
(1996) 03 AP CK 0061

In the Andhra Pradesh High Court

Case No : W.A. No's. 230 and 253 to 2273 of 1996

Rama Rao P. and Others

APPELLANT

Vs

Controlling Authority under P.G. Act and ALC(C) and Others

RESPONDENT

Date of Decision : 29-03-1996

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 10
Payment of Gratuity Act, 1972 — Section 15

Citation : (1996) 2 ALT 406 : (1998) 3 LLJ 114

Hon'ble Judges : P.S. Mishra, C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : C. Suryanarayana, for the Appellant; P. Innayya Reddy, C.G.S.C. for Respondent No. 1 and G.B. Ravindra Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—A batch of writ petitions questioning the order of the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central) under which order he has rejected the objection of the writ petitioner -respondent (the employer) as to the delay in filing the claim application for gratuity, has been allowed by the learned single Judge. Employees have preferred the instant appeals.

2. It is not in dispute that the appellant-employees served for the full term of employment and retired and on their retirement, became entitled to gratuity under the Payment of Gratuity Act, 1972 (for short "the Act") and the Rules framed thereunder. Their demands, however, for non payment of certain part of gratuity were inordinately delayed as their services were terminated ranging from 1973 to 1993. The management responded to their demands in the proceeding by stating that they had already been paid gratuity as per their entitlement under the Act and after such inordinate delay, it was not desirable to entertain their claims. Appellants, however, maintained that they were not aware of the beneficial provisions of the Act when their services were terminated. As

soon as they came to know through their co-workers they submitted their claim applications before the proper authority for their due gratuity. On the question, however of condonation of delay, we shall refer to the relevant provisions later in our judgment. The Controlling Authority under the Act and Assistant Labour Commissioner (Central) has stated as follows :

"The applicants also stated that it is obligatory on the part of the employer to calculate the gratuity amount correctly in accordance with the provisions of law. Whereas this fact came to their notice through the case of Sri P.V. Raju that the Management has not calculated the gratuity amount as due to them. As such, the delay has occurred in filing the present cases.

The Hon"ble High Court of Rajasthan in the case of Madar Union Sanatorium and Hospital Vs. M.B. Sathe and Others, inter alia observed that "the person who is not technical and legal minded is generally entitled for the benefit of condonation of delay, specially under beneficial legislation enacted for the welfare of the people". In the instant case, undisputedly, the applicants are not legal minded; as such they cannot be denied the benefit of condonation.

The opposite party in Ex. M-1 also mentioned one of the reasons for not condoning the delay as the petition lacks bona fides. It is held vague and devoid of even prima facie case for seeking condonation of delay extending over 20 years. The applicants have received gratuity payable under the Payment of Gratuity Act immediately after their superannuation without any demur and protest. Surprisingly, the applicants have chosen to come forward with the present unjust claim on vexatious grounds after a considerable lapse of time with the motive to make unlawful gain by a mere chance, if possible. Whereas the applicants have stated that their claims are bona fide and have merits to meet the justice if they are offered the opportunity. It is true that without hearing the parties and without offering opportunities to the parties, it cannot be said that their claims lack bona fides and whether their claims are unjust claims on vexatious grounds with the motive to make unlawful gain by mere chance or not.

Regarding sufficient cause for delay, the applicants relied on the decision of the Hon"ble Supreme Court of India in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and stated that the expression "sufficient cause" is elastic enough to apply the law in a meaningful manner to subserve the ends of justice and that liberal approach should be adopted. In the instant case, though the services of the applicants were terminated in between 1973 to 1993, they were not aware of their legitimate right for getting their due gratuity. It is Sri P.V. Raju's case through which they came to know recently that they have been denied justice. As such they have filed the present claim cases to get their due gratuity in accordance with the provisions of law.

The opposite party in Ex. M-1 relied upon the decision of the Hon"ble High Court of Karnataka in the case of Binny Ltd. Bangalore v. H.K. Madaiah 1987 Lab IC 931 and endorsed this proposition in the instant case. In this case, the workmen

had been paid the gratuity by the employer as and when it became due. They also received gratuity without demur. However, on April 23, 1984 and other subsequent dates, these workmen filed their claims in prescribed form under Rule 10 before the Controlling Authority with an application for condoning the delay in filing their claims cases. These applications were rejected by the Controlling Authority on the ground that they were barred by time since, in the view of the Controlling Authority, the workmen had not shown sufficient cause for condoning the delay ranging from 9 years to one year. However, in the appeals preferred by the workmen before the Appellate Authority under the Act, the said Authority took the view that in the light of the decision of the Supreme Court in Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others, , the workmen were entitled to the amounts withheld by the employer at the time their claims were settled in 1974 and subsequently. Therefore, in the light of the decision of the Supreme Court, the employer had absolutely no defence for withholding balance amount of gratuity. So on that account, the Appellate Authority condoned the delay and made the impugned order directing the employer to pay the balance amount due to the workmen. The Hon''ble High Court of Karnataka had examined the issue of condonation of delay in the light of various judgments of various Hon''ble Courts at length. Though the Hon''ble Court has allowed the petition submitted by the employer and quashed the impugned order, but on the order hand, directed the employer to pay 50% of the amount awarded as ex gratia to the workmen and the workmen who have moved the Controlling Authority within a period of one year from the date of adjudication by the employer, directed the employer to pay the full amount awarded by the Appellate Authority as ex gratia. Thus the directions issued in the Hon''ble High Court in this case clearly indicates that the Hon''ble High Court of Karnataka has not denied the legitimate claims of the workmen to meet the ends of justice, though their claims were filed belatedly ranging from 9 years to one year.

The Hon''ble High Court of Judicature, Bombay in the case of Ramjilal Chimanlal Sharma v. Elphenstone Spinning and Weaving Mills Ltd. 1984 Lab IC 1703, inter alia, observed that this rule leaves no manner of doubt that the legislations intended the claims on the applications for gratuity by the employees should not be denied on technical consideration and the Authority should be very liberal in condoning the delay.

Keeping in view the ratio laid down by the Hon''ble Courts in the abovementioned cases and the grounds of delay submitted by the applicants, the delay in submitting the present 42 applications before the Controlling Authority for issuance of necessary directions for getting due gratuity under sub-rule of Rule 10 of Central Rules is hereby condoned. Now the Case is posted for hearing the merits of the case on December 7, 1994 at 10.00 hours in my office.

I order accordingly."

3. Writ petitioner- respondent (employer) has invoked the jurisdiction of the

Court under Article 226 of the Constitution of India. Learned single Judge has set aside the order of the Controlling Authority on principle, inter alia,

"It is needless to mention that in a matter concerning condonation of delay requiring showing of sufficient cause for each day's delay (on the analogy of Section 5 of Limitation Act), the facts have got to be stated with precision in each and every case and that should be in the form of affidavit so as to enable the party in opposition to file an effective counter. Should the facts be disputed, then it will be incumbent upon the person seeking condonation to adduce the evidence." and commented as follows:

"Surprisingly, the plea was made on behalf of the applicants through their representative, Mr. G. Krishna Murthy, before the first respondent that as the applicants are entitled for statutory benefit of gratuity, the petitioners were estopped from raising the plea of limitation. In my considered view, this was a callous and baseless averment as Rule 10 of Payment of Gratuity Rules (Central Rules, 1972) impose a time of 90 days from the date of occurrence of the cause for the application to seek for gratuity and to be applied in form - "N" and if it is not filed, the delay can be condoned on sufficient cause being shown. No cause has been shown and the first respondent went on citing one judgment or the other without there being any factual foundation. No legal precedents can be applied in a matter concerning condonation unless the factual foundation is made and unless it is shown that the principle laid down in any case can be made applicable having regard to the facts of the case."

4. Learned single Judge has rejected the contention that the Payment of Gratuity Act is a beneficial legislation and as such condonation of delay has to be viewed liberally and stated that-

"It is well settled that even if it is a welfare legislation, the obligation or liability to prove sufficient cause for delay is there and a vague and baseless application of this sort, that too without following any procedure, cannot be entertained. Another intriguing factor is that the delay is not a day, a week or a month or even an year, but the minimum delay is three years and the maximum is about 21 years. May be, they through their representative before the first respondent were unable to specify by an affidavit the sufficient cause for such enormous delay and that is why they evaded. Further, the claim itself appears to be vexatious and devoid of legal foundation:"

5. Before we proceed to consider the contentions and decide, on the basis of the materials placed before us, the issue --whether sufficient cause has been made out for condonation of delay in demanding the gratuity, allegedly not paid to them, by the appellants herein--we may refer to some of the provisions of the Payment of Gratuity Act, 1972. The Act received the assent of the President on August 21, 1972 and was published in Section-1 Extraordinary, Gazetter of India, on August 22, 1972 with a view to provide for a scheme for the payment of gratuity to employees engaged in factories, mines oil fields, plantations, ports,

railway companies, shops or other establishments and for matters connected therewith or incidental thereto. Section 4 of the Act 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 on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease. Section 7 of the Act speaks of the determination of the amount of gratuity and provides, inter alia, that a person who is eligible for payment of gratuity or any person authorised, shall send a written application to the employer within such time and in such form as may be prescribed for payment of such gratuity. Elaborating the procedure for determination of the amount of gratuity and payment, this Section in one part states, "As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) 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. It refers to the Controlling Authority and his power to hold enquiry and the right of appeal to any person aggrieved by the order of the Controlling Authority as follows :

"7 (4) (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.

(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 the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due enquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry an amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount, or, as the case may be, such amount as reduced by the amount already deposited by the employee.

(d) The controlling authority shall pay the amount, deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under Clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) Where the applicant is not the employee, to the nominee or as the case may be, the guardian if such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under Sub-section (4), the controlling authority shall have the same powers as are vested in a Court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely :

- (a) enforcing the attendance of any person or examining him on oath ;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits ;
- (d) issuing commissions for the examination of witnesses.

(6) any inquiry under this Section shall be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code, 1860 (45 of 1860)

(7) Any person aggrieved by an order under Sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub-section (4), or deposits with the appellate authority such amount."

6. Section 15 of the Act empowers the appropriate Government to make, by notification, rules for the purpose of carrying out the provisions of the Act, and besides, prescribes as follows:

"15(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

7. In purported exercise of the power u/s 15, rules have been framed and the relevant rules with which we are concerned are - 7, 8, 9 and 10 which are as follows :

"7) Application for gratuity:--

(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised in writing, to act on his behalf shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form "I" to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to Sub-section (1) of Section 4 shall apply, ordinarily within thirty days from the date the gratuity became payable to him, in Form "J" to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to Sub-section (1) of Section 4 shall apply, ordinarily within one year from the date the gratuity became payable to him in Form "K" to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in Sub-rules (1), (2) and (3), shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient-cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgment due.

8) Notice for payment of gratuity :--

(i) Within fifteen days of the receipt of an application under Rule 7 for payment of gratuity, the employer shall-

(i) if the claim is found admissible on verification, issue a notice in Form "L" to the applicant-employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date not being later than the thirteenth day after the date of receipt of the application, for payment thereof, or

(ii) if the claim for gratuity is not found admissible, issue a notice in Form "M" to the applicant employee, nominee or legal heir, as the case may be, specifying the

reasons why the claim for gratuity is not considered admissible.

In either case a copy of the notice shall be endorsed to the controlling authority.

(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form "L" under Clause (1) of Sub-rule (1) shall be refixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the day specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim as the case may be. In that case the time limit specified for issuance of notices under Sub-rule (1) shall be operative with effect from the date such witness or evidence as the case may be, called for by the employee is furnished to the employer.

(4) A notice in Form "L" or Form "M" shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgment due.

5) A notice under Sub-section (2) of Section 7 shall be in Form "L".

9) Mode of payment of gratuity :--

The gratuity payable under the Act shall be paid in cash or, if so desired by the payee, in demand draft or bank cheque to the eligible employee, nominee or legal heir, as the case may be:

Provided that in the case the eligible employee, nominee or legal heir, as the case may be, so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the postal money order commission therefore from the amount payable ;

Provided further that intimation about the details of payment shall also be given by the employer to the controlling authority of the area.

10) Application to Controlling Authority for Direction :--(1) If an employer -

(i) refuses to accept a nomination or to entertain an application sought to be filed under Rule 7, or

(ii) issues a notice under Sub-rule (1) of Rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under Rule 7, fails to issue any notice as required under Rule 8 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply, in Form "N"

to the controlling authority for issuing a direction under Sub-section (4) of Section 7 with as many extra copies as are the opposite parties :

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant after the expiry of the specified period.

(2) Application under Sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgment due."

8. According to the above, thus a person who has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease, becomes eligible for payment of gratuity and he or any person authorised in writing to act on his behalf, can send a written application to the employer within the prescribed time limit for payment of such gratuity--the time limit being spelled out in Rule 7 aforequoted to be, "ordinarily within thirty days from the date the gratuity became payable". The employer is made liable to pay the amount of gratuity within thirty days from the date it becomes payable to the person to Whom the gratuity is payable under Sub-section (3) of Section 7 of the Act and if the amount of gratuity payable is not paid by the employer within the period of thirty days, he is required to pay simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits as provided under Sub-section (3-A). The above mandate, however, is substituted by Act 22 of 1987. Mechanism, however, for resolving the dispute with regard to any matter or matters in Clause (a) of Sub-section (4) of Section 7 is introduced by Act 25 of 1984. However, rules have existed since September, 1972 and spell out that ordinarily the application for gratuity shall be presented to the employer within thirty days from the date the gratuity became payable and an application for payment of gratuity filed after the expiry of the period specified in the rule shall also be entertained by the employer, "if the applicant adduces sufficient cause for the delay in preferring his claim and, "no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period". The law, as in the rules, has contemplated," any dispute in this regard shall be referred to the controlling authority for his decision". Employer's responsibilities on receipt of application for gratuity are -- (1) within fifteen days of the receipt of the application under Rule 7 for payment of gratuity, he shall, "if the claim is found admissible on verification", issue a notice in Form "L" to the applicant employee specifying the amount of gratuity payable and fixing a date not being later than the thirteenth day after the date of receipt of the application for payment thereof, or (2) if the claim for gratuity is not found admissible, issue a notice in Form "M" to the applicant employee specifying the reasons why the claim for gratuity is not considered admissible, and (3) in either case the employer shall endorse a copy of the notice to the controlling authority. Rule 10 gives to the

person eligible for gratuity a period of ninety days to make an application to the Controlling Authority for a direction in the case of the employer -- (i) refusing to accept a nomination or to entertain an application sought to be filed under Rule 7, or (ii) issuing a notice under Sub-rule (1) of Rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or (iii) having received an application under Rule 7, failing to issue any notice as required under Rule 8 within the time specified therein. Controlling Authority is empowered to accept any application from the person eligible for gratuity even beyond the period of ninety days of the events as above on sufficient cause being shown by the applicant.

9. It is not in dispute before us that the respondent-employer is a "State" under Article 2 of the Constitution of India and is an establishment which is answerable to the demand of gratuity by its employees. Relevant facts, however, from which one can understand the dispute which the Controlling Authority has been asked to resolve, are neither available in the judgment of the learned single Judge nor in the order of the Controlling Authority. The writ petitions have been filed only with a number of grounds stated, without stating whether the Controlling Authority is required to give his decision in regard to the dispute - whether the claim applications are invalid merely because the claimants failed to present their applications to the employer within thirty days from the date the gratuity became payable, or whether the employer has found the claim inadmissible, or the claim has been found admissible but not to the extent demanded by the employees. In the counter, however, which is described as the preliminary counter only, by the respondent -appellant, it is stated as follows:

"On my retirement from service, the petitioner - Bank paid me gratuity under the provisions of the P. G. Act, 1972. But I came to know recently (i.e. after the Regional Labour Commissioner, Central, Hyderabad, as appellate authority, passed order on July 1, 1994) that in the claim made by Shri P.V. Raju, who also retired from the service of the petitioner-Bank, for payment of gratuity under the LAT decision, at the rate of one month salary for every completed year of service or part of it exceeding six months WITHOUT LIMIT, the Controlling Authority allowed his claim declaring that his service conditions remained unchanged by virtue of the provisions of Section 7 of the State Bank of India Act, 1955 by which the Imperial Bank of India was taken over. I, therefore, made the above claim application in order to secure determination of the total amount of gratuity payable to me and to secure payment of the balance amount as I am similarly situate like the said Shri P.V. Raju.

But the petitioner-Bank on the "delay" in making the claim. Therefore, an application was filed on my behalf before the Controlling Authority to condone the alleged delay in making the claim though it was not necessary to make a separate application to condone the delay in view of Section 5 of the Limitation Act."

10. Rule 10 afore-quoted fixes the period of limitation, "within ninety days of the occurrence of the cause for the application". The expression "occurrence of the cause for the application" cannot receive the meaning which shall leave the applicant to guess the starting point of limitation for making the application in Form "N" to the Controlling Authority for issuing a direction under Sub-section (4) of Section 7 of the Act. Since causes for the application to the Controlling Authority can be many and the one Whether the dispute in regard to delay in preferring the claim is required to be referred to the Controlling Authority for his decision, cannot be taken to have started on any day previous to the reference of the dispute to the Controlling Authority for his decision ; otherwise some claims will become barred by limitation and will be denied merely because the claimant failed to present his application within the specified period of thirty days under Sub-rule (1) of Rule 7 above. In other cases where the claim is accepted in part or is rejected altogether, one can immediately set the starting point of limitation. The "occurrence of the cause" for the application to the Controlling Authority will be either the notice in Form "L" or the notice in Form "M" in such cases.

11. When we examine the cause of interference with the order of the Controlling Authority by this Court, we fail to see how in a case where an application has been filed beyond the period of thirty days for gratuity before the employer, the claim is said to be barred by limitation, when the rule declares, "an application for payment of gratuity filed after the expiry of the period specified in this rule (Rule 7) shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period". As we notice the rule, it is necessary that employer states the reasons why he has not agreed to entertain the claim which has been belatedly filed for payment of gratuity. If he is not agreeable to entertain the same and is not satisfied with the cause of the delay shown by the applicant, employer, however, has a duty to refer the dispute to the Controlling Authority. In case, however, the employer is not referring the dispute to the Controlling Authority, the occurrence to be the cause for the application by the claimant before the Controlling Authority is not available. Obviously the insufficient pleadings in the writ petitions have caused the unnecessary exercise of investigation of the sufficiency of the cause of delay in making the application by the claimants before the Controlling Authority.

12. We would have proceeded to dispose of the appeals for the obvious conclusions from the above that the claim is not barred by limitation merely because it is filed before the employer beyond the period of thirty days as prescribed under Rule 7(1) above and the Controlling Authority is required to enter into the dispute and deliver a judgment in this behalf, but for persistent arguments on behalf of the parties before us on certain other aspects of the controversy. True, law of limitation is generally accepted as the law of procedure but quite often enters into the realm or substantive law as well, particularly when it appears to extinguish a right or interest. In cases where the remedy is barred

but the right is not extinguished, the law as to limitation remains confined to procedure. In cases where it has the tendency to extinguish the claim, right or interest, it almost becomes substantive law.

13. Dealing with a similar question in AIR 1972 1935 (SC) the Supreme Court has considered the effect of Rule 17 framed by the Bombay Government prescribing limitation for filing application u/s 75 of the Employees' State Insurance Act, and stated as follows :

"The question which directly confronts us is whether the power to prescribe periods of limitation for initiating proceedings before the Court is a part of and is included in the power to prescribe "the procedure to be followed in proceedings before such Courts." The answer to this question would involve the determination of the further question whether the law relating to limitation is procedural or substantive or partly procedural and partly substantive. If it is procedural law, does it make any difference whether it relates to the time of filing application for initiation of proceedings before the Court or whether it relates to interlocutory applications or other statements filed before it after the initiation of such proceedings....

The topic of procedure has been the subject of academic debate and scrutiny as well as of judicial decisions over a long period but in spite of it, it has defied the formulation of a logical test or definition which enables us to determine and demarcate the bounds where procedural law ends and substantive law begins or in other words, it hardly facilitates us in distinguishing in a given case whether the subject of controversy concerns procedural law or substantive law. The reason for this appears to be obvious, because substantive law deals with right and is fundamental while procedure is concerned with legal process involving actions and remedies, which Salmond defines "as that branch of law which governs the process of litigation" or to put it in another way, substantive law is that which we enforce while procedure deals with rules by which we enforce it. We are tempted in this regard to cite a picturesque aphorism of Therman Arnold when he says "Substantive law is canonised procedure. Procedure is unfrocked substantive law". (45 HLJ 617).

The manner of this approach may be open to the criticism of having over simplified the distinction, but nonetheless this will enable us to grasp the essential requisites of each of the concepts which at any rate "has been found to be a workable concept to point out the real and valid difference between the rules in which stability is of prime importance and those in which flexibility is a more important value". American jurisprudence -- Vol. 51 (2nd edition) 695. Keeping these basic assumptions in view it will be appropriate to examine whether the topic of limitation belongs to the branch of procedural law or is outside it. If it is a part of the procedure, whether the entire topic is covered by it or only a part of it and if so, what part of it and the tests for ascertaining them. The law of limitation appertains to remedies because the Rule is that claims in respect of rights cannot be entertained if not commenced within the time

prescribed by the statute in respect of that right. Apart from legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore, any time fixed by the statute is necessarily to be arbitrary. A statute prescribing limitation however, does not confer a right of action nor speaking generally does it confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period firstly to assure the availability of evidence, documentary as well as oral, to; enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in a maxim *vigilantibus non dormientibus jura subveniunt* (the laws give help to those who, are watchful and not those who sleep). Therefore, the object of statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or, fraudulent claims. While this is so, there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remain merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural. According to Salmond the law of procedure is that branch of the law of actions which governs the process of litigation, both Civil and Criminal. "All the residue" he says "is substantive law and relates not to the process or litigation but to its purposes and subject matter". It may be stated that much water has flown under the bridges since the original English theory justifying a statute of limitation on the ground that a debt long over due was presumed to have been paid and discharged or that such statutes are merely procedural. Historically there was a period when substantive law was inextricably intermixed with procedure at a later period procedural law seems to have reigned supreme when forms of action ruled. In the words of Maine "So great is the ascendancy of the Law of Actions in the infancy of Courts of justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure". Maine *Early Law and Custom* 389. Even after the forms of action were abolished Maitland in his *Equity* was still able to say "The forms of action we have worried but they still rule us from their graves", to which Salmond added "In their life they were powers of evil and even in death they have not wholly ceased from troubling". 21 LOR 43 Oliver (Wendal Arva). Holmes had however observed in "The Common Law", "Wherever we trace a leading doctrine of substantive law far enough back we are likely to find some forgotten circumstances of procedure at its source". It does not therefore, appear that the statement that substantive law determines rights and procedural law deals with remedies, is wholly valid, for neither the entire law of remedies

belongs to procedure nor are rights merely confined to substantive law, because as already noticed rights are hidden even "in the interstices of procedure". There is therefore, clear-cut division between the two.

7. A large number of decisions have been referred before us both English and Indian some of antiquity in support of the proposition that the law prescribing the time within which an action can be commenced is purely procedural and therefore, when a statute empowers the Government to make rules in respect of procedure it confers upon it also the right to prescribe limitation. To this end has been cited the case of *Lopez v. Burslem* 1843 4 PC 300 and *Ruckmoboye v. Lullobhov Motichand* 1849 5 Ind App 234. An examination of these cases would show that what was being considered was whether the law of limitation was part of the *lex fori* which foreigners and persons not domiciled in the country have to follow if they have to have recourse to actions in that country. In the latter case the Privy Council observed at page 265:--

"The arguments in support of the plea are founded upon the legal character of a law of limitation or prescription and it is insisted and the Committee are of opinion correctly insisted that such legal character of the law of prescription has been so much considered and discussed among writers upon jurisprudence and has been so often the subject of legal decision in the Courts of law of this and other countries that it is no longer subject to doubt an uncertainty. In truth, it has become almost an axiom in jurisprudence that a law of prescription or law of limitation, which is meant by that denomination is a law relating to procedure having reference only to the *lex fori*."

These observations as well as those in the earlier case must be understood in the light of the principles governing conflict of laws. What was in fact being examined was whether they are part of the procedural law in the sense that the Municipal laws will be applicable on the question of limitation for the commencement of actions because if limitation was purely a question of substantive law that would be governed by the law of the country of the domicile of the person who is having recourse to the Courts of the other country. In other words the substantive rights of the parties to an action are governed by a foreign law while all matters pertaining to procedure are governed exclusively by the *lex fori*.

8. The cases cited at the Bar of the various High Courts in this country show that they were construing the rules prescribing limitation in respect of proceedings in Court i.e. proceedings after the institution of the suit or filing of the Appeal. In *Sennimalai Goundan v. Palani Goundan* AIR 1917 Mad 957, the question was whether the High Court by framing a rule u/s 122 CPC could make Section 5 of the Limitation Act applicable to applications under Sub-rule (2) of Rule 13 of Order IX. While holding that it could, *Coutts Trotter, J.*, as he then was made this pertinent observation:

"Whatever may be the case of the statute prescribing say three years for an action to be brought I am quite clear that the Articles in the Act limiting

applications of this nature which are almost entirely interlocutory deal clearly with matters of procedure....."

This was also the view of the Full Bench in Krishnamachariar Vs. Sri Rengammal and Others, which was followed by the Bombay High Court in Pandarinath v. Thakoredas AIR 1929 Bom 262 . It was contended in Velu Pillai Vs. Sevuga Perumal Pillai, that Rule 41 (A) (2) of the Appellate Side Rules of the Madras High Court providing for the presentation of a petition to the High Court within 90 days from the date of the order passed in an execution proceedings was ultra vires because the High Courts were not entitled by rules to regulate or enlarge the periods in the Limitation Act in respect of the proceedings to which the Limitation Act apply. This contention was negatived on the ground that such a power was inherent in Section 122 of the Civil Procedure Code. The argument of the petitioner that he had a vested right to go up in revision at any time and that the decision of the Full Bench in Krishnamachariar Vs. Sri Rengammal and Others, does not affect his right, was rejected on the ground that Section 122 CPC empowers the High Courts to make rules regulating their own procedure and the procedure of the subordinate Courts subject to their superintendence.

9. There were earlier decisions of the Allahabad High Court and Lahore High Court as also a decision of the Bombay High Court rendered u/s 602 of the old CPC referred to by Krishnan J. in his referring order in Krishnamachariar Vs. Sri Rengammal and Others, which took the view that the High Court has not the power by rule u/s 122 or the corresponding Section 602 of the old CPC to make rules for altering the period of limitation prescribed by the Indian Limitation Act. See Narsingh Sahai Vs. Sheo Prasad, and Chunilal Jethabhai v. Dhayabhai Amulakh ILR 1908 Bom 14. Again a similar question arose as to whether Clause 27 of the Letters Patent of Lahore High Court (there are similar clauses in the Letters Patent of the other High Courts) could validly empower the making, of Rule 4 prescribing a period for filing an appeal under Clause 10 of the Letters Patent. Clause 27 of the letters Patent empowered the High Court from time to time to make rules and orders for regulating the practice of the Court etc. This Court in The Union of India (UOI) Vs. Ram Kanwar and Others, approved the view of a Full Bench of the Punjab High Court in Punjab Co-operative - Bank Ltd. v. Official Liquidators Punjab Cotton Press Co. Ltd (in liquidation) AIR 1941 Lah 257 where it was held that Rule 4 is a special law within the meaning of Section 29(2) of the Limitation Act. Subba Rao J., as he then was said at p. 251 of AIR :

"Rule 4 is made by the High Court in exercise of the legislative power conferred upon the said High Court under Clause 27 of the Letters Patent. As the said rule is a law made in respect of special cases covered by it, it would certainly be a special law within the meaning of Section 29(2) of the Limitation Act."

In that case no question was raised as to whether Rule 4 was dealing with a procedural matter or dealt with a substantive right. These cases are of little assistance and if at all they lay down the principle that interlocutory proceedings before the Court do not deal with substantive rights and are concerned with mere

procedure and can be dealt with by rules made under the powers conferred on the High Court to regulate the procedure. It is therefore apparent that whether the fulfilment of a particular formality as a condition of enforceability of a particular right is procedural or substantive has not been, as we had already noticed, free from difficulty. What appears to be a self evident principle will not become so evident when we begin to devise tests for distinguishing procedural rule from substantive law. It appears to us that there is a difference between the manner in which the jurisprudential lawyers consider the question and the way in which the Judges view the matter. The present tendency is that where a question of limitation arises, the distinction between so called substantive and procedural statutes of limitation may not prove to be a determining factor but what has to be considered is whether the statute extinguishes merely the remedy or extinguishes the substantive right as well as the remedy. Instead of generalising on a principle the safest course would be to examine each case on its own facts and circumstances and determine for instance whether it affects substantive right and extinguishes them or whether it merely concerns a procedural rule only dealing with remedies, or whether the intentment to prescribe limitation is discernible from the scheme of the Act or is inconsistent with the rule making power etc.

10. Apart from the implications inherent in the term procedure appearing in Section 96(1)(b) the power to prescribe by rules any matter falling within the ambit of the term must be the "procedure to be followed in proceedings before such Court". The word "in" emphasised by us, furnishes a clue to the controversy that the procedure must be in relation to proceedings in Court after it has taken seisin of the matter which obviously it takes when moved by an application presented before it. If such be the meaning the application by which the Court is asked to adjudicate on a matter covered by Section 75(2) is outside the scope of the rule making power conferred on the Government.

11. In the *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, one of the questions that was considered by this Court was whether the clause that provides for a suit to be brought within one year after the delivery of the goods or the date when the goods should have been delivered, only prescribes a rule of limitation or does it also provide for the extinction of the right to compensation after certain period of time. It was observed by Das Gupta, J. at P. 1065 of AIR:

"The distinction between the extinction of a right and the extinction of remedy for the enforcement of that right though fine, is of great importance. The legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an article purporting to prescribe rights and immunities of the shipowners. The words are apt to express an intention of total extinction of the liability and should specially in view of the international character of the legislation, be construed in that sense. It is hardly necessary to add that once the liability is extinguished under this clause there is no scope of

any acknowledgment of liability thereafter."

12. What we have to consider is, apart from the question that the Government on the terms of Section 96(1)(b) is not empowered to fix periods of limitation for filing applications u/s 75(2) to move the Court whether on an examination of the scheme of the Act, Rule 17 affects substantive rights by extinguishing the claim of the Corporation to enforce the liability for contributions payable by the appellant."

14. Proceeding, after the above, to examine the purpose and intendment of the Act and the scheme which it effectuated, the Supreme Court has pronounced as follows: AIR 1972 1935 (SC)

"It may be of interest to notice that Falshaw C.J. had earlier taken a different view in Chanan Singh Proprietor Chanan Singh and Sons, Amritsar Vs. Regional Director, Employees' State Insurance Corporation, Amritsar, but said that he had no hesitation in agreeing with Dua J's view because he realised that this earlier view was based on an over simplification. In the latest case the Andhra Pradesh High Court also, following the earlier decision of Madhya Pradesh, Madras and Punjab held that the State Government had exceeded its powers to frame Rule 17 as no such power to prescribe limitation under the provisions of Section 96(1)(b) or u/s 78(2) can be said to have been delegated to the State Govt. We, however, find that Section 78(2) does not delegate any power to the Government to make rules but only requires the Insurance Court to follow "such procedure as may be prescribed by rules made by the State Govt." which rules can only be made u/s 96 of the Act. In the view we have taken it is unnecessary to examine the question whether legislative practice also leads to the same conclusion though in the Madras and the Punjab decisions that was also one of the grounds given in support of their respective conclusions. The contrary view expressed by a Bench of the Allahabad High Court is in our opinion not good law. We may before parting with this case point out that the legislature has since chosen to specifically prescribe 3 years as limitation period by addition of. Sub-section (1-A) to Section 77 while deleting Section 80. Section 77(1-A) provides that "Every such application shall be made within a period of three years from the date on which the cause of action arose". By this amendment the claim under Clause (d) as well as the one under Clause (f) of Sub-section (2) of Section 75(2) which provides for the adjudication of a claim by the Insurance Court for the recovery of any benefit admissible under the Act for which a separate limitation was fixed u/s 80, is now to be made within three years from the date of the accrual of the cause of action. This amendment also confirms the view taken by this Court that the power u/s 96(1)(b) does not empower the Government to prescribe by rules a period of limitation for claims u/s 75(2)."

15. Neither over simplification nor a dogmatic approach will ever lead to the correct principle behind the rule as expressed in the maxim *vigilantibus non dormientibus jura subveniunt* i.e., the laws give help to those who are watchful and not to those who sleep. The object of the statutes of limitation is to compel a

person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. In AIR 1972 1935 (SC) the Supreme Court has pointed out that there are two aspects of the statutes of limitation one concerns the extinguishment of the right, if a claim or action is not commenced within a particular time, and other merely bars the claim without affecting the right which either remain merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right, it affects substantive rights, while that which purely pertains to the commencement of action without touching the right, is said to be procedural.

16. We need not, however, in this case examine in any detail whether the rules prescribing for limitation are ultra vires the Act, although it seems obvious to us that if they intend to extinguish the right which is recognised u/s 4 of the Act (Payment of Gratuity Act, 1972) they are ultra vires the Act. They, however, appear to us to be rules strictly procedural in nature and do not intend to extinguish the right. Rule 7 aforequoted has used the expression that an employee who is eligible for payment of gratuity under the Act, or any person authorised in writing to act on his behalf to apply, "ordinarily within thirty days from the date the gratuity became payable."

This rule has intended only to give to the employee opportunity to seek expeditious payment of gratuity by the employer, who in any case under the Act, whether any application is made by the employee or not, is required to pay the gratuity to the employee. It is not possible to read in this rule any such limitation that in case no application is filed by the employee or on his behalf within thirty days from the date the gratuity became payable, the claim shall become extinguished. That the employee can make an application even after the said period of thirty days and the application made by the employee shall be considered by the employer for such notice as Rule 8 has envisaged and the employer is obliged to consider the same is envisaged in Sub-rule (5) of Rule 7 which provides, inter alia, that an application for payment of gratuity filed after the expiry of the period specified in the rule shall also be entertained by the employer. This Sub-rule, however, says the employer shall entertain the application made beyond the period of thirty days, "if the applicant adduces sufficient cause for the delay in preferring his claim" and adds, "and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period". If there is a dispute in respect of payment of gratuity by the employer and the application is filed after the expiry of the period of thirty days and the employer is not willing to entertain the claim, it is a dispute which this sub-rule says, "shall be referred to the controlling authority for his decision". Procedural limitation, however, is contemplated under Rule 10 in three circumstances -- (1) if an employer refuses to accept a nomination or to entertain an application sought to be filed under Rule 7; (2) issues a notice under sub-rule of Rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or

rejecting the eligibility to payment of gratuity; or (3) having received an application under Rule 7 fails to issue any notice as required under Rule 8 within the time specified therein. The period fixed for such application to the Controlling Authority for direction to the employer is ninety days of the occurrence of the cause for the application. The Controlling Authority, however, is given the power to condone the delay, if sufficient cause is shown by the applicant.

17. On the facts of the instant case, it will not be possible to say that Rule 10 is attracted unless it is a case falling under any of the three categories. The view which we have taken has the support of a judgment by a learned single Judge of the Karnataka High Court in *Binny Ltd. v. H.K. Madia*, (supra). Learned single Judge has dealt with a case of the workmen who filed Form No. "N" prescribed under Rule 10 of the Rules before the Controlling Authority with an application for condoning the delay in filing that Form and the Controlling Authority rejected the same on the ground that they were barred by time, since, in the view of the Controlling Authority, the workmen had not shown sufficient cause for condoning the delay ranging from 9 years to one year. The learned Judge has said as follows at Pp.936-37 :

"If the object of the Limitation Act is kept in view, it would not be difficult to understand the reasoning for the period of limitation fixed under Rule 10 of the Rules. Before the workman invokes Rule 10 of the Rules for determination of the amount due to him, he would have an ample opportunity to work out his right with the employer u/s 7 (1) (2) (3) and (4) (a). u/s 7(4)(b) he has a right to raise a dispute and have the same referred to the controlling authority. The employer under Rule 7 (5) of the Rules cannot resist the claim of the workmen on the ground of limitation. The employer in these cases did not reject the claim of the workmen under Rule 7(5). In the circumstances, the plea of limitation as prescribed under Rule 10 of the Rules will have to be considered in the light of the provisions of Section 7 of the Act and Rule 7 of the Rules. In my view, Rule 10 would be applicable to the facts of this case only when the workman had raised a dispute earlier u/s 7(4)(a) of the Act and that dispute was not resolved by the employer and thereafter the workman approaches the controlling authority for determination of that dispute."

18. A similar view is expressed in *Ramjilal v. Elphinstone Spg. & Wvg. Mill Co. Ltd.*, (supra) by a learned single Judge of the Bombay High Court in these words at p. 1706 :

"Section 7 Gratuity Act requires a person entitled to the payment of gratuity to send a written application to the employer within such time as may be prescribed. Rule 7 Payment of Gratuity (Maharashtra) Rules, 1972 provides that the employee entitled to the gratuity shall apply ordinarily within thirty days from the date the gratuity becomes payable. It is undoubtedly true that the petitioner had applied on November 4, 1976, which is long after the expiry of period of thirty days from the date when the right to gratuity accrued. Sub-rule (5) of Rule 7 empowers the authority to condone the delay and further issues a flat that no

claim for gratuity shall be invalid merely because the claimant failed to present his application within the specified period. The rule leaves no manner of doubt that the Legislature intended that the claim or application for gratuity by an employee should not be defeated on technical consideration and the authority should be very liberal in condoning the delay. The Controlling Authority relying upon this provision had thought it fit to condone the delay in presenting the application."

19. We are also concerned in this case with the question whether in a case in which the Controlling Authority has exercised his discretion and condoned the delay, if at all there is any delay, this Court, in exercise of its Writ jurisdiction shall enter into the discretion of the Controlling Authority and set aside the order condoning the delay. One of the settled principles of law is that wherever law gives discretion and it is not shown that discretion has been exercised arbitrarily or has not been exercised at all in accordance with law, the Court does not interfere merely because on the facts of the case it comes to a different conclusion. Even a Court which has the appellate power and the power extends to all that the Court of original jurisdiction exercises, merely because it has a different opinion on facts, it does not interfere with a finding of fact. The Bombay High Court in *Ramjilal v. Elphinstone Spg. & Wvg. Mill Co. Ltd.*, (supra) was guided more or less by this consideration, when it observed at P. 1706, Para 6:

"The Controlling Authority relying upon this provision had thought it fit to condone the delay in presenting the application and in my judgment the Appellate Authority should have been very very slow in disturbing the exercise of the jurisdiction. The Appellate Authority felt that the explanation given by the petitioner that he did not file the application because of the insistence of the employer that the amount would be paid only after he vacates the premises was not acceptable or believable. It is difficult to see any reason why the word of the petitioner on this count should be turned down. The Appellate Authority should have borne in mind that an employee has served faithfully for over twenty years and the right of gratuity should not be declined merely on technical consideration."

20. It is observed in *Hindusthan Sugar Mills Vs. State of Rajasthan and Others*, and the very words are repeated in *Commissioner of Sales Tax, U.P. Vs. Auriaya Chamber of Commerce, Allahabad*, , as follows at Pp. 1559-60:

".....We are living in a democratic society governed by the rule of law and every Government which claims to be inspired by ethical and moral values must do what is fair and just to the citizen, regardless of legal technicalities. We hope and trust that the Central Government will not seek to defeat the legitimate claim of the assessee for reimbursement of sales tax on the amount of freight by adopting a legalistic attitude but will do what fairness and justice demand."

21. Learned counsel for the respondent -employer has placed before us quite a number of judgments of the Supreme Court and of different High Courts to

impress that one, who seeks lifting the bar of limitation, must explain the delay of each day of the period of limitation and unless the delay is fully explained, Court should not condone the delay. As we have noticed earlier, the respondent-employer is a "State" under Article 12 of the Constitution of India. It has the liability to pay gratuity to its employees in accordance with law. It has claimed, however, that it did pay the gratuity and discharged its liability. Employees, however, have found that the liability has not been discharged in accordance with law. They have chosen to dispute the claim of the employer and have thus sought for adjudication by the Controlling Authority. If their claim is not supported by any evidence or law and it is found that they have been paid in full, the Controlling Authority may in such a situation decline to grant any order in their favour. However, if there is any truth in the claim of the employees and the money which has become payable to them by way of gratuity is not paid by the respondent - employer to them, respondent-employer has benefitted itself by the money which legitimately and legally belongs to the employees. It appears it has benefitted itself for a very long period of time by such amount of money which legitimately belongs to the employees. A recourse to a technicality on such facts, in our opinion, shall be wholly unfair. No one, who has benefitted himself at the cost of another, should be allowed to resist the claim against him on grounds as technical as the law of limitation, more so, when such a person is a "State" under Article 12 of the Constitution of India.

22. On the facts that we have noticed, we have every reason to hold that there is nothing on the record or from which it can be held that the respondents-appellants herein approached the Controlling Authority after the expiry of the period of limitation as contemplated under Rule 10 aforequoted. Their claim, no doubt, is not covered by the ordinary period of thirty days as envisaged under Rule 7(1), but even such a claim is not thrown out merely because employer decides to ignore. Law as above in Sub-rule (5) of Rule 7 has created a duty upon the employer to state reasons why it is not entertaining the claim of the employee which is, however, filed, according to it, beyond the period of thirty days.

23. We, however, are not benefitted by the full disclosure of facts by either party. Since the respondent-employer has wanted to avoid the order passed by the Controlling Authority, it was required to disclose all necessary facts. By withholding facts and not telling the whole facts, it has denied to itself any right to claim the review (judicial review) of the order of the Controlling Authority.

24. We have given our anxious consideration whether to set aside the impugned judgment and restore the order of the Controlling Authority, or to remit the matter to the Controlling Authority for a rehearing of the individual cases of the employees. We are of the opinion, however, on the facts of this case that condonation of delay which has been ordered in the instant case, should not be taken up for appeal or judicial review independently and if on facts a proper case is made out, it should be left open to the parties to agitate the same in the

appeal in accordance with law or in any other proceeding but only after the dispute is adjudicated on merits.

25. In the result, the appeals are allowed; the impugned judgment is set aside. The Controlling Authority is directed to proceed with the hearing of the matter in the light of the observations made above and in accordance with law. No order as to costs.