

(2008) 01 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No. 22187 of 2006

Ahmedabad Jupiter Textile Mills

APPELLANT

Vs

Mamlatdar and Others

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Gratuity Rules, 1989 — Rule 27, 3

Payment of Gratuity Act, 1972 — Section 14, 2, 4, 4(5), 4(6)

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(3), 22(4)

Citation : (2008) 118 FLR 285 : (2008) 1 GLH 352 : (2008) 2 GLR 1393

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Saurabh Mehta, for Nanavati and Nanavati for Petitioner 1, for the Appellant; Kiran Pandey, AGP for Respondents 1 and 3 and P.S. Chari, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Saurabh Mehta for Nanavati & Nanavati on behalf of the petitioner, learned AGP Ms.

Kiran Pandey for respondent Nos. 1 and 3 and learned advocate Mr. Chari for respondent No. 2.

2. In the present petition, the petitioner has made prayer in Para.9(A), (B), (C) and (D) which is quoted as under:

A. This Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or

directions quashing and setting aside the impugned recovery notice dated 29.5.06 issued by the respondent No. 2 - Mamlatdar, Alien Recovery,

Ahmedabad, as well as communication dated 2.9.2006 to Deputy Labour Commissioner at Annexure-A to the petition as being illegal, arbitrary,

without authority and without jurisdiction.

B. Pending hearing and final disposal of the present petition, this Hon''ble Court may be pleased to grant interim relief, staying implementation and

execution of the impugned recovery notice dated 29.5.2006 issued by the respondent No. 2 as well as communication dated 2.9.2006 to Deputy

Labour Commissioner herein at Annexure-A to the petition.

C. Pending hearing, an ex-parte ad interim relief in terms of Para9 (B) may kindly be granted.

D. Such other and further relief as this Hon''ble Court deems just and proper in the interest of justice may also be granted.

3. The Mamlatdar, Ahmedabad City has issued notice (Annexure-A) dated 29.5.2006 to the petitioner to pay the amount to the respondent

employee as per the order passed by the Controlling authority and the appellate authority. On 2.9.2006, the Mamlatdar, Alien Recovery,

Ahmedabad sent the papers back to the Deputy Labour Commissioner on the ground that post of one Recovery Officer has been sanctioned.

Therefore, the recovery proceedings is to be initiated by the office of the Deputy Labour Commissioner. The respondent employee addressed a

letter on 29.8.2006 to Ahmedabad City, Alien Recovery, Ahmedabad stating that he has not received the amount of gratuity interest and though 8

months have passed, no steps have been taken by the respondents. It is also stated that the Ahmedabad Jupiter Textile Mills is closed. So please

note that all financially and other matter decided by National Textile Corporation (G) Ltd.,1971 Ashram Road, Ahmedabad-9. According to

respondent employee, he is aged about 70 years old, has not received the gratuity interest and his worry is that it may be received after his death.

The recovery certificate is at Annexure-B which has been issued by the controlling authority dated 14.8.2003 and page-19 is the order passed by

controlling authority granting the amount of gratuity which comes to Rs. 1,00,000/- with simple interest of 10% w.e.f. 1.5.1997. Thereafter, appeal

was preferred by petitioner before the appellate authority. The appellate authority has passed the order which is at page-26 and appeal is rejected

considering the same is time barred and accordingly, appeal was not entertained u/s 7(7) of Payment of Gratuity Act,1972. The appellate authority

has no jurisdiction or having power to condone the delay beyond total period of

120 days. Therefore, on 29.10.2004, the appellate authority has dismissed the appeal. At Annexure-E is the decision of Division Bench in LPA No. 1603 of 1999 in SCA No. 8351 of 1999 dated 30.12.1999

where establishment is before BIFR. Then, Section 22 is operated and permission from BIFR is necessary. Therefore, concerned party must have

to approach the BIFR. Then, similar order at page-32. Then notice issued by Mamlatdar, Alien Recovery, Ahmedabad city under Bombay Land

Revenue Code, 1879 u/s 154. Affidavit in reply filed by respondent employee.

4. I have considered the record which has been produced by petitioner. I have heard learned advocates appearing for the respective parties. It is

necessary to note that petitioner has not challenged the order passed by the controlling authority and appellate authority under the provisions of

Gratuity Act, 1972. The recovery certificate is challenged by petitioner based on order passed by controlling authority and appellate authority

which orders are not under challenge. Therefore, petition against recovery certificate based on order passed by controlling authority and appellate

authority cannot be entertained by this Court because it is a consequential order passed by authority when amount of gratuity and interest is not

paid by petitioner to the respondent employee.

5. The contention raised by petitioner before the controlling authority about sick unit under the provisions of SICA Act and proceedings is pending

before the BIFR. The controlling authority has considered it and rejected the contention raised by petitioner (page-21). Taking into consideration

the Section 14 of the Gratuity Act, 1972, the amount of gratuity cannot be withheld or forfeited by employee because of proceedings is pending

under the SICA Act. Section 14 of the Act is quoted as under:

Section 14 : Act to override other enactments, etc. - The provisions of this Act or any rule made thereunder shall have effect notwithstanding

anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any

enactment other than this Act.

6. The overriding effect of any law and amount of gratuity is protected by statutory provisions. Therefore, such amount cannot be denied by the

employer to the employee or employer has no power to withhold or forfeit the said amount unless the provisions of Section 4(6) of Payment of

Gratuity Act is satisfied by the petitioner. It is not the case of the petitioner that procedure which is required u/s 4(6) of the Act was followed by

the petitioner because it is not the case of termination but it is the case of superannuation. Therefore, Section 4(6) of the Act procedure is not

followed by petitioner and it is also not the case of petitioner that such procedure was followed by petitioner. Learned advocate Mr.Saurabh

Mehta submitted that contention was raised by petitioner in Para.2 of the appeal that u/s 4(6) of the Payment of Gratuity Act,1972, the employee

was not entitled the gratuity. The petitioner remained silent that what steps are to be taken u/s 4(6) of the Payment of Gratuity Act,1972. Section

4(6) of the Payment of Gratuity Act,1972 is quoted as under:

Section 4(6) : Notwithstanding anything contained in Sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or

destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited] -

if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence

is committed by him in the course of his employment.

7. It is the duty of the employer to take effective steps for withholding or forfeiting the gratuity as required u/s 4(6) of the Payment of Gratuity

Act,1972. That the steps have not been taken or procedure was not followed by the petitioner. Therefore, the petitioner is not entitled to withhold

or forfeit the amount of gratuity u/s 4(6) of the Payment of Gratuity Act,1972. So long the procedure is not followed, the petitioner is not entitled to

withhold the amount of gratuity. In the facts of this case, the respondent has retired from service and his service was not terminated and therefore,

the case of the respondent does not fall within the purview of Section 4(6) of the Payment of Gratuity Act,1972.

8. Learned advocate Mr. Saurabh Mehta raised contention that National Textile Corporation (Gujarat) Ltd., the Gratuity Rules, 1989 were

amended on 16.4.1996 with retrospective effect from 1989 and under Ruled 3(b)

is relevant which is quoted as under:

3(b) An employee against whom disciplinary action/criminal or any other proceedings are contemplated or pending at the time of

resignation/retirement etc. will not be paid the gratuity unless such action/proceedings against him have been finalized and on finalization of such

action/proceedings the release of payment of amount of gratuity will depend on the final outcome of such action/proceedings and in keeping in view

the order of the concerned authority/Court. The gratuity will not be admissible to an employee whose services are terminated for misconduct,

insolvency or inefficiency.

8.1 Therefore, he submitted that Rules permit the petitioner to withhold or forfeit the amount of gratuity.

9. In view of the aforesaid rules, it was informed to the respondent employee by the petitioner on 28.4.1997 that CBI inquiry is going on against

him. Therefore, he is not entitled the amount of gratuity. Against which, the answer was given by respondent employee in reply that no

departmental inquiry was initiated against him by the petitioner and respondent employee reached the age of superannuation and accordingly, he

retired from service during the pendency of CBI inquiry and no steps have been taken by petitioner either to issue charge sheet or suspend the

employee. Therefore, considering the aforesaid submissions made by learned advocate Mr.Saurabh Mehta relying upon the rules as referred

above, the petitioner is not entitled to withhold or forfeit the amount of gratuity under the aforesaid Rules because the view taken by the Apex

Court in the case of Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Ors. reported in (2007) 1 SCC 663. That in respect to the claim of

gratuity of the concerned employee, whether service rule prevailed or provisions of the Act is prevailed. The Apex Court also observed that in

comparison to services rules, the statutory provisions of the Act is prevailed and not the service rules. The Apex Court further observed that,

amount of gratuity - Forfeiture of - Conditions laid down in Section 4(6) of Payment of Gratuity Act must be fulfilled - Provisions of the Act will

prevail over non-statutory rules framed by the company - R.34.3 of Coal India Executives" Conduct, Discipline and Appeal Rules,1978 should be

read subject to the provisions of the Act- Disciplinary proceedings initiated

against appellant Chief GM of respondent company - During pendency of the proceedings appellant allowed to retire having attained age of superannuation - But gratuity payable to him withheld for making adjustment in the event recovery therefrom directed to be made in the disciplinary proceedings - The controlling authority has allowed the application and ultimately it has been held that requirement of Section 4(6) not satisfied and therefore, forfeiture of gratuity was not justified. Para.9, 10, 13, 14 and 15 are quoted as under:

9. The Rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of Respondent No. 1.

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of

loss caused to the company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in

service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event, the employee retires from

service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for

continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not

mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can

be imposed.

13. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the

essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification

thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, Sub-section (6) of Section 4 of the Act contains a

non-obstante clause vis-à-vis Sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions

laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6)

of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However,

the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or

damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant.

Clause (b) of Sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services

had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence

involving moral turpitude. Conditions laid down therein are also not satisfied.

14. Termination of services for any of the causes enumerated in Sub-section (6) of Section 4 of the Act, therefore, is imperative.

15. In *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, this Court opined:

As regards the provisions of the Payment of Gratuity Act, 1972 (as amended from time to time) it is no longer in the realm of charity but a statutory

right provided in favour of the employee....

10. The Calcutta High Court in case of *Rabindra Nath Banerjee Vs. The Certificate Officer and Others*, has in Para.14 observed as under:

14. Having regard to such the question as raised by respondents in the writ application that the recovery proceedings under Bengal Public

Demands Recovery Act as initiated for realization of gratuity amount could be resisted by application of Section 22 of SICA,1985, is answered

negatively by holding that Section 22 of SICA,1985 cannot resist any proceeding for realization of gratuity aSICK INDUSTRIAL mount

payability of which is in the domain of emanated fundamental right of retired employee. Writ application accordingly is allowed in terms of prayer

(a), (b), (c) and (d). Respondent No. 1 is directed to realize the amount as mentioned in the said prayers along with the interest with effect from the

date as allowed by initiating the recovery proceeding and/or certificate proceeding under the concerned Public Demands Recovery Act within two

months from this date and thereby to disburse the amounts in accordance with law in favour of the petitioner. Controlling authority is directed to

take all steps by production of the records etc. to implement the judgment.

11. The Ahmedabad Jupiter Textile Mills is a unit of National Textile Corporation (Gujarat) Ltd. The petitioner Mill was declared sick industrial

undertaking under the provisions of SICA Act,1985. The Board of Industrial and Financial Re-Construction of 19.2.2002, after hearing the

submissions of all the concerned, sanctioned the scheme u/s 18(3) of the said Act with certain modification and the said scheme is under

implementation. Therefore, the proceedings before BIFR means Reference is come to an end. The NTC was declared sick on 6.3.1993.

Therefore, the decision which has been relied by the petitioner (Annexure-C) in LPA No. 1603 of 1999 as referred above is not applicable to the

facts of this case because it is not the decision on merits and facts are altogether different because there is no proceedings is pending with the

BIFR. Therefore, the question of making application does not arise. The order passed by this Hon'ble Court (Coram : M.S.Shah,J.0 dated

13.10.2000 in SCA No. 8108 of 2000 is also not applicable to the facts of this case because reference is already decided in the present case and

in case of aforesaid order, the reference was pending before BIFR. Therefore, both the decisions are not helpful to the petitioner. However, the

controlling authority has considered the contention of sick unit as well as delay in filing the gratuity application and come to the conclusion that

considering the overriding effect u/s 14 of the Gratuity Act, there is no bar of Section 22 of the SICA Act. Therefore, contention raised by learned

advocate Mr.Mehta cannot be accepted. The delay was rightly condoned by the controlling authority. In this case, the respondent has retired from

service. Therefore, it is the case of superannuation. Therefore, Section 4(6) of the Act is not applicable to the facts of this case.

12. The Apex Court has considered the said aspect in case of H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd. reported in

2003 AIR SCW 885. Relevant observations are in Para.9, which is quoted as under:

9. It is clear from what is extracted above from the order of learned single Judge that interest on delayed payment of gratuity was denied only on

the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the

Courts during the pendency of enquiry. The learned single Judge having held that the appellant was entitled for payment of gratuity was not right in

denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that

the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the Controlling

Authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for

payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity

with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did

not satisfy the mandatory requirements of the proviso to Section 7(3A), no discretion was left to deny the interest to the appellant on belated

payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to

interfere with the order of the learned single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the

discretion exercised by the learned single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned

single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The

Division Bench, in our opinion, committed an error in assuming that the learned single Judge could exercise the discretion in the matter of awarding

interest and that such a discretion exercised was not arbitrary.

13. The Apex Court has considered the said aspect in case of M.C. Chamaraju Vs. Hind Nippon Rural Industrial (P) Ltd., Relevant observations

are in Para.15, which is quoted as under:

15. There is another aspect also which is relevant. The Act has been enacted with a view to grant benefit to workers, a "weaker section" in

industrial adjudicatory process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken. A benefit has

been extended by the Authorities under the Act to the workman by recording a finding that the applicant (appellant herein) had completed requisite

service of five years to be eligible to get gratuity. In that case, even if another view was possible, the Division Bench should not have set aside the

findings recorded by the Authorities under the Act and confirmed by a Single Judge by allowing the appeal of the employer.

14. The Bombay High Court has considered the said aspect in case of Modistone

Ltd. and Ors. v. Deputy Commissioner of Labour, Mumbai and

Ors. reported in 1999 II LLJ 1042. Relevant observations are in Para.9, which is quoted as under:

9. Thus it is a settled law that it is not open for the company to take shelter of Section 22 in respect of the workers' wages and other dues. A

feeble attempt was made by Mr.Vasudeo to distinguish the above judgment by contending that the present case relates to payment of gratuity to

the workmen and since such claim is in the nature of arrears, the case would be governed by the decision of the Apex Court in Tata Davy Ltd. Vs.

State of Orissa and Others, I am unable to accept the submissions made by the learned Counsel for the petitioners. By no stretch of imagination

gratuity can be called arrears of wages. The basic minimum which the workman is entitled to get is the wages and gratuity and other statutory

benefits.

15. The Bombay High Court has considered the said aspect in case of A.S. Iyer Vs. Union of India (UOI) and Others, Relevant observations are

in Para.8 and 9, which is quoted as under:

8. The Payment of Gratuity Act has been enacted as a special legislation for the purpose of payment of gratuity. Section 1(3) of the Act is

applicable to every factory, mine, oil field, plantation, port, railway company as well as every shop or establishment in which 10 or more persons

are employed on any day of the preceding 12 months and such other establishments notified by the Central Government where 10 or more

employees are employed. u/s 4 of the Act, gratuity is payable to all employees employed in the aforesaid establishments at the rate of 15 days'

wages per year of service. However, Section 4 Sub-section (5) permits an employee to draw a higher amount of gratuity if the rules governing the

service conditions so permit. The regulations framed under the ONGC Act were framed in 1989 and cover the service conditions in respect to

death-cum-retirement and terminal gratuity applicable to the employees of the ONGC. The regulations being framed prior in point of time to the

enactment of the Payment of Gratuity Act, would not prevail over the Payment of Gratuity Act so far as the payment of gratuity is concerned. In

fact, Section 14 of the Payment of Gratuity Act, which is a non obstante clause, makes it very clear that anything inconsistent with the Payment of

Gratuity Act should not be given effect to. Admittedly, the Regulations of the ONGC and the Payment of Gratuity Act are not identical. The

Regulations impose a ceiling of Rs. 36,000/- for payment of gratuity. However, such a ceiling is not present in the Payment of Gratuity Act. At the

time when the petitioner retired in 1984, the maximum gratuity payable to an employee was 20 months salary. We see no reason why the gratuity

payable to the petitioner should not be paid in accordance with the Payment of Gratuity Act.

9. The reliance placed by Mr. Cama on the judgments in the cases of Jain Ink (supra) and the State of Uttar Pradesh (supra) is misplaced. In the

case of Jain Ink (supra), the Apex Court was considering the effect of a non obstante clause contained in two or more laws operating in the same

field and the effect if they operate in two different spheres though there may be some amount of overlap. The Apex Court was considering the

provisions of the Delhi Rent Control Act and the Public Premises (Eviction of Unauthorized Occupants) Act as compared to the Rent Control Act

had a broader spectrum and that the Public Premises (Eviction of Unauthorized Occupants) Act being a special Act overrides the provisions of the

Rent Control Act, especially since it was subsequent to the Rent Control Act. They are also considered the provisions of the Slum Areas

(Improvement and Clearance) Act, 1956 in juxtaposition with the Public Premises (Eviction of Unauthorized Occupants) Act and held that the

Public Premises (Eviction of Unauthorized Occupants) Act overrides the Slum Areas (Improvement and Clearance) Act. In the present case, the

Payment of Gratuity Act is a special legislation for the payment of gratuity to employees working in certain establishments whereas the Regulations

framed under the ONGC Act operate qua the employees of the ONGC. A harmonious construction and interpretation of the Payment of Gratuity

Act and the Regulations leads us to the inevitable conclusion that the former will prevail. The Payment of Gratuity Act is a later enactment specially

enacted for the payment of gratuity in establishments mentioned in Section 1 and, therefore, that Act would prevail over the regulations so far as

the payment of gratuity is concerned. In the case of State of Uttar Pradesh (supra), the Apex Court considered whether the Rules framed under a

statute were to be treated for all purposes of construction or obligation exactly as if they were in the Act and whether they were to be given the

same effect as if contained in the Act. There is no doubt that the Regulations would have a statutory force of law. However, this does not mean

that the Regulations would automatically prevail over the provisions of the Payment of Gratuity Act

16. The Kerala High Court has considered the said aspect in case of Anappara Karinkallu Thozhilali Sahayam Co-op. Society Ltd. Vs. Many,

Relevant observations are in Para.12 and 13, which is quoted as under:

12. Section 2(f) of the Act provides that in relation to any establishment, belonging to or under the control of any Government or any local

authority, "the person who, or the authority which has an ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation,

port, railway, company or shop" will be treated as employer. Admittedly, the appellant had taken on lease certain quarries. Necessarily, for the

purpose of quarrying work, going by the definition, the appellant shall be the "employer". Here, no matter whether the appellant employs, to

perform the work, the members or any one else. For such work, the member concerned is given wages. Necessarily, he will be an "employee" in

terms of Section 2(e) of the Act. In Section 4(5) of the Act, it is specifically provided that:

Nothing in this Section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the

employer"

Necessarily, the Act will apply only in the absence of a better provision for payment of gratuity than that is provided in the Act. The Act does not

discriminate anyone, for the purpose of computation of gratuity and while reckoning the continuous service, whether one performs the work for

240 days or less. But the provisions in the bye-law make it clear that only those who have worked for 240 days in a year will be eligible for

gratuity. Therefore, the provision contained in the bye-law is no more beneficial or better than what is contained in the Act. Therefore, the bye-law

cannot have any application, when provision in the Act provides for better rate of gratuity.

13. Moreover, Section 14 of the Act makes it clear that "the provision of this Act and the Rules made thereunder shall have effect notwithstanding

anything inconsistent therewith contained in any enactment other than this Act

or in any instrument or contract having effect by virtue of any enactment other than this Act". The bye-law is an instrument registered in terms of the Co-operative Societies Act. Whatever provision contained

therein cannot have application unless it did provide for a better rate of gratuity. In other words, the Act will override the provisions in the bye-law.

So the payment of gratuity cannot be limited in terms of the bye-law. Appeal therefore, fails, dismissed.

17. The Karnataka High Court in case of Cement Corporation of India Ltd. Sedam Gulbarg District v. Regional Labour Commissioner, Central,

Bangalore reported in 2008 I LLJ 26 (Karn) has held that the provisions of Section 22(3) and (4) of SICA Act read with Section 7(7) of the

Gratuity Act - the sick industry not exempted from deposit requirement in proviso to Section 7(7) of the Gratuity Act.

18. In view of the law decided by the Apex Court as referred above as well as in light of the fact that no challenge is made to the order of the

controlling authority and appellate authority and only the petitioner has challenged the recovery certificate/notice which is based on order passed by

controlling authority and appellate authority and therefore, according to my opinion, the amount of gratuity which has been withheld or forfeited by

the petitioner is contrary to the order passed by the controlling authority and appellate authority. Therefore, there is no substance in the present

petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

19. The respondent No. 1 is directed to immediately recover the amount of interest which comes to Rs. 74,795/- from the petitioner on the basis

of notice (Annexure-A) dated 29.5.2006 and pay the said amount of interest to the respondent No. 2 as early as possible.