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**(2007) 05 SHI CK 0008**  
**In the High Court Of Himachal Pradesh**

State of H.P.

APPELLANT

Vs

Lashkari Ram

RESPONDENT

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**Date of Decision :** 09-05-2007

**Acts Referred:**

Himachal Pradesh Payment of Gratuity Rules, 1972 — Rule 10(1)

**Citation :** (2008) 1 LLJ 137 : (2008) 1 ShimLC 245

**Hon'ble Judges :** Rajiv Sharma, J

**Bench :** Single Bench

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**Judgement**

Rajiv Sharma, J.—By way of this petition the State has challenged the orders passed by the Appellate Authority dated October 24, 2003 and the Labour Officer-cum-Controlling Authority, dated September 23, 2002. The brief facts necessary for the adjudication of this petition are that the respondent-workman has served the Himachal Pradesh Irrigation and Public Health Division, Sarkaghat, as daily wage worker w.e.f. March, 1982 to December 31, 1993 and thereafter his services were regularized as water guard-helper from January 1, 1994. He retired from service after attaining the age of superannuation on October 31, 2001. He submitted an application under Sub-rule (10) of Rule 7 of the Payment of Gratuity Act, 1972 on November 27, 2001 to the Executive Engineer, 1 & PH Division, Sarkaghat. He was paid a sum of Rs. 17,269/- as terminal gratuity. The respondent herein will be addressed as. "workman" for convenience.

2. The workman filed claim before the Labour Officer-cum-Controlling Authority (under the Payment of Gratuity Act, 1972), Mandi under sub-rule (1) of Rule 10 of the Himachal Pradesh Payment of Gratuity Rules, 1972. The gist of the claim before the Labour Officer was that the employer has not included the period of daily wages service from March, 1982, to December 31, 1993.

3. The Executive Engineer, Irrigation and public Health division Sarkaghat sent a letter to the Labour Officer-cum-Controlling Authority on August 16, 2002 mentioning therein, that the petitioner was only entitled to sum of Rs. 17,269/-.

4. The Labour Officer has adjudicated upon the application preferred by the workman and consequently directed the Executive Engineer, Irrigation and Public Health Division, Sarkaghat to pay the workman an amount of Rs. 36,604/- within thirty days of the receipt of the notice on September 23, 2002, failing which the employer was liable for 9% simple interest for further delay of the payment from the date of the order.

5. The petitioner-State filed an appeal before the Appellate Authority. The Appellate Authority vide order dated October 24, 2003 rejected the plea of the employer i.e. the Executive Engineer, Irrigation and Public Health Division, Sarkaghat, Mandi and held that Irrigation & Public Health Department is covered under the Payment of Gratuity Act, 1972. The Appellate Authority has categorically held that the workman was entitled for gratuity for daily wage period of service under the provisions of Gratuity Act, 1972 with compound interest @ 10% per annum. The Appellate Authority had also consequently modified the order dated September 23, 2002 and directed that amount of gratuity Rs. 28,771/- and compound interest amounting to Rs. 6042/- was due to the workman w.e.f. December 1, 2001. In nut-shell, the workman was held entitled to the payment of Rs. 34,813/-.

6. Mr. M.S. Chandel, learned advocate General has "strenuously urged that the provision of Payment of Gratuity Act, 1972 cannot be invoked by the respondent-workman because the Irrigation & Public Health Department does not fall within the scope of Section 1(3) of the Act

Section 1(3) provides that the Act will, apply to:

(a) every factory, mine, oilfield, plantation, port and railway company:

(b) every shop or establishment within the-meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on day of the preceding twelve months:

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

7. The Controlling Authority under the Payment of Gratuity Act, 1972 has held that the H.P. Irrigation and Public Health Department is an establishment within the purview of Payment of Gratuity Act. 1972. The Controlling Authority while coming to this conclusion has relied upon the judgment of Hon"ble Supreme Court in State of Punjab Vs. Labour Court Jullunder and Others, Their Lordships of the Supreme Court have held as under at p. 355 of LLJ:

According to the parties, it is Clause (b) alone which needs to be considered for deciding whether the Act applies to the Project. The Labour Court has held that the Project is an establishment within the meaning of the Payment of Wages Act, Section 2(ii)(g) of which defines an "industrial establishment" to mean any

"establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on," It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1(3)(b) of the Payment of Gratuity Act. The Payment of Wages Act, it is pointed out, is a central enactment and Section 1(3)(b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shops and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But, it is contended, the law referred to u/s 1(3)(b) must be a law which relates to both shops and establishments, such as the Punjab Shops & Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limited the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment surely the appellant would have been able to point out to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial Establishments Act does not relate to all kinds of establishments, Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. We have carefully examined, the various provisions of the Payment of Gratuity Act, and we are; unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant, Section 1(3)(b) applies to every establishment within the meaning of any law for the time, being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is, such an establishment, and the Payment of Gratuity Act applies to it.

8. The H.P. Irrigation and Public Health Department is looking after the entire

infrastructure for the supply of water in the State. The H.P. Irrigation and Public Health Department is constructing, maintaining and operating water pumps throughout the State of Himachal Pradesh and for that purpose had engaged a large number of workmen. Taking into consideration the entire functioning of the H.P. Irrigation and Public Health Department and the principles laid down by the Hon'ble Supreme Court in the above cited case, I hold the H.P. Irrigation and Public Health Department to be an establishment u/s 1(3) of the Payment of Gratuity Act, 1972.

9. The next argument advanced on behalf of the State is that the workman is disentitled to claim gratuity under the Payment of Gratuity Act because he is a person excluded from the scope of the expression "employee" as defined in Section 2(e) of the Act by reason of his having been the holder of a post under the State Government at the time of his superannuation from service. It is an admitted fact that the workman became the holder of post only when he was regularized on January 1, 1994 under the State Government and was appointed as Water Guard-Helper. But the workman had admittedly worked as daily wage labourer during the period w.e.f. March, 1982 to December 31, 1993. There was notional termination of the employment of the Workmen as daily labourer when he was regularized as Water Guard-Helper from January 1, 1994.

10. Two questions which require deep consideration by this Court are:

(1) Whether the workman is entitled to get gratuity for the period he remains on daily wages basis under the Payment of Gratuity Act, 1972 and thereafter is he entitled to get the gratuity under the CCS (Pension) Rules, 1972 for the period commencing from regularization to the date of superannuation?

(2) Whether the workman's entire period w.e.f. his initial date of engagement on daily wages basis, including the period of regularization up to superannuation, will entitle him to get the gratuity either under the Payment of Gratuity Act, 1972 or under the CCS (Pension) Rules, 1972?

11. Admittedly, the workman has worked "on daily wages basis w.e.f. March, 1982 to December 31, 1993 and thereafter after his regularization as Water Guard-helper from January 1, 1994 to October 31, 2001.

12. I am of the view that the workman in these circumstances where he has worked in two different spells in different capacities, he is entitled to get the benefit of both the Acts, i.e. Payment of Gratuity Act, 1972 and CCS (Pension) Rules, 1972. The workman is entitled to get the gratuity for the period he remained on daily wage basis under the Payment of Gratuity Act, 1972 and for rest of the period after his regularization to superannuation under the CCS (Pension) Rules, 1972. This question is no more *res integra* in view of 1981 (Vol. 1) ILR Kerala Series 164, in the *Executive Engineer (Construction) Southern Railway, Quilon and Ors. v. M.P. Sankara Pillai*, which is as under:

That brings us to the contention raised by the appellant for the first time in this

appeal that the writ petitioner is disentitled to claim gratuity under the Act because he is a person excluded from the scope of expression "employee" as defined in Section 2(e) of the Act by reason of his having been the holder of a civil post under the Central Government at the time of his retirement from service. It is true that the writ petitioner became the holder of a civil post under the Central Government when he was appointed as temporary Lascar under the order Exhibit R-1, dated June 17, 1975. If he had served the Railway Administration only in the said capacity, the appellants would have been well founded in the contention of the Act. But the writ petitioner had admittedly worked as a casual labourer during the period from April 29, 1954 till June 16, 1975, There was a notional termination of the employment of the writ petitioner as casual labourer when he was absorbed as temporary Lascar in the regular service of the Railway on June 17, 1975. Such termination having taken place only subsequent to the coming into force of the Act, the provisions of Section 4 get attracted and a tight accrued to the petitioner to have gratuity paid to him in respect of the service rendered by him as casual labourer for the period from April 29, 1954 till June 16, 1975. It is contended on behalf of the appellants that because the writ petitioner was absorbed as a temporary Lascar while functioning as a casual labourer, there was no break at all in his service and no termination of service could be said to be implied in his absorption as regular employee. We are unable to accept this contention. A casual labourer is not in the service of the Railway at all in any strict or real sense. The petitioner became a Railway servant only when he was appointed as temporary Lascar under the order Exhibit R-1. In accepting that appointment he had necessarily to forsake or abandon his status as a casual labourer and that involved a severance of the nexus that existed between himself and the Railway Administration arising out of his continuous casual employment. It is true that there was no order passed or even any overt action taken by the Railway Department terminating the status of the petitioner as casual employee. But as pointed out by the Supreme Court in *The State Bank of India Vs. Shri N. Sundara Money*, "termination embraces not merely the act of termination by the employer but the fact of termination howsoever produced". A termination of the relationship arising out of casual employment took place when the petitioner was offered appointment as temporary Lascar under the order Exhibit R-1 and the said offer was accepted by him on June 17, 1975. The expression "retirement" as defined in Section 2(g) in the Act means termination of the service of an employee otherwise than on superannuation. Going by the said definition the writ petitioner must be taken to have "retired" from employment as casual labourer on the date of Exhibit R-1 and he became entitled to claim gratuity u/s 4 of the Act. The right, which became vested in him, is not in any way affected by the reason that he has served the railway administration in the capacity of temporary Lascar for the short period of 1 year 6 months and 15 days subsequent to the date of Exhibit R-1, which service cannot be counted for the purpose of payment of gratuity under the Act.

13. Whether the workman appointed on daily wage holds a civil post or not, is no

more res integra. The Hon"ble Supreme Court in M.P. Housing Board and Another Vs. Manoj Shrivastava, has held as under at p. 122 of LLJ:

12. A daily-wager does not hold a post unless he is appointed in terms of the Act and the Rules framed thereunder. He does not derive any legal right in relation thereto.

14. Since the workman has not been appointed against any sanctioned post w.e.f. 1982 to 1994, he cannot be held to be holder of post to exclude him from the ambit of Payment of Gratuity Act, 1972.

15. The Hon"ble Supreme Court in Chander Sain Vs. State of Haryana and others, , was seized of the proposition whether the period of service prior to take over of the college by the State Government could not be taken into account for computing the amount of gratuity payable to the employee and that gratuity could only be computed on the: basis of period of service rendered by him after the take over of the college by the State Government. Their Lordships have held as under at p. 928 of LLJ:

10. We do not find any merit in this contention of the learned Counsel for the respondent State. Para 3 of the memo dated March 28, 1979 Indicates that the employees in private colleges who were to retire on or after April 1, 1979 have to be treated on a par with Government employees in the matter of gratuity. The mere fact that the appellant did not retire prior to the take-over of the college by the State Government, but retired after it was so taken over, does not mean that he is not entitled to claim gratuity in respect of the period of service rendered by him before the college was taken over by the State. If the appellant would have been entitled to payment of gratuity on the basis of the service rendered by him when the college was under private management if he had retired prior to the college being taken over by the State Government, there appears to be no reason why the said period of service of the appellant while the college was under private management should be ignored for the purpose of computing gratuity payable to him. Merely because he retired after the college had been taken over by the State Government, that shall not make any difference....

16. Mr. M.S. Chandel then argued that the workman appointed on daily wages cannot be paid gratuity under the Payment of Gratuity Act, 1972. The question whether the workman appointed on daily wages are entitled to the payment of gratuity or not under Payment of Gratuity Act, 1972 has been considered by Madhya Pradesh High Court in Municipal Council Panna v. Controlling Authority and Anr. 2002 II LLJ 379 (MP). The single Judge has held as under:

From a bare reading of the above quoted notification, it is clear that Municipal Council is a local body and more than ten persons were in the employment as required under the notification. The petitioner/municipal Council cannot escape the observance of the provision of the Act of 1972. An "employee" has been defined in Section 2(e) of the Act of 1972 to mean that any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield,

plantation, port railway company, or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or Implied, (and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Thus, person working on daily wages or monthly wages is not excluded from the purview of the Act of 1972. It is not necessary that he should be in a permanent employment. Respondent No. 2 was clearly an employee within the ken of definition of "employee" in Section 2(e) of the Act of 1972.

17. The question whether a workman would be entitled to payment of gratuity under the Payment of Gratuity Act, 1972 when the employer had adopted the provisions of CCS (Pension) Rules, 1972, has been considered by the Hon"ble Supreme Court in *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another*, their Lordships have held as under at p. 625 of LLJ:

2. The short question that arise for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as the "Pension Rules"), whereunder there is a provision both for payment of pension as well as of] gratuity. The contention of the learned Counsel appearing for the appellant in this "Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees or the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act can not be held applicable. We have examined carefully the provisions of the Pension Rules f as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employee of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MDC. The MDC employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules Will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act in its opinion the employee of such establishment are in

receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government u/s 5 of the Payment of Gratuity Act. In the aforesaid premises we are of the considered opinion that the employees of the MCD, would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under Pension Rules.

18. The Court is of the opinion that both the legislations i.e. Payment of Gratuity Act, 1972 and CCS (Pension) Rules, 1972 can co-exist and can operate simultaneously. Payment of Gratuity Act, 1972 for the period the workman has worked on daily wages basis and CCS (Pension) Rules, 1972 after the period of regularization till the date of superannuation. There would not be any conflict while implementing the Payment of Gratuity Act, 1972 as well as CCS (Pension) Rules, 1972 qua the workman whose nature of appointment varies from time to time. This question has also been considered by the Hon'ble Apex Court E.I.D. Parry (I) Ltd. Vs. G. Omkar Murthy and Others, . Their Lordships have opined as under:

Four contentions are put forth before us, namely that:

(i) the Central Act prevails over the State Act by virtue of Article 254 of the Constitution and Section 40(3) is invalid and the claims are unsustainable;

(ii) Section 40(3) of the State Act stood repealed on the coming into force of the Andhra Pradesh Shops and Establishment Act, 1988 and gratuity became payable u/s 47(5) of the State Act where payment of gratuity is not payable under the Central Act;;

(iii) Section 14 of the Central Act overrides other enactments in relation to gratuity, and

(iv) the respondents have been paid gratuity under the Central Act for the period covered and for the balance period of service gratuity is paid under the prevailing Trust Scheme. At the relevant time when the respondents voluntarily retired from service the definition of "employee" u/s 2(e) of the Central Act read as not to include an employee whose wages exceeds Rs. 1000 per mensem while the respondent employees were all getting wages more than Rs. 1600 per mensem and, therefore, the Central Act could not be applied. If that is so, it is certainly permissible for the respondents to have made an application for payment of gratuity u/s 40(3) of the State Act. Further the scheme of the Central Act would indicate that it would not be applicable in cases where the State Act is more beneficial than the Central Act. In this case, the finding is that the State Act is more beneficial than the Central Act. Therefore, the contentions sought to be advanced on behalf of the appellant as to repugnancy of otherwise of the State Act would not arise at all. If both the enactments can co-exist and can operate where one Act or the other is not available then we find no difficulty in making

the State Act applicable on the fact situation available as has been done in the present case. Therefore, we find that the contentions raised on behalf of the appellant are unsustainable.

19. The Hon''ble Supreme Court in Ahmedabad Pvt. Primary Teachers'' Association Vs. Administrative Officer and Others, , has held that the Payment of Gratuity Act is a piece of welfare legislation and its provisions are in the nature of social security measures like employment, insurance, Provident Fund and Pension. Their Lordships have held as under at p. 598 of LLJ:

6. The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retrial benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judges of the High Court "gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received". It has now been universally recognized that all persons in society needs protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social-security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social security measure to wage earning population in industries, factories and establishment.

7. Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body. The expression "gratuity" itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post-retrial hardships and inconveniences.

20. Mr. M.S. Chandel, learned Advocate General has lastly submitted that the interest as per the operative portion of the appellate order could not be directed to be paid by the employer. The payment of gratuity without interest is not discretionary but it is a statutory compulsion. The Hon''ble Supreme Court in H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., , has held that there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment, of gratuity and there was also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Their Lordships of the Hon''ble Supreme Court have opined as under at pp. 1120, 1121 and 1122 of LLJ:

3. The learned Counsel for the appellant urged that claim for Interest on belated payment of gratuity is a statutory right as envisaged under Sections 7 and 8 of

the Act; the High Court committed an error in denying the same to the appellant on the ground of discretion on the facts and circumstances of the case. According to the learned counsel, when the appellant on the facts was found to be entitled to interest, he should not have been denied the same.

4. The learned Counsel for the respondent Corporation argued in support and justification of the impugned order.

5. In order to appreciate the above contentions urged, it is necessary to notice the provisions of the Payment of Gratuity - Act, 1972 (for short "the Act") to the extent they are relevant. They are extracted below:

7. Determination of the amount of gratuity:

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) 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.

....

(3-A) If the amount of gratuity payable under Sub-section (3) is not paid by the employer within the period specified in Sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, 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 that Government may, by notification specify;

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

8. Recovery of gratuity: If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this Section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this Section shall, in no case exceed the amount of gratuity payable under this Act.

6. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to 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. u/s 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under Sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in Sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on the ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. u/s 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the persons entitled. A penal provision is also made in Section 9 for non-payment of, gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in, *State of Kerala and Others Vs. M. Padmanabhan Nair*, . Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from October 1, 1987. In the case of *Charan Singh Vs. Birla Textiles and Another*, this aspect was noticed in the following words:

There was no provision in the Act for payment of interest when Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of Sub-section (3-A) in Section 7. That provision has prospective application.

7. In the background of this legal position, now we turn to the facts of the present case. The appellant was under suspension from March 15, 1999 to May 21, 1999. On attaining the age of superannuation, he retired from service of the respondent Corporation on January 1, 2000. The learned single Judge, after considering the rival contentions, disposed of the writ petition issuing directions to the respondent Corporation to settle the full salary and allowances for the period of suspension, gratuity, cash equivalent to leave salary, deferred leave, concession amount etc. As regards the claim of interest on gratuity, the learned single Judge held as under:

Since there was doubt as to whether the petitioner is entitled to the gratuity, cash equivalent of leave salary etc., in view of the divergent opinion of the Courts during the pendency of an enquiry proceedings of a retired employee, in my view, the petitioner is not entitled to the relief of interest for the belated payment of gratuity and other amounts.

8. It is clear from what is extracted above that from the order of the learned single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the Courts during the pendency of enquiry. The learned single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provision of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of the gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned single Judge not be said to be arbitrary. In the first place in the light of what is stated above, the learned single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in; assuming that the learned single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

21. The Hon''ble Supreme Court in Madan Singh Shekhawat Vs. Union of India and Others, , has held that it is the duty of the Court to interpret a provision,

especially a beneficial provision liberally so as to give it a wider meaning.

Their Lordships of the Supreme Court have held:

It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the rule.

22. In the present case, the Controlling Authority while calculating the gratuity payable to the Workman has counted the entire period from March, 1982 to October 31, 2001, i.e. twenty years and has directed the Executive Engineer, Irrigation & Public Health Division, Sarkaghat to pay a sum of Rs. 53,873/- initially and after deducting a sum of Rs. 17,269/- finally directed the State to pay sum of Rs. 36,604/-.

23. In view of the above discussion, the Controlling Authority was required to calculate the gratuity for the period w.e.f. March, 1982 to December 31, 1993 under the Payment of Gratuity Act, 1972 and for the remaining period, i.e. January 1, 1994 to January 31, 2001 (regular period only), the State was bound to pay the gratuity under the CCS (Pension) Rules, 1972. Accordingly, the writ petition is disposed of with the following directions:

(i) The workman is entitled to get the gratuity for the period w.e.f. March, 1982 to December 31, 1993 under the Payment of Gratuity Act, 1972 with interest as per law laid down by the Hon'ble Supreme Court in *H. Gangahanume Gowda v. Karnataka Agro Industries Corporation Ltd.* (supra);

(ii) The workman is held entitled and is to be paid the gratuity w.e.f. January 1, 1994 to January 31, 2001 (sic) (regular period) under the CCS (Pension) Rules, 1972 with interest @ 9% per annum. The copy of the judgment be sent to the Secretary Labour & Employment for its distribution to the Controlling as well as Appellate Authority constituted under the Payment of Gratuity Act, 1972.

The aforesaid directions be complied with by the State within a period of one month from today.