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**(1994) 08 AHC CK 0025**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 20839 of 1986**

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|---------------------------------------------------|------------|
| The Regional Manager, Punjab National Bank        | APPELLANT  |
| Vs                                                |            |
| Regional Labour Commissioner (Central) and Others | RESPONDENT |

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**Date of Decision :** 31-08-1994

**Acts Referred:**

Payment of Gratuity Act, 1972 — Section 4(3), 7

**Citation :** (1995) 1 LLJ 852

**Hon'ble Judges :** S.R. Singh, J;G.S.N. Tripathi, J

**Bench :** Division Bench

**Advocate :** K.L. Grover, for the Appellant;

**Final Decision :** Allowed

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## Judgement

S.R. Singh and G.S.N. Tripathi, JJ.—The petition is directed against the order dated April 9, 1986 (Annexure-3 to the writ petition) passed by the Assistant Labour Commissioner (C)/Controlling Authority under the Payment of Gratuity Act, 1972. The order impugned in the writ petition was passed on the application filed by the respondent Ram Nath u/s 7 of the Payment of Gratuity Act, 1972 (in short the Act). It may be noticed that Section 7 provides for determination of the amount of gratuity. According to Section 4 of the Act, gratuity shall be payable to an employee on termination of his employment if he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement

Sub-section (2) of Section 4 of the Act provides the mode of determination of

gratuity payable to an employee and visualises that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. Provisions and the Explanation to Sub-section (2) being not relevant need not be referred to Sub-section (3) however, puts a ceiling on the maximum amount of gratuity payable to an employee. According to Subsection (3) as it stood before its substitution by Act No. 22 of 1987, the amount of gratuity payable to an employee would not exceed twenty months' wages. The expression "twenty months wages" occurring in Sub-section (3) has now been substituted by the Expression "fifty thousand rupees".

2. The only question raised by the learned counsel appearing for the petitioner is that the respondent No. 2 has erred in computing the amount of gratuity payable to respondent-employee in that the Controlling Authority/Assistant Labour Commissioner (C) has misconstrued the scope and ambit of Sub-section (3) and on that account ignored the maximum limit of gratuity fixed by Sub-section (3). The respondent employee was admittedly paid Rs. 31,070.60/- as gratuity payable to him. This amount in our opinion was correctly worked out by the petitioner employer well in accordance with Subsection (2) read with Sub-section (3) of Section 4 of the Act. The 2nd respondent has awarded a sum of Rs. 3,883.15/- more towards gratuity; payable to the respondent- employee. Additional amount directed to be paid to the respondent employee has been worked out by ignoring the ceiling put by Sub-section (3) of Section 4 of the Act. In the opinion of the court the respondent employee was not entitled to any amount of gratuity in excess of twenty months' wages which admittedly comes to Rs. 31,070.60/- as already paid to him.

3. The view that we are taking is well in tune with the view taken by the Hon'ble Supreme Court in case of Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others, , while interpreting Sub-section (2) and Sub-section (3) of Section 4 of the Act The Supreme Court has held as under in the above noted case:

"The intention of the legislature enacting Sub-section (2) of Section 4 of the Act was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self contained all embracing complete and comprehensive code relating to gratuity as a compulsory retrial benefit. The quantum of gratuity payable under Subsection (2) of Section 4 of the Act has to be fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or more in excess of six months subject to the maximum of 20 months' wages as provided by Sub-section (3) thereof. The whole object is to ensure that the employee concerned must be paid gratuity at the rate of fifteen days' wages for 365 days in a year of service. The total amount of gratuity payable to such employee at that rate has to be multiplied by the number of years subject to the ceiling imposed by Sub-section (3) of Section 4 of the Act viz. that such amount shall not exceed 20 months'

wages."

4. The view taken by the 2nd respondent being in conflict with the view taken by the Supreme Court in the aforesaid case cannot be sustained. Accordingly the writ petition succeeds and is allowed. The impugned order dated April 9, 1986 (Annexure-3 to the writ petition) is quashed.