
(2010) 01 P&H CK 0240

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 69 of 2005

The Managing Director, Punjab State Cooperative Bank Ltd.
Chandigarh

APPELLANT

Vs

Manjit Singh Sodhi and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1), 31(1)
Payment of Gratuity Act, 1972 — Section 14, 4, 4(5), 5, 5(1)
Punjab Civil Services Rules — Rule 6(1)
Punjab State Cooperative Financing Instituting Service (Common Cadre) Rules, 1970
— Rule 1(1), 2, 3, 3(11)

Citation : (2010) 2 ILR (P&H) 651

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—This Regular Second Appeal No. 69 of 2005 (The Managing Director, the Punjab State Cooperative Bank Ltd., Chandigarh v. Manjit Singh Sodhi and others) is being disposed of alongwith 13 other Civil Writ Petition Nos. 567 of 2005 (Abnash Chander Sidana and another v. State of Punjab and others) 8975 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Hari Chand Gupta and others), 16403 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Hukam Chand and others), 16405 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Sarabjit Singh Johal and others), 16413 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Hakim Singh and others), 16415 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Ved Parkash Sharma and others), 16466 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Jagdev Singh and others),),), 1047 of 2008 (Kewal Krishan Kanwra and another v. State of Punjab and others), 20051 of 2008 (Harjinder Pal Singh v. State of Punjab and others), 21740 of 2008 (Balbir Singh Gill and others v. State of Punjab and others) and 21792 of 2008 (Karamjit Singh Randhawa and others v. State of Punjab and others).

2. Common issue involved in all these cases relates to payment of gratuity. The appellant-Bank is in Regular Second Appeal to impugn the judgments passed by the Trial Court as well as First Appellate Court, through which the suit filed by one Manjit Singh Sodhi for payment of gratuity has been decreed. Manjit Singh had filed this suit with a grievance that he was entitled to the gratuity equivalent to 22 months of salary, which would work out to be Rs. 2,56,014 on the basis of the pay and emoluments he was drawing whereas he had been paid a sum of Rs. 2,05,384, He accordingly prayed for release of Rs. 50,130 which was the short fall in the gratuity that was payable to him alongwith 18% interest per annum. The case set-up by the respondent-plaintiff was that as per the last pay certificate (L.P.C.) issued to him on 24th December, 1996, his basic pay was Rs. 5,100, medical allowance Rs. 125, dearness allowance Rs. 5,202, interim relief Rs. 710 and house rent allowance Rs. 500, totalling to Rs. 11,637.

3. Appellant Bank appeared and contested the suit and objected to the prayer made by the respondent-plaintiff, pleading that he was not entitled to recover any amount of gratuity with interest as prayed for. The claim of the respondent-plaintiff that he was entitled to the gratuity due to 32 years service he had rendered was contested by stating that he had 31 years 11 months and 25 days service and not 32 years as alleged. Appellant Bank (Defendant No. 4) filed a separate written statement, contesting the claim. It was pleaded that respondent-plaintiff was entitled to gratuity equivalent to 21 months service and, thus, he was not entitled to the amount claimed in the suit. The suit proceeded on following issues :"-

1. Whether the plaintiff is entitled for mandatory injunction for payment of gratuity amount of Rs. 56,130 ? OPP

2. Whether the plaintiff is entitled for interest ? If so at what rate and what amount ? OPP

3. Whether the suit is liable to be dismissed for misjoinder of parties ? OPP

4. Whether the plaintiff (sic) plaint is not verified in accordance with law ?OPD

4-A. Whether suit is not valued for the purpose of court fee and jurisdiction ? OPD

5. Relief.

4. The parties led evidence in support of their respective stands. The respondent plaintiff claimed gratuity equivalent to 22 months of salary on the basis of his last drawn salary being Rs. 11,637. The appellant-Bank, however, maintained that respondent-plaintiff was entitled to gratuity equivalent to 21 months salary. In addition, it was pleaded that the gratuity would be payable by taking into consideration the basic salary plus D.A., Interim relief and that house rent and medical allowance cannot be considered as part of salary for calculating gratuity.

5. Pritpal Singh (DW2) was examined as a witness by the appellants in support of their case. He admitted while under cross-examination that total salary drawn

by the respondent-plaintiff was Rs. 11,637 and that payment of gratuity was to be made to the plaintiff as per Punjab State Cooperative Financing Instituting Service (Common Cadre) Rules, 1970-71 (for short, "Common Cadre Rules"). By referring to Rules 3a of the Common Cadre Rules, it was stated that the respondent-plaintiff was entitled to receive gratuity equal to the salary of 15 months for putting in 25 years service and thereafter for one month salary for each completed year of satisfactory service. It was on this basis pleaded that the service of the respondent-plaintiff, being 31 years, he was entitled to gratuity equivalent to 21 months of pay as 7th year of his service was not complete as it fell short by 6 days. The submissions made by counsel for respondent-plaintiff by referring to Rule 6.1 of Punjab Civil Service Rules, Volume II, that completed service of 3 months shall be treated as six months period for the purpose of pension was not accepted by the Trial Court on the ground that Rules for payment of gratuity for the employees of the Bank were Common Cadre Rules and so the Punjab Civil Service Rules would not be applicable. It was further observed that there was no provision for calculating fraction of a year as a completed year under the Common Cadre Rules and as per Rule 304 one month's pay as additional gratuity was payable for each completed year of satisfactory service beyond 25 years. Accordingly, it was held that respondent-plaintiff would be entitled to gratuity equivalent to 21 months salary.

6. By placing reliance on Rule 2(C) of Common Cadre Rules, pay was held to mean average salary inclusive of other remuneration drawn in salary during the last 12 months and in view of the admitted fact that the total salary drawn by the respondent-plaintiff was Rs. 11,637, the gratuity payable to the respondent-plaintiff was calculated to be Rs. 2,44,377. Submissions made on behalf of appellant-Bank that definition of "wages" as provided in the Payment of Gratuity Act (for short "Gratuity Act") did not include bonus, commission, house rent allowance and over time wages and any other allowance, was not accepted on the ground that the gratuity was payable as per the Common Cadre Rules where the salary was defined to include all other remunerations drawn as salary. Accordingly, the justification advanced by the appellant-Bank to exclude the house rent and medical allowance for the purpose of calculating gratuity was rejected.

7. Issues No. 3 and 4 were decided against the appellant-Bank on the ground that these were not pressed. Similarly, additional issue framed as 4A was also not raised at the time of arguments and accordingly was decided in favour of the respondent-plaintiff.

8. The appellant-Bank had filed appeal against this order primarily on the ground that the legal position was not properly appreciated and the term "pay" for the payment of gratuity was not properly appreciated. The Appellate Court upheld the judgment passed by the Trial Court and rejected the contention raised by the appellant-Bank to the effect that pay would not include other remunerations like house rent, medical allowance. The first Appellate Court also relied upon Rule

2(C) of the Common Cadre Rules for the purpose of definition of "pay". The 1st Appellate Court also made reference to an order passed by this Court while deciding Civil Writ Petition No. 1182 of 1997 to say that it was abundantly clear that the average salary including other remunerations drawn as salary during the last 12 months were to be taken into account while calculating gratuity. Rather, the Court further held that gratuity cannot be calculated on the basis of basic salary alone. The Bank now, thus, is in appeal before this Court.

9. From the issues that were framed while deciding the suit and the pleadings that were made, it would come out clearly that the Bank had never raised any question that the provisions of the Gratuity Act would prevail over the provisions of Common Cadre Rules for the purpose of calculating gratuity. Without any plea made in this regard, it was vaguely argued before the Trial Court that the wages as defined under the Gratuity Act be considered for the purpose of calculating the gratuity. In fact, the witness produced by the appellant-Bank clearly conceded the applicability of the Common Cadre Rules while under cross-examination. The last pay certificate of the respondent- plaintiff was also admitted. However, entirely new twist is now given to the controversy while arguing the Regular Second Appeal before this Court by pleading that the provisions of Gratuity Act will have over-riding effect as per Section 14 of the Gratuity Act.

10. The contention noticed by this Court while issuing notice of motion is that definition of "wages" under the Gratuity Act, has been ignored. This was the precise submission advanced even at the time of admission of the present Regular Second Appeal. Plea was that medical allowance and house rent allowance could not be taken as a component of pay for the purpose of calculating the gratuity and taking of these into account for the purpose of calculation would be contrary to the provisions of the Gratuity Act.

11. Now, while arguing this case before the Court, a new dimension has been given to the controversy. Not only this, the issue apparently is further compounded due to an action taken by the senior counsel who had appeared for the appellant Bank. His advice to Registrar led to withdrawing certain communication earlier issued by the Registrar. This has given rise to filing of number of writ petitions by the employees to challenge the said communication. Bank has also come forward to challenge the calculation of gratuity by filing number of petitions making this advice as a base.

12. As would be noticeable, the Court had decreed the suit, primarily on the ground that the Common Cadre Rules would govern the payment of gratuity in this case. There was no specific pleading made that the Gratuity Act is to apply or that it would have an over-riding effect. Apparently, to tide over this tight situation, another novel method appears to have been invented and adopted to move the Registrar to withdraw the approval granted by him to the Common Cadre Rules. A communication was initiated on 19th October, 2005 by the Registrar, Cooperative Societies, Punjab, to the Managing Director of the appellant-Bank to the effect that the letter No. Credit/CA4/Amendment/8535,

dated 7th June, 2001 and Credit/CA4/7206, dated 7th May, 2002 regarding gratuity were withdrawn on the legal advice given by Senior Advocate, who is named in the communication. The communication reads as under:--

Proposal sent by you vide letter under reference on the subject mentioned above was considered and on the recommendation of the Managing Director, Punjab State Co-operative Bank and keeping in view the legal advice given by Shri H.S. Mattewal, Senior Advocate High Court, letter No. Credit/CA4/ Amendment/8535, dated 7th June, 2001 and No. Credit/CA4/ 7206, dated 7th May, 2002 regarding gratuity are hereby withdrawn and letter No. Credit/CA4/8230, dated 24th August, 1998 will remain in force.

13. These letters have, thus, been withdrawn on the advice of a counsel, who had appeared for the Bank to argue the Regular Second Appeal.

14. The background, which would have necessitated the need to withdraw these communication, may be noticed. On 24th August, 1998, Registrar had issued a communication to substitute Rule 3.11 of Common Cadre Rules, which reads as under :--

The employees shall be paid Gratuity as per the provisions of the Payment of Gratuity Act, 1972.

15. Another communication dated 7th June, 2001 was issued in response to a letter written by the Managing Director of the appellant-Bank. It is stated in this letter that the proposal was considered and it was decided to allow the payment of gratuity as per Annexure V to those Common Cadre employees who were working as such before 24th August, 1998 with the condition that no such employee who has been made final payment due to any reason whatsoever will be given any benefit in addition to whatever has been paid to him. It was also clarified that the gratuity was to be paid as per the provisions of the Gratuity Act, to those common cadre employees who were appointed after 24th August, 1998, when the amendment in the Rule 3.11 was introduced. This position was again reiterated through letter dated 7th May, 2002 where it was clarified that the gratuity is to be paid as per Annexure V of the Common Cadre Rules to the employees who were in the common cadre as on 24th July, 1998 and the same was to be paid as per the Gratuity Act, to those employees who came into service or came into common cadre after 24th August, 1998. These two clarificatory communications were withdrawn as noted above and the resultant effect is that it is now pleaded that the Gratuity Act would prevail over the Common Cadre Rules.

16. Primarily, it appears to be aimed at circumventing the liability, which is payable up to 24th August, 1998 and also to substantiate the stand of the Bank to challenge the judgment that was under appeal before this Court. This action of Registrar to favour the Bank, which is a party before this Court, that too on the advice of the counsel representing the Bank would certainly be a cause of concern. It is for the counsel to consider if it was ethical to tender legal advice in

a case where he was representing a party. It would be a cause of grievance to those employees who were affected because of the withdrawal of these communications. Accordingly, number of writ petitions came to be filed before this Court to seek quashing this communication dated 19th October, 2005, (Annexure P-5), and so also the directions dated 24th August, 1998. Prayer in the alternative is made to say that the said letters be made applicable to those employees who came into common cadre after issuance of the said letters. Civil Writ Petition Nos. 567, 1047, 20051, 21740, 21792 of 2008 were accordingly filed by the employees to challenge the communications that were initiated by the Registrar. Civil Writ Petition No. 19852 of 2005 was filed by one Amrik Singh Walia, seeking direction for payment for release of his gratuity with an additional prayer to count his military service for this purpose. Gurcharan Singh, another petitioner filed Civil Writ Petition No. 19882 of 2006, also approached this Court for release of his gratuity under the Common Cadre Rules. These two writ petitions were admitted to be heard alongwith the Regular Second Appeal on the ground that the common question of law was involved.

17. During the pendency of the Regular Second Appeal, the Bank also filed some Civil Writ Petitions to impugn the calculation done by the Accountant General for payment of gratuity by taking into consideration the emoluments/allowances to be inclusive in the pay, on the lines of the view taken by the Court which is under challenge in the instant Regular Second Appeal and perhaps in some of the writ petitions. The Bank accordingly challenged the calculation so done through a writ petition to say that the gratuity being calculated by including house rent allowance, medical allowance, city compensatory allowance and the interim relief, cannot be done but was being done and would be contrary to the Gratuity Act and in terms of the definition of pay given in clause 2 (c) of the Common Cadre Rules. First Civil Writ Petition filed in this regard is 8975 of 2005, which was admitted to be heard alongwith this Regular Second Appeal. Civil Writ Petition Nos. 16403, 16405, 16413, 16415, 16466 of 2005 containing identical challenge were ordered to be admitted for hearing alongwith Civil Writ Petition No. 8975 of 2005. Some of the writ petitions filed by the employees were also admitted to be heard alongwith these writ petitions as the identical issues were being raised in all such writ petitions.

18. It is being canvassed by the employees that gratuity shall be payable to them in terms of the Common Cadre Rules where the salary is so defined and, thus, for the purpose of calculating the gratuity, the house rent and medical allowance, which are emoluments payable to them as a salary are required to be included for the purpose of calculating gratuity. This is what has been held in the civil suit decided by the Courts, which is impugned by the Bank through present Regular Second Appeal. On the other hand, the Bank would say that pay is to be construed in terms of the definition contained in the Gratuity Act and accordingly the allowances like house rent allowance or medical allowance etc. would not form part of pay and hence, cannot be included as part of pay for the purpose of calculating gratuity.

19. The shift in the stand of the Bank to come out of the judgment passed against it and to substantiate its stand in the Regular Second Appeal can be clearly discerned. No submission on the lines as are advanced before this Court were ever made in the pleadings while defending the civil suit. A vague plea was raised that the salary is to be construed as per the definition given in the Gratuity Act. No plea was ever raised in this regard in the pleadings. It was also not urged, as is now being stated, that the provisions of the Gratuity Act would have an over-riding effect on the other statutory provisions in view of Section 14 thereof. No plea was raised as is being now urged that exception to this could be only in those situation where there are better terms u/s 5 of the Gratuity Act that too when exemption is granted. Of course, his plea that the wages will include only dearness allowance and not other emoluments, as already noticed, was vaguely raised. Plea further is that the emoluments, unless categorized as pay cannot become part of the pay as per the definition of term contained in various statutes.

20. The counsel representing the employees would join serious issues regarding the submission made by the counsel for the appellant, who has appeared for the Bank in some of the writ petitions as well. They would plead that the provisions of the Common Cadre Rules are to be taken into consideration for payment of gratuity as has even been viewed by the Department as such, till the time the Rule was substituted on 24th August, 1998. They would also plead that the Registrar would not have jurisdiction to withdraw the communications as was done by issuing Annexure P-5, which is under challenge in the writ petitions. By making reference to the provisions of Punjab State Cooperative Societies Act, it is urged that the approval once granted by the Registrar to the common cadre cannot be withdrawn as it would amount to review of the order for which Registrar has no power or authority. Alternatively, it is pleaded that in any case once the benefit was granted and is available to the employees as a right, the same cannot be taken away retrospectively as it would then amount to taking away the accrued rights of the employees, which in any case would be totally illegally being unconstitutional.

21. Mr. H.S. Sidhu has advanced his arguments in the Regular Second Appeal. The first difficulty that started at him in this background was the pleadings made on behalf of the appellant Bank before the Trial Court. There was total lack of pleadings on the aspects which he argued before this Court. Rather, the Regular Second Appeal was got admitted on this basis only, which had not been pleaded or urged before the Trial Court in the pleadings. To tide over this situation, he drew my attention to Tarini Kamal Pandit and Others Vs. Prafulla Kumar Chatterjee (Dead) by Legal Representatives, to urge that a pure question of law not involving any question of fact was permitted to be raised for the first time even before the Supreme Court as per the law laid down in this case. The relevant observations of the Hon'ble Supreme Court in this regard are as under :--

This point was not taken in any of the courts below but learned counsel submitted that because it is a pure question of law not involving any investigation of facts and as it goes to the root of the matter the court may permit the point to be taken. In support of his contention that a pure question of law in the circumstances can be taken for the first time in this Court he relied on the decisions of this Court in *Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari*, , *Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa*, , *Seth Badri Prasad and Others Vs. Seth Nagarmal and Others*, , *The State of U.P. and Another Vs. Shri Anand Swarup*, and *T.C. Appanda Mudaliar (Dead) by L. Rs. Vs. State of Madras*, . As the point raised is a pure question of law not involving any investigation of the facts, we permitted the learned counsel to raise the question.

22. Reference in this regard is also made to *T.C. Appanda Mudaliar (Dead) by L. Rs. Vs. State of Madras*, where new plea raising pure questions of law relating to interpretation of statute was allowed by the Supreme Court. In *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, a new plea not raised before any Forum below but involving questions of law was allowed to be raised by the Supreme Court. Similar view was taken by the Hon"ble Supreme Court in *Rajeswari Amma and another v. Joseph and another*, 1985 (2) S.C.C. 159. Accordingly, these pleas even if are being raised for the first time before this Court may require consideration, especially so when the similar issues are arising in the writ petitions, which are being heard alongwith this Regular Second Appeal.

23. The first submission that would require consideration would be regarding the over-riding effect of the provisions of the Gratuity Act in terms of Section 14. The counsel for the appellant has canvassed that the provisions of the Gratuity Act would have an over-riding effect notwithstanding anything contained inconsistent therewith in any enactment, any other act or any instrument. He would, however, concede that Section 4 of the Gratuity Act would carve out an exception in this regard by providing in sub-section (5) thereof that "nothing in this Section shall effect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer." To escape from the rigor of this exception, the counsel would contend that Common Cadre Rules, being statutory rules, cannot be termed as an award, agreement or contract. As per him, these terms would not include statutory rules. In support he has placed reliance on *Workmen of Metro Theatre, Bombay Vs. Metro Theatre Ltd., Bombay*, . As per the counsel, Section 4(5) of the Gratuity Act was limited to awards, agreements or contract and existing better terms being covered by Section 5 of the Gratuity Act. These submissions are misconceived as would be seen in later part of the judgment. The counsel would further contend that the Gratuity Act will over-ride any statutory rules, regulating payment of gratuity to the employees, unless exemption u/s 5 of the Gratuity Act is granted by the appropriate Government. In this regard, the counsel seeks support from the observations in *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another*, . This view about the applicability of Gratuity Act was taken because these provisions were beneficial and were being ignored to pay gratuity.

24. On the other hand, the counsel appearing for the employees would contend that in case award, agreement, contract or rules provide any better terms of gratuity, then that would prevail in view of the provisions of Section 4(5) of the Gratuity Act and Section 14 of the Gratuity Act, thus, would not have effect in such cases as the primary aim of the legislation is to ensure better terms for the employees. It is stated that Section 4(5) is in the nature of saving clause. The counsel would also contest the submissions made by the counsel for the appellant that Section 4(5) will operate only in the case of contract, agreement or award and for other exemptions to be applicable, Section 5 of the Gratuity Act would come into play. If there is no exemption granted u/s 5 of the Gratuity Act, Section 14 of the Gratuity Act would make the provisions of Gratuity Act applicable as it has an over-riding effect. In this regard, reference is made to Superintendent of Post Offices v. Smt. Sham Dulari and others, 2006 (3) S.C.T. 577 where Division Bench of this Court, after relying upon E.I.D. Parry (I) Ltd. Vs. G. Omkar Murthy and Others, has taken a view that the scheme of the Gratuity Act indicates that it is not applicable to cases where any other Rule or statute is more beneficial than the Gratuity Act. The relevant observations in this regard are as under :--

We are further of the view that the scheme of the Gratuity Act indicates that it is not applicable to cases where any other rule or statute is more beneficial than the Gratuity Act. For the aforementioned proposition, reliance may be placed on a judgment of the Supreme Court in the case of E.I.D. Parry (I) Ltd. Vs. G. Omkar Murthy and Others, . The converse would also be true that in cases where the Gratuity Act is more beneficial than the Rules, regulations or any statute then the Gratuity Act would apply.

25. Reference is also made to Bank of Baroda v. Controlling Authority under payment of Gratuity Act and others 2008 (4) S.C.T. 7 where while considering provisions of Section 4(5) and Section 14 of the Gratuity Act, the Court has held that the Act will be attracted ipso-facto in absence of any exception, notification and will have overriding effect over any scheme, which is less favourable to the employees. Contention is that a beneficial legislation is to prevail ipso facto without any notification. Reference is also made to Rajamani v. The Deputy Commissioner of Labour and Appellate Authority, 2001 (4) S.C.T. 2013. In this case, it is viewed that no instrument, contract, standing order, rule can have force over and above the provisions of the Gratuity Act. In the same breath, it is also observed that if the employees are given lesser gratuity, then they are entitled either by virtue of any representation, Rule or standing order that will not stand in a way of claiming full benefits u/s 4 of the Gratuity Act.

26. In addition, Mr. Vikas Suri, appearing for the respondent-plaintiff in Regular Second Appeal has made reference to the statements of object and reasons of the Gratuity Act to highlight the fact that this Act was enacted to provide a minimum base and aim was not to curtail the better terms in any manner. Rather, the entire scheme of the Act, would show that the better terms are to

prevail in case, they are available either under contract, agreement or award or any other enactment. The reference to the statement of object and reasons in enacting this legislation would show that there was no Central Act to regulate the payment of gratuity to industrial workers. The Government of Kerala has enacted a legislation for payment of gratuity to workers employed in the factories etc. The Government of West Bengal had promulgated an ordinance prescribing the similar scheme for payment of gratuity. It was also noticed that the gratuity was also payable under awards or agreements. Other State Governments had also voiced their intention for enacting similar measures. Accordingly, it was considered necessary to have a Central law on the object to ensure uniform pattern of payment of gratuity throughout the country.

27. This Act is, thus, a beneficial legislature primarily aimed at protecting the rights of the employees and was to lay down minimum standard of payment. This would further be evident from the provisions of Section 4(5) of the Gratuity Act, which provides that this enactment would not effect the right of an employee to receive better terms of gratuity under any award or agreement or a contract. If the aim was to make this enactment have an over-riding effect over the other rules, regulations governing the payment of gratuity, though having beneficial terms, then there was no need to make a provision like Section 4(5) of the Gratuity Act. This provision rather will give out the clear legislative intent to give preference to beneficial terms over the Gratuity Act. The obvious aim of this sub-section is that employee entitled to the better terms of gratuity, either by way of award or agreement or a contract would not have to be paid gratuity under the Gratuity Act. That being so, it would be difficult to accept the submission that this provision would not apply to other enactment or rules or statutes when it has given preference to even terms of agreement, award or contract. The plea that enactment would apply only when exemption is asked for and is granted would mean that even less beneficial enactment could prevail which may lead to a contradiction of a sort between Section 5 and Section 4(5) of the Gratuity Act. Thus, the submission by appellant's counsel that this sub-section would only operate in the case of award, agreement or contract and would not apply where the gratuity is payable either by way of rules or statute would amount to negating the very purpose and object behind the enactment of the Gratuity Act.

28. The counsel for the appellant would urge that better terms would be payable in terms of any other enactment, rules or regulations only if appropriate Government grants exemption by way of notification, which would be subject to such conditions as may be specified in the notification. The submission on these lines would even amount to misreading the provisions of Section 5 of the Gratuity Act. No doubt, this provision empowers the appropriate Government to exempt any establishment, factory, mine, oil field, plantation, port, railway company or shop from the operation of the provisions of this Act but this can be done only when the appropriate Government is of the opinion that employees in such establishments are in receipt of gratuity or pensionary benefits not less

favourable that the benefits conferred under this Act. Thus, the aim of this Section is to grant exemption for the benefit of the employees and not to curtail or curb their rights to receive better terms for payment of gratuity under any other enactment.

29. Section 5(1) of the Gratuity Act talks of exemption establishment as such whereas sub-section (2) regulates the exemption of any employee or class of employees. The reason behind the grant of exemption under both the sub-sections is same and is that when such employee or class of employees of establishments are in receipt of Gratuity or pensionable benefits not less favourable than the benefit conferred under this Act. This Section cannot read to mean that unless exemption is granted to either the establishment, employees or class of employees, they could be paid gratuity which is less favourable or less beneficial to them. If the plea as raised about the over-riding effect is accepted, it would defeat the very purpose expressed in these provisions of the Gratuity Act. In this regard, the observations made by Allahabad High Court in the case of Bank of Baroda (supra) can be noticed. It is rightly viewed that the Act will be attracted ipso-facto in the absence of exemption notification and will have over-riding effect over any scheme, which is less" favourable to employees. The converse would be equally true and if any other Scheme is favourable, then it would prevail. In fact, the observations of Hon'ble Supreme Court in EID Parry (1) Ltd.'s case (supra) can be referred here for benefit, which are :--

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 or otherwise of the State Act would not arise at all. If both the enactments can coexist and can operate where one Act or the other is not available then we find no difficulty in making the State Act applicable to 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.

30. The ratio which can be culled out from the above observations is that if the State Act is more beneficial than the Central Act, then even the argument of repugnancy or otherwise of the State Act would not arise at all. It has been very aptly observed that both the enactments can co-exist.

31. In order to wriggle out of this proposition that more beneficial enactment has to prevail, the counsel for the appellant contends that these observations were made in the fact situation of that case which would not apply to the present case. He submits that the Gratuity Act and the Common Cadre Rules both are applicable and so the Gratuity Act would prevail in view of Section 14 of the Gratuity Act. While so stating the counsel is missing out a basic point regarding the aim, object and purpose of the Gratuity Act and that more beneficial provisions to prevail, being the object of the legislation behind the enactment. If any support is needed in this regard, then the same can be had from The workmen of Metro Theatre Ltd., (supra), where it is observed that the Scheme envisaged by the Gratuity Act secures the minimum for the employees in that

behalf and expressed provisions are found under the Gratuity Act under which better terms of gratuity, if already existing, are not only preserved but better terms could not be conferred on an employee in future. Following observations will further clarify the position:--

Counsel for the appellant Union urged before us that no standardisation of any gratuity scheme was contemplated by the Act as was clear from the express provisions contained in Section 4(5) and Section 5 of the Act and that enactment being a beneficial piece of legislation Section 4(5) should be construed in favour of the employees and that, therefore, the Tribunal's view that it could not grant anything beyond the scheme contemplated by the Act was erroneous. In support of such construction reliance was placed upon this court's decision in *Alembic Chemical Works Co. Ltd. Vs. The Workmen*, where a similar provision under the Factories Act was construed as conferring power on the Tribunal to fix the quantum of leave on a scale more liberal than the one provided by the Act. We find considerable force in this submission.

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This also becomes amply clear from the provisions of Section 5 which confer power upon the appropriate Government to exempt any establishment to which the Act applies from the operation of the provisions of the Act if in its opinion the employees in such establishment are in receipt of gratuity benefits not less favourable than the benefits conferred under the Act.

Therefore, on true construction we are clearly of the view that the expression "award" occurring in the above provision does not mean and cannot be confined to "existing award" but includes any award that would be made by an adjudicator wherein better terms of gratuity could be granted to the employees if the facts and circumstances warrant such grant. It is true, as has been observed, by this Court in *State of Punjab Vs. Labour Court Jullunder and Others*, that the Act enacts a complete Code containing detailed provisions covering all essential features of the scheme for payment of gratuity. But it is also clear that the scheme envisaged by the enactment secures the minimum for the employees in that behalf and express provisions are found in the Act under which better terms of gratuity if already existing are not merely preserved but better terms could be conferred on the employee in future. In other words the view taken by the Tribunal that it could not go beyond the scheme of gratuity contemplated by the Act is clearly erroneous.

32. Reference here only can be made to *Parry and Co. Ltd. v. Second Addl. Labour Court and others*, (1996) 89 F.J.R. 288 where it is observed that Act is not intended to do away with other retirement benefits already existing and available to the employees and that this Act confers extra benefits on the employees. It is observed as under :-

With this background, and the factual concept set clear as above, we proceed to consider the contention of the management that the pension scheme stood

statutorily scrapped after the coming into force of the Act. The Act is a piece of legislation forming a milestone in the annals of labour welfare schemes in this country. Gratuity, as the term itself suggests, is a gratuitous payment given to an employee on discharge or retirement. The Act is not intended to do away with other retiral benefits already existing and available to the employees. In brief the Act, the legislation clearly intended to confer extra benefits on the employees. The court, while construing the provisions of the Act, which is a piece of social legislation, must construe them so as to help achieving the object of the legislation. The retiral benefits which stood conferred already on the employee do not militate against the benefit of gratuity. The endeavour must be to see that the retiral benefit schemes already existing and the scheme of gratuity under the Act co-exist in a concern.

33. Reference here can be made to the case of *M.C. Chamaraju v. Hind Nippon Rural Industrial (P) Ltd.*, 2007 (4) S.C.T. 195 to observe that liberal view should be taken, the Act being beneficial legislation. The Hon"ble Supreme Court has observed in this case that the Act has been enacted with a view to grant benefits to the workers, a weaker section, in industrial adjudicatory process. In interpreting the provision of such beneficial legislation, liberal view should be taken. Similar view will emerge from the observations made in *Bank of Baroda's* case (supra), where the Gratuity Act was held to have an over-riding effect over any scheme which is less favourable to the employee. On the other hand, if the employees are entitled to better terms under any Scheme, the same would be protected by Section 4(5) of the Gratuity Act. In *Transport Manager, Kolhapur Municipal Transport Undertaking v. Pravin Bhabhulal Shah*, 2004 (4) S.C.T. 833 the Court has observed that workman and employer are free to enter into contract of payment of gratuity at a higher rate and if the settlement does not impose any ceiling limit to the gratuity receivable by an employee, the Act can not impose any limit. It is, thus, clear that what is for the benefit of an employee is to be preferred rather than the over-riding effect of the Gratuity Act. In *Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra and Others*, . Hon"ble Supreme Court negated the prayer of the employees to seek some benefits under the Gratuity Act and other under contract by declining to apply "doctrine of blue pencil". Court has held that Sub-section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. If such an interpretation is given, the spirit of the Act shall be lost.

34. From the above discussion, it is clear that the Gratuity Act is a beneficial legislation. It is to be construed in favour of the employees. It would be erroneous to say that one cannot go beyond the scheme of gratuity contemplated under the Gratuity Act. As held in *D.T.C. Retired Employees Association and Others Vs. Delhi Transport and Others etc. etc.*, , sub-section (5) of Section 4 is an exception to the main Section under which gratuity is payable to the employee. The employer, who is more concerned with the industrial peace and better employer employee relations, can always give benefit to the

employees irrespective of any statutory minimum prescribed under law in respect of such reliefs. In all welfare legislation, the amount payable to the employees or labourers is fixed at minimum rate and there will not be any prohibition for an employer to give better per-requisites or amount than what is fixed under law. It is also clear that the Gratuity Act is not intended to do away with other retiral benefits already existing and available to the employees. It is to confer extra benefits. This is a social piece of legislation and the Court has to construe the provision to help in achieving the object of the legislation. The endeavour has to be to see that the beneficial schemes already existing and the scheme of gratuity under the Gratuity Act co-exist in a concern.

35. Let us examine this from another angle. Perusal of Section 14 of the Gratuity Act would show that what this Section provides is that the provision of this Act or any Rules made under the Act shall have effect notwithstanding anything which is inconsistent therewith in any other enactment or any other instrument or contract etc. The Section, thus, lays down that the provisions of this Act would prevail in the case of inconsistency with another enactment. The counsel for the appellant has not been able to point out any inconsistency between the provisions of the Gratuity Act and the Common Cadre Rules. Merely because some different gratuity is payable would not mean that there is inconsistency between the provisions of the Gratuity Act and the Common Cadre Rules. It would need appreciation that both the enactments are making provisions for payment of gratuity. Inconsistency would have been if there was no provision made for payment of gratuity under the Common Cadre Rules. The reason and purpose behind enacting Section 14 of the Gratuity Act again is for the benefit of the employees. The provisions of the Gratuity Act apparently are given an over-riding effect in case of inconsistency to ensure payment of better gratuity to an employee and not to curtail the better terms. It is only with this aim that this provision has apparently been enacted so that no employer is able to deny his liability to pay a better gratuity by invoking the provisions of any award, contract, agreement or instrument. The provisions of this Section are, thus, to be read in conjunction with sub-section (5) of Section 4 and also with Section 5 of the Gratuity Act. The combined effect of all these provisions would be to ensure better terms for payment of gratuity to the employees and this enactment, thus, cannot be put to use to decline better terms by making it to operate in the manner as is being urged by counsel for the appellant.

36. All the judgments that were cited before me would clearly indicate that observations made were only to the effect that beneficial provisions are to prevail. Where the payment of gratuity is more beneficial under the Gratuity Act then the provisions of this Act would prevail and vice-versa if some other provisions enacted in respect of an employee would entitle him to better terms, then those would prevail. The employer cannot take shelter under the provisions of the Gratuity Act to pay less gratuity than is otherwise payable under the statute, rules, regulations, contract, agreement or award. The contention of the counsel that the provisions of the Gratuity Act would have an over-riding effect in

view of Section 14 of the Gratuity Act would amount to doing injustice and would be contrary to the basic aim and objects of this enactment and in a way would lead to nullifying or stultifying the very purpose behind enacting the Gratuity Act. Accordingly, this submission of the counsel deserves to be rejected. In fact, the very act of the Registrar to apply the provisions of Gratuity Act may be open to question if the Act is less beneficial as it would then violate the mandate laid down in Section 5 of the Gratuity Act. I am, thus, clear in my mind that Section 14 of the Gratuity Act cannot be read in the manner to give an over-riding effect even in these cases where other enactments are beneficial.

37. In view of what has been held above in regard to the applicability of the Gratuity Act, there would not be much difficulty to deal with the other limb of submissions made by the counsel for the appellant in regard to the definition of terms "pay" or "wages". Once it is held that the Common Cadre Rules would be attracted to calculate the gratuity, then the salary as defined under the Rules is the only legislation, which would be required to be taken into consideration and there would not be much need to go into the definition of this term or the "wages" under any other enactment. Learned counsel for the respondent-plaintiff was also justified in highlighting the fact that the counsel for the appellant has mainly referred to the judgments which had defined the "pay" or "wages" under the other enactments and, thus, would not really be relevant to decide the term.

38. There is substance in what is urged before me in this regard. Once it is held that Common Cadre Rules are to be considered for calculating the gratuity, then necessarily one is to fall back on the definition of the term pay etc. given therein which would regulate the payment of gratuity. Annexure V to the Common Cadre Rules contains the Rules for payment of gratuity to the employees. It specifically provides that these Rules may be called Rules for payment of Gratuity. Pay u/s 2(c) is defined to mean :--

The average of salary inclusive of other remuneration drawn as salary during the last 12 months.

39. Thus, it can be stated that pay is something which is a broader term and will include salary as well as other remuneration drawn as salary. To understand the meaning of "pay", one may have to know what would salary mean. The same is also defined under the Common Cadre Rules in Rule 1.3(k). It says :--

Salary means the basic monthly pay inclusive of any other emoluments treated as pay.

40. Accordingly, it can be said that pay is not only the monthly basic pay but would include other remuneration which are drawn as salary and would also include emoluments which are treated as pay. It would be reasonable to infer that the salary is not only the basic pay and it is something more than that. What is then to be seen is as to what are the other remunerations which are being drawn as salary or what are the other emoluments which are treated as a pay.

41. There are only two elements which are subject matter of dispute between the parties in the present case. Counsel for the appellant would say that the house rent allowance and medical allowance cannot be treated as part of pay and, thus, are required to be excluded for calculating gratuity. On the other hand, counsel for the respondents would term these to be either remunerations or emoluments and hence countable towards salary payable to the employee and, thus, open to be taken into consideration for calculating the gratuity. Since the terms "emolument" and "remuneration" are not defined under the Common Cadre Rules, it would be fair to look for the literal meaning of these terms as apparently these have been so used in a literal sense in the Rules. As held in *Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal*, dictionary meaning may be resorted to as external aid when the definition clause does not define the expression conceptually. The dictionary meaning of the term "emolument" is profit arising from employment, such as salary or fee advantage. In a way, the term is defined as an advantage arising out of employment. Apart from salary, house rent allowance and medical allowance are payable as advantage to an employee. This is paid on monthly basis. If we see the meaning of term "remuneration", it would mean to compensate; to pay for services rendered; reward; pay. It cannot be said that house rent allowance or medical allowance is not being paid on account of service rendered or that it is not to recompense for the services rendered. In this background, it would be difficult to say that these remunerations or emoluments would not be part of salary as defined under the Common Cadre Rules.

42. Reference made by the counsel to *Director Central Plantation Crops Research Institute, Kesaragod and others v. M. Purushothaman and others*, AIR 1994 S.C. 2541 to explain the meaning of term "pay" would not help him as the Hon'ble Supreme Court in this case has interpreted the term "pay" under fundamental rules where it is defined to mean as under:--

- (i) the pay, other than special pay granted in view of his personal qualification, which has been sanctioned for a post held by him substantive or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President.

43. Under this definition only those emoluments could be included as part of pay which were specifically classed as pay by the President. Reference here can also be made to *State Bank of India and Others Vs. K.P. Subbaiah and Others*, where the meaning of "pay" has been explained. Pay has been held to be essentially a consideration for services rendered by an employee and is the remuneration which is payable to him. Remuneration is the recurring payment of services rendered during the terms of employment. It is also held that the pay and salary are necessarily not interchangeable concepts. As per the Hon'ble Supreme

Court, their meaning vary depending upon the provisions providing for them. Thus, the definition of pay in this case would not be relevant. The meaning of the pay and salary as defined in the Common Cadre Rules would be relevant to assign them meaning. The Hon"ble Supreme Court in the case of K.P. Subbaiah (supra) took help of the dictionary meaning to define the word "pay" in its ordinary sense. It is also observed that in the service jurisprudence the expression "pay" has technical connotation of its own. Similar ratio can be culled out from Gestetner Duplicators Pvt. Ltd. (supra) where it is held that answer to the question for expression of term "salary" must depend upon the true meaning of the term occurring in the Rules. This would show that salary can be given meaning assigned in the particular Rules. In this case, the term "salary" as given in Section 2(h) of the income tax Act was under consideration, where it is defined as:--

Salary" includes dearness allowance, if the term of employment so provide but exclude all other allowances.

Thus, this judgment may not be of much help to the counsel.

44. Another reason which would weigh with me to come to the conclusion that the house rent allowance and medical allowance will be inclusive of salary is the evidence that was led by the appellant itself during the course of trial. The evidence given by DW1, the witness of the appellant, would show that last pay certificate issued in respect of the respondent-plaintiff included house rent allowance and medical allowance as part of his salary.

45. Counsel for the respondent-plaintiff has also made reference to the decision of this Court in Civil Writ Petition No. 1182 of 1997, annexed as Annexure P-8 with Civil Writ Petition No. 8975 of 2005 (The Punjab State Cooperative Bank Ltd. Chandigarh v. Hari Chand Gupta and another), where the gratuity was directed to be calculated by including remunerations. It is held:--

A perusal of this rule makes it clear that on retirement, an employee is to be allowed gratuity equal to one month's pay for each complete year of qualifying service subject to other conditions specified therein. The word "pay" has been defined in rule 2(c) of the rules to mean "the average of the salary inclusive of other remunerations drawn as salary during the last 12 months" Reading Rule 3(a) along with rule 2(c), it is abundantly clear that average of the salary including the other remunerations drawn as salary during the last 12 months of the service has to be taken into account while calculating gratuity. In other words, gratuity cannot be calculated on basic salary alone. As per the affidavit filed by the Managing Director, remuneration drawn by the petitioner during the last 12 months of his service in addition to his salary were not included for calculating the amount. In this view of the matter, the amount paid to the petitioner is obviously less than what was due to him. We, therefore, allow the writ petition and direct respondent No. 1 to calculate the amount of gratuity after taking into account the average of the remuneration drawn by the petitioner

during the last 12 months of his service and then pay the balance to him.

46. Thus, no case for interference in this part of the factual finding recorded on the basis of evidence given by none other than the witness produced by the appellant is called for.

47. The learned counsel for the appellant, however, is justified in urging that the rate of interest allowed on the balance of gratuity amount i.e. 18% is highly excessive. It can be said that it was only the balance amount of gratuity, which was not paid and which was under dispute. Thus, there was no culpable neglect noticeable in non-release of this amount. In this background, interest @18% per annum would sound excessive. Civil Writ Petition Nos. 567 of 2005, 19852 of 2005, 19882 of 2006, 1047 of 2008, 20051 of 2008, 21740 of 2008 and 21792 of 2008.

48. As already noted, challenge in the abovesaid Civil Writ Petitions is to the communication issued by the Registrar, Cooperative Societies, for withdrawing the approval to the Common Cadre Rules or the communications that were initiated subsequent thereto on the basis of advice given by the counsel representing the appellant-Bank. During the course of arguments, it was pointed out before me that all these employees are covered by the Common Cadre Rules made applicable to them prior to 24th August, 1998. Learned counsel thereafter mainly pressed his alternative prayer to say that once the right has accrued to these employees to receive their gratuity under the Common Cadre Rules, the same could not be changed to their disadvantage by any subsequent order passed by the Registrar as it would amount to taking away their accrued right with retrospective effect which would be beyond the jurisdiction and power of the Registrar. This legal position would not be in much dispute.

49. The counsel appearing for the respondent-Bank in these cases though has challenged the maintainability of the writ petitions against the respondent-Bank but did not seriously dispute the submission that accrued rights could not be taken away retrospectively. The counsel for the Bank did not dispute that order passed by the Registrar would be amenable to writ jurisdiction. The counsel did not realize that the bank had itself also filed writ petition and thus could not have validly raised this objection.

50. In support, reference is made to Kerala Electrical and Allied Engg. Co. Ltd. v. Raveendran Pillai, 1999 (4) S.C.T. 206 where limitation on the amount of gratuity by amendment with retrospective effect was held arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution. In Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, a Constitution Bench, has considered the validity of retrospective amendment in the case of emoluments for the purpose of calculating pension. It is observed that the Parliament has the power to effect retrospective amendment in the law but cannot take away the accrued and vested rights with retrospective effect. It is further observed that any reduction in the pension accrued to a retiree amounts to violation of his

fundamental rights under Article 19(1)(f) and 31(1). Reduction in pension, with retrospective effect, to which an employee had become entitled on his retirement and was receiving is held unreasonable, arbitrary and unconstitutional and, thus, violative of Articles 14 and 16 of the Constitution. This view is expressed by the Court after making reference to number of judgments. In *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, , Constitution Bench of the Hon''ble Supreme Court struck down the amendment through which rights of Government servant were sought to be extinguished by making retrospective amendment. It is observed as under:--

The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do''s and don''ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today''s rights and not yesterday''s. The legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history.

51. Same Ratio can be culled out from *Y.R. Shenoy and others v. Syndicate Bank and others* 2003 (4) S.C.T. 368, that the gratuity is a statutory right earned by long and continuous service as a retiral benefit. It is a right if accrued cannot be taken away by agreement between the parties.

52. Thus, it is fairly certain that accrued rights cannot be taken away with retrospective effect in view of the law laid down in the above noted judgments. The communication addressed by Registrar annexed as Annexure P-5 in Civil Writ Petition No. 21740 of 2008 on the basis of legal advice received by him cannot be sustained and is set aside as it amounted to taking away the accrued rights of the petitioner-employees. Since all the employees in this case are appointees prior to 24th August, 1998 and, thus, governed by Common Cadre Rules. I am not going into the vires or the power of the Registrar to withdraw the approval granted to the Common Cadre Rules or to his power to substitute the provision in the Common Cadre Rules to make applicable the provisions of the Gratuity Act to the employees governed by the Common Cadre Rules after 24th August, 1998. This issue is left open.

53. As a result of above discussion, Regular Second Appeal No. 69 of 2005 is dismissed. However, the rate of interest as allowed at the rate of 18% is reduced to 8% per annum on the amount due, which is payable from the date it is due for payment to the date of payment.

54. Civil Writ Petition Nos. 567 of 2005 (Abnash Chander Sidana and another v. State of Punjab and others), 19852 of 2005 (Amrik Singh Walia v. State of Punjab and another), 19882 of 2006 (Gurcharan Singh v. The Punjab State Cooperative Bank, Chandigarh and another), 1047 of 2008 (Kewal Krishan Kanwra and another v. State of Punjab and others), 20051 of 2008 (Harjinder Pal Singh v. State of Punjab and others), 21740 of 2008 (Balbir Singh Gill and others v. State of Punjab and others), and 21792 of 2008 (Karamjit Singh Randhawa and others v. State of Punjab and others) filed by the employees are partly allowed. Communication, Annexure P-5 issued by the Registrar bearing No. Credit/CA-4/13275, dated 19th October, 2005 is set-aside as it would amount to prejudicially effecting the rights of the employees by taking away the accrued rights for payment of gratuity under the provisions of Common Cadre Rules, which was in use and on the basis of which the gratuity was being paid.

55. Civil Writ Petition Nos. 8975 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Hari Chand Gupta and others), 16403 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Hukam Chand and others), 16405 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Sarabjit Singh Johal and others) 16413 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Hakim Singh and others) 16415 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Ved Parkash Sharma and others), and 16466 of 2005 (The Punjab State Cooperative Bank Ltd., Chandigarh v. Jagdev Singh and others), as filed by the Bank are dismissed.