated 29.03.2018 (Annexure P-6) enhancing the maximum limit of gratuity to Rs.20.00 lacs. The petitioners filed a detailed representation and a speaking order was passed on 12.12.2024 curiously while admitting the claim of the petitioners but refusing the financial benefits. The respondents have refused to pay the enhanced gratuity citing the Finance Department letter and claiming that the Corporation revenue sources do not permit and further without the approval of the State Government the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

4. *Per contra*, learned counsel for the respondent refers to notification issued on 29.03.2018, in which the amendment had been carried out in the Act 1972 and enhanced the payment of gratuity. However, learned counsel for the respondents opposes the prayer made by the petitioners on



the ground that the respondent-Corporation cannot be compelled to grant the enhanced amount even if the amendment is carried out by the Central Government unless and until the same is adopted by the respondent-Corporation and further without the approval of the State Government, the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

5. Having heard learned counsel for the parties and perused the record. The issue raised before this Court is no longer *res integra*. This Court in case of **Som Nath's case (supra)** has dealt with the issue in *extenso* and following has been observed:-

“The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.03.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.3.2018. Similar issue came up for consideration before Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated



13.09.2019 cannot contravene the statutory provisions of the Payment of Gratuity Act,1972. It was also held that the amendment in the Payment of Gratuity Act,1972 would automatically become applicable to the respondent and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act,1972

The relevant extract of the judgement is reproduced as under:

"12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in



"Allahabad Bank Vs. All India Allahabad Bank Retired Employees Association", 2010 (1) SCT 531 has already dealt with the similar issue and while considering the provisions of the Payment of Gratuity Act, 1972; has held as under:-

"(a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act where under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In *Hindustan Lever and Anr. v. State of Maharashtra & Anr.*, (2004) 9 SCC 438 relying upon the decision in *Purshottam H. Judye v. V.B. Poddar*, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.

(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the



person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. The employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Subsection (7) of Section 7. provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act."



13. *It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-*

"15. A Constitution Bench in Sant Ram Sharma v.State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions, against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that: (AIR p. 1914, para 7)

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean



that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

16. In Union of India v. Ashok Kumar Aggarwal [Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147: (2014) 3 SCC (L&S) 405] a two- Judge Bench of this Court speaking in the context of service regulations governing a departmental enquiry reiterated that an office order or office memorandum cannot contravene statutory rules. B.S. Chauhan, J. noted the position in law in the following terms: (SCC p. 172, para 59) "59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya (Union of India v. Majji Jangamayya, (1977) 1 SCC 606 1977 SCC (L&S) 191], P.D. Aggarwal v. State of U.P. (P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 1987 SCC (L&S) 3101. Paluru Ramkrishnaiah v. Union of India (Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541: 1989 SCC (L&S) 375). C. Rangaswamaiah v. Karnataka Lokayukta [C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66: 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [Joint Action Committee of



Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435))"

14. In view of the above, the impugned chargesheet dated 25.7.2018 (Annexure P-3), order dated 4.12.2018 (Annexure P-7) and all proceedings emanating and having taken place thereupon stand quashed. The respondents are directed to recalculate the amount due to the petitioner, qua his retiral benefits including balance amount of leave encashment and gratuity in accordance with law, which shall be paid within 3 months from the date of receipt of copy of certified copy of this order; the petitioner is entitled to interest @ 6% per annum simple from the date of his retirement till the period of 3 months from today and if the retirement dues are not paid within this period then for future, period petitioner will be entitled to interest at the rate of 9% per annum simple till its realisation.

A perusal of the facts of the present case would show that the petitioner retired on 30.9.2019 after the amendment made in the Payment of Gratuity Act, 1972. The petitioner has already received an amount of Rs. 10,00,000/- qua gratuity. The petitioner is held entitled for balance amount of gratuity as per the amendment in the Payment of Gratuity Act, 1972."

6. In view of above, the present petition is allowed in terms of the judgment rendered in **Som Nath's case (Supra)**. The respondents are directed to recalculate the gratuity amount in view of the amendment made in the Act of 1972. The amount due to the petitioners towards gratuity shall be paid within a period of 3 months from the date of receipt of certified copy of this order. The petitioners are also entitled to interest @ 6% per annum on the arrears of balanced/differential amount of gratuity from the date it becomes due till actual annual realization.

16.03.2026
monika

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No



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(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



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HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondent to make payment of balance amount of gratuity payable above Rs.10,00,000/- upon enhancing the maximum limit of gratuity from existing Rs.10.00 lakhs to Rs.20.00 lakhs w.e.f. 29.03.2018 with interest @ 9% per annum.

2. Learned counsel for the petitioners *inter alia* contends that the issue involved in the present petition is squarely covered by the judgment passed by this Court in **CWP No.22009 of 2022 titled as 'Som Nath Vs. Punjab State Water Resources Managment and Development Corporation Limited'**, decided on 02.04.2025 and also in view of the amendment carried out vide notification No.S.O-1420(E), dated 29.03.2018

**CWP-30579-2025(O&M)****-2-**

entitled the petitioners to receive the enhanced payment of gratuity under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'Act 1972').

3. Learned counsel for the petitioners submits that the petitioners have retired from the respondent-Corporation on attaining the age of superannuation between the year 2018-2025 as is discernable from Annexures P-1 to P-5. Initially, they were paid a gratuity amount of Rs.10.00 lacs each, in view of the provisions of Act 1972, which governs the payment of gratuity as provided in Rule 18 of the Punjab Water Resources Management and Development Corporation Employees Service Bye Laws, which was amended vide notification dated 29.03.2018 (Annexure P-6) enhancing the maximum limit of gratuity to Rs.20.00 lacs. The petitioners filed a detailed representation and a speaking order was passed on 12.12.2024 curiously while admitting the claim of the petitioners but refusing the financial benefits. The respondents have refused to pay the enhanced gratuity citing the Finance Department letter and claiming that the Corporation revenue sources do not permit and further without the approval of the State Government the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

4. *Per contra*, learned counsel for the respondent refers to notification issued on 29.03.2018, in which the amendment had been carried out in the Act 1972 and enhanced the payment of gratuity. However, learned counsel for the respondents opposes the prayer made by the petitioners on



the ground that the respondent-Corporation cannot be compelled to grant the enhanced amount even if the amendment is carried out by the Central Government unless and until the same is adopted by the respondent-Corporation and further without the approval of the State Government, the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

5. Having heard learned counsel for the parties and perused the record. The issue raised before this Court is no longer *res integra*. This Court in case of **Som Nath's case (supra)** has dealt with the issue in *extenso* and following has been observed:-

“The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.03.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.3.2018. Similar issue came up for consideration before Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated



13.09.2019 cannot contravene the statutory provisions of the Payment of Gratuity Act,1972. It was also held that the amendment in the Payment of Gratuity Act,1972 would automatically become applicable to the respondent and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act,1972

The relevant extract of the judgement is reproduced as under:

"12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in



"Allahabad Bank Vs. All India Allahabad Bank Retired Employees Association", 2010 (1) SCT 531 has already dealt with the similar issue and while considering the provisions of the Payment of Gratuity Act, 1972; has held as under:-

"(a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act where under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



SCT 297]

(d) *An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.*

(e) *The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.*

(f) *In Hindustan Lever and Anr. v. State of Maharashtra & Anr., (2004) 9 SCC 438 relying upon the decision in Purshottam H. Judye v. V.B. Poddar, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.*

(g) *Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the*



person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. The employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Subsection (7) of Section 7. provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act."



13. *It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-*

"15. A Constitution Bench in Sant Ram Sharma v.State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions, against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that: (AIR p. 1914, para 7)

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean



that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

16. In Union of India v. Ashok Kumar Aggarwal [Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147: (2014) 3 SCC (L&S) 405] a two- Judge Bench of this Court speaking in the context of service regulations governing a departmental enquiry reiterated that an office order or office memorandum cannot contravene statutory rules. B.S. Chauhan, J. noted the position in law in the following terms: (SCC p. 172, para 59) "59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya (Union of India v. Majji Jangamayya, (1977) 1 SCC 606 1977 SCC (L&S) 191], P.D. Aggarwal v. State of U.P. (P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 1987 SCC (L&S) 3101. Paluru Ramkrishnaiah v. Union of India (Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541: 1989 SCC (L&S) 375). C. Rangaswamaiah v. Karnataka Lokayukta [C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66: 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [Joint Action Committee of



Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435))"

14. In view of the above, the impugned chargesheet dated 25.7.2018 (Annexure P-3), order dated 4.12.2018 (Annexure P-7) and all proceedings emanating and having taken place thereupon stand quashed. The respondents are directed to recalculate the amount due to the petitioner, qua his retiral benefits including balance amount of leave encashment and gratuity in accordance with law, which shall be paid within 3 months from the date of receipt of copy of certified copy of this order; the petitioner is entitled to interest @ 6% per annum simple from the date of his retirement till the period of 3 months from today and if the retirement dues are not paid within this period then for future, period petitioner will be entitled to interest at the rate of 9% per annum simple till its realisation.

A perusal of the facts of the present case would show that the petitioner retired on 30.9.2019 after the amendment made in the Payment of Gratuity Act, 1972. The petitioner has already received an amount of Rs. 10,00,000/- qua gratuity. The petitioner is held entitled for balance amount of gratuity as per the amendment in the Payment of Gratuity Act, 1972."

6. In view of above, the present petition is allowed in terms of the judgment rendered in **Som Nath's case (Supra)**. The respondents are directed to recalculate the gratuity amount in view of the amendment made in the Act of 1972. The amount due to the petitioners towards gratuity shall be paid within a period of 3 months from the date of receipt of certified copy of this order. The petitioners are also entitled to interest @ 6% per annum on the arrears of balanced/differential amount of gratuity from the date it becomes due till actual annual realization.

16.03.2026
monika

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No



CWP-30579-2025(O&M)

-1-

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

(246)

CWP-30579-2025(O&M)

Date of Decision :16.03.2026

Jaswinder Singh & ors.

.. Petitioners

Versus

**Punjab State Water Resources Management
and Development Corporation Ltd.**

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Walia, Advocate
for the petitioners.

Mr. Rahul Verma, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondent to make payment of balance amount of gratuity payable above Rs.10,00,000/- upon enhancing the maximum limit of gratuity from existing Rs.10.00 lakhs to Rs.20.00 lakhs w.e.f. 29.03.2018 with interest @ 9% per annum.

2. Learned counsel for the petitioners *inter alia* contends that the issue involved in the present petition is squarely covered by the judgment passed by this Court in **CWP No.22009 of 2022 titled as 'Som Nath Vs. Punjab State Water Resources Managment and Development Corporation Limited'**, decided on 02.04.2025 and also in view of the amendment carried out vide notification No.S.O-1420(E), dated 29.03.2018

**CWP-30579-2025(O&M)****-2-**

entitled the petitioners to receive the enhanced payment of gratuity under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'Act 1972').

3. Learned counsel for the petitioners submits that the petitioners have retired from the respondent-Corporation on attaining the age of superannuation between the year 2018-2025 as is discernable from Annexures P-1 to P-5. Initially, they were paid a gratuity amount of Rs.10.00 lacs each, in view of the provisions of Act 1972, which governs the payment of gratuity as provided in Rule 18 of the Punjab Water Resources Management and Development Corporation Employees Service Bye Laws, which was amended vide notification dated 29.03.2018 (Annexure P-6) enhancing the maximum limit of gratuity to Rs.20.00 lacs. The petitioners filed a detailed representation and a speaking order was passed on 12.12.2024 curiously while admitting the claim of the petitioners but refusing the financial benefits. The respondents have refused to pay the enhanced gratuity citing the Finance Department letter and claiming that the Corporation revenue sources do not permit and further without the approval of the State Government the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

4. *Per contra*, learned counsel for the respondent refers to notification issued on 29.03.2018, in which the amendment had been carried out in the Act 1972 and enhanced the payment of gratuity. However, learned counsel for the respondents opposes the prayer made by the petitioners on



the ground that the respondent-Corporation cannot be compelled to grant the enhanced amount even if the amendment is carried out by the Central Government unless and until the same is adopted by the respondent-Corporation and further without the approval of the State Government, the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

5. Having heard learned counsel for the parties and perused the record. The issue raised before this Court is no longer *res integra*. This Court in case of **Som Nath's case (supra)** has dealt with the issue in *extenso* and following has been observed:-

“The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.03.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.3.2018. Similar issue came up for consideration before Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated



13.09.2019 cannot contravene the statutory provisions of the Payment of Gratuity Act,1972. It was also held that the amendment in the Payment of Gratuity Act,1972 would automatically become applicable to the respondent and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act,1972

The relevant extract of the judgement is reproduced as under:

"12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in



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(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In *Hindustan Lever and Anr. v. State of Maharashtra & Anr.*, (2004) 9 SCC 438 relying upon the decision in *Purshottam H. Judye v. V.B. Poddar*, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.

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13. *It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-*

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16.03.2026
monika

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JUDGE

Whether speaking/reasoned : Yes/No
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CWP-30579-2025(O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
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(246)

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Date of Decision :16.03.2026

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Versus

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CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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HARPREET SINGH BRAR, J. (ORAL)

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2. Learned counsel for the petitioners *inter alia* contends that the issue involved in the present petition is squarely covered by the judgment passed by this Court in **CWP No.22009 of 2022 titled as 'Som Nath Vs. Punjab State Water Resources Managment and Development Corporation Limited'**, decided on 02.04.2025 and also in view of the amendment carried out vide notification No.S.O-1420(E), dated 29.03.2018

**CWP-30579-2025(O&M)****-2-**

entitled the petitioners to receive the enhanced payment of gratuity under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'Act 1972').

3. Learned counsel for the petitioners submits that the petitioners have retired from the respondent-Corporation on attaining the age of superannuation between the year 2018-2025 as is discernable from Annexures P-1 to P-5. Initially, they were paid a gratuity amount of Rs.10.00 lacs each, in view of the provisions of Act 1972, which governs the payment of gratuity as provided in Rule 18 of the Punjab Water Resources Management and Development Corporation Employees Service Bye Laws, which was amended vide notification dated 29.03.2018 (Annexure P-6) enhancing the maximum limit of gratuity to Rs.20.00 lacs. The petitioners filed a detailed representation and a speaking order was passed on 12.12.2024 curiously while admitting the claim of the petitioners but refusing the financial benefits. The respondents have refused to pay the enhanced gratuity citing the Finance Department letter and claiming that the Corporation revenue sources do not permit and further without the approval of the State Government the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

4. *Per contra*, learned counsel for the respondent refers to notification issued on 29.03.2018, in which the amendment had been carried out in the Act 1972 and enhanced the payment of gratuity. However, learned counsel for the respondents opposes the prayer made by the petitioners on



the ground that the respondent-Corporation cannot be compelled to grant the enhanced amount even if the amendment is carried out by the Central Government unless and until the same is adopted by the respondent-Corporation and further without the approval of the State Government, the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

5. Having heard learned counsel for the parties and perused the record. The issue raised before this Court is no longer *res integra*. This Court in case of **Som Nath's case (supra)** has dealt with the issue in *extenso* and following has been observed:-

“The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.03.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.3.2018. Similar issue came up for consideration before Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated



13.09.2019 cannot contravene the statutory provisions of the Payment of Gratuity Act,1972. It was also held that the amendment in the Payment of Gratuity Act,1972 would automatically become applicable to the respondent and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act,1972

The relevant extract of the judgement is reproduced as under:

"12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in



"Allahabad Bank Vs. All India Allahabad Bank Retired Employees Association", 2010 (1) SCT 531 has already dealt with the similar issue and while considering the provisions of the Payment of Gratuity Act, 1972; has held as under:-

"(a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act where under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In *Hindustan Lever and Anr. v. State of Maharashtra & Anr.*, (2004) 9 SCC 438 relying upon the decision in *Purshottam H. Judye v. V.B. Poddar*, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.

(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the



person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. The employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Subsection (7) of Section 7. provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act."



13. *It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-*

"15. A Constitution Bench in Sant Ram Sharma v.State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions, against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that: (AIR p. 1914, para 7)

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean



that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

16. In Union of India v. Ashok Kumar Aggarwal [Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147: (2014) 3 SCC (L&S) 405] a two- Judge Bench of this Court speaking in the context of service regulations governing a departmental enquiry reiterated that an office order or office memorandum cannot contravene statutory rules. B.S. Chauhan, J. noted the position in law in the following terms: (SCC p. 172, para 59) "59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya (Union of India v. Majji Jangamayya, (1977) 1 SCC 606 1977 SCC (L&S) 191], P.D. Aggarwal v. State of U.P. (P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 1987 SCC (L&S) 3101. Paluru Ramkrishnaiah v. Union of India (Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541: 1989 SCC (L&S) 375). C. Rangaswamaiah v. Karnataka Lokayukta [C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66: 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [Joint Action Committee of



Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435))"

14. In view of the above, the impugned chargesheet dated 25.7.2018 (Annexure P-3), order dated 4.12.2018 (Annexure P-7) and all proceedings emanating and having taken place thereupon stand quashed. The respondents are directed to recalculate the amount due to the petitioner, qua his retiral benefits including balance amount of leave encashment and gratuity in accordance with law, which shall be paid within 3 months from the date of receipt of copy of certified copy of this order; the petitioner is entitled to interest @ 6% per annum simple from the date of his retirement till the period of 3 months from today and if the retirement dues are not paid within this period then for future, period petitioner will be entitled to interest at the rate of 9% per annum simple till its realisation.

A perusal of the facts of the present case would show that the petitioner retired on 30.9.2019 after the amendment made in the Payment of Gratuity Act, 1972. The petitioner has already received an amount of Rs. 10,00,000/- qua gratuity. The petitioner is held entitled for balance amount of gratuity as per the amendment in the Payment of Gratuity Act, 1972."

6. In view of above, the present petition is allowed in terms of the judgment rendered in **Som Nath's case (Supra)**. The respondents are directed to recalculate the gratuity amount in view of the amendment made in the Act of 1972. The amount due to the petitioners towards gratuity shall be paid within a period of 3 months from the date of receipt of certified copy of this order. The petitioners are also entitled to interest @ 6% per annum on the arrears of balanced/differential amount of gratuity from the date it becomes due till actual annual realization.

16.03.2026
monika

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No



CWP-30579-2025(O&M)

-1-

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

(246)

CWP-30579-2025(O&M)
Date of Decision :16.03.2026

Jaswinder Singh & ors.

.. Petitioners

Versus

**Punjab State Water Resources Management
and Development Corporation Ltd.**

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Walia, Advocate
for the petitioners.

Mr. Rahul Verma, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondent to make payment of balance amount of gratuity payable above Rs.10,00,000/- upon enhancing the maximum limit of gratuity from existing Rs.10.00 lakhs to Rs.20.00 lakhs w.e.f. 29.03.2018 with interest @ 9% per annum.

2. Learned counsel for the petitioners *inter alia* contends that the issue involved in the present petition is squarely covered by the judgment passed by this Court in **CWP No.22009 of 2022 titled as 'Som Nath Vs. Punjab State Water Resources Managment and Development Corporation Limited'**, decided on 02.04.2025 and also in view of the amendment carried out vide notification No.S.O-1420(E), dated 29.03.2018

**CWP-30579-2025(O&M)****-2-**

entitled the petitioners to receive the enhanced payment of gratuity under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'Act 1972').

3. Learned counsel for the petitioners submits that the petitioners have retired from the respondent-Corporation on attaining the age of superannuation between the year 2018-2025 as is discernable from Annexures P-1 to P-5. Initially, they were paid a gratuity amount of Rs.10.00 lacs each, in view of the provisions of Act 1972, which governs the payment of gratuity as provided in Rule 18 of the Punjab Water Resources Management and Development Corporation Employees Service Bye Laws, which was amended vide notification dated 29.03.2018 (Annexure P-6) enhancing the maximum limit of gratuity to Rs.20.00 lacs. The petitioners filed a detailed representation and a speaking order was passed on 12.12.2024 curiously while admitting the claim of the petitioners but refusing the financial benefits. The respondents have refused to pay the enhanced gratuity citing the Finance Department letter and claiming that the Corporation revenue sources do not permit and further without the approval of the State Government the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

4. *Per contra*, learned counsel for the respondent refers to notification issued on 29.03.2018, in which the amendment had been carried out in the Act 1972 and enhanced the payment of gratuity. However, learned counsel for the respondents opposes the prayer made by the petitioners on



the ground that the respondent-Corporation cannot be compelled to grant the enhanced amount even if the amendment is carried out by the Central Government unless and until the same is adopted by the respondent-Corporation and further without the approval of the State Government, the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

5. Having heard learned counsel for the parties and perused the record. The issue raised before this Court is no longer *res integra*. This Court in case of **Som Nath's case (supra)** has dealt with the issue in *extenso* and following has been observed:-

“The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.03.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.3.2018. Similar issue came up for consideration before Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated



13.09.2019 cannot contravene the statutory provisions of the Payment of Gratuity Act,1972. It was also held that the amendment in the Payment of Gratuity Act,1972 would automatically become applicable to the respondent and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act,1972

The relevant extract of the judgement is reproduced as under:

"12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in



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(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In *Hindustan Lever and Anr. v. State of Maharashtra & Anr.*, (2004) 9 SCC 438 relying upon the decision in *Purshottam H. Judye v. V.B. Poddar*, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.

(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the



person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. The employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Subsection (7) of Section 7. provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act."



13. *It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-*

"15. A Constitution Bench in Sant Ram Sharma v.State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions, against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that: (AIR p. 1914, para 7)

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean



that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

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Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435))"

14. In view of the above, the impugned chargesheet dated 25.7.2018 (Annexure P-3), order dated 4.12.2018 (Annexure P-7) and all proceedings emanating and having taken place thereupon stand quashed. The respondents are directed to recalculate the amount due to the petitioner, qua his retiral benefits including balance amount of leave encashment and gratuity in accordance with law, which shall be paid within 3 months from the date of receipt of copy of certified copy of this order; the petitioner is entitled to interest @ 6% per annum simple from the date of his retirement till the period of 3 months from today and if the retirement dues are not paid within this period then for future, period petitioner will be entitled to interest at the rate of 9% per annum simple till its realisation.

A perusal of the facts of the present case would show that the petitioner retired on 30.9.2019 after the amendment made in the Payment of Gratuity Act, 1972. The petitioner has already received an amount of Rs. 10,00,000/- qua gratuity. The petitioner is held entitled for balance amount of gratuity as per the amendment in the Payment of Gratuity Act, 1972."

6. In view of above, the present petition is allowed in terms of the judgment rendered in **Som Nath's case (Supra)**. The respondents are directed to recalculate the gratuity amount in view of the amendment made in the Act of 1972. The amount due to the petitioners towards gratuity shall be paid within a period of 3 months from the date of receipt of certified copy of this order. The petitioners are also entitled to interest @ 6% per annum on the arrears of balanced/differential amount of gratuity from the date it becomes due till actual annual realization.

16.03.2026
monika

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No



CWP-30579-2025(O&M)

-1-

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

(246)

CWP-30579-2025(O&M)

Date of Decision :16.03.2026

Jaswinder Singh & ors.

.. Petitioners

Versus

**Punjab State Water Resources Management
and Development Corporation Ltd.**

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Walia, Advocate
for the petitioners.

Mr. Rahul Verma, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondent to make payment of balance amount of gratuity payable above Rs.10,00,000/- upon enhancing the maximum limit of gratuity from existing Rs.10.00 lakhs to Rs.20.00 lakhs w.e.f. 29.03.2018 with interest @ 9% per annum.

2. Learned counsel for the petitioners *inter alia* contends that the issue involved in the present petition is squarely covered by the judgment passed by this Court in **CWP No.22009 of 2022 titled as 'Som Nath Vs. Punjab State Water Resources Managment and Development Corporation Limited'**, decided on 02.04.2025 and also in view of the amendment carried out vide notification No.S.O-1420(E), dated 29.03.2018

**CWP-30579-2025(O&M)****-2-**

entitled the petitioners to receive the enhanced payment of gratuity under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'Act 1972').

3. Learned counsel for the petitioners submits that the petitioners have retired from the respondent-Corporation on attaining the age of superannuation between the year 2018-2025 as is discernable from Annexures P-1 to P-5. Initially, they were paid a gratuity amount of Rs.10.00 lacs each, in view of the provisions of Act 1972, which governs the payment of gratuity as provided in Rule 18 of the Punjab Water Resources Management and Development Corporation Employees Service Bye Laws, which was amended vide notification dated 29.03.2018 (Annexure P-6) enhancing the maximum limit of gratuity to Rs.20.00 lacs. The petitioners filed a detailed representation and a speaking order was passed on 12.12.2024 curiously while admitting the claim of the petitioners but refusing the financial benefits. The respondents have refused to pay the enhanced gratuity citing the Finance Department letter and claiming that the Corporation revenue sources do not permit and further without the approval of the State Government the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

4. *Per contra*, learned counsel for the respondent refers to notification issued on 29.03.2018, in which the amendment had been carried out in the Act 1972 and enhanced the payment of gratuity. However, learned counsel for the respondents opposes the prayer made by the petitioners on



the ground that the respondent-Corporation cannot be compelled to grant the enhanced amount even if the amendment is carried out by the Central Government unless and until the same is adopted by the respondent-Corporation and further without the approval of the State Government, the respondent-Corporation cannot implement the amendment carried out in the Act of 1972.

5. Having heard learned counsel for the parties and perused the record. The issue raised before this Court is no longer *res integra*. This Court in case of **Som Nath's case (supra)** has dealt with the issue in *extenso* and following has been observed:-

“The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.03.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.3.2018. Similar issue came up for consideration before Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated



13.09.2019 cannot contravene the statutory provisions of the Payment of Gratuity Act,1972. It was also held that the amendment in the Payment of Gratuity Act,1972 would automatically become applicable to the respondent and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act,1972

The relevant extract of the judgement is reproduced as under:

"12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in



"Allahabad Bank Vs. All India Allahabad Bank Retired Employees Association", 2010 (1) SCT 531 has already dealt with the similar issue and while considering the provisions of the Payment of Gratuity Act, 1972; has held as under:-

"(a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act where under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2)



SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In *Hindustan Lever and Anr. v. State of Maharashtra & Anr.*, (2004) 9 SCC 438 relying upon the decision in *Purshottam H. Judye v. V.B. Poddar*, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.

(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the



person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. The employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Subsection (7) of Section 7. provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act."



13. *It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-*

"15. A Constitution Bench in Sant Ram Sharma v.State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions, against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that: (AIR p. 1914, para 7)

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean



that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

16. In Union of India v. Ashok Kumar Aggarwal [Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147: (2014) 3 SCC (L&S) 405] a two- Judge Bench of this Court speaking in the context of service regulations governing a departmental enquiry reiterated that an office order or office memorandum cannot contravene statutory rules. B.S. Chauhan, J. noted the position in law in the following terms: (SCC p. 172, para 59) "59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya (Union of India v. Majji Jangamayya, (1977) 1 SCC 606 1977 SCC (L&S) 191], P.D. Aggarwal v. State of U.P. (P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 1987 SCC (L&S) 3101. Paluru Ramkrishnaiah v. Union of India (Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541: 1989 SCC (L&S) 375). C. Rangaswamaiah v. Karnataka Lokayukta [C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66: 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [Joint Action Committee of



Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435))"

14. In view of the above, the impugned chargesheet dated 25.7.2018 (Annexure P-3), order dated 4.12.2018 (Annexure P-7) and all proceedings emanating and having taken place thereupon stand quashed. The respondents are directed to recalculate the amount due to the petitioner, qua his retiral benefits including balance amount of leave encashment and gratuity in accordance with law, which shall be paid within 3 months from the date of receipt of copy of certified copy of this order; the petitioner is entitled to interest @ 6% per annum simple from the date of his retirement till the period of 3 months from today and if the retirement dues are not paid within this period then for future, period petitioner will be entitled to interest at the rate of 9% per annum simple till its realisation.

A perusal of the facts of the present case would show that the petitioner retired on 30.9.2019 after the amendment made in the Payment of Gratuity Act, 1972. The petitioner has already received an amount of Rs. 10,00,000/- qua gratuity. The petitioner is held entitled for balance amount of gratuity as per the amendment in the Payment of Gratuity Act, 1972."

6. In view of above, the present petition is allowed in terms of the judgment rendered in **Som Nath's case (Supra)**. The respondents are directed to recalculate the gratuity amount in view of the amendment made in the Act of 1972. The amount due to the petitioners towards gratuity shall be paid within a period of 3 months from the date of receipt of certified copy of this order. The petitioners are also entitled to interest @ 6% per annum on the arrears of balanced/differential amount of gratuity from the date it becomes due till actual annual realization.

16.03.2026
monika

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No