

(1981) 06 MAD CK 0014

In the Madras High Court

Case No : Writ Petition 1551 of 1976, etc., etc.

Jeevanlal (1929) Limited and Others

APPELLANT

Vs

Controlling Authority Under the Payment of Gratuity Act and Others

RESPONDENT

Date of Decision : 19-06-1981

Acts Referred:

Constitution of India, 1950 — Article 133(1), 134, 14, 19, 19(1)
Industrial Disputes Act, 1947 — Section 25
Payment of Gratuity Act, 1972 — Section 14, 2, 4, 4(2), 5
Tamil Nadu Payment of Gratuity Rules, 1973 — Rule 10, 10(1), 7(5)

Citation : (1982) 1 LLJ 86

Hon'ble Judges : P.K. Sethuraman, J;K.M. Natarajan, J

Bench : Division Bench

Judgement

Natarajan, J.—These writ petitions have been clubbed together and posted before us for disposal by a common order since all of them

relate to proceedings under the payment of Gratuity Act (No. 39 of 1972), hereinafter referred to as the Act. Most of the petitions have been filed

by the Managements of various companies, while the rest of them have been filed by the employees. Since the facts differ in the various batches of

cases, we shall deal separately with each batch, and wherever necessary, common questions of law will be dealt with collectively.

2. The first batch of cases, viz, Writ Petition Nos. 1551, to 1553, 1590 to 1598 and 635, of 1976, 2028, 2058, 2073, 2168 and 2170 to 2172

of 1978, 2451 to 2454 of 1978, 2469 to 2471 of 1978, 2570, 2662, to 2665 of 1978, 4136 of 1978, 26 and 614 of 1979, 1732, 1959, 2005

to 2008, 2085, 2122, 2134, 2135, 2171 to 2175, 2412, 2427, 3156 to 3158, 3163 to 3165, 3166, 3567, to 3571, 3972, 4022 to 4029, 4053

to 4058, 4252 to 4255, 4257 to 4259, 4331, 4339, and 4408 to 4414 of 1988, have been filed by Messrs. Jeevanlal Limited. In all these cases,

the concerned employee has been impleaded as the first respondent, the Controlling authority and the Appellate Authority under the Act have been

impleaded respectively as respondents 2 and 3, the Workers' Union in which the concerned employee is a member as the fourth respondent, the

Union of India represented by the Secretary, Ministry of Labour as the fifth respondent and the workers' union belonging to another concern run

by the petitioner management as the sixth respondent.

3. These petitions have been filed for quashing the orders passed by the third respondent in the respective appeals filed by the petitioner against the

concerned employee shown as the first respondent in each of the petitioner, by the issue of a writ of certiorari or any other appropriate writ or

direction or order as may be deemed fit and necessary.

4. The impugned orders came to be passed in the following circumstances. In all these cases, the employees retired from the service of the

petitioner between the years 1979 and 1980. They claimed payment of gratuity in accordance with the provisions of the Act which came into force

on 16th September; 1972. The petitioner management took the stand that in so far as the services rendered by the employees prior to the Act

coming on into force are concerned, the employees can claim gratuity only in accordance with the scheme or award that governed the rights of

parties and that the Act would not cover the period of service prior to its coming into force on 16-9-1972 for the purpose of payment of gratuity

under S. 4. The employees then approached the Controlling Authority and the said Authority overruled the contentions of the petitioner and

ordered payment of gratuity as claimed by the employees. The petitioner - management filed appeals to the Appellate Authority, but without

success. It is against those orders of the Authorities below, the writ petitions have been filed. In all the writ petitions, the constitutional validity of

the Act is questioned. In addition except in Writ Petitions Nos. 1551 to 1553 and 1590 to 1597 of 1976, in the other cases an additional

objection has also been raised about the competence of the second and third respondents to deal with the dispute or to pass the impugned orders,

since, according to the petitioner, the appropriate Government to deal with the

matter is the Central Government and not the State Government.

5. Messrs. Jeevanlal Limited is a public limited company, incorporated under the Indian Companies Act, 1913 and is engaged in the business of

manufacturing and selling household utensils and other articles made out of aluminum metal. The company is an all-India concern and has its

registered head-office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and

Cochin. The company has employed 1300 workmen in its offices at Calcutta, Bombay and Madras and about 300 clerical and subordinate staff in

the head office, branch offices, sales offices and factories throughout the country. The service conditions of the different categories of workmen in

the factories are governed by awards and settlements reached at the respective places where the factories are situate and the said awards or

settlements also govern the gratuity to its employees. As far as the clerical and subordinate staff employed in the commercial establishments of the

company are concerned, the company has framed a gratuity scheme for those employees and the scheme was introduced in 1967. The salient

features of the gratuity scheme are as follows :

(1) The qualifying period for payment of gratuity is five years of continuous service.

(2) The gratuity is payable on the basic salary or wage exclusive of dearness allowance and other allowances.

(3) Gratuity is payable at the rate of half a month's basic salary or wage for every completed year of service, subject to a maximum of ten months"

basic salary or wage.

(4) Gratuity shall be payable only for the period upto superannuation and at the rate of the basic wage prevailing then.

(5) No gratuity is payable to an employee for certain proved acts of misconduct.

6. The petitioner-company has two factories in Madras, viz., (1) Sree Ganeshar Aluminum Works and (2) Mysore Premier Metal Factory. It has

also a branch office in Madras. All the three establishments employ more than ten persons. In respect of the workmen employed in Ganeshar

Aluminum Works, the petitioner entered into a settlement with the Worker's Union of Sree Ganeshar Aluminum Factory for payment of gratuity to

the workmen of that factory. Similarly, in respect of the workmen employed in

the Mysore Premier Metal Factory, the workmen are governed by the award of the Industrial Tribunal dated 25-3-1960 for payment of gratuity to the workmen in that factory. The age of retirement for the employees of the factories has been fixed as 58 years as per the Certified Standing Orders formulated by the company. In accordance with the settlement or award as the case may be, the petitioner had been paying gratuity to its employees. However, the Act, enacted by parliament came into force with effect from 16-9-1972. Before the Act came into force, the employees were not entitled to gratuity as a matter of right unless a gratuity scheme had been framed voluntarily by the employer or bilaterally formulated in pursuance of a settlement or award. Though the petitioner had been paying to its employees gratuity as per the award or settlement or scheme as the case may be, the petitioner had not created any gratuity fund, nor had it made any provision by way of separate reserve to meet the liability for payment of gratuity. However, by the terms of the Act, the petitioner is obliged to pay every employee who has put in five years of continuous service, on the termination of his employment, gratuity at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned. Further more, in case of death or disablement, gratuity will have to be paid even if the employee had not put in the qualifying period of service. Besides, the terms "wages" has been defined to include dearness allowance. Before the Act was enacted, the financial capacity of the employer to bear the burden of gratuity was an important consideration and unless the employer's financial capacity was sound, no gratuity scheme could be evolved for payment of gratuity by the employer to the employee. But, on account of the Act, an employer is obliged to pay gratuity to its employees, whatever be the financial solvency of the employer. Before the Act gratuity was invariably, paid only on the basis of basic wages. But after the Act gratuity has to be paid on the basis of, not only basic wages, but also dearness allowance, over the fixation of which the petitioner has no control since the payment of dearness allowance is linked with the cost of living index which has been increasing rapidly from time to time. Hence, from the coming into force of the Act on 16-9-1972, a colossal financial liability has been inflicted on the petitioner. Under S. 4(2) gratuity is payable to an employee at the rate of 15

days" wages for every completed year of service. Every completed year of service has been defined to mean continuous service of one year and continuous service has been defined to mean uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or lock-out or cessation of work not due to any fault of the employee. In view of this wide definition, the Act has not only imposed an additional liability on the petitioner, but has also given retrospective effect to the Act since the period of service prior to the commencement of the Act can also be taken advantage of by the employee. It is also pertinent to state that the liability is exposed to contingencies over which the employer has no control.

7. For example, if all the employees eligible to receive gratuity bring about a simultaneous cessation of service, the petitioner company would not have the requisite resources to pay the gratuity amount and that would lead to the driving out of the petitioner from existence or to appropriate the capital which will seriously affect the petitioner's right to carry on the business. The Act has imposed a rigid liability on the company to pay gratuity to its employees irrespective of the fact whether the company has earned profit or not and whether the company's resources will allow payment of gratuity to the employees without detriment to its business operations. The Act violates Arts. 14, 19(1)(f) and 19(1)(g) of the Constitution of India in that it offends the rule of discrimination on account of unequals being placed on equal footing and also on account of the petitioner's right to carry on trade or business according to its own convenience being affected. The Act and the scheme framed thereunder are also violative of the petitioner's fundamental right under Art, 31 of the Constitution, inasmuch as the Act is expropriatory in nature. The Act has not laid any reasonable classification between the employers and the employees inasmuch as losing concerns and profit-making concerns in the same region are treated on par and also on account of the fact that companies situate in different parts of the country are sought to be treated alike. The employees are entitled to payment of gratuity only as per the settlement reached between the parties or as per the award. But, the employees were insisting upon payment of gratuity as per the terms of the Act. The stand of the employees has been upheld by the second respondent, viz., the Controlling Authority and by

the third respondent, viz., the Appellate Authority. Hence the Act should be struck down as unconstitutional and the orders passed by the second

and third respondents in accordance with the terms of the Act should be quashed.

8. Respondents 1 and 4 have filed a common counter-affidavit and they have traversed therein the several contentions raised in the affidavit of the

petitioner. It has firstly been stated that the sixth respondent is an unnecessary party since no writ petition against any workman of that factory had

been filed by the petitioner. As regards the petitioner's contention regarding the constitutional validity of the Act, it has been stated that the vires

and legality of the Act have been tested from many angles by the various High Courts and the Supreme Court and the Act has been upheld in all

those proceedings and as such, it is no longer open to the petitioner to raise a contention that the Act is violative of the Constitution. For the

enforcement of the Act, the financial position of the petitioner-company is not a relevant factor, but even if that factor was to be taken note of, the

company was making huge profits year after year and as such, the petitioner cannot be in want of funds for petitioner gratuity to its workmen as

per the terms of the Act. The settlement entered in to between the petitioner and the workers union for payment of gratuity contains a provision

that the settlement would give place as and when any enactment is made for payment of gratuity to the employees and in view of this position, it

was futile for the petitioner to harp upon the scheme originally framed. The failure of the petitioner to have created a gratuity fund a reserve there

for was of no consequence and, at best, it would only amount to laches on the part of the petitioner and cannot be converted to the advantage of

the petitioner. The other grounds put forward such as linking up of the dearness allowance with wages, the appreciation of dearness allowance due

to causes beyond the control of the petitioner, the huge financial burden the payment of gratuity will cast upon the petitioner company etc., have all

been refuted by respondents 1 and 4 and they have characterised these averments as imaginary and irrelevant. Consequently, these respondents

have prayed for the dismissal of the writ petitions. On behalf of the fifth respondents, a counter-affidavit has been sworn to by Mr. Hans

Rajchhabra; Deputy Secretary, Government of India, Ministry of Labour. It has been set out in the counter - affidavit that the Act came in to force

on 16-9-1972 and from that date, the establishments covered by the Act are under a statutory obligation to pay gratuity in terms of the Act unless exempted under S. 5 thereof. Section 14 of the Act clearly lays down that the Act will have overriding force over all other enactments, instruments, or contracts relating to payment of gratuity, subject, however, to the condition that if an employee is entitled to higher gratuity benefits under any settlement, award or scheme, the employee should not be deprived of these benefits. As the Act provides a minimum benefit to the employees, the financial capacity of the employer is not a relevant factor for consideration. The concept of gratuity involves payment for the entire service. Hence it is a fallacy to say that the Act has got retrospective effect or places additional liability on the employer. The liability for payment of gratuity arises at the time of an employee's service coming to an end. Such being the case, the contention that if the services of a large number of employees come to an end at a particular point of time, the employer would be saddled with a heavy financial burden, is not a tenable contention. The Act does not violate the fundamental rights guaranteed by the Constitution. On the other hand, it provides only for a minimum benefit and cannot, therefore, be considered as discriminatory in nature. In fact, the Act seeks to achieve one of the directive principles of State Policy embodied in Article 43 of the Constitution, viz., securing a minimum standard living wage for the workers. The restrictions, if any, imposed by the Act are reasonable and are in the interests of the general public. Hence they are protected by the term of clause (6) of Art. 19. Article 19(1)(b) and 19(1)(i) and Art 31 have not been violated. The Act does not also offend Art. 14 of the Constitution. Hence the Writ petitions are devoid of merit and should be dismissed.

9. Though Messrs. Jeevanlal Limited have raised a contention that the Act is unconstitutional in that it violates Art. 14, 19(1)(f) and 19(1)(g) and

31, Mr. Govind Swaminathan, learned counsel appearing for the petitioner-company, did not seriously press this contention. Learned counsel

conceded that having regard to the several pronouncements of the Supreme Court and several High Courts about the Act and analogous

legislations it would not serve any purpose to press the contention. It is, therefore, enough if we refer in passing to the several decisions cited by

Mr. N. G. R. Prasad, learned counsel for respondents 1 and 4 and the Senior Standing Counsel for the Central Government in support of their

contention that the Act does not offend the Constitution in any manner. In *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*,

the Supreme Court observed that in respect of bonus, provident fund, retrenchment compensation, State Insurance Scheme as well as medical

benefits, legislations have been introduced bringing a reasonable degree of certainty in the laws governing the various benefits available to the

workmen and hence they are of the view that even in respect of gratuity a reasonably uniform scheme may be evolved by the Legislatures which

could prevent resort to the adjudicators in respect of the complicated matter of dispute between the employer and the employees. The suggestion

made by the Supreme Court has been accepted by Parliament and the Act has been enacted. In *Jalan Trading Co. (Private Ltd.) Vs. Mill*

Mazdoor Union, , the validity of the Payment of Bonus Act, 1965 was considered and upheld by the Supreme Court. In *Narottamdas Vs. State of*

Madhya Pradesh, , it was held by the supreme Court that the retrospective operation of a legislation is a relevant circumstance in deciding its

reasonableness, but it is, however, not necessarily a decisive test. (In the cases on hand, the contention of the respondents' counsel was that the

Act in question does not have any retrospective operation and the contention to the contrary is a bogey). In *Bijay Cotton Mills Ltd. Vs. The State*

of Ajmer, , while considering the validity of some other provisions of the Minimum Wages Act, 1948, it was held as follows :

If it is in the interest of the general public that the labourer should be secured adequate living wages, the intentions of the employers, whether good

or bad, are really irrelevant. Individual employers might find it difficult to carry on the business on the basis of the minimum wages fixed under the

Act, but this must be due entirely to the economic conditions of these particular employers. That cannot be a reason for striking down the law itself

as unreasonable.

In *Hindustan Antibiotics Ltd. Vs. The Workmen and Others*, , it was held that ""gratuity is an additional form of relief for the employee to fall back

upon,"" In *The Straw Board Manufacturing Co. Ltd. Vs. Its Workmen*, while upholding an award, the Supreme Court held that ""Wages"" would

mean and include basic wages and dearness allowance, and referred to the definition of ""wages"" in the payment of Gratuity Act as ""last wages

inclusive of dearness allowance." In *The Patel Mills Co. Ltd. Vs. The Textile Labour Association and Another*, a Division Bench of the Gujarat

High Court held that S. 10 of the Payment of Bonus Act had been enacted by Parliament with a view to maintain peace and harmony between the

agencies which contribute to the earning of profit, that the provision for payment of bonus at the Statutory minimum rate even if the establishment

has not earned profit, is clearly enacted to ensure the object of that Act and hence the validity of S. 10 of the said Act cannot be disputed. All

these decisions have been succinctly considered by a learned single Judge of the Karnataka High Court in *Sujirkar's Tile Works v. Union of India*,

54 (1979) F.J.R. 281, while disposing of a petition filed to challenge the validity of the Payment of Gratuity Act, 1972. After an elaborate

consideration of the provisions of the Act and the case-law, the learned Judge held that the Act did not violate Arts. 14 and 19(1)(g) of the

Constitution and whatever restrictions have been placed by the Act on the employers are permissible under clause (6) of Art. 19 of the

Constitution. Having regard to all these decisions, even if Mr. Govind Swaminathan had pressed the contention of the petitioner that the Act

violates Arts 14, 19(1)(f), 19(1)(g) and 31 of the Constitution, we would have had no hesitation in discountenancing the argument and upholding

the validity of the Act.

10. Passing on to the next contention of Mr. Govind Swaminathan, it was argued that the petitioner company is an all-Indian concern and while it

has its registered head office at Calcutta, it has got branch officer and factories at Calcutta, Bombay and Madras and sales offices (branches) at

Delhi, Hyderabad and Cochin and hence it followed that the petitioner has branches in more States than one and consequently, the appropriate

Government under S. 2(a) in respect of the petitioner would only be the Central Government and not the State Government and as such, the

second and third respondents, who are authorities appointed by the Government of Tamil Nadu, have no jurisdiction to deal with the applications

filed by the employees for payment of gratuity in accordance with the terms of the Act. In support of this contention, Mr. Govind Swaminathan

relied upon a decision of P. P. Bopanna, J., of the Karnataka High Court in *Binny Ltd. v. Commissioner of Labour*, (57), F.J.R. 139. The

petitioner in that case was owning a textile mill in the State of Tamil Nadu and had its registered office in Madras. The company also owned a

textile Mill in Bangalore in Karnataka State, and carried on operations similar to those carried on in its Madras factory. On an application under S.

7 of the Act, made by a workman employed in the factory at Bangalore, the controlling authority and the appellate authority appointed by the State

Government of Karnataka took the view that the appropriate Government was the State Government and not the Central Government and hence

they were competent to deal with the application and adjudicate the claim of the workman. The company refuted this position and contended that it

was an establishment having branches in more than one state and it was not having factories in two States and on that basis the company filed a

writ petition before the Karnataka High Court. The contention was accepted by the learned single Judge and it was held that the word

establishment"" occurring in the Act has been used in a general sense to include a factory, mine, oil-mill, plantation, port and railway company and

also the establishments specified in S. (1)(3)(b) and (c) of the Act and that, in the absence of a definition of the word ""establishment"" in the Act, the

general meaning must be given to that word in S. 2(a)(1) of the Act unless the context otherwise required. The meaning to be ascribed to the word

establishment"" occurring in the Act came to be considered by one of us (Natarajan, J.) in Neyveli Lignite Corporation Ltd. Vs. J. Satagopan and

Another, . An employee of the Neiveli Lignite Corporation who had voluntarily retired in accordance with the scheme governing the employees of

the Corporation, claimed payment of gratuity as per the terms of the Act. But the Corporation took the stand since he was not employed in the

factory or mine, he would not be entitled to payment of gratuity in accordance with the provisions of the Act. Such a contention was raised on the

basis that the employee was employed as a Junior statistical officer and hence he could not be considered an employee of an establishment of a

factory belonging to the Central Government and likewise, he could not be considered as an employee in a factory or mine run by the Corporation,

because the Material Controller's Office was an independent unit and had nothing to do with the factory or the mine. The controlling authority

sustained the objections of the corporation and held that the employee was entitled to payment of gratuity only as per the scheme framed by the

Corporation and not in accordance with the terms of the Act. The employee filed an appeal to the appellate authority. The appellate authority took a different view and held inter alia that according to S. 2(a) of the Act, the Central Government is the appropriate Government in relation to the establishment of a factory or mine belonging to or under the control of the Central Government, that the Act is applicable not only to factories and mines, but also establishments relating to such factories and mines, that since the Material Controllers' Office of the Corporation is an establishment in relation to factories as well as mines of the corporation, the employees working in the Material Controller's Office will also be governed by the provisions of the Act and hence the employee would be entitled to the full amount of gratuity claimed by him. Accordingly he allowed the appeal. Aggrieved by that, the Corporation preferred a writ petition to quash the order of the appellate authority. One of the contentions raised in the writ petition was that the appellate authority was wrong in taking the view that the employee was employed in an establishment relating to a factory or mine. After considering the relevant provisions of the Act, the meaning to be given to the word "establishment" was decided in the following terms :

On consideration of the matter, I think there is force in the argument of Mr. Gopalaratham that there can only be a factory, mine, oilfield, plantation, etc., and there cannot be an establishment of a factory, port, mine; oilfield, etc., In S. 1(3) as well as S. 2(e) and (f) the word "establishment" has been used disjunctively in juxtaposition to the words "factory, mine, oilfield, plantation, etc.," Merely because the preamble contains the words "or other establishments" and S. 2(a) affords scope for the word "establishment" being prefixed to the words "of a factory" occurring in sub-cl (c) and "of a major port, mine, oilfield, or railway company" occurring in sub-clause (d) it is not possible to hold that the Legislature intended to enlarge the meaning of the words "factory" major port, mine, oilfield, etc., etc., by tacking on the word, "establishment" to them. This inference is inescapable because, as already stated, sub-clause (g) (i), (j), (1), (m), (n) and (p) restrict the meaning of the appropriate word found in the sub-clauses to the meaning given to them in the parent Acts referred to therein. For example, in sub-clause (2)(g) the word

"factory" has been assigned the meaning given to it in clause (m) of S. 2 of the Factories Act, 1948. Having given such a definition, the Legislature would not have intended to enlarge the meaning of the word factory by describing it as "establishment of a factory". Section 2, the wording of which has presumably led the second respondent to hold that there can be an establishment of a mine, is intended to cover (i) establishments belonging to or under the control of the Central Government and (ii) establishments having branches in more than one State, as well as (iii) factories belonging to or under the control of the Central Government and (iv) major ports, mines, oilfields or railway companies. It is on account of the composite nature of the subsection, the word "establishment" has been used even with reference to factory, major port, mine, etc. Therefore, the view of the second respondent that the Gratuity Act is applicable not only to factories and mines, but also to establishments related to such factories and mines, is not correct.

This decision was relied on by the respondents' counsel to counter the argument of Mr. Govind Swaminathan.

11. Having considered the judgment of Bopanna, J., and the judgment of one of us referred to above, we are of the opinion that the view taken in Neyveli Lignite Corporation Ltd. Vs. J. Satagopan and Another, , is more acceptable. It is, no doubt, true a debate similar to the one now raised, viz., whether the appropriate authority to deal with the application filed by an employee of the Neyveli Lignite Corporation was the authority appointed by the Central Government or the State Government did not directly arise for consideration in that case. Even so, it must be pointed out that the meaning to be given to the word "establishment" occurring in S. 2(a) had been fully considered for rendering judgment in that case. Hence, accepting the ratio in that judgment, we cannot sustain the argument of Mr. Govind Swaminathan that the petitioner's factories in various States must be deemed as branches of an establishment of the petitioner with its head-office in Calcutta, and, as such, the appropriate Government would be only the Central Government and consequently, respondents 2 and 3 appointed by the State Government did not have jurisdiction to deal with the applications filed by the employees. On the other hand, the petitioner's factories in Madras will fall only under S. 2(a)(ii); viz., "in any other

case"" the State Government and as such, respondents 2 and 3 appointed by the State Government were alone entitled to deal with the applications

field by the employees of the petitioner for payment of gratuity. Hence we are unable to accept the contention of the petitioner that appropriate

Government for the petitioner's factories at Madras is not the State Government, but only the Central Government and as such, the impugned

orders passed by respondents 2 and 3 are without jurisdiction. Hence all the writ petitions filed by Messrs. Jeevanlal Limited, except Writ Petition

Nos. 4136 of 1978 and 26 of 1979, where the quantum of gratuity is involved, have to fail.

12. Taking up the next batch of cases, they are Writ Petition Nos. 391 of 1977, 734 of 1978, 3120 to 3123 of 1979, 3503, 3504., 3834 to 3836

and 4197 to 4200 of 1979, 4628 and 4629 of 1979, 701 and 1158 of 1980 filed by Messrs. Jeevanlal Limited, while Writ Petition Nos. 1434 to

1436 of 1980 have been filed by the management of Pioneer Mills. Coimbatore and Writ Petition No. 5245 of 1980 has been filed by Messrs.

Lakshmi Mills Co. Limited, Coimbatore and Writ Petition No. 4995 of 1980 had been filed by a worker employed in Messrs. Gordon

Woodroffee and Co., Madras. As already stated, Writ Petition Nos. 4136 of 1978 and 26 of 1979 filed by Messrs. Jeevanlal Limited also fall for

consideration in this batch of cases. In all these cases, the controversy is with reference to the interpretation of the words ""rate of fifteen days"

wages"" occurring in sub S. (2) of S. 4 and the words ""twenty month"" ""wages"" occurring in sub-s. (3) of S. 4 of the Act. Before referring to the

arguments of Mr. M. R. Narayanaswami, learned counsel for the petitioners in this batch of cases and Mr. Govind Swaminathan, learned counsel

for the petitioners in writ petition No. S. 4136 of 1978 and 260 of 1979, we may usefully extract the relevant portions of S. 4 of the Act and in

particular, sub-S. (2) and (3). The relevant provisions read as follows :

Section 4(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less

than five years

(a) on his superannuation, or. (b) on his retirement or resignation, or.

(c) on his death or disablement due to accident or disease :

..... (Provisos & Explanation omitted)

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen

days" wages based on the rate of wages last drawn by the employee concerned;

..... (Provisos omitted)

(3) The amount of gratuity payable to an employee shall not exceed twenty months" wages.

..... sub-S. (4) omitted

It is common ground that in all these cases, the employees were monthly rated employees. The employees in the cases in which Mr.

Narayanaswami appears had all put in more than 35 years of service. They were paid gratuity of 20 months salary on the basis of their last drawn

salary. The employees were not satisfied with such payment and contended that the payment made by the employers worked out only to 520

days" wages and not 20 months" wages or 600 days" wages which the employers were bound to pay under the terms of the Act. Such a

contention was raised on the basis that the salary paid for a month would be referable only to the 26 working days in the month and therefore, the

rate of wages per day must be arrived at by dividing the monthly salary by the number of working days, viz., 26 and on the basis of the figure so

arrived, monthly wages must be calculated by multiplying the figure by 30 and the sum arrived at must again be multiplied by 20 to conform to the

requirements of S. 4(3) of the Act. The Managements did not accept the contentions of the employees and hence the employees moved the

controlling authority for securing the balance of amount claimed by them, In all cases except in one, viz., the case relating to Writ Petition No. 1158

of 1980, the controlling authority rejected the contentions of the employers and directed them to pay the additional sums to the employees so as to

cover a period of 20 months or 600 days envisaged by S. 4(3) of the Act. In all the cases, the employers filed appeals to the appellate authority an

in W.P. No. 1158 of 1980 alone the employee filed an appeal. The appellate authority dismissed the appeals filed by the employers and allowed

the appeal filed by the employee. It is to challenge the correctness of the order passed by the appellate authority in each case, these writ petitions

have been filed.

13. Learned counsel appearing for the petitioners advanced various arguments in

support of their contention that fifteen days" wages would only mean half a month"s salary and 20 months" wages would only mean the actual payment made to the employees for every month"s service multiplied by 20. It was firstly pointed out that if an employee absented himself for a day without leave, the employer used to deduct 1/30th of the salary towards loss of pay for the day on which the employees was absent. The counsel then referred to the language of sub-ss. (2) and (3) and submitted that there was no basis whatever for the employees to ask for an artificial construction being made of the words ""fifteen days," ""wages as meaning the wages payable for fifteen working days and the monthly wages being divided by the number of working days and the daily wages fixed on that basis. It was further argued that even if under S. 4(2) fifteen days wages should be taken to mean the wages paid for a month divided by the number of working days, viz., 26 and then multiplied by 15, still, when it came to a question of payment of 20 Months wages under S. 4(3), the words used, viz., ""20 Months"" ""wages"" did not afford room for any artificial calculation being made to determine the month"s wages. Yet another arguments advanced was that if a month is to be considered as consisting of 26 working days, then the same basis must be adopted for determining the maximum amount of gratuity of 20 months wages payable under S. 4(3) and, thus construed, the employees would be entitled to get only wages for 20 months of 26 days each, or in other words, 520 days. To put it differently, it was argued that if the divisor taken as 26 days in a month, it must then, it must be the same for applying the multiplier of 20 also, and as such, the employees are not entitled to ask for payment of wages of 600 days.

14. The question as to how sub-ss. (2) and (3) of S. 4 of the Act should be interpreted is no longer res integra. In Lakshmi Vishnu Textile Mills Vs. P.S. Mavlankar, , a Division Bench of the Bombay High Court had to consider whether the fifteen days" wages referred to in S. 4(2) should be construed as fifteen days" wages or thirteen days" wages "wages or thirteen days" wages and whether the words, "twenty months"" ""wages occurring in S. 4(3) should be taken to mean wages for 600 days or wages for 520 days. The employees concerned in that case were all daily rated workmen. They worked out their claim for gratuity at the rate of actual

fifteen days" wages for every completed year of service by multiplying the amount of their actual daily wages by 15 and of "twenty months" "wages", in terms of S. 4(3), by multiplying it by 600, treating each month to be of thirty days. The employers, on the other hand, contended that all the workmen, without regard to the mode of payment of their wages, worked only for 26 days in a month, that fifteen days" period is equivalent to half a month, that in the case of monthly rated workmen half a month"s wages turned out only to be those of 13 days" wages, that the Legislature could not have intended to fix a higher rate of gratuity for daily rated workman and discriminate against monthly rated workmen and therefore, a month must be equated with 26 days and thirteen days with half a month. Hence the employers insisted on limiting the yearly rate of gratuity at 13 days actual wages. The Division bench rejected the contentions of the employers and held that the rate of 15 days" wages in S. 4(2) cannot be construed to mean 13 days" wages and if the rate of 15 days" wages under S. 4(2) cannot be reduced to thirteen working days" wages, and then the wages of twenty months covering 600 days also cannot be reduced to 520 days "wages. It may thus be seen that contentions similar to the ones raised before us had been raised before the Bombay High Court but were not accepted by the learned Judges. The only difference is that in the cases before us the employees are monthly rated personnel whereas in the case dealt with by the Bombay High Court the employees were daily rated workmen. However, it has been pointed out by the Division Bench that the rule of construction has to be the same for daily rated employees as well as monthly rated employees.

15. Subsequent to the judgment rendered by the Bombay High Court, the Supreme Court has also rendered decision on this matter in *Digvijay Woollen Mills Ltd. Vs. Shri. Mahendra Prataprai Buch*, . There were two cases before the Supreme Court and in both, the employee were monthly rated workers. The employers calculated the amount of gratuity payable to the workers on the basis that fifteen days" wages were half of the monthly wages last drawn by them. The workers demanded an additional sum as gratuity on the ground that their monthly wages should be taken as what they got for 26 days, their daily wages should be ascertained on that basis and the fifteen days wages worked out accordingly and

not by just taking half of the wages for a month of thirty days or fixing the daily wages by dividing the monthly wages by 30. The controlling

authority and the appellate authority sustained the contentions of the workers and passed orders accordingly. The employers filed petitions under

Art. 227 of the Constitution challenging those orders before the Gujarat High Court. The learned Judges summarily dismissed the petitions, but

gave reasons in support of their order. The employers took the matter to the Supreme Court. The Supreme Court dismissed the appeals holding as

follows :

The view expressed in the extract quoted above appears to be legitimate and reasonable. Ordinarily, of course, a month is understood to mean 30

days, but, in the manner of calculating the gratuity payable under the Act to the employees, the work for 26 days a month followed by the Gujarat

High Court cannot be called perverse. It is not necessary to consider whether another view is possible. The High Court summarily dismissed the

petition of the appellant in both the appeals before us and upheld the decision of the authorities under the Act. We are not inclined to interfere with

the decision of the High Court because it seems to us that the view taken by the authorities is not in any way unreasonable or perverse.

Having regard to this pronouncement of the Supreme Court, we do not think there is any scope for the petitioners to contend that the orders

passed by the appellate authority are incorrect and contrary to law. No other contention was raised in these writ petitions. Hence all these writ

petitions have to fail.

16. In Writ Petition No. 4995 of 1910 the petitioner who is a worker had put in a service of 14 years, 8 months and 9 days on the date of

superannuation. He was given gratuity for 14 years and 8 months instead of 15 years, and at the rate of 13 days' wages per completed year of

service. When he approached the controlling authority, the first error was set right, but not the second. An appeal to the appellate authority proved

futile, and hence he has filed this writ petition. Since the worker had put in more than six months' service, it was rightly held that he was entitled to

gratuity for 15 years. However, the authorities below should have ordered payment of 15 working days' wages, and not 13 working days' wages

along, for each year of service as gratuity. This is in accordance with the view we

have taken in similar cases. Hence the writ petition deserves to succeed. The authorities below will calculate the proper amount due to the petitioner and pass revised order :

17. The next batch of writ petitions have been filed by Messrs. Madura Coats Limited, and they are W.P. Nos. 2967, 2983, 3032 to 3042, 3047,

to 3056, 3766, 3767, 4258 to 4263 and 4380 to 4383 of 1977 and W.P. No. 168 of 1979. In these cases, the interpretation of S. 4(2) of the

Act is alone raised for consideration. All the employees concerned in these writ petitions are monthly rated workmen. Hence the management

contended that 15 days' wages would only mean half a month's salary and there was no scope for an artificial calculation being made by dividing

the wages for a month by the number of working days, viz., 26 and determining the daily wages and multiplying the same by 15 to determine the

amount representing 15 days' wages. Evidence was taken before the controlling authority and one Krishnamachari had given evidence on behalf of

the management. He had deposed that if an employee works for the entire month, he would be given full pay for the month, that no deductions are

made for the holidays, that the monthly wages which must include dearness allowance is a constant figure irrespective of the fact whether the

concerned month comprised of 24 or 25 or 26 working days, and no extra payment would be made if the number of working days was as high as

27. Hence, according to the management, the monthly rate was for all the thirty days of a month and not for 26 working days alone and therefore,

15 days' wages would, in their case, amount only to half a month's salary. These contentions have been put forward in the affidavits filed in

support of the petitions and reiterated in the reply affidavit filed by the management.

18. Mr. Ramasubramaniam, learned counsel appearing for the petitioners in these cases, after referring to the evidence in the case and submitting

that the controlling authority and the appellate authority have passed the impugned orders on general assumptions without taking note of the proved

facts in the case, cited certain decisions in support of the contentions that the workers were entitled only to half a month's salary as gratuity per

completed year of service and not to the wages of 15 actual working days. The first case cited by Mr. Ramasubramaniam was Swamy v.

Authority, payment of Gratuity Act, 52 FJR. 138, where it was held that in the case of a monthly paid employee, there was no warrant for

calculating the amount which he would be deemed to have earned per day and then proceeding to calculate 15 days' wages on that basis; a month

being a period of 30 days inclusive of rest days and holidays, if wages have to be calculated at the monthly rate, 15 days' wages would be what an

employee would learn within a period of 15 days, and not by 15 working days. The counsel then argued that the word "rate" has been used in two

places in S. 4(2), viz., "at the rate of 15 days" wages based on the rate of wages last drawn by the employees", and that the words "rate of wages

would have reference to hourly, daily or monthly rate at which the worker was paid. He also submitted that the period of 15 days has been taken

from other enactments and cited in this connection S. 25F(b) of the Industrial Disputes Act. The words, "fifteen" days average pay, occurring in S.

25F(b) of that Act has been interpreted by the Supreme Court to mean half a month's wage, in Workmen U. P. State Electricity Board v. U.G.V.

El. Supply Co., 1966 I L.L.J. 730. Hence the same ratio must be adopted in the instant case also. Mr. Ramasubramaniam, however, conceded

that a different view, viz., 15 days "wages" means wages for fifteen working days, has been taken in the following cases, but nevertheless, argued

that the view taken by the Supreme Court in Workmen, U. P. State Electricity Board v. U.G.V. El. Supply Co. 1966 I L.L.J. 730, should be

followed. The cases where a different view has been taken are : Lakshmi Vishnu Textile Mills v. P. S. Mavlankar (supra) and Indian Hume Pipe

Company v. Palaniswami, 1968 I L.L.J. 89.

19. Mr. Ramasubramaniam further argued that the decision of the Supreme Court in Digvijay Woollen Mills Limited v. Mahendra Prataprai Buch

(supra) has been rendered without noticing the decisions in Swami v. Authority, Payment of Gratuity Act (supra) and Workmen of U.P. State

Electricity Board v. U.G.V. El. Supply Co. (Supra) Further more, the evidence adduced by the petitioners before the controlling authority did not

afford any scope for holding that the monthly wages paid to the employees were referable only to 26 working days and not the remaining 4 days

also. We are not persuaded by the arguments of Mr. Ramasubramaniam, because the judgment of the Supreme Court in Digvijay Woollen Mills

Ltd. v. Mahendra Prataprai Buch (supra) is directly on point and the petitioners cannot avoid the application of the ratio contained in the judgment

to their cases. As regards the argument that the Supreme Court has not considered some of the judgment, which lend support to the contentions of

the petitioners, we need only extract paragraph 6 of the judgment of the Supreme Court in Digvijay Woollen Mills Ltd. Vs. Shri. Mahendra

Prataprai Buch, , which provides a complete answer to the arguments of the petitioners" counsel. The paragraph reads as follows :

In the view, we take, we do not find it necessary to consider the decisions of some of the High Courts cited at the Bar taking one view or the

other on the question involved in these appeals, the decisions based on some of the provisions of the Minimum Wages Act and other statutes

which were relied on by either side are in our opinion, not relevant on the question of computation of fifteen days" under S. 4(2) of the payment of

Gratuity Act.

We are, therefore, clearly of opinion that all these petitions should also fail.

20. The next batch of cases comprises of Writ Petitions Nos 3503, 3505, 3120 to 3123, 4197 to 4200 and 5214 of 1979. These petitions have

also been filed by Messrs. Madurai Coats Limited. But in these cases Mr. Gopalan is appearing as counsel for the petitioners. The same

contentions that were raised in the previous batch of cases have been raised in these cases, except in the case of Writ Petition No. 5214/79. As

we have dealt with the contentions of Mr. Ramasubramaniam in the previous batch of cases and held they are not sustainable, it follows that these

petitions also have to fail except Writ Petition No. 5214 of 1979 wherein a new point is raised. In that petition, the employee resigned on grounds

of health with effect from 26-3-1976. He had put in a service of 26 years and 11 months which was rounded up to 27 years. On 1-9-1976 the

employee claimed, by means of an application in Form I, a sum of Rs. 6,698.70 P. towards gratuity. On 14-9-1976, the company gave the sum

claimed by him. However on 1-12-1976 the employee applied to the controlling authority and claimed an additional sum from the employer on the

ground that he was entitled to higher gratuity as per the terms of the Act. The employer opposed the application and contended that this employee

had been paid the amount claimed by him, that as such, the employee cannot

seek further amounts, that in any event, the rules framed under the Act did not confer any right on the employee to make an application for the disputed amount and, likewise, the controlling authority had no jurisdiction to entertain the employee's application or pass an order on the merits of the case. These objections were not countenanced by the controlling authority and hence the employee's application was allowed and the management was called upon to pay the additional sum claimed by the employee. The employer filed an appeal to the appellate authority, but it proved of no avail. Hence the employer has come forward with the writ petition. Mr. Gopalan reiterated the contentions raised by the employer before the authorities below to assail the impugned orders. On a consideration of the matter, we find that the employer's contentions are not tenable. It is no doubt true the employee calculated gratuity amount for himself and claimed a sum of Rs. 6,698.70 p. and the said sum was paid by the employer. Even so, it can never be contended that the employee is estopped in law from claiming the additional sum due to him as per the terms of the Act. The petitioner's counsel placed reliance on rule 10 of the Tamil Nadu Payment of Gratuity, Rules, 1973 and argued that cls. (i), (ii) and (iii) of rule 10 will have no application to the claim made by the employee before the controlling authority and hence the controlling authority did not have jurisdiction to enquire into the matter and pass an order. It is true the employee's application will not fall under cls. (i) and (iii) but it will certainly fall within the ambit of clause (ii). Merely because the employee had taken the initiative and asked for the payment of gratuity at a particular sum, the employer will not stand absolved of his statutory obligation to pay the employee the proper amount of gratuity he is entitled to. Section 14 of the Act clearly lays down that the provisions of the Act or any rule made thereunder will have overriding effect over any other enactment other than the Act. Having regard to the wide ambit of S. 14, it follows that even if the employee had made a mistake in the calculation of the gratuity amount and received a lesser amount than what he is entitled to, he will not be estopped or barred in law from claiming the balance amount due to him or initiating proceedings envisaged under the Act and Rules for recovering the balance amount due to him. Hence this petition also has to fail.

21. We will now take up the next batch of cases, viz., Writ Petition Nos. 338 to 340 and 492/77, 1377 to 1379/78 and 1540 to 1540 to

1542/78. These petitions have been filed by the employer, viz., Messrs. Jeevanlal Limited challenging the correctness of the orders passed by the

controlling authority and the appellate authority. In these cases, the facts are slightly different. The employees concerned in these cases had reached

the age of superannuation which was 58 years well before the Act came into force. They were, however, re-employed on an yearly basis and

eventually, their employment came to an end on 31-12-1972 or 31-12-1973 as the case may be. Having regarded to this factor, the employees

claimed that they were entitled to payment of gratuity in accordance with the terms of the Act. The Management, however, contended that their

employment had come to a termination on their reaching the age of superannuation long before the Act came into force, and as such, they will be

entitled to get gratuity only in accordance with the terms of the scheme or award which was in force earlier. As illustrative of the facts, we may set

out the case of the worker by name Adishesha Pillai. He reached the age of superannuation of 58 years in 1968. The management informed him that

this services in the company ceased on 31-12-1968, but, however, having regarded to his physical fitness and capacity, he was being given re-

employment for a period of twelve months operative from 1st January, 1969 to 31st December 1969. In the same way for the subsequent years

also, viz., 1970, 1971 and 1972 he was given re-employment and he stopped working in the company on and from 1-9-1972. Since the Act

came into force on 16-1-1972, the employee claimed gratuity payments in accordance with the terms of the Act. On the other hand, the

management said that gratuity would be paid him only as per the scheme or award originally governing the parties, which meant that only the basic

pay, and not dearness allowance, would be taken into consideration for computing gratuity.

22. Mr. Gopalan, learned counsel for the petitioner in these cases, argued that since the employees had reached superannuation, their services

must be deemed to have become terminated at the end of that year, in which they reached the age of superannuation, and since that event had

taken place before the Act came into force, the employees were not entitled to rely upon the provisions of the Act for payment of gratuity. In

support of the contention, reliance was placed on State of W.B. v. Purnendu Sen, (1977) Lab. I.C., 1978.

23. In our opinion, the contentions of the petitioner are clearly untenable. Though the employees had reached the age of superannuation before the

Act came into force, they were given re-employment in such a manner that there was no break in their services. Thus purely from a factual

point of view the employees continued to serve the petitioner-company uninterruptedly. Secondly; it is common ground that on the employees

reaching the age of superannuation and ceasing to be regular employees of the company, the gratuity payable to them as per scheme or award

governing the parties was not paid to them by the company. If there was a legal break in their service, then it follows that the gratuity payable to

them upto the date of their retirement would have been calculated and paid to them. Such a course had not been followed by the petitioner.

Thirdly, it is seen that in the order of re-employment there is a clause, viz., clause (5) which provides for payment of gratuity for the period of

service during re-employment also. The clause reads as follows :

Without prejudice to any of these terms and conditions and without creating any admission or estoppel by the Management against the binding

character of these terms and conditions, you shall be entitled to contribute to the Company's Provident Fund Scheme and shall be also entitled to

gratuity, if any, in terms of the Award (Settlement) Scheme governing you".

No doubt, the words used in the clause are, "Gratuity, if any, in terms of the Award "Settlement Scheme". But, on account of the Act coming into

force, the provisions of the Act would override the contract between the parties unless the terms of the contract were more favourable to the

employees than what the Act has conferred on them. The order of re-employment indicates that for the period of re-employment also the worker

would be entitled to gratuity benefits. As the actual stoppage of work has taken place after the Act came into force, the employees were justified in

asking for payment of gratuity in accordance with the terms of the Act. State of W.B. v. Purnendu Sen, (1977) Lab. I.C., 1978, cited by the

petitioner's counsel decided not to advance the petitioner's case in any manner. The decision in that case was rendered on the basis of the

construction placed on a Government Order issued by the Government of West

Bengal. The decision does not lay down any general principle of law. The concerned authorities were, therefore, right in taking the view that employees should get gratuity as per the terms of the Act.

24. In the course of the arguments it was urged for the petitioner that the employees had filed their applications under Rule 10 beyond the prescribed period, but in spite of it, the controlling authority had condoned the delay and entertained the applications and such action of his was opposed to law. In refuting this contention, it was argued by the employees' counsel that the employer had failed to send the intimation to the employees in Form L and in view of this lapse it was not open to the employer to contend that the controlling authority ought not to have condoned the delay in the filing of the applications by the employees. We are not impressed with the objection raised by the petitioner's counsel, because the proviso to Rule 10 clearly gives power to the controlling authority to accept applications filed beyond time if sufficient cause was shown by the applicant for the delay in the filing of the application. In these cases, the controlling authority has accepted the explanation offered by the employees and condoned the delay, and the appellate authority has approved his action. In such circumstances, we do not think that the order has been passed without jurisdiction. The net result is that these petitions have to fail.

25. The next batch of cases relate to Writ Petition Nos. 2078 to 2084 of 1979. These petitions have been filed by the management to contend that in spite of the concerned employees who are respondents in these petitions not having put in continuous service, the controlling authority and the appellate authority have ordered gratuity to be paid to them in accordance with the terms of the Act. It was, therefore, urged that the orders are liable to be quashed. We may refer to the relevant provisions of Act for a proper appreciation of the petitioner's case. Section 4(1) provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.

Continuous service has been defined in S. 2(c) as meaning uninterrupted service and including service which is interrupted by sickness, accident, leave lay-off, strike or lock-out or cessation of work not due to any fault of the employee concerned. The explanation to S. 2(c) lays down that in the case of an employee who has not been in uninterrupted service for one year,

he shall be deemed to be in continuous service if he had been actually employed by the employer during the continuous twelve months immediately preceding the year for not less than : (i) 190 days, if employed below the ground in a mine, or (ii) 240 days, in any other case, except when he is employed in a seasonal establishment. Section 4(2) lays down that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. According to the petitioners in these cases, the employees have not put in completed service as defined under the Act. For example, in Writ Petition No. 2078 of 1979 the date of joining of the worker is 21-7-1944 and his date of retirement is 9-5-1977. However, according to the petitioner, during the years 1974-75, 1975-76 and 1976-77, the employee had not put in completed years of service, or in other words, the employee had not put in 240 days of work. In the same day, the employees concerned in Writ Petition Nos. 2079, 2080, 2081, 2082, 2083 and 2084 of 1979 had breaks of service between the dates of joining and retirement or resignation as the case may be, in that they had not worked for a total period of 240 days in some of the years. On that ground, the employer refused to pay gratuity amounts claimed by the employees. The matter was taken to the statutory authorities and they have taken the view that as long as the relationship of employer and employee subsisted between the parties, the fact that in some of the years of service the employee had not put in service for 240 days will not affect the number of years of employment or disentitle the employee from claiming gratuity in accordance with the terms of the Act. In support of such a view, the authorities have placed reliance on Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen, . Learned counsel for the petitioners submitted that the ratio in the abovesaid case would not be applicable to the case of the employees in question, because the judgment rendered by the Supreme Court was with reference to employees who were governed by a scheme framed under an award. In that scheme, the expression "'continuous service'" was not defined. Therefore, the Supreme Court, in the peculiar circumstances of the case, held that "continuous service" in the context of the scheme of gratuity, postulated the continuation of relationship of

master and servant between the employer and the employees, which could come to an end either by act of parties, or by operation of Law, but the

continuity of service did not come to an end merely because an employee was absent without obtaining leave. Learned counsel for the petitioners

further argued that inasmuch as the Act defines what is continuous service, the parties as well as the enforcement authorities are governed by the

definition contained in the Act and, as such, when the employees had not put in 240 days of service in a year, the only conclusion that could be

reached is that the employees cannot claim gratuity for those years in which they had not put in the requisite number of days of work. The counsel

also submitted that the ratio contained in *Bombay Union Dyeing and Bleaching Mills Vs. Narayan Tukaram More and Another*, and *Parthasarathy*

v. Standard Motors, ILR 1979 Madras 264, would fully apply to the case of the employees and by application of the ratio, it must be held that the

employees are not entitled to the amounts of gratuity claimed by them. In *B. U. D. & B. Mills v. N. T. More*, (supra) the relevant portion of the

ruling as contained in the head-note reads as follows :

Continuous service"", no doubt, presupposes a contract of employment; but a contract of employment between a master and servant is not the

same thing as rendering continuous service. The two are not synonymous.

The emphasis in S. 4(1) is not on a contract of employment being subsisting. The emphasis is on rendering continuous service. Notwithstanding

that in the definition of ""continuous service"" interrupted service has been fictionally treated as part of continuous service, the fact remains that the

concept of "continuous service" contemplates that the employee is in fact rendering service as distinguished from a mere subsistence of a contract

of employment.

It may be mentioned here that this case arose directly under the Payment of Gratuity Act. The ratio laid down by the Division Bench of the

Bombay High Court has been subsequently approved by the Supreme Court in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*,

The other case, *Parthasarathy v. Standard Motors*, ILR 1979 Madras 264, related to the payment of closure compensation for workmen u/s 25-

FFF of Industrial Disputes Act. Inter alia the Division Bench of this Court, in that case had to consider the meaning to be given to the words

"continuous service" occurring in S. 25-F of that Act. Another matter had also to be decided in that case, viz., whether a worker would be eligible

for closure compensation, if he had been in continuous service for not less than one year within the meaning of S. 25-B, irrespective of whether he

was in such continuous service in the year immediately preceding the date of closure of the undertaking. We are not now concerned with the

decision of the Bench on the second question. But, so far as the interpretation of ""continuous service"" is concerned, the Bench held as follows :

"The new definition in Section 25-B and the substitution of the words ""for every completed year of continuous service" for the words "for every

completed year of service" in S. 25-F clearly indicates that the workman will now be entitled to compensation only for those completed years of

continuous service worked out from the date of entry into service and he will not be entitled to any retrenchment compensation in respect of the

year in which he could not be said to be in continuous service within the meaning of S. 25-B Thus, in the first or earliest completed year of

continuous service a workman qualifies himself and becomes entitled to retrenchment compensation, but the compensation, is to be calculated for

every completed year of continuous service or any part thereof in excess of six months. It will be seen that it will not be enough as per the existing

provision, if the workman satisfied the test of S. 25B in respect of one year alone in order to enable him to claim compensation for all the period he

has been in service under the employer

Thus, it will be seen that even under the Industrial Disputes Act, it has been held that in order to get closure compensation for a certain number of

years the worker will have to satisfy that in every completed year of service he had put in the requisite number of days of work, viz., 190 days in

the case of miners and 240 days in all other cases. On an analysis of the situation, we are of opinion that the contention of the petitioners in these

case must be upheld. Gratuity as is well known, is a retirement benefit which is given to an employee in lieu of his service and is a measure of

compensation for the gradual destruction of his wage earning capacity. Even so, the claim for such benefit should fall within the limits circumscribed

by the Legislature such as minimum number of years of qualifying service and continuity of service. As such, if an employee had not put in the

requisite number of days of work in a year, he will not be entitled to claim gratuity for that year. The decision in Messrs. Jeevanlal (1920) Calcutta

v. Its Workmen, 1961 I L.L.J. 510, which has been relied on by the appellate authority to uphold the contention of the employees, does not really

support the case of the workmen. As already stated, the Supreme court was dealing with a case where the rights of parties were governed by a

scheme framed in pursuance of an award and not with reference to the provisions of the Payment of Gratuity Act. In fact, the Supreme Court has

given the reason for the liberal construction of the words ""continuous service"" in that case, viz., the scheme did not define what continuous service

should be.

The position has been made still clear by the following observation :

In other words, the expression, "continuous service" may be statutorily defined, in which case, the definition will prevail. An Award using the said

expression may itself give a definition of that expression and that will bind the parties in dealing with claims arising from the award."

The above passage clearly goes to show that the Supreme Court has laid down that if the expression ""continuous service"" has been statutorily

defined or defined in the scheme itself, then the expression will have to be interpreted accordingly and not in a different manner. As such, the

words, ""continuous service"" occurring in the Act have to be interpreted in conformity with the definition given in the Act itself. Viewed from that

angle; the order passed by the controlling authority and the appellate authority cannot be sustained. Therefore, these writ petitions have to be

allowed and it has to be held that the employees will be entitled to payment of gratuity only for those years in which they had put in completed

years of service, or, in other words, they had put in service for 240 days. Accordingly, we allow these writ petitions, viz., Writ Petition Nos. 2078

to 2084 of 1979. In view of our order the appellate authority has to determine the exact number of years for which the employees are entitled to

payment of gratuity on the basis of their rendering completed years of services. Hence, while allowing these writ petitions, we direct the appellate

authority to pass fresh orders in the light of the directions given by us.

26. Writ Petition No. 1382 of 1980 is also a petition filed by a management, wherein inter alia it was contended by the management that the

worker had put in completed years of service only during 14 years and not 16 years and as such, he was not entitled to claim gratuity on the basis

he had put in completed years of service for 16 years. The controlling authority overruled this objection and directed payment of gratuity for 16

years. But, on appeal, the appellate authority remitted the matter to give opportunity to the management to prove that the worker had put in

qualifying service for only 14 years. The management, however, failed to prove its contention and hence payment of gratuity was again ordered to

be paid for 16 years. It is against that order this petition has been filed. From the recorded it is seen, and even the learned counsel for the petitioner

conceded, that the statement of service filed by the management before the controlling authority amply proved that the worker had put in more than

240 days of service in each of the sixteen years if the periods of privilege leaves, sick leave, lay-off or strike period were added to the number of

working days. Having regard to this position, there is no basis for the petitioner to contend that the worker ought to have been paid gratuity only

14 years and not 16 years. The writ petition "therefore" deserves to fail.

27. Writ Petition Nos. 82 of 1979 and 2284 of 1979 are connected. While the former has been filed by the management, the latter has been filed

by the workman. In the former petition the management has contended that the worker has put in completed years of service only for 9 years, but

the functionaries under the Act have wrongly conceded the claim of the worker and awarded him gratuity for 20 years of service. However, the

management has not substantiated its case before the controlling authority or the appellate authority and proved that the worker had not put in 240

days of service in each year between the period 1-3-1954 to 4-7-1974 and that he satisfied the requirements of the Act only for nine years during

the period of his service. The appellate authority has pointed out in his order as follows :

Thiru A. S. Ganapathy, witness of the opposite party, has stated that he has not filed the service record of the respondent in this case even though

it is available with the appellant. While stating the details of continued service in Ext. R. 3, the appellant has not included the days of strike or lock-

out, or cessation of work not due to the fault of the concerned employee. In view of the above position, I consider the conclusion of the controlling

authority that the respondent herein has put in 20 years of service is in order.

Having regard to this finding, we find that there are merits in the petition filed by the management.

28. As regards W.P. No. 2284 of 1979, filed by the workman, his contention is that the appellate authority had wrongly allowed him only 13

days' wages for every completed year of service instead of 15 days' wages and, therefore, he should be paid gratuity at the rate of 15 days'

actual wages per year for the period of 20 years. We have already held in the earlier petitions that the contention of the workers in this behalf is

fully sustainable. The order of the appellate authority in this case is clearly erroneous. Hence we allow the writ petition. The appellate authority is

directed to determine a fresh the correct amount of gratuity the worker will be entitled and pass an order accordingly.

29. Writ Petition No. 3987 of 1978 has been filed by the management to assail the orders of the controlling authority and the appellate authority on

the ground that the controlling authority has passed the impugned order without giving opportunity to the petitioner to put forth his case and that the

appellate authority has passed the impugned order without taking note of the fact that the appeal was filed within time if limitation had been

reckoned from the date on which the copy of the order passed by the controlling authority was furnished to the petitioner. The facts lie within a

narrow compass. One Subbiah working under the petitioner as a spinning doffer died on 18-9-1975 after having put in nearly 27 years of service.

One Moopidathi Ammal (the third respondent) claimed to be his wife and asked for the gratuity due to Subbiah being paid to her. Since there

were doubts about her status, the matter was argued before the controlling authority as a preliminary point. The controlling authority, however,

while passing the order, not only ruled that she was wife of Subbiah. But further more she was entitled to gratuity in a sum of Rs. 7,260 as against

Rs. 6,300 admitted as payable by the management. The order copy was not communicated to the petitioner. Long after, the petitioner came to

know of the comprehensive order and obtained a certified copy thereof and preferred an appeal. The appellate authority, without taking note of

the fact that the delay in filing the appeal had occurred due to the laches committed by the controlling authority (in not communicating his order to

the management), rejected the appeal as barred by limitation. Hence the management has come forward with this writ petition. No doubt, the dismissal of the appeal by the appellate authority on the ground of limitation appears to be erroneous. The appellate authority ought to have noticed that the failure of the controlling authority to have communicated his order to the management had occasioned the delay in the filing of the appeal. Even so, we are not persuaded to allow the writ petition, because the main contention of the petitioner, viz., that it is liable to pay gratuity only at the rate of 13 days' wages per year and the wages for 15 working days, is not a tenable contention. In other cases we have dealt with this matter in extenso and held that 15 days' wages mentioned in S. 4(2) means actual wages for 15 working days and not 13 days' wages alone. Hence, even if we allow the writ petition and direct the appellate authority to dispose of the appeal on merits, it will ultimately prove to be a futile exercise for the petitioner. Hence, the writ petition deserves to fail.

30. Writ Petition No. 1122 of 1979 has been filed by a firm, Messrs. Chimanlal M. Modi, to impugn the orders of the controlling authority and the appellate authority functioning under the Act at Madurai. The third respondent, T. S. Ramamurthi, was an employee of the petitioner and he resigned from service on 16-11-1977. Long after his accounts were settled, the third respondent preferred a claim for Rs. 4,085 as gratuity payable to him. The petitioner opposed the claim on various grounds, one of them being that the firm had employed, only seven persons and hence the Act would not apply to it. The application was posted for hearing at 2 P.M. on 24-4-1978, but on account of traffic bottle-necks and a tyre-puncture of his vehicle, the partner of the petitioner could reach the office of the controlling authority only by about 2-30 P.M. By then, the controlling authority had recorded ex parte evidence and passed an ex parte order. Hence he directed the petitioner to file a petition for setting aside the ex parte order. The petitioner filed a petition accordingly, but for want of an officer to deal with that petition, the matter remained pending. Since steps were taken to collect the disputed gratuity amount, the petitioner preferred an appeal to the appellate authority. The appeal was numbered and interim orders of stay were passed. Subsequently, the appellate authority dismissed the appeal on the ground the petitioner had

failed to furnish in time a copy of the ex parte order passed against it. It is in such circumstances, this petition has been filed to quash the impugned orders. In view of the fact that the petitioner's application to set aside the ex parte order is pending disposal and that the appellate authority had already admitted the appeal and passed interim orders of stay, we do not think the appellate authority was justified in dismissing the appeal on the technical ground that the petitioner had filed belatedly the copy of the ex parte order passed against it by the controlling authority. Hence this is a fit case where the petition should be allowed and the appellate authority should be directed to restore the appeal to file and dispose of it on merits.

The petition, therefore, succeeds :

31. In Writ Petition No. 2059 of 1976, the management (Mettur Chemical and Industrial Corporation Limited, Mettur Dam R. S.) assails the order of the authorities below on two grounds, viz., that the worker is not entitled to tack on his services under an independent contractor with his services under the petitioner for payment of gratuity and secondly, the authorities below had over-stepped their limits when they granted 15 working days' wages per year instead of 13 days' wages, when the worker had not raised such a claim. The worker, Chinna Goundan, was formerly working under a contractor who was working in the mines belonging to the petitioner. In 1967 the petitioner took over the operation of the mines and worker continued to work in the mines as a breaker. The worker resigned his job on 19-12-1975. But, as per his request, the resignation was with effect from 27-9-1975. The management treated the period of service of the worker as 8 years, i.e., between 1967 and 1975 and paid him gratuity of Rs. 1292-72p. The worker approached the controlling authority and asked for payment of for the earlier period also during which he worked under the contractor. This plea was accepted by the controlling authority and gratuity was ordered to be paid from 1964 itself. In addition, the controlling authority directed payment of gratuity at 15 days' wages per year instead of 13 days wages as given by the petitioner. The result was, the petitioner was called upon to pay a further sum of Rs. 758.23p to the worker. This order was unsuccessfully challenged before the appellate authority and that has led to the filing of this petition. Two questions arise for determination, viz., whether the

worker is entitled to claim gratuity from 1964 onwards and secondly, whether the direction for payment of gratuity at 15 days' wages when the

worker had not specifically raised such a claim is legally sustainable. As regards the first question, it has been pointed out by the authorities below

that though the contractor's work was abolished with effect from 1-9-1967, the workers employed by the contractor were continued by the

petitioner-company and no break in service was effected in the nomination Form F obtained from the workers under the Act, the date of

appointment of the employee was recorded as 4-10-1964 which was verified and accepted the Additional Personnel Officer of the company

under the seal of the company; accordingly the services in the petitioner. Company should be taken only as to have begun from 4-10-1964 and

due credit should be given for the entire period from 4-10-1964, namely, the date of appointment, to 27-9-1975, the date of termination of

employment and hence the employee is entitled to the difference of gratuity due for the period from 4-10-1964 to 31-8-1967 also. Having regard

to this position, we are unable to find anything wrong in the impugned orders of the authorities. The management itself had treated the worker as

having entered service from 4-10-1964 onwards. Hence the management cannot refute its liability to pay gratuity for the period 4-10-1964 to 31-

8-1967. As regards the second question, though the worker may not have specifically raised a claim for payment of gratuity at 15 days wages, yet

the authorities functioning under the Act are statutorily bound to direct payment of gratuity to the worker as per the provisions of the Act. We have

held in other petitions that a worker is entitled to get the actual wages for 15 working days per completed year of service under S, 4(2) of the Act

and not 13 days' wages alone. Hence the second contention is also devoid of merit. The resultant position is that the writ petition has to fail.

32. In Writ Petition No. 3323 of 1977 filed by the management, two contentions were put forward. The first is that the claim of the workman for

payment of additional gratuity was made to the controlling authority beyond a period of 90 days after he received the gratuity payment and hence

the application was barred by limitation. The second contention is that the workman is entitled to gratuity only at the rate of 13 days wages and not

15 days wages. The Second contention has been overruled in several other cases and hence for the reasons given therein; it has to fail. As regards

the first contention, the controlling authority as well as the appellate authority have pointed out that the workman had given sufficient reasons for the delay, viz., that he had to wait for the publication of the Tamil Nadu Payment of Gratuity Rules, and for publication of notification of the controlling authority in the Official Gazette and to get the necessary forms for filing the claim statement before the controlling authority, etc. The Act and the rules give a discretion to the authorities to condone the delay in filing claims and appeals within the prescribed time. On the facts of this case, we do not find any improper or erroneous exercise of power or discretion by the authorities below. Hence the first contention also falls to the ground. In the result, this Writ Petition has to fail.

33. Writ Petition No. 168 of 1979 has been filed by the Management of Madura Coats Limited to quash the order of the appellate authority dismissing the appeal preferred by the petitioner on the ground that it had been filed beyond the limitation period of sixty days. The main contention of the petitioner before the controlling authority as well as the appellate authority was that the worker concerned, being a monthly rated employee, is not entitled to claim gratuity on the basis of 15 working days' wages for purposes of gratuity, but only 13 days' wages. In view of the decision of the Supreme Court on this matter and our dismissal of the other writ petitions on that basis, the real grievance of the petitioner is found to be untenable. Hence, even if we allow the writ petition and direct the appellate authority to dispose of the appeal on merits, the resultant position will be the same for the petitioner. In such circumstances, we do not find any justification to allow the writ petition and direct the appellate authority to restore the appeal to file and dispose it of on merits. The writ petition will, therefore, stand dismissed.

34. Writ Petition Nos. 6356 of 1979 and 2627 and 2628 of 1980 have been filed by the Management of T.I. Cycles of India, Ambattur, to question the correctness and validity of a common order passed by the appellate authority in favour of three workmen, viz., K. Mathavan, R. Viswanathan and S. Ramaswami, in P.G.A. case No. 1 of 1979. The Industrial concern works only for five days a week and hence for every completed year of service, the management calculated the gratuity payable at 11 days' wages. This was on the basis that in a cycle of 15 days

there would be only 11 working days and hence the wages paid for the 11 working days have alone got to be paid to the workmen as gratuity payable for a completed year. The workmen, however, contended that they were entitled to 15 working days' wages for each completed year and the balance of amounts should be paid to them by the management. Their contention was upheld by the controlling authority and the appellate authority has confirmed the order passed by the controlling authority. It is that order which is challenged in these petitions. In accordance with the view we have already taken on this question, we must reject the contention of the management in these petitions. Whether a week consists of six working days, or five working days as is the case here, or whether a month consists of 26 working days or 22 or 23 working days, the obligation of a management under S. 4(2) of the Act is to pay the workmen the wages for fifteen working days. Hence the authorities below were justified in granting the workmen the further amounts claimed by them towards gratuity. It, therefore, follows that these three petitions have to fail.

35. Writ Petition No. 3137 of 1979 has been filed by management of Messrs. Saradha's, Mount Road, Madras to quash the order of the controlling authority dated 30-5-1979, whereunder he condoned the delay in the filing of an application by the petitioner's ex-employee v. Ramamurthy, for payment of gratuity in terms of the Act, The employee was a sales assistant under the petitioner and he is said to have stopped from employment with effect from 2-6-1976. About two and half years later, the employee preferred an application under Rule 10(1) of the Tamil Nadu payment of Gratuity Rules, 1973, to the controlling authority to claim gratuity from the petitioner. The petitioner opposed the application and contended that the employee had abruptly stopped from service without giving intimation, that he had overdrawn a sum of Rs. 1,075-25 p. and in any event, the application made after an inordinate delay of about two and a half years was hopelessly barred by limitation and as such, the application ought not to be entertained. The controlling authority has, however, overruled the objection of the petitioner and condoned the delay and taken the petition on file and posted it for disposal on merits. It is against that order the present writ petition has been filed. On a perusal of the order we find that it does not suffer from any error. The controlling authority has pointed out that under S. 7(2) of the Act, an obligation has been

case on the employer to determine the gratuity payable to the employee and intimate him accordingly and that the employer has failed to discharge the statutory obligation cast on it. In addition, the controlling authority has observed that according to Rule 7(5), a claim for gratuity under the Act shall not become invalid merely because the claimant failed to present his application within the specified time. In addition to what the controlling authority has stated, we may point out that under the proviso to Rule 10(1) of the Tamil Nadu payment of Gratuity Rules, it is open to the controlling authority to accept an application under the sub-rule, on sufficient case being shown by the applicant, after the expiry of the specified period. In the instant case the controlling authority has stated that according to the applicant, he has been approaching the employer in person and also through the employees' union for payment of the gratuity amount and in such circumstances, he was hoping that the employer would settle the account without forcing him to resort to proceedings before the controlling authority. In such circumstances, it cannot be said that the controlling authority has acted beyond his powers or that he has exercised his discretion in an illegal manner. As already stated, the controlling authority has expressed his willingness to consider the objections of the petitioner regarding its liability to pay gratuity to the employee. We do not, therefore, find any merit in the writ petition and accordingly, it has to be dismissed.

36. Writ Petition Nos. 264 to 266 of 1979 have been filed by the management of Madura Coats Limited, Madurai, to assail the order of the appellate authority dismissing its appeals on the technical ground that the appeals have been filed beyond the prescribed period of limitation, viz., sixty days. The contention of the petitioner in all the cases is that the appeals had been actually filed in time if the period of limitation was reckoned from the time when the copy of the detailed order of the controlling authority was furnished to it and secondly, even the employees had not raised any objection about the appeal having been filed out of time. In the view we propose to take in the matter, it is not necessary to go into the question whether the appellate authority had wrongly construed the period of limitation and if so, whether his order should be quashed and he be directed to restore the appeals to file and dispose them of on merits. The real grievance of the management against the order of the controlling

authority which was appealed against, is that the controlling authority had wrongly construed S. 4(2) of the Act and directed payment of gratuity at

the rate of 15 working days' wages instead of 13 days' wages alone. As far as this contention is concerned, we have already held in a number of

cases that such a contention is not a tenable one and the workers are entitled to 15 working days' wages, whether they may be monthly rated

employees or daily rated employees. In view of this position, even if we allow these writ petitions and direct the appellate authority to restore the

appeals to file and dispose them of on merits, the petitioner will have to eventually abide by the order of the controlling authority. In that view of the

matter, we do not feel persuaded to allow these writ petitions. Consequently, they will be dismissed,

37. Writ Petition No. 84 of 1979 has been filed by the management of Thiakesar Alai, Tiruchirapalli, against the order passed by the appellate

authority in P.G. Appeal No. 6 of 1975 dated 21-11-1978. The workman the second respondent in the petition, was on the pay-rolls of the

company during the period 18-3-1954 to 4-7-1974, by which time, he reached the age of superannuation. The worker claimed a sum of Rs.

4,677 by way of gratuity, but the management held that he was entitled only to a sum of Rs. 1,806-03 p. The stand of the management was that (i)

the worker had put in completed years, he will, be entitled to get half a month's wages as gratuity, he being a monthly rated employee or in other

words, the wages for 13 working days only. The worker refuted the management's stand and approached the controlling authority. The controlling

authority sustained the contentions of the worker and awarded gratuity of Rs. 4,677. On appeal by the management the appellate authority held

that the worker will be entitled to gratuity for all the twenty years but, however, the payment for each year would only be the wages for thirteen

working days, and not fifteen working days. The management has filed the writ petition to question the period for which payment of gratuity has

been ordered.

38. The grievance of the management regarding the direction to pay gratuity for all the twenty years of service has to be sustained. We have

already referred to the ratio which should be applied to decide the question whether a worker would be entitled to get gratuity even for those years

in which he had not put in the prescribed period of service, viz., 190 days in the case of mining workers and 240 days in other cases. We have

adopted the ratio laid down in the Bombay case which as already stated, has been upheld by the Supreme Court in Lalappa Lingappa and Others

Vs. Laxmi Vishnu Textile Mills Ltd., . Hence adopting the same view, we must allow the management's writ petition, i.e., W.P. No. 84 of 1979,

and quash the order of the appellate authority the appellate authority will determine the number of years in which the worker has put in completed

years of service and compute the gratuity amount.

39. In the result, we allow writ petition Nos. 2078 to 2084 of 1979, 2284 of 1979, 1122 of 1979, 4995 of 1980 and 84 of 1979 and direct the

appellate authority to restore the respective appeals to his file and dispose them of afresh in accordance with law and the directions contained in

this judgment. We dismiss writ petition Nos. 1551 to 1553, 1590 to 1598 and 1634 of 1976, 2028, 2058, 2073, 2168 and 2170 to 2172 of

1978, 2451 to 2454 of 1978, 2469 to 2471 of 1978, 2570 and 2665 to 2666 of 1978, 4136 of 1978, 26 of 1979, 614 of 1979, 1732, 1959,

2005 to 2008, 1980, 2085, 2122, 2134, 2135, 2171 to 2175, 2412, 2426, 2427, 3156 to 3158. 3163 to 3165, 3166, 3567 to 3571, 3972,

4022 to 4029, 4053 to 4058, 4252 to 4255, 4257 to 4259, 4331, 4339 and 4408 to 4414 of 1980, Writ Petition Nos. 391 of 1977, 734 of

1978, 3120 to 3123, 3503, 3504, 3834 to 3836, 4197 to 4200, 4628 and 4629 of 1979, 701, 1158, 1434 to 1436 and 5245 of 1980, Writ

petition Nos. 2967, 2983, 3032 to 3042, 3047 to 3056, 3766, 3767, 4258 to 4263 and 4380 to 4383 of 1977 and 168 of 1979, Writ Petition

Nos. 5214 of 1979, Writ Petition Nos. 338 to 340 and 492 of 1977, 1377 to 1379 and 1540 to 1542 of 1978, 1382 of 1980, 3987 of 1978,

Writ Petition Nos. 2059 of 1976, 3323 of 1977, 6356 of 1979, 2627 and 2628 of 1980. 3137 of 1979 and 264 to 266 of 1979. We direct the

parties in all the writ petitions to bear their respective costs.

40. After we pronounced the order in all the writ petitions, learned counsel appearing for Messrs. Jeevanlal (1929) Limited and Messrs. Madura

Coats Limited, in Writ Petition Nos. 1551 to 1553, 1590 to 1598 and 1635 of 1976, 2967, 2983, 3032 to 3042, 3047 to 3056, 3766, 3767,

4258 to 4263, 4380 to 4383 of 1977, 2028, 2058, 2073, 2168, 2170 to 2172,

2451 to 2454, 469 to 2471, 2662 to 2665 and 4136 of 1978,
26, 168, 264 to 266 and 614 of 1979, 1732, 19, 9, 2005 to 2008, 2085, 2122,
2134, 2135, 2171 to 2175, 3156 to 3158, 2412, 2426, 2427,
3163 to 3166, 4022 to 4029, 4053 to 4058, 4251 to 4255 and 4257 to 4259,
3567 to 357 and 4408 to 4414 of 1980, made oral applications
under Art. 134A read with Art. 133(1)(a) of the Constitution of India for leave
being granted for appeals being preferred to the Supreme Court
against our judgment Since we have rendered judgment on the basis of the
earlier decisions of the Supreme Court on the questions involved in the
writ petitions, we are not inclined to grant leave. Hence the applications are
rejected.