

(2019) 12 CAL CK 0109

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 22312 (W) Of 2018

Sri Tapan Chandra

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 2(e), 4(6), 13, 14
Oil And Natural Gas Commission Act, 1959 — Section 32, 32(1)
Sail Conduct, Discipline And Appeal Rules, 1977 — Rule 3.1, 3.2.1(c), 3.2.1(d), 34.3
Constitution Of India, 1950 — Article 12, 14, 21, 226, 142, 300A

Citation : (2019) 12 CAL CK 0109

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Arnab Roy, Narayan Ch. Bhattacharya, Amitava Roy, Raj Kumar Gaurisaria, Dinabandhu Mukherjee

Final Decision : Allowed

Judgement

Shekhar B. Saraf, J

1. This is an application under Article 226 of the Constitution of India wherein the petitioner is aggrieved by an order dated September 11, 2018 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"). The grievance of the writ petitioner is that he has not been paid the admissible amount of Rs.10 lakhs payable as gratuity due to him as per the "Statement of Normal Separation Persons for the month of Oct- 2016" issued to him by his employer.

2. The chronological facts leading to this writ petition are as follows:-

a. On 4th January, 1980, the petitioner was offered employment as Junior Sports Assistant at the Alloy Steels Plant, Durgapur (hereinafter referred to as "ASP") of the Steel Authority of India Ltd. (hereinafter referred to as "SAIL") on provisional basis.

b. On 27th December, 2007, the petitioner was allotted a Category 'A' type quarter (his present residential accommodation) by a House Allotment Order of the ASP on payment of rent and electricity charges etc.

c. Further, on 21st December, 2009, an ASP scheme for licensing of Category 'A' and Category 'B' type houses-2009 was circulated, to which the petitioner applied for licensing by depositing a sum of Rs. 5000/- [Rupees Five Thousand Only] as earnest money for the quarter allotted to him. Hitherto, neither has this earnest money been returned to him nor has he been notified about the status of the application for licensing.

d. On 28th December, 2010, the petitioner was promoted to the post of Junior Officer, MED-Fuel of the ASP. Further, on 31st December, 2015 the petitioner was promoted to the post of Asst. Manager, MED-Fuel of the ASP. Thereafter, on 31st October, 2016, the petitioner vacated the office at the age of superannuation after rendering a continuous service of 36 years, 9 months and 22 days.

e. On 24th February, 2017 and 25th October, 2017 the writ petitioner made an appeal to the Executive Director of the ASP for the allotment of quarter under 'ASP Scheme for Licensing of Category A/B type of houses-2009' on as is where is basis.

f. The petitioner on 24th November, 2017, filed an application for direction of payment of Gratuity along with Form 'N' before the Controlling Authority under the Act, but the same was dismissed by an order dated 26th April, 2018. The order directed M/s SAIL to make payment of gratuity only after vacation of quarter allotted to the petitioner by the ASP.

g. Thereafter, a proceeding was initiated by the ASP against the writ petitioner for unauthorized occupation of ASP Quarter. By an order dated 16th June, 2018 the Ld. Estate Officer, SAIL, Durgapur Steel Plant allowed the application and directed the petitioner to vacate the said quarter within 15 days from the days from the date of receipt of this order. The petitioner preferred an appeal to this order before the District Judge, Burdwan wherein a stay order was granted in favour of the petitioner till 1st August, 2018. Further, by an order dated 1st August, 2018 the stay order was extended till 14th November, 2018.

h. The petitioner preferred an appeal before the Appellate Authority against the Controlling Authority's order and the same was dismissed by an order dated 11th September, 2018 directing the petitioner to pay penal rent to ASP for non-vacation of quarter after his superannuation. This penal rent was to be recovered from his gratuity thus, making the payment of gratuity conditional upon vacation of quarter by the petitioner.

i. It is also important to mention that the writ petitioner has time and again received letters from ASP demanding payment of the utility charges in terms of the accommodation provided to him by the ASP and all such demands were timely paid by the writ petitioner.

j. Hence, this writ.

3. The counsel for the petitioner, Mr. Arnab Ray submitted that the SAIL has an instrument known as the SAIL Gratuity Rules, with regard to matters of gratuity of the employees. Clause 3.2.1 (c) of the SAIL Gratuity Rules [hereinafter referred to as "the Rules"] provides that SAIL has the right to withhold the gratuity amount payable to an ex-employee for, inter-alia, non-vacation of its accommodation and no interest shall be payable on the gratuity so withheld for the period of "unauthorized occupation" of the said accommodation and up to one month after vacation thereof. However, no beneficial provisions have been opted for by the petitioner from the Rules.

4. Mr. Ray also submits before the court that as per the letter of promotion dated 28th December, 2010, issued by the ASP, the petitioner was to be governed by the SAIL Conduct, Discipline and Appeal Rules, 1977. The relevant portion of the letter of Appointment on Promotion date is reproduced hereunder:

"In the matters of employment and service conditions, you shall be governed by SAIL Conduct, Discipline and Appeal Rules, 1977, Rules & Regulations as well as the Administrative Orders of the Company, as applicable to the executives of the Company, which may be in force from time to time."

5. Mr. Ray submits that the impugned order dated 11th September, 2018, is not sustainable in the eyes of law because gratuity is no longer a bounty but is a matter of statutory right of an employee under Article 300A of the Constitution of India. The authority of law in this regard has categorically been provided under Section 4(6) of the Act which requires to be scrupulously followed in order to deprive a former employee from his statutory right. He also points out that in order to have satisfactory application of Section 4(6) of the Act the first and foremost condition is termination of employee from service for any wrong committed during the course of employment and the said statutory provision does not come into picture for anything done after superannuation. He also submits that the provisions of SAIL Gratuity Rules for non-payment of gratuity due to non-vacation of residential accommodation, being provisions of an instrument which are inconsistent with the Payment of Gratuity Act, 1972, cannot be applicable in view of Section 14 of the Act.

6. During the course of arguments, Mr. Ray has placed reliance upon the judgment delivered by Dipankar Dutta J., a co-ordinate bench of this Court in Steel Authorities of India Ltd. & anr. -v- Taraknath Sengupta & Ors. reported in (2010) 2 Cal LT 473 and Steel Authority of India Limited -v- The Ld. Controlling Authority under the Payment of Gratuity Act and Asstt. Labour Commissioner (Central), Raniganj & Anr. an unreported judgment of this court wherein the Courts in both the above judgments held that no deduction from gratuity could be made by the employer in any manner that is inconsistent with the provisions of the said Act. To further buttress his arguments, Mr. Ray cited Mining and Allied Machinery Corporation -v- Ram Ranjan Mukherjee and Others reported in 2004

(1) CHN 510 wherein the court held that withholding and/or deducting gratuity payable to the employees on account of arrear rent payable by them in respect of their official accommodation provided by the employer is not permissible under the said Act. He thereafter placed reliance on Y.K. Singla -v- Punjab National Bank and Others reported in (2013) 3 SCC 472 wherein the court held that Section 14 of the said Act gives it a superior status than any other enactment with this regard. He further relied on Jorsingh Govind Vanjari -v- Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon Division, Jalgaon reported in (2017) 2 SCC 12 wherein the court held that for denial of gratuity, there must be termination on account of alleged misconduct which constitutes an offence involving moral turpitude. Mr. Ray finally placed reliance on Union Bank of India and others -v- C. G. Ajay Babu and another reported in AIR 2018 SC 3792 and Oriental Bank of Commerce -v- Deputy Chief Labour Commissioner (Central), Kolkata reported in 2017(4) CHN (CAL) 433 to further his argument that forfeiture and/ or any deduction is not permissible unless the same is done as per the provisions of Section 4(6) of the Payment of Gratuity Act, 1972.

7. Affidavit-in-Opposition has been filed by the respondent nos. 4, 5, 6 and 7. Mr. Narayan Ch. Bhattacharya, the counsel appearing on behalf of respondent nos. 4, 5, 6 & 7 submits before the court that the writ petitioner after his superannuation forcefully occupied the quarter allotted to him and the same constitutes an offence involving moral turpitude, and therefore, attracts Section 4(6) of the said Act. Thus, the petitioner is not entitled to the gratuity and any interest for such alleged delayed non-payment of such amount. It is further submitted by counsel that according to Rule 3.1 of the Rules, gratuity shall be granted to the employees of the company for good, efficient and faithful service upon superannuation and the conduct of the petitioner in non-vacating the quarter after superannuation is in violation of the above Rule. Furthermore, Mr. Bhattacharya submits that under Rule 3.2.1(c) the company is entitled to withhold the gratuity amount payable to the ex-employee or his nominee/legal heir in case of death, for non-compliance of company rules including non-vacation of accommodation provided by the company.

8. Mr. Bhattacharya submits that according to Rule 3.2.1(d) the respondent no. 4 is entitled to deduct any such amount due from the employee to the company from the gratuity payable and admissible under this Rule. He also submits that the SAIL as a whole is passing through a difficult situation with most of the plants operating in losses. The respondent company being one of the units of SAIL is also running through very critical stage in terms of profit.

9. Mr. Bhattacharya while making submissions before the court has also relied on the case of Wazir Chand -v- Union of India and Others reported in (2001) 6 SCC 596 wherein the apex court held that the appellant having unauthorizedly occupied the quarter was liable to pay the penal rent in accordance with the rules and, therefore, there is no illegality in those dues being adjusted against the

death-cum-retirement dues of the appellant. He further relied on Secretary, O.N.G.C. Ltd. & Another -v- V. U. Warriar reported in AIR 2005 SC 3029 wherein the Apex Court held that in certain circumstances, deduction of amounts due towards penal charges for unauthorized occupation from gratuity payable to the employee cannot be held as arbitrary, unlawful or unreasonable.

10. Furthermore, Mr. Bhattacharya also relied on an unreported judgment delivered by Madras High Court in the matter of Binny Ltd. -v- The Assistant Commissioner of Labour & Ors. (W.P. No. 16247 of 2007) wherein the court directed the employee to vacate the residential quarter, upon which the Assistant Commission of Labour would release the amount of gratuity deposited by the petitioner to the employee. He also relied on Grid Corporation of Orissa & Ors. -v- Rasananda Das reported in (2003) 10 SCC 297; Union of India and Another -v- K. Balakrishna Nambiar and Sardar Sohan Singh to buttress his arguments. Another argument placed by the respondent is that the petitioner has not approached this Court with clean hands and the Writ Court being a discretionary jurisdiction, the Court should not grant any relief to the petitioner. It was further argued that the High Court does not act as a Court of appeal under Article 226 and the discretion should be exercised on recognized lines and not arbitrarily. Reliance has been placed on paragraph 33 of V. U. Warriar (supra) to advance this argument.

11. I have heard learned counsel for both the parties and perused the materials on record.

12. The two issues which need to be adjudicated in the present writ petition are as follows:

a. Whether any company/organization is allowed to delay or withhold or make deductions from the gratuity amount payable to the ex-employee after superannuation in case of non-vacation of accommodation provided by the company / organization under the Payment of Gratuity Act, 1972?

b. Whether the SAIL Gratuity Rules will have overriding effect on Payment of Gratuity Act, 1972?

13. At this juncture, it is prudent to examine the plethora of judgment cited by both the parties on the subject issue. In Taraknath Sengupta & Ors. (Supra), Dipankar Dutta, J. after going deep into the subject matter was of the opinion that no deduction from the gratuity could be made by the employer in such a manner which is inconsistent with the provisions of the said Act. The relevant paragraphs of the judgment are delineated below:

"26. This Court humbly shares the view. Since the Act itself provides for quantification of gratuity as well as its recovery, it would be open to an employer to make supplemental provisions for promoting the object of the Act but making of provisions which in effect curtails an employee's right to receive gratuity under the Act is not legally permissible. The provision contained in section 14 of the Act

has overriding effect and therefore is a prohibition against application of any other law or terms of instrument or contract inconsistent therewith to deny an employee his due gratuity except to the extent authorised by section 4(6) thereof. The employer is thus not entitled in law to effect any deduction from gratuity on account of any misdemeanor or objectionable conduct of an employee, post-retirement. There is no warrant for the proposition that any amount which an employee may owe to his employer in respect of acts of omission/commission after he has retired from service can be deducted from his gratuity even though the rules of the employer may permit the same. The right to gratuity under the Act is statutory. Having regard to the provisions of section 14 of the Act, any non-statutory rule (which is nothing but an instrument as is referred to therein) inconsistent with the provisions of the Act cannot impair the statutory right to receive gratuity, which flows from the Act. It is only when an employee's service is terminated on grounds of the nature specified in clauses (a) and (b) of sub-section (6) of section 4 of the Act that he forfeits his right to receive gratuity under the Act and not otherwise. The reasoning of the learned Judge in *Sardar Sohan Singh* (supra) that a prohibitory provision which the legislature never made in the Act cannot be read in the statute thereby disentitling an employer to make deduction from gratuity, does not appeal to this Court to be correct since provisions of the Act impliedly exclude recourse to any other provision inconsistent therewith relating to non-payment of gratuity.

27. Retention of official accommodation by the first respondent which was allotted to him while he was in employment under the company illegally, as contended by it, is not at all linked with the service rendered by him and, therefore, gratuity payable to him could not have been linked with alleged illegal retention thereof. An employee covered by the provisions of the Act is entitled to gratuity for service rendered by him and the right which has accrued in his favour cannot be allowed to be impaired except to the extent permitted by the Act.

28. The maxim *expressum facit cessare taciturn* meaning "when there is express mention of certain things, then anything not mentioned is excluded" would apply in construing the Act. This well-known maxim which is a principle of logic and common sense and not merely a technical rule of construction has been applied by the Apex Court in a number of cases reference to which, however, is not considered necessary.

29. The silence in the Act must be held not to have allowed withholding/deduction from gratuity payable to an employee and it is not necessary to construe the statute in a manner construed by the learned Judge in *Sardar Sohan Singh* (supra) that there is no requirement of reading a prohibitory provision that the legislature never made. In this connection, it would also be useful to refer to the decision in *Moniruddin Bepari v. The Chairman of the Municipal Commissioners, Dacca*, reported in XL CWN 17 which has also been followed as late as in *Bipad Taran Patra v. State of West Bengal*, reported in

(1994) 2 CLJ 450.

30. Hon'ble R.C. Mitter, J. in Maniruddin (supra) observed as follows:

"It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The Corporation has no power to do anything unless those powers are conferred on it by the statute which creates it".

31. Though the company is not a statutory authority, yet being a Central Government undertaking, it is an Article 12 authority and is thus discharging public functions. In all its actions, it must be guided by Articles 14 and 21 of the Constitution. The right of forfeiture of gratuity that is statutorily provided to the company can, if the situation so demands, be exercised strictly in accordance therewith or not at all. Since the Act does not permit withholding/deduction of gratuity for realisation of dues payable by an employee to it, such power cannot be exercised on the assumption that there is no express prohibition in the statute. It could take recourse to withholding deduction if such power had been statutorily conferred without the same being inconsistent with the Act. It is fallacious to assume that when forfeiture of gratuity is not permissible except in grave situations arising out of an employee's misconduct during service, his gratuity could be withheld or deduction made therefrom for an incident after cessation of employer-employee relationship which the company considers is against its rules. Gratuity Rules of the company are not statutory and, therefore, would not in the circumstances confer any right on it to deduct any amount on account of liability incurred by an employee, if at all, subsequent to his retirement.

32. The aforesaid view this Court has taken finds support from the Division Bench decision of this Court in Eastern Coalfields Limited v. Kripa Sankar Somany, reported in 2004 (1) CHN 662. It was held therein that no regulation authorizing forfeiture/withholding of gratuity can be sustained if the incident for which action is proposed to be taken does not come within the exceptions provided in section 4 (6) of the Act. The Division Bench also ruled that service regulations or rules inconsistent with section 4(6) of the Act has to yield to the provisions contained in section

4(6) of the Act and shall stand superseded by reason of section 14 thereof.

33. The Gratuity Rules (insofar as it permits the employer to deduct any sum towards dues payable by the employee) which are not statutory in nature and are wholly inconsistent with the scheme of the Act can have no effect having regard to provision of section 14 thereof. Such non-statutory rules could not have been pressed into service to render the scheme of the Act nugatory. To the extent the decision in Sardar Sohan Singh (supra) fails to consider section 14 of the Act in the proper perspective, it ceases to have the effect of a binding precedent. This Court is conscious that a misreading of a provision in a decision

would as much be binding on a subsequent Bench of coordinate strength but apart from a casual reference to section 14 of the Act in the portion quoted above, there appears to be no real consideration of its effect in the decision as well as appreciation of the law laid down in *Jaswant Singh Gill* (supra). The said decision was distinguished only on the ground that the issue therein was of forfeiture of gratuity which was not the issue before His Lordship. Paragraphs 11 and 12 of the decision in *Jaswant Singh Gill* (supra) being relevant, are quoted below:

"11. Power to withhold penalty (sic gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefor is rendition of five years' continuous service.

12. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent 1 or its holding are not statutory in nature. The Rules in any event do not provide for withholding of retiral benefits or gratuity."

(emphasis supplied)

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41. It would also be worthwhile to note the decision in *Mining & Allied Machinery Corporation* (supra). Upon considering the provisions of section 4(6) of the Act, the Division Bench held as follows:

"7. Under the provisions of the said Act, 1972 the employer is entitled to withhold the payment of gratuity only under three circumstances:

(i) the service of an employee is terminated for wilful omission or negligence on the part of the employee causing loss or damage or destruction of the property belonging to the;

(ii) service of the employee is terminated for riotous or disorderly conduct or any other act of violence;

(iii) termination of service due to an offence involving moral turpitude committed in course of this employment.

8. Reliance was placed in this regard on three Apex Court decisions which are as follows:

(1) AIR 1985, Supreme Court, Page 996 (*Calcutta Dock Labour Board v. Sandhya Mitra*).

(2) AIR 1990, Supreme Court, Page 1923 (D.V. Kapoor v. Union of India)

13. In our view, the learned judge correctly approached the situation and rightly held against the appellant and directed them to pay the deducted amount to the respective employees being the writ companys/respondents and we do not find any scope of interference.

14. As a result, the appeals fail and are hereby dismissed.

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42. To distinguish the decision in Mining & Allied Machinery Corporation (supra), the learned Judge in Sardar Sohan Singh (supra) observed as follows:

"The first question for decision is whether the matter directly in issue in the present case is covered by any binding precedent. I am unable to agree with counsel for the parties that it is. In so far as the Division Bench decision of this court in Mining & Allied Machinery Corporation's case is concerned, suffice it say that that cannot be considered a binding precedent to govern the question directly in issue in this case, since there their Lordships were not considering whether provisions of the Payment of Gratuity Act, 1972 would stand in the way of deduction, even when the gratuity rules of the company provided for deduction, from gratuity, of amounts payable to the company on any account including on account of normal and penal rent for withholding delivery of quarters by the employee concerned. From the decision it does not appear either whether in that case the question of deduction was governed by any gratuity rules of the company concerned."

43. True it is that from the Division Bench decision it does not appear as to whether or not there existed any rule of the employer authorising deduction from gratuity payable to the employees for not vacating residential accommodation allotted to them. However, for reasons discussed above, existence of a rule of the employer authorising withholding/deduction of gratuity, if inconsistent with the scheme of the Act, would have no effect in view of section 14 of the Act.

44. For ascertaining the facts and circumstances in the backdrop whereof the Division Bench had decided Mining & Allied Machinery Corporation (supra); this Court also looked into the decision of the learned single Judge which was under appeal before the said Division Bench viz. Ram Ranjan Mukherjee v. Mining and Allied Machinery Corporation Ltd., reported in (2000) 3 Cal LT 468 (HC). There, the employee retired in pursuance of a Voluntary Retirement Scheme of the company. Paragraph 6(2) of the Scheme laid down that payment thereunder would be made after handing over of charges of the post including tools, materials, accessories and residential accommodation allotted by the company. One of the several questions formulated by the learned Judge for determination was: "whether clause 6(2) of the VRS dated 26.5.1989 is ultra vires of the Payment of Gratuity Act, 1972".

The question was answered in the manner following:

"5. ****There is a mandate of the Payment of Gratuity Act that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his death. I am of the view that by introducing VRS the mandate of the Payment of Gratuity Act cannot be violated. Paragraph 6(2) of the VRS lays down that the payment under VRS shall be made after handing over all charges of the posts including tools, materials, accessories and residential accommodation by the Corporation. In my opinion the aforesaid paragraph 6(2) of VRS cannot be made available in respect of payment of gratuity under Payment of Gratuity Act, 1972 because if the said paragraph is made applicable in respect of payment of gratuity then it shall violate the mandate of the provisions of the Payment of Gratuity Act and cannot but be termed to be illegal in the nature".

45. It is clear from a bare perusal of the decision of the learned single Judge as extracted above that gratuity was sought to be withheld not on invocation of any provision of rules framed by the employer but on the basis of a condition in its Voluntary Retirement Scheme. Payment of gratuity was not released because the accommodation had not been vacated. The Scheme is also an instrument as referred to in section 14 of the Act. The impugned action was not found to be authorised in law by the learned single Judge and the view was upheld by the Division Bench.

46. From whichever angle one looks at, the conclusion is inescapable that no deduction from gratuity could be made by the employer in such manner that is not consistent with the provisions of the Act. This Court is thus of the further considered view that the Division Bench decision of this Court in Mining & Allied Machinery Corporation (supra) is directly on the point and binding on this Court."

14. In Ram Ranjan Mukherjee and Others (Supra) the court held that only under three circumstances mentioned in the Section 4(6) of the Act the employer can withhold or delay the payment of gratuity to the ex-employee of the company. The relevant portion of the judgment is delineated below:

"7. Under the provisions of the said Act, 1972 the employer is entitled to withhold the payment of gratuity only under three circumstances:

(i) the service of an employee is terminated for wilful omission or negligence on the part of the employee causing loss or damage or destruction of the property belonging to the company;

(ii) service of the employee is terminated for riotous or disorderly conduct or any other act of violence;.

(iii) termination of service due to an offence involving moral turpitude committed in course of this employment.

8. None of the three eventualities stipulated above was present in the instant case. The writ petitioners/respondents were allowed to retire prematurely accepting the voluntary retirement scheme. Assuming that there had been some dues to be recovered from the said employees the appellant company was not

entitled to adjust such dues against gratuity as the same was not permissible in law.

9. Reliance was placed in this regard on three Apex Court decisions which are as follows:

(1) AIR 1985, Supreme Court, Page 996 (Calcutta Dock Labour Board v. Sandhya Mitra)

(2) AIR 1990, Supreme Court, Page 1923 (D.V. Kapoor v. Union of India)

10. In the case of Calcutta Dock Labour Board (supra) the Apex Court held that the order of attachment of gratuity was not tenable in law under section 13 of the said Act, 1972.

11. In the case of D.V. Kapoor, (supra) the Apex Court held that withholding of gratuity after retirement as a measure of punishment was not permissible in law.

12. In the present case as we have just now held that none of the eventualities under sub-section (6) of section 4 of the said Act, 1972 had occurred the appellant was not entitled to withhold and/or deduct payment of gratuity on account of arrear rent.

13. In our view, the learned judge correctly approached the situation and rightly held against the appellant and directed them to pay the deducted amount to the respective employees being the writ petitioners/respondents and we do not find any scope of interference."

15. In Y.K. Singla (Supra), the Supreme Court laid emphasis on Section 14 of the said Act and held that the legislature has vested superiority to the provisions of the said Act. The relevant portion of the judgment is delineated below:

"22. In order to determine which of the two provisions (the Gratuity Act or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:

"14. Act to override other enactments, etc.-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

(emphasis supplied)

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument

or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

16. In *Jorsingh Govind Vanjari* (Supra) the Apex Court ruled that gratuity cannot be denied merely on the fact that alleged misconduct of the employee constitutes moral turpitude and has to be coupled with the fact that termination had taken place based on such alleged misconduct. The relevant portion of the judgment is delineated below:

"15. In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude."

17. In *Wazir Chand* (Supra) the Apex Court held that the appellant having unauthorizedly occupied the quarter was liable to pay the penal rent in accordance with the rules and, therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. The order delivered by the Supreme Court has been delineated below:

"These appeals are directed against the orders of the Central Administrative Tribunal rejecting the claim of the appellant, who happens to be a retired railway servant. Admittedly, the appellant even after superannuation continued to occupy the government quarters, though being placed under hard circumstances. For such continuance, the Government, in accordance with rules, has charged penal rent from the retired government servant, and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid, as noted in the impugned order of the Tribunal. The appellant's main contention is that in view of the Full Bench decision of the Tribunal against which the Union of India had approached this Court and the special leave application was dismissed as withdrawn, it was the bounden duty of the Union of India not to withhold any gratuity amount and, therefore, the appellant would be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorizedly occupied the government quarters was liable to pay the penal rent in accordance with rules and, therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed."

18. In *V. U. Warriar* (Supra) the Apex Court in this case had allowed deduction of penal charges for unauthorized accommodation from gratuity payable to the employee in terms of Regulations. The relevant portion of the judgment is

delineated below:

"17. Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be "bounty". Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101] the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act, 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc. Regulation 5 deals with recovery of dues of the Commission and reads thus:

"5. Recovery of dues.-The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of the Commission's dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of a deceased officer, as the case may be."

The above regulation leaves no room for doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity. In the present case admittedly the respondent retired after office hours of 28-2-1990. According to the Commission, he could be allowed four months' time to occupy the quarters which was granted to him. His prayer for extension was considered and rejected stating that it would not be possible for the Commission to accept the prayer in view of several officers waiting for quarters. He was also informed that if he would not vacate the quarters, penal rent as per the policy of the Commission would be recovered from him. But the respondent did not vacate the quarters. It was only after eviction proceedings were initiated that he vacated the quarters on 16-5-1991. In the circumstances, in our opinion, it cannot be said that the action of the Commission was arbitrary, unlawful or unreasonable. It also cannot be said that the Commission had no right to withhold gratuity by deducting the amount which is found "due" to the Commission and payable by the respondent towards penal charges for unauthorised occupation of the quarters for the period between 1-7-1990 and 15-5-1991.

24. In *Wazir Chand v. Union of India* [(2001) 6 SCC 596 : 2001 SCC (L&S) 1038] , a retired employee continuously kept the quarters occupied unauthorisedly. He was charged penal rent in accordance with rules and after adjustment of dues, balance amount of gratuity was paid to him. He contended that it was the bounden duty of the Government not to withhold the gratuity

amount. The Court, however, dismissed the appeal observing that it was "unable to accept" the prayer of the appellant. The Court observed that the appellant having unauthorisedly kept the government quarters was liable to pay penal rent in accordance with rules and there was no illegality in adjusting those dues against death-cum-retirement benefits.

25. Wazir Chand [(2001) 6 SCC 596 : 2001 SCC (L&S) 1038] was considered in Gorakhpur University [(2001) 6 SCC 591 : 2001 SCC (L&S) 1032] but the Court stated that it was not clear from the facts whether the person was allowed to retain the accommodation on receipt of normal rent as in University case [(2001) 6 SCC 591 : 2001 SCC (L&S) 1032] .

26. The matter can be considered from another angle also. It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that article can be exercised by the High Court "to reach injustice wherever it is found". More than fifty years before, in *Veerappa Pillai v. Raman & Raman Ltd.* [1952 SCR 583 : AIR 1952 SC 192] , the Constitution Bench of this Court speaking through Chandrasekhara Aiyar, J., observed (at SCR p. 594) that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them

"in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice".

(emphasis supplied)

27. Similarly, in the leading case of *Sangram Singh v. Election Tribunal, Kotah* [(1955) 2 SCR 1 : AIR 1955 SC 425] dealing with the ambit and scope of powers of High Courts under Article 226 of the Constitution, Bose, J. stated: (SCR p. 8)

"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

(emphasis supplied)

The above principle has been reiterated and followed by this Court in several subsequent cases.

19. It is now important here to reproduce Sections 4(6) and 14 of the said Act and also Rule 3.2.1(c) and 3.2.1(d) of the SAIL Gratuity Rules.

"4. Payment of gratuity.

(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 27[may be wholly or partially forfeited]-

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

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

14. Act to override other enactments, etc.-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

"Rule 3.2.1(c) - The company will have the right to withhold the gratuity amount payable to an ex-employee or his nominee/legal heir(s), in case of his death, for non-compliance of Company's rules including non-vacation of Company's accommodation. No interest shall be payable on the gratuity amount so withheld for the period of unauthorized occupation of Company's accommodation and up to one month after the vacation of the Company's accommodation."

"Rule 3.2.1(d) - The Company will always have the right to deduct from the Gratuity payable and admissible under these rules to an employee, such amount as may be due from the employee."

20. In light of the judgments cited and arguments advanced by both the parties before this court with respect to the subject issue in the present writ petition, I am of the considered view that the view taken by the coordinate bench of the Calcutta High Court in Taraknath Sengupta & Ors. (supra) is the correct view. In the said judgment, a plethora of judgments of the Supreme Court (including the ones cited before me) have been referred to and the ratios of the same culled out to answer the issue as to whether an employee upon superannuation can be deprived of his gratuity dehors the provisions of the Act. The said judgment categorically distinguishes Wazir Chand (supra), V. U. Warriar (supra) and Sardar Sohan Singh (supra). The reasons for distinguishing the above three judgments

need not be repeated here. Taraknath Sengupta & Ors. (supra) clearly answers the question that is in issue in the present case. It may be noted that the ratio of Ram Ranjan Mukherjee (supra) was applied and the Court held that the appellant therein was not entitled to withhold and/or deduct payment of gratuity on account of arrear rent. In fact, there are plethora of judgments delivered by this court as well as by the Supreme Court which has time and again answered the issue agitated in the present writ petition. The case cited by the respondents Wazir Chand (supra) is of no assistance to this court since the Apex Court did not lay down any principle of law which would have answered any of the issues in the present matter under the given facts and circumstances. Another case which was relied upon by the respondent company was the case of V. U. Warriar (supra) wherein the respondent at that point of time had a salary which was beyond the amount mentioned in the definition of "employee" under Section 2(e) of the said Act which was subsequently amended in the year 1994 and the provision as to the amount of salary has been amended to which the Supreme Court held that the respondent is not an employee under the meaning of the Act. Therefore, this case is of no help to this court as it does not influence any of the issues to be dealt in the present writ petition.

21. Binny Ltd. (supra) and Rasananda Das (supra), in my view, both cases cited by the respondents, finds no relevance in the present matter as these are based on completely different set of facts and issues. Also, these cases do not lay down any principle of law which relates to the present issue in hand. Hence, this court finds no substance in the cases cited by the respondents.

22. With respect to the first issue, I would like to look into the matter of Taraknath Sengupta & Ors. (Supra) which has been cited by the petitioner, taking this into account the above judgment directly deals with the present issue in question. In this case the court had elaborately dealt with the issue of whether can the Gratuity amount be adjusted or deducted with any kind of penal charges or outstanding amount due to the employer. To which the court answered in clear terms and said that under no circumstances can the employer make deductions or withhold the amount payable to the employee in terms of his gratuity amount apart from the three conditions mentioned in Section 4(6) of the said act. Moreover, in the present matter the petitioner has served the respondent company for more than 36 years and now upon his retirement he is entitled to get his Gratuity which is a statutory right backed by the provisions of the said Act. The only exception where the gratuity amount can be forfeited by the employer is only when any of the conditions mentioned under Section 4(6) of the said Act comes into play but in the present matter none of the conditions are attracted and thus in this case, under no circumstances, can the statutory right of the petitioner be curtailed. According to me the Appellate Authority had not looked into the case of the writ petitioner in a diligent manner and thus the order dated 11th September, 2018 is violating the rights of the petitioner. Similarly, in the case of Ram Ranjan Mukherjee and Others (Supra) the Division Bench of this Court once again reiterated the law with respect to the gratuity payable to the

employees on superannuation. In this case the court directed the appellant to pay the deducted amount to the respective employees and held that the appellant was not entitled to withhold and/or deduct payment of gratuity on account of arrear rent. In the present case the Appellate Authority in its order dated 11th September, 2018 directed the petitioner to pay the penal rent and failing to do so the respondent company will have the right to recover the same from gratuity. This order of the Appellate Authority is in violation of the law established in the case of Ram Ranjan Mukherjee and Others (Supra) and thus the order of the Appellate Authority dated 11th September, 2018, is bad in the eyes of law. The relevant portion of the Order is delineated below:

"1. The Appeal filed by Shri Tapan Chandra fails and the same is dismissed.

2. The order of the CA is affirmed as the same does not suffer from illegality, irrationality, procedural impropriety and perversity.

3. The Appellant is liable to pay penal rent etc as assessed by the ASP (employer), if he does not pay, ASP can recover the same from the gratuity.

4. The gratuity would be paid to the respondent when he vacates the quarter."

23. None of the abovementioned conditions listed under Section 4(6) of the Act are present in the instant case. The writ petitioner was discharged from his services upon superannuation and is entitled to gratuity. Accordingly, relying on the ratios carved out in Taraknath Sengupta & Ors. (supra) and Ram Ranjan Mukherjee and Others (supra), I am of the view that ASP cannot withhold the petitioner's gratuity other than for any other conditions as has been laid down in the Section 4(6) of the Act.

24. The second issue relates to the superiority of one legislation over the other. In this case the question is whether the SAIL Gratuity Rules will have overriding effect over the Payment of Gratuity Act, 1972. This question has been answered in various judgments across the nation. In Y.K. Singla (supra) the Supreme Court has examined Section 14 of the said Act and held that the law is very clear with respect to its superiority and leaves no scope for any other instrument or contract to frustrate the intent of the legislature behind the said Act. The law relating to gratuity must be governed by the said Act and in the present case Rule 3.2.1(c) and Rule 3.2.1(d) of the Rules is clearly inconsistent with the said Act. Therefore, the defense taken by the respondent by relying on the SAIL Gratuity Rules cannot be considered as a valid one and I find that the Payment of Gratuity Act, 1972, will have an overriding effect over the SAIL Gratuity Rules.

25. Therefore, it is held that gratuity is a statutory right of the writ petitioner and the same cannot be impaired by reason of Rules and Regulations which do not have the force of a statute. It will bear repetition to state that the rules framed by the respondent are not statutory in nature and thus, it cannot be enforced.

26. With regard to the argument of the respondents that no relief should be granted to the petitioner as he has come before this Court in violation of the

Principles of *Uberrima fides* and the fact that the Writ Court does not act as an Appeal Court, I am of the view that this argument, in the present facts and circumstance, is required to be rejected. It is to be noted that the petitioner has approached this Court against the order passed by the appellate authority. The appellate authority is required to act in accordance with the statutory provisions and the principles culled out by the Supreme Court which operate as law under Article 142 of the Constitution of India. In the present case, the appellate authority has failed to consider the law in its correct perspective and has, therefore, erred in law. It is true that the Writ Court does not act as a Court of appeal, however, the Writ Court is required to strike down an order that is palpably illegal and against the principles established in law. Under these circumstances, a wrong order passed by a quasi judicial authority cannot be allowed to stand.

27. In light of the above reasons, I am of the view that in the case of the writ petitioner, the Appellate Authority has erred in its finding while directing the ASP to recover its penal rent from the amount of gratuity payable to the petitioner. Therefore, this Court orders for the amount of gratuity to be released in favour of the petitioner with interest from the date of his superannuation within a period of four weeks from date.

28. There is another aspect that is required to be addressed though not on the merits of the case. The observations hereunder should have been penned down as a prologue but I have chosen to address it as an epilogue. On the very first day of the hearing, it was apparent that the issue being agitated in the present writ petition was clearly covered by the judgment in *Tarakanath Sengupta & Ors.* (supra). In fact, the Coordinate Bench had specifically dealt with not only the same provision of Section 4 (6) of the said Act but also Rule 3.2.1(c) of the Rules. The petitioner therein was the Steel Authority of India Ltd. who is one of the respondents in this writ petition along with its subsidiary ASP. Upon noticing that the issue was *pari materia*, I had put a query before counsel appearing for the respondents as to whether any appeal had been filed against the order passed by the Coordinate Bench in *Tarakanath Sengupta & Ors.* (supra). The reply was in the negative and was followed by the submission that the decision of Coordinate Bench in *Tarakanath Sengupta & Ors.* (supra) was *per incuriam* and distinguishable from the instant case. As is evident from the several dates of hearing, a lot of time was spent on the matter, and finally, I have come to the same conclusion, as held in *Tarakanath Sengupta & Ors.* (supra) as indicated above. In my view, having not preferred an appeal against *Tarakanath Sengupta & Ors.* (supra), the respondent authorities had accepted the issue in the case of a particular employee, and therefore, even though they were not hit by the Doctrine of Finality and/or the Doctrine of *Res judicata*, they should not have forced this Court to have gone through a protracted hearing. Having accepted the ratio in *Tarakanath Sengupta & Ors.* (supra), the stand of the respondents that the judgment in *Tarakanath Sengupta & Ors.* (supra) was *per incuriam* is not justified. I would like to conclude my above observations with a caution to the

counsel that the Court's time is valuable and keeping in mind the fact that the pendency in the High Courts is so huge counsel should refrain from reagitating settled issues.

29. In spite of my comments in the preceding paragraph, I would be amiss to note the superlative advocacy skills of the appearing counsel and the assistance given to this Court.

30. There shall be no order as to costs. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance of the requisite formalities.