

(2012) 09 MAD CK 0032

In the Madras High Court

Case No : Writ Petition (MD) No. 9327 of 2009 and MP. (MD) No's. 1 of 2009
and 1 of 2010

Management, Virudhunagar District Central Co-operative
Bank Ltd.

APPELLANT

Vs

Assistant Commissioner of Labour, Madurai and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12(3), 33C(2), 36(A), 9(A)
Payment of Gratuity Act, 1972 — Section 14, 2(d), 3, 4, 4(2)

Citation : (2013) 137 FLR 476 : (2013) 1 LLJ 745 : (2013) LLR 734

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : D. Shanmugaraja Sethupathi, for the Appellant; S. Kumar, Additional
Government Pleader and V. Illanchezian, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—Challenge in this writ petition is to a common order, dated 22.4.2009, passed by the Appellate Authority under the

Payment of Gratuity Act (The Joint Commissioner of Labour), Madurai, directing the petitioner Bank to pay the arrears of gratuity payable to the

Respondents 2 to 53. The Special Officer/Joint Registrar of the Virudhunagar District Central Co-operative Bank Ltd., Virudhunagar, the petitioner

herein has submitted that Virudhunagar District Central Co-operative Bank is incorporated under the Tamil Nadu Co-operative Societies Act and

the Rules made thereunder, and that the Bank is having registered by-laws and special by-laws, in respect of the service conditions of the

employees, in accordance with the provisions of the Tamil Nadu Co-operative Societies Act.

2. According to the petitioner bank. Respondents 2 to 53, who were the employees of the petitioner Bank and retired from service, on attaining

the age of superannuation on various dates and they have received the entire gratuity, due to them, as per the scheme viz., Group Gratuity (Cash

Accumulation) Scheme, which is linked with Life Insurance Corporation of India.

3. It is the case of the petitioner that the Respondents 2 to 53 filed an application before the Assistant Commissioner of Labour, Madurai, the first

respondent herein, claiming that they are entitled to receive further amount of gratuity, notwithstanding the claim made already, as per the

settlement, dated 5.3.1997, arrived at u/s 12(3) of the Industrial Disputes Act, which according to them, provides for more benefit than the Act.

4. As per Section 4(A) of the Payment of Gratuity Act, the petitioner Bank had framed a scheme viz., Group Gratuity Scheme linked with Life

Insurance Corporation of India. It is submitted that as per the said scheme, an employee is entitled to get 15 days wages for every completed year

of service, as gratuity, subject to a maximum of the amount, equaling to 20 months salary. The abovesaid term emanated from the scheme in

respect of payment of gratuity has been included in the settlement, dated 5.3.1997, arrived at, between the Bank and various Employees Unions,

in accordance with Section 12(3) of the Industrial Disputes Act. Further the above term of the settlement also says that for the purpose of

calculation of Gratuity, 26 days would be reckoned, as a month, not only for arriving at the pay, but also for calculation for the length of service.

5. It is the further case of the petitioner Bank that the Respondents 2 to 53 have filed applications before the Controlling Authority, viz., the first

respondent herein, claiming difference of gratuity, relying on the above terms stated in the settlement. According to the petitioner Bank, the

Respondents 2 to 53 were misconstrued the term of the settlement, as if every 26 days would form a month and as such, the calculation of length

of service would be long year than the actual working years and that if such method is adopted, then a year with 365 days would have 14 months

and the same would lead to absurdity.

6. The petitioner Bank has further stated that the Supreme Court in Digvijay Woollen Mills Ltd. Vs. Shri. Mahendra Prataprai Buch, has held that

in any factory, an employee never works for all the 30 days in a month, and he

gets 4 Sundays in a month and that though a month is understood to mean 30 days, but the manner of calculating gratuity under the Act to the employee who works for 26 days, should be on the basis for what he gets for 26 working days. Reiterating the same view, the Hon''ble Apex Court in Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others, has held that the ""rate of fifteen days wages" of an employee mentioned in Section 4(2) has to be calculated by ascertaining his daily wages by dividing the monthly wages by 26 and multiplying it by 15.

7. According to the petitioner Bank, subsequent to the above judgments of the Hon''ble Apex Court, an amendment was brought about in Section 4 of the Payment of Gratuity Act, inserting an explanation that ""in the case of a monthly rated employee, the 15 days wages shall be calculated by dividing the monthly rate of wages last drawn by him by dividing 26 and multiplying the quotient by 15, and therefore, the above term of settlement dated 5.3.1997 has been incorporated in conformity with the explanation inserted in Section 4 of the Payment of Gratuity Act.

8. According to the petitioner Bank, vide Letter No. 8571/CC 1/98-10, dated 20.11.2001, the Government have issued an amendment deleting the entire term of the particular settlement and consequently, after issuing notice u/s 9(A) of the Industrial Disputes Act, the Special Officer of the petitioner Bank has passed an order vide R.C. No. 1386/200-2001/E. 1, dated 18.9.2002, confirming to the change made in the settlement.

When the above order of the Special Officer was challenged by the Employees Union before this Court in W.P. No. 40604 of 2002, this Court, vide order dated 25.7.2008, dismissed the same holding that the above Government Letter and consequential order of the Special Officer is in conformity with law. Hence, as on date, the excess amount claimed by the employee, relying on the relevant term of the settlement, cannot be granted.

9. It is further stated by the petitioner Bank that as regards the dispute between the petitioner Bank and the Respondents 2 to 53 is pertaining to the gratuity payable under the group gratuity scheme linked with Life Insurance Corporation of India, as mentioned in the settlement u/s 12(3) of the Industrial Disputes Act, the first respondent has no jurisdiction to entertain

the dispute u/s 7(4) of the Payment of Gratuity Act. According to the petitioner Bank, the principle applied by the Hon''ble Apex Court in State of Punjab Vs. Labour Court Jullunder and Others, that any claim under the Act only could be made before the Authority prescribed by the Act and the said decision is equally applicable to the facts of this case, as in this case also, the claim under the settlement, which did not come under the purview of the Act, has been claimed before the Authority under the Act.

10. According to the petitioner Bank, the first respondent, authority under the Payment of Gratuity Act, has no jurisdiction to decide the disputes, on the interpretation of 12(3) settlement, in view of Section 36(A) of the Industrial Disputes Act, which contemplates that if any difficulty or doubt arises as to interpretation any provision or any award or settlement, the appropriate Government shall refer the question to such Labour Court, Tribunal or National Industrial Tribunal, as it may think fit. For the aforesaid reasons, the petitioner bank has sought for quashment of the common order, dated 22.4.2009.

11. Denying all the contentions raised in the affidavit filed in support of the writ petition and praying to vacate the interim stay granted by this Court on 16.6.2009, the General Secretary of the Tamil Nadu Co-operative Bank's Retired Employees Federation, Chennai, representing the Respondents 2 to 53, in the counter affidavit filed in support of the vacate stay petition has stated that this writ petition is not maintainable, either in law or on facts, as there is an alternative remedy u/s 7(7) of the Payment of Gratuity Act and that the petitioner Bank, with the intention to evade the deposit of the amount ordered by the controlling authority, has approached this Court with the writ petition.

12. It is further stated that as per Clause 17 of the Settlement u/s 12(3) of the Industrial Disputes Act, dated 5.3.1997, all the Respondents 2 to 53 have filed separate petitions for payment of gratuity, before the controlling authority with a delay and that the same was allowed. He has further submitted that though the petitioner Bank has challenged the said order before the appellate authority, the same was confirmed and subsequently this Court, in W.P. No. 1712 of 2004, has also confirmed the said order. Thereafter, the petitioner bank has filed W.A. No. 457 of 2008 and vide

order dated 22.9.2008, the appeal was disposed of by the Division Bench of this Court. According to the Respondents 2 to 53, the term Gratuity has been mentioned as a separate clause, in the settlement dated 5.3.1997 u/s 12(3) of the Industrial Disputes Act, for arriving payment of gratuity, which is applicable to the Respondents 2 to 53. It is further submitted that the calculation of one day salary, has to be taken from the last pay drawn divided by 26.

13. According to the Respondents 2 to 53, as per the judgment of the Apex Court, a settlement arrived between the parties u/s 12(3) of the Industrial Dispute Acts, has to be replaced only by way of another settlement and not by a letter from the Government. It is further stated by the Respondents 2 to 53 that though the writ petition filed by the Respondents 2 to 53, challenging the order of cancellation of term of settlement, has been disposed by the Principal Bench of this Court, vide order dated 25.7.2008, the appeal filed against that order in W.A. No. 1686 of 2009 is still pending. According to the Respondents 2 to 53, the controlling authority had not at all made any interpretation of the term "settlement" u/s 12(3) of the Industrial Disputes Act and that therefore, the Government or the Registrar of Co-operative Societies or the Management have no authority to cancel or modify or alter the 12(3) Settlement, unilaterally, and any alteration or modification or cancellation must be done only by a subsequent 12(3) Settlement. For the abovesaid reasons, the Respondents 2 to 53, prayed to vacate the stay granted in M.P. (MD). No. 1 of 2009 in W.P. (MD). No. 9327 of 2009, dated 16.9.2009 and consequently, dismiss the writ petition.

14. Heard the learned counsel for the parties and perused the materials available on record.

15. Though several contentions have been raised on merits, for and against the impugned order, this Court deems it fit to address the preliminary issue, raised in this writ petition, as to whether the Assistant Commissioner of Labour, Madurai, has jurisdiction to entertain the dispute, under the Payment of Gratuity Act. The factual dispute as could be deduced from the pleadings is whether the computation of the period for calculating gratuity should be on the basis of wages for 26 days in a month, though the number of days in a month is 30. Whether such dispute attracts the

provision u/s 7(4) of the Payment of Gratuity Act, empowering the controlling authority to adjudicate the dispute, and whether the terms of the settlement u/s 12(3) of the Industrial Disputes Act, can be subject matter of a dispute, falling u/s 7(4) of the Payment of Gratuity Act.

16. Admittedly, the dispute between the Management of Virudhunagar District Central Bank Limited and its employees, pertains to entitlement and computation of gratuity, payable under the Group Gratuity linked with the Life Insurance Corporation of India, as per the Settlement u/s 12(3) of the Industrial Disputes Act. In order to address the issue of jurisdiction, let me consider the decisions relied on by the learned counsel appearing for both sides, which are as follows:

- (a) Gujarat State Export Corp. Ltd. Vs. Madhusudan L. Khandwala,
- (b) Gujarat State Road Transport Corporation Vs. Chandrakant Tapubhai Vyas,
- (c) Ayyappan Vs. Joint Labour Commissioner,
- (d) Eastern Coal Fields Ltd. Vs. Regional Labour Commissioner, (Central) and Others
- (e) Sivaraman Nair Vs. The Plantation Corporation of Kerala Ltd.,
- (f) Thomas Kurian Vs. Idukki District Co-operative Bank Ltd. and Others,
- (g) Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn.,
- (h) Digvijay Woollen Mills Ltd. v. Shri Mahendra Prataprai Buch (supra);
- (i) Jeewanlal Limited and Others v. Appellate Authority under the Payment of Gratuity Act and Others (supra);
- (j) Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra and Others,
- (k) The Executive Engineer and Another Vs. Sri Seetaram Rice Mill,

17. In Gujarat State Export Corporation Limited v. Madhusudan L. Khandwala and Another (supra), the High Court of Gujarat has considered a case where a Company Secretary and Senior Manager, who had put in 28 years of service, sought for enforcement of a private scheme of gratuity and for a direction, for payment of the differential amount, contending inter alia mat, in the private scheme, he was entitled to higher gratuity amount. The controlling authority has accepted the contention. The Corporation filed an appeal, which has been dismissed. The decision has been challenged in the High Court, wherein the learned counsel for the Corporation

has mainly contended that the controlling authority has no jurisdiction to adjudicate the claim of the respondent, as the same was not flowing from the provisions of the Act. On merits, it was contended that an employee cannot insist for payment of gratuity under the private scheme, wherein the maximum limit was only 20 months. On the aspect of jurisdiction, it has been contended that the controlling authority under the Payment of Gratuity Act has no jurisdiction. Reliance has also been placed on the decision of the Kerala High Court in the matter of Ayyappan v. Joint Labour Commissioner (supra). Per contra, the learned counsel for the Company Secretary and Manager has contended that the controlling authority has the jurisdiction and made submissions on merits. After considering the rival submissions, with reference to the provisions Clauses (a) and (b) of the sub section 4 of Section 7 of the Payment of Gratuity Act, which states that (a) if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of or in relation to an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount, as he admits to be payable by him as gratuity and (b) Where there is a dispute with regard to any matter or matters specified in Clause (a) the employer or employee or any other person raising dispute may make an application to the controlling authority for deciding the dispute, at paragraph No. 12, the Gujarat High Court has held as follows;

12. Mr. Master, the learned advocate placed reliance on the following decisions to contend that the Controlling Authority can entertain a claim on the basis of settlements.

- (i) Ramjilal Chimanlal Sharma v. Elphinstone Spinning and Weaving Mill Co. Ltd. and Another, (1984) LAB IC 1703 (Bombay High Court);
- (ii) Dholpur Kraya Vikraya Sahkari Samiti Ltd. Vs. Controller under Payment of Gratuity Act and Others,
- (iii) Eastern Coal Fields Ltd. Vs. Regional Labour Commissioner, (Central) and Others
- (iv) State Government Pensioners" Association and Others Vs. State of Andhra Pradesh,

These decisions have no application to the facts of the present case, hence the

same are not discussed in detail. As against that the decision in case of Ayyappan v. Joint Labour Commissioner (supra) of Kerala High Court is referred and relied upon by Mr. Patel wherein it is held that the Controlling Authority can order payment of gratuity only in terms of the Act. No decision of the Honourable the Apex Court on the point is cited. In considered opinion of this Court, the benefits, to the extent the same are flowing from the provisions of the Gratuity Act, the Authority under the Act has power to adjudicate for the same. But if benefits sought for are arising from a settlement or private scheme, the same cannot be agitated before the Authority under the Act.

18. In Gujarat State Road Transport Corporation v. Chandrakant Tabubhai Vyas (supra), the question for consideration, was as to whether any statutory liability was attracted for payment of gratuity, as per Section 4(2) of the Payment of Gratuity Act, 1972 and on account of subsequent revision of pay scale, after the date of retirement amount or not. The second question, which incidentally arose for consideration of the Gujarat High Court, was what shall be the consequential order, in view of the subsequent change in circumstances, from the date of filing of the application before the controlling authority under the Act, till the pendency of the petition, more particularly, when the same related to retiral benefits of the employees. After considering the scope and ambit of Section 4(2) of the Payment of Gratuity Act, which reads 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 15 days' wages, based on the rate of wages last drawn by the employee concerned and sub Section 4 of Section 7 of the Act which reads that if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to admissibility of any claim under the Act, the employer shall deposit with the controlling authority such amount, as he admits to be payable by him as gratuity and also, after considering clause (c) of sub Section 4 of Section 7 of the Act which states that the controlling authority, shall after due enquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determined the matter or matters in dispute, at paragraph No. 6 the Gujarat High Court observed that;

6. The employees concerned in the present case asserted their right for

admissibility of the payment of gratuity is upon revision of pay-scale

whereas the employer-petitioner has denied the liability on the question of not providing by way of settlement expressly for payment of gratuity. As

such, on a conjoint reading of Sections 4 and 7 it appears that the jurisdiction of the controlling authority would be attracted only if there is

statutory liability to pay the amount of gratuity, and there is non-payment by the employer concerned. Further, even if the power u/s 7 are

construed for entertaining the claim of gratuity in purported exercise of the right to receive gratuity, then also the controlling authority, while

exercising the admissibility of the claim will have to decide as to whether such claim is legally admissible or not. At the time when such aspect is to

be considered, the authority shall be guided by the provision of the Act for accrual of liability to pay the gratuity and for accrual of the right to

receive the amount of gratuity.

19. In *Ayyappan v. Joint Labour Commissioner (supra)*, considered in *Gujarat State Export Corporation Ltd., v. Madhusudan L. Khandwala*

(*supra*) the dispute was whether the controlling authority was right in ordering gratuity payable to the applicant therein, who retired from service

and the question that came up for consideration was, whether there could be a classification between those who retired from service or resigned

from service. After considering the rival submissions, the Kerala High Court in paragraph Nos. 3 and 4 held as follows;

3. A reading of the entire provisions of Section 4 makes it clear that gratuity payable under the Act is limited to 15 days wages for every

completed year and an employee can claim gratuity from the employer if he is entitled for better terms in accordance with any other better

provisions of conditions of service. Therefore, the gratuity in terms of Clause 9 of Exhibit Government order providing for one month's wages for

every completed year is not the gratuity payable under the Act.

4. Section 7 of the Act enables an employee to approach the controlling authority for determination of the amount towards gratuity. Section 7 can

be invoked only by "a person who is eligible for payment of gratuity under this Act." The gratuity claimed by the petitioner is not under this Act but

under Exhibit P-2. Under the Act the petitioner is entitled only to the rate as mentioned in Sub-Section 2 of Section 4 The amount granted in

Exhibit P-4 is equal to that rate. Therefore, limiting of the gratuity payable to the petitioner under the Act to 15 days' wages for every completed year as contained in Exhibit P-4 is justified though on a different ground. On that basis, the petitioner cannot challenge the quantum of gratuity directed to be paid in Exhibit P-4. Therefore, Exhibit P-4 to that extent alone is upheld. But the finding that Exhibit P-2 is not applicable to the petitioner is set aside and left open.

20. In *Sivaraman Nair v. The Plantation Corporation of Kerala Ltd. (supra)*, the employees of the Plantation Corporation of Kerala Limited, a Government of Kerala undertaking, on their retirement were paid gratuity by the employer. Believing that they were entitled to a better deal, the employees approached the controlling authority under the Payment of Gratuity Act. According to them, full and eligible gratuity payable to them was held back and that therefore, they sought for a direction. They also claimed that the rate should be maintained, as one month wages for every completed years of service, on the ceiling, as prescribed under the Act. Under the Payment of Gratuity Act, the rate is 15 days wages per year of service, with a maximum limit of Rs. 3.5 lakhs. In the said case, the Government have issued orders, as early as in 1989 to the effect that the employees were entitled to get gratuity, for every completed years of service and at that time, an upper limit of Rs. 50,000/- had been fixed, as the maximum gratuity payable, by the Government Order. It was latter revised by the Government in G.O. Ms. No. 50/96/AD, dated 3.2.1996, whereby, the maximum limit was increased to Rs. 1 lakh and after this revision, there was no subsequent Government Order, enhancing the upper limit.

21. The employer in the above case paid the maximum limit, as per the Government Order and on this aspect, the employees had approached the Controlling Authority, with a claim that full entitlement has not been extended to them. Their claim that one month's salary for every completed year of service and the upper limit of Rs. 3.5 lakhs was not accepted by the Controlling Authority. But the authority directed that the petitioners would be entitled to gratuity payable under the Payment of Gratuity Act, i.e., at the rate of 15 days salary per year for every completed year of service as it would have been more advantageous. The Controlling Authority

rejected the contention of the petitioner that the rate has to be maintained, at one month salary, for every completed years of service. Though the authority had gone into the merits of the claim, the said authority also held that, it has no jurisdiction to pronounce upon a claim, as to whether it falls within and not, in accordance with the parameters, prescribed under the Act. The Controlling Authority also maintained that he had no jurisdiction to travel beyond the statute and limits, nor was enjoying powers of original jurisdiction. The appellate authority also confirmed the orders, which resulted in the challenge before the High Court. After considering the decisions made in *Ramilal C. Sharma v. Elphinstone Spinning and Weaving Mill Co. Ltd.*, 1984 Lab. I.C. 1703 and *State of Punjab v. Labour Court, Jullunder* (supra); *Eastern Coal Fields Ltd. v. Regional Labour Commissioner (Central), Calcutta and Others* (supra); and *Ayyappan v. Joint Labour* (supra), the Kerala High Court at paragraph Nos. 10, 11, 13 and 14 held as follows;

10. The Gratuity Act prescribes that the payment is of general application. It may be permissible for the parties, namely, the employees and employers to agree upon any terms of payment of gratuity, different from the one prescribed under the Act. Only restriction is that such agreement should not result in a payment of gratuity which is lesser than what is provided by the Act. There is nothing in the Act or Section 4 to indicate that in respect of calculation, the rates prescribed by the Government orders could be taken notice of, and for the purpose of ceiling limit, the prescription under the Payment of Gratuity Act is adoptable. Option is for the workmen to claim benefits as per the condition of service or in the alternate, request for applying the statutory terms. The legal position as above has been correctly understood by the Authorities when they had examined the claims presented by the workmen.

11. Reliance had been placed by the petitioners on a decision of the Bombay High Court, *Ramilal C. Sharma v. Elphinstone Spinning and Weaving Mill Co. Ltd.* (supra). The Court had observed that claim for granting gratuity on the basis of a settlement also could be entertained under the Act.

The objection as above had been overruled by the Court, holding that being a beneficial piece of legislation, it should be construed in a manner which would advance the cause of justice. The Court, of course, noticed that a

claim for gratuity under the Act was to be exclusively tried by the Controlling Authority under the Act, as laid down by the Supreme Court in *State of Punjab v. Labour Court, Jullunder* (supra). In the case before it, gratuity was being claimed on the basis of a settlement, and the Controlling Authority had jurisdiction to take cognisance of the claim, as it pertained to gratuity, as what was brought about by the settlement was only to vary the rate of amount. The Court had also adverted to a judgment of Calcutta High Court in *Eastern Coal Fields Ltd. v. Regional Labour Commissioner (Central), Calcutta and Others* (supra). Copy of two judgments have been produced as Exhibits P-3 and P-4 respectively.

13. Therefore, the Controlling Authority could have determined a claim as exclusively coming under the Act alone. Of course, a claim for gratuity

other than that coming within the purview of the Act could have been adjudicated u/s 33-C(2) of the Industrial Disputes Act, by a Labour Court.

In such a case also, possibly the adjudication could have been only as prescribed by the settlement, and simultaneously taking notice of the ceiling

as it always was to operate as a package deal. In short, the petitioners had to face restrictions at one point or another, viz., at the rate prescribed

by the Government Orders, and with a ceiling prescribed by the order, or purely under the Act. The claims as presented therefore were ambitious,

but without legal backing.

14. I do not think that the Controlling Authority or Appellate Authority had committed any error in comprehending the issue. The Original Petitions are dismissed.

22. In *Thomas Kurian v. Idukki District Co-operative Bank Limited* (supra), the petitioner therein, a retired General Manager of Idukki District

Co-operative Bank Limited, has filed an original petition for quashing Exhibit P-8, arbitration proceedings, before the arbitrator and also prayed

for a declaration to declare, that the question regarding the gratuity has to be decided by the fifth respondent therein, the controlling authority

constituted under the Payment of Gratuity Act, 1972. The petitioner therein has contended that he was eligible for an amount of Rs. 4,92,692/-,

whereas, the Bank issued a notice to him, that an excess amount of Rs. 77,000/- has been disbursed to the petitioner towards gratuity and that the

said amount was liable to be returned, with interest of 18%. The Bank also filed

Exhibit P-8, arbitration case before the arbitrator for recovery of the alleged excess amount. The petitioner has filed Exhibit P-12, an application before the Controlling Authority, claiming the balance amount, due towards gratuity. He has also filed an original petition for quashing Exhibit P-8, proceedings pending before the arbitrator and for a declaration that the controlling authority constituted under the Gratuity Act alone is competent to decide the dispute regarding the quantum of gratuity and not the Arbitrator. After considering the rival submissions, at para 6 of the judgment, the Kerala High Court held that the Controlling Authority has no jurisdiction.

6. Learned counsel for the petitioner submitted that in view of the provision in Clause 21(A) ""For this purpose the Payment of Gratuity Act (Central Act) or this provision, whichever is beneficial will be applicable"", the petitioner would be entitled to the amount of gratuity calculated in accordance with the above provision in the service regulation. But by Exhibit P-1 circular issued by the Registrar of Co-operative Societies the gratuity had been limited to the amount payable in accordance with the provisions of the Gratuity Act. In view of Exhibit P-1 Circular No. 25 of 1999, dated 22.6.1999, an employee would be entitled to claim gratuity payable only in accordance with the provisions of the Gratuity Act and he was not entitled to any amount in excess of the same. As the amount paid to the petitioner towards gratuity was in excess of the amount fixed under sub-section (3) of Section 4 of the Act, the Audit Department objected to the excess payment and in pursuance of the same, Exhibit P-4 notice was issued to the petitioner for refund of the excess amount. The petitioner filed objections contending that he was entitled to furthermore amount in view of the provisions in the revised service regulations. As the petitioner was not ready to repay the excess amount collected by him, the bank filed arbitration proceedings before the arbitrator and thereafter the petitioner filed Exhibit P-12 application before the Controlling Authority constituted u/s 3 of the Gratuity Act claiming further amount. Learned counsel for the first respondent submitted that the maximum amount payable under sub-section (3) of Section 4 of the Gratuity Act is Rs. 3.5 lakhs and the bank is not disputing the petitioner's claim for Rs. 3.5 lakhs. The Controlling Authority constituted under the Gratuity Act can

consider the claim of an employee in accordance with the provisions of the Gratuity Act and can sanction the maximum amount of Rs. 3.5 lakhs prescribed under sub-section (3). In view of Section 5 of the Act, the Controlling Authority can allow in excess of the maximum prescribed under sub-section (3), if there was any provision in the bye-law or any agreement with the employer entitling for higher amount. But in the present case, by Exhibit P-1 circular, the gratuity payable to an employee was limited to the amount payable under the Gratuity Act. The Controlling Authority constituted under the Gratuity Act is incompetent to consider the legality or propriety of Exhibit P-1 circular as he does not have any authority or jurisdiction to consider the same. When the right to get the maximum amount of gratuity under the Gratuity Act is not disputed by the bank, the Controlling Authority has no jurisdiction in adjudicating the dispute regarding the excess amount paid to the employee. As the dispute is relating to the payment of an amount in excess of the amount prescribed under sub-section (3) of Section 4 of the Gratuity Act and that being a dispute between the employer and employee, it has to be adjudicated by the arbitrator u/s 69 of the Co-operative Societies Act. The Co-operative Societies Act envisages a dispute between the employer and the former employee also to be decided by arbitration. Hence, Exhibit P-8 proceedings initiated by the bank before the arbitrator is in accordance with law and has to be proceeded with. In the present case, the Controlling Authority cannot have any jurisdiction in the matter, as the dispute relates to the claim regarding the excess amount paid which is beyond the purview of the Gratuity Act. Hence, the reliefs prayed for in this original petition cannot be allowed.

Ultimately, in the above reported case, the Kerala High Court held that the arbitration pending before the Arbitrator shall be proceeded with, whereas, the proceedings of the controller shall be dropped.

23. In a recent decision of the Apex Court, in *Allahabad Bank and Others v. All India Allahabad Bank Retired Employees Association* (supra), one of the issues considered by the Supreme Court was, whether the controlling authority has jurisdiction under the Act to deal with any issue, under Sub Section 5 of Section 4 and as to whether the terms of gratuity payable under any award or agreement or contract was more beneficial

to employees then one provided for under payment of Gratuity Act. After considering the statutory provisions and the decisions of the Supreme

Court in *Som Prakash Rekhi Vs. Union of India (UOI) and Another, Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others, Union*

of India (UOI) Vs. All India Services Pensioners' Association and Another, DTC retired Employees " D.T.C. Retired Employees Association and

Others Vs. Delhi Transport and Others etc. etc., Beed District Central Cooperative Bank Limited v. State of Maharashtra and Others (supra);

Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, Workman of Metro Theatre, Bank of India and Others Vs. O.P.

Swaranakar etc., Bank of India and Others v. P.O. Swarnakar and Others, (2003) 2 SCC 721; Hindustan Lever and Another Vs. State of

Maharashtra and Another, the Hon''ble Supreme Court held as follows;

41. Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government u/s 3 of the Act. u/s 3 the

Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for

different areas.

42. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required

to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the

gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in

writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and

arrange to pay the amount of gratuity to the person to whom the gratuity is payable.

43. The Scheme envisaged u/s 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to

the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. the employer is required to deposit with the Controlling

Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding

the dispute who after due inquiry and after giving the parties to the dispute, a

reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee.

44. Sub-section (7) of Section 7, provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction

upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any

Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order

could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the

Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering

to grant exemption from the operation of the provisions of the Act.

45. Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (old) offered by the Bank is more beneficial since

the amount of money the pensioners got under the Pension Scheme is more than the amount that could have been received in the form of gratuity

under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that sub-section (5) of Section 4 of the Act, protects

the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred

under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of

gratuity payable to an employee u/s 4 of the Act. There can be no comparison between a Pension Scheme which does not provide for payment of

any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act.

46. Viewed from any angle the order of the Controlling Authority is unsustainable. The order is liable to be set aside and the same is accordingly set aside.

24. In an unreported common order in W.P. (MD). Nos. 11896 to 11898 of 2008, dated 16.3.2012, Venugopal and two Others v. The Joint

Commissioner of Labour, Madurai and the Management of Thanjavur Sarvodaya

Sangham, Thanjavur, three writ petitions have been filed by three employees of the second respondent Management therein, challenging the order passed by the Joint Commissioner of Labour, the Appellate Authority under the Payment of Gratuity Act, made in P.G.A.I.A. Nos. 16 to 18 of 2006, by which the said authority allowed the appeals filed by the second respondent management and set aside the orders passed by the Controlling Authority viz., the Assistant Commissioner of Labour, in P.G. Case Nos. 18 to 20 of 2004. In the above cases, the Management was having its own scheme for voluntary retirement and according to the scheme, those who retired from service can avail the benefit of gratuity for 45 months of salary. The scheme was modified on 1.5.2002 in its 92nd General Body Meeting held on 11.4.2002 and that the petitioners therein submitted their applications for seeking voluntary retirement and that they were relieved from service on 30.4.2002. They contended that as per resolution No. 3(2), they were entitled to gratuity of 45 months of salary, along with other retirement benefits, but paid only a limited extent. In sum and substance, the grievance of the petitioners therein was that full gratuity agreed to, at the general body meeting was not paid. Hence, applications have been made before the controlling authority, under the Payment of Gratuity Act. The second respondent Management inter alia has contended that the employees applied for voluntary retirement of service from 17.4.2002, 25.4.2002 and 27.4.2002, respectively and that they were paid part of the gratuity amount and due to paucity of funds, the entire amount could not be paid and that the petitioners herein agreed to receive the balance, as and when the Financial position of the Sangam improved.

25. In the above case, the Controlling Authority by its order, dated 3.4.2006, allowed the applications, holding that the General Body Resolution made in the 92nd meeting was fully applicable to the petitioners therein and that therefore, they are entitled for 45 months salary, along with interest, as gratuity. Being aggrieved by the same, the Management has filed an appeal before the Joint Commissioner of Labour, the appellate authority under the Payment of Gratuity Act. Inter alia it has been contended that the Controlling Authority under the Gratuity Act has no jurisdiction to enforce a private scheme framed for voluntary retirement. It has

been further contended that, since the petitioners therein were already paid gratuity, the question of payment of interest, on the unpaid amount does not arise. The appellate authority held that the Controlling Officer has no jurisdiction to enforce any private scheme of gratuity and in that view of the matter, set aside the order passed by the controlling authority. When a challenge to the said order of the appellate Authority under the payment of Gratuity Act was made, in W.P. (MD). Nos. 11896 to 11898 of 2008, the Hon"ble Mr. Justice Chandru, after considering the Gujarat State Export Corporation Ltd. v. Madhusudan L. Khandwala (supra); Ayyappan v. Joint Commissioner (supra); Eastern Coal Fields Ltd., v. Regional Labour Commissioner (supra); Gujarat State Road Transport Corporation v. Chandrakant Tapubhai Vyas (supra); Thomas Kurian v. Idukki District Co-operative Bank Limited and Others (supra); and Allahabad Bank and Another v. All India Allahabad Bank Retired Employees Association (supra), held that no interference called for in the order passed by the appellate authority, wherein, the said authority has held that the controlling authority under the Payment of Gratuity Act has no jurisdiction to enforce a private scheme of gratuity.

26. In an unreported decision made in W.A. No. 675 of 2007, dated 26.10.2010, Management, Madurai District Central Co-operative Bank Limited, Madurai v. The Joint Commissioner of Labour, Madurai and 5 Others, the respondents therein, were the employees of the Bank and on attaining the age of superannuation the Respondents 3 to 6 therein received gratuity, according to the Group Gratuity (Cash Accumulation) Scheme. Stating that they were to be paid gratuity, as per the Payment of Gratuity Act, the respondents 3 to 6 filed applications before the controlling authority, claiming that the further amount of gratuity has to be calculated, by ignoring the maximum of 20 months salary, prescribed in the Group Gratuity Scheme. By a common order, dated 4.3.2004, the controlling authority allowed the claim of the respondents 3 to 6 and ordered payment of gratuity, as per the Act. The appeals filed by the Bank before the Joint Commissioner of Labour, Madurai, appellate authority, were also dismissed. Being aggrieved by the same, the Bank has filed a W.P. (MD). No. 874 of 2006. The writ Court, while considering the dispute, held that so long as the terms of Section 12(3) of the settlement is in

existence, it can override, only the contract providing for lesser benefits, as per Section 14 of the Payment of Gratuity Act and further held that therefore, the Bank having signed the agreement, cannot resile from the terms of the settlement, as it deals with the very same subject matter viz., gratuity and accordingly, dismissed the writ petitions.

27. The Bank pursued the matter by filing a Writ Appeal (MD). No. 675 of 2007 and inter alia contended that u/s 7(4) of the Payment of Gratuity

Act, if there was any dispute, as to the amount of gratuity payable under the Act, it can only be decided by the controlling authority, but, when the

dispute between the appellant bank and the respondent 3 to 6 pertain to gratuity payment, under Group Gratuity Scheme linked with Life

Insurance Corporation of India, as mentioned in the settlement u/s 12(3) of the Industrial Disputes Act, such a dispute would not come under the

purview of Section 7(4) of the Payment of Gratuity Act. It was therefore, contended by the bank, that both the controlling and the appellate

authorities, under the Payment of Gratuity Act have no jurisdiction, to entertain such a dispute. It was also contended that the controlling and

appellate authorities have no jurisdiction to entertain such a dispute. The contentions of the Bank, incorporated at paragraph Nos. 9 to 10 of the

Judgment of the Division Bench, are extracted hereunder:

9. u/s 7(4) of the Act, if there is any dispute as to the amount of gratuity payable to the employee under the Act or as to the admissibility of any

claim or in relation to an employee for payment of gratuity, or as to the person entitled to receive the gratuity, Respondents 1 and 2 who are the

competent authority under the Act shall have jurisdiction. In the above decision in Gujarat State Export Corporation Ltd. v. Madhusudan L.

Khandwala (supra), gratuity was payable on the basis of private scheme and the factual matrix of the said case is entirely different from the case on

hand. The dispute is not mere interpretation of any provision of settlement, but to see whether the employees can claim gratuity under Payment of

Gratuity Act or as per settlement. Therefore, it cannot be contended that Respondents 1 and 2 did not have competency to entertain the claim.

10. There is Group Gratuity (Cash Accumulation) Scheme linked with Life Insurance Corporation of India in the Appellant Bank. As per the

scheme, an employee is entitled to get 15 days wages as gratuity for every year

of service, subject to a maximum of the amount equivalent to 20

months salary. According to appellant Bank, since the gratuity amount was more beneficial to the employees than the Act, in the settlement dated

17.2.1997 u/s 12(3) of the Industrial Disputes Act, it was agreed to continue the Group Gratuity Scheme, So the existing practice of payment of

gratuity under Group Gratuity Scheme has been continued as per the Settlement in the subsequent Section 12(3) settlement dated 5.12.2003 also

it has been reiterated that the existing benefit of payment of gratuity as per the Group Gratuity Scheme would continue.

28. Similar to the issue in the present case, as to how the salary has to be computed for the purpose of arriving at the gratuity, in the unreported

judgment in Writ Appeal No. 675 of 2007, dated 26.10.2010, the salary, defined in Clause 1 (xiv) of the Group Gratuity (Cash Accumulation)

Scheme has been extracted as follows;

Clause 1 (xiv): ""Salary"" shall mean gross salary of the member inclusive of dearness allowance shall not include the commission, house rent

allowance, bonus, overtime or any emoluments a variable or contingent nature. In the case of monthly rated employees a day's is to be calculated

as 1/26th of the monthly salary and in case of daily rated employees salary will be calculated as 26 times the daily wages.

However, the Division Bench did not go into the aspect of jurisdiction, but decided the issue on merits, in favour of the bank.

29. The decision in Beed District Central Co-operative Bank v. State of Maharashtra and Others (supra), does not pertain to jurisdiction. The

decision in Executive Engineer and Another v. Sri Seetaram Rice Mill (supra), relied on by the learned counsel for the petitioner, may not in strict

sense, applicable to the facts of this case.

30. Let me now consider, the decisions relied on by the learned counsel for the respondents which are (a) State of Punjab v. Labour Court,

Jullundur and Others (supra); (b) Steel Authority of India Vs. Regional Labour Commissioner (Central) and Others,

31. In State of Punjab v. Labour Court, Jullundur and Others (supra), the contention raised by the Government as to the jurisdiction of the

controlling, has been answered at paragraph Nos. 6 and 7, which are as follows;

6. The third contention raised by the appellant is that the employee respondents

were not entitled to apply u/s 33-C(2) of the Industrial Disputes Act, 1947 for payment of the gratuity, and should have, if at all, applied under the provisions of the Payment of Gratuity Act. It is urged that the Payment of Gratuity Act is a self-contained code incorporating all the essential provisions relating to payment of gratuity which can be claimed under that Act, and its provisions impliedly exclude recourse to any other statute for that purpose. The contention has force and must be accepted.

A careful perusal of the relevant provisions of the Payment of Gratuity Act shows that Parliament has enacted a closely knit scheme providing for payment of gratuity. A controlling authority is appointed by the appropriate Government u/s 3. and Parliament has made him responsible for the administration of the entire Act. In what event gratuity will become payable and how it will be quantified are detailed in Section 4. Section 7(1) entitled a person eligible for payment of gratuity to apply in that behalf to the employer. u/s 7(2), the employer is obliged, as soon as gratuity becomes payable and whether an application has or has not been made for payment of gratuity, to determine the amount of gratuity and inform the person to whom the gratuity is payable specifying the amount of gratuity so determined. He is obliged, by virtue of the same provision, to inform the controlling authority also, thus ensuring that the controlling authority is seized at all times of information in regard to gratuity as it becomes payable. If a dispute is raised in regard to the amount of gratuity payable or as to the admissibility of any claim to gratuity, or as to the person entitled to receive the gratuity, Section 7(4)(a) requires the employer to deposit with the controlling authority such amount as he admits to be payable by him as gratuity. The controlling authority is empowered u/s 7(4)(b), to enter upon an adjudication of the dispute, and after due inquiry, and after giving the parties to the dispute a reasonable opportunity of being heard, he is required to determine the amount of gratuity payable. In this regard, the controlling authority has all the powers as are vested in a Court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence. The amount deposited by the employer with the controlling authority as the admitted amount of gratuity will be paid over by the controlling authority to the employee or his nominee or heir. Section 7(7) provides an appeal

against the order of the controlling authority u/s 7(4) to the appropriate Government or such other authority as may be specified by the appropriate Government in that behalf. The appropriate Government or the appellate authority is empowered u/s 7(8), after giving the parties to the appeal a reasonable opportunity of being heard, to confirm, modify or reverse the decision of the controlling authority. Where the amount of gratuity payable is not paid by the employer within the prescribed time, the controlling authority is required by Section 8, on application made to it by the aggrieved person, to issue a certificate for that amount to the Collector. The Collector, thereupon, is empowered to recover the amount of gratuity, together with compound interest thereon at the rate of nine per cent per annum from the date of expiry of the prescribed time, as arrears of land revenue, and pay the same to the person entitled thereto.

7. It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfillment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act.

32. In the said judgment, the contention was as to whether an application filed u/s 33(c)(2) of the Industrial Disputes Act would lie before the Labour Court, when the amount under the Payment of Gratuity Act was not paid and at paragraph Nos. 8 and 9 the Apex Court has held as follows;

8. Upon all these considerations, the conclusion is inescapable that Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other.

That being so, it must be held that the applications filed by the employee respondents u/s 33-C(2) of the Industrial Disputes Act did not lie, and the Labour Court had no jurisdiction to entertain and dispose of them. On that ground, this appeal must succeed.

9. In the circumstances, it is not necessary to notice the further submission on behalf of the appellant that where a serious dispute exists in regard to the basis of a claim for payment of gratuity, no proceedings will lie u/s 33C(2) of the Industrial Disputes Act.

33. In *Steel Authority of India v. Regional Labour Commissioner (Central) and Others* (supra), one of the contentions raised by the parties was,

whether the controlling authority has jurisdiction to entertain a dispute regarding the payment of gratuity, if there are better terms of gratuity under

any award or agreement or contract with the employer. Dealing with the issue, at para No. 9, the Division Bench of the Orissa High Court held as

follows;

9. The aforesaid being the gamut of operation of Payment of Gratuity Act which is a beneficial legislation, we cannot deny the opp party No. 3 his

right to claim gratuity and get it adjudicated before the Controlling Authority for the period during which his wages came to be enhanced beyond

the ceiling. It would be against the spirit of the Act to drive him to seek this remedy in some other forum. Since the entitlement of the employee-

opposite party to get the gratuity is conceded and the only dispute by the employer being that for the subsequent period, another forum should be

approached, we are of the considered opinion that the equitable jurisdiction of this Court should not be invoked under Article 226 of the

Constitution. It is well settled that where an inferior Tribunal passes a just and correct order, the High Court may not interfere with the same, even

if the order may be without jurisdiction. In the facts and circumstances of the present case, it would be wholly unjust and inequitable to require the

employee to approach another forum for part of the service period to receive the gratuity.

34. In W.P. Nos. 11896 to 11898 of 2008, dated 16.3.2012, after considering various judgments, including the judgment of the Apex Court in

Allahabad Bank and Others v. All India Allahabad Bank Retired Employees Association (supra), this Court has held that the authority under the

Gratuity Act, has no jurisdiction to enforce the private scheme of gratuity. When there is a judgment of this Court, rendered on the basis of an

Apex Court judgment, it is binding on the co-equal Bench and has to be followed. In the light of the above, the writ petition is allowed, holding that

the controlling authority under the Payment of Gratuity Act, has no jurisdiction to decide the dispute and accordingly, the common order passed by

the first respondent, appellate authority are set aside. Consequently, connected M.P. (MD). No. 1 of 2009 is dismissed and M.P. (MD). No. 1 of

2010 is closed. No costs.