

(2012) 09 AP CK 0112

In the Andhra Pradesh High Court

Case No : Writ Petitions No's. 16325 of 2000, 20561 and 20562 of 2003, 19813 of 2005 and 12511 of 2006

The Secretary, Siddhartha Academy of General and Technical Education, Vijayawada and Another

APPELLANT

Vs

The Appellate Authority under the A.P. Payment of Gratuity Rules, 1972 And the Deputy Commissioner of Labour, Eluru, W.G. District and two Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Payment of Gratuity Act, 1972 — Section 1, 1(3)(c), 15, 4, 5

Citation : (2013) 2 ALD 279 : (2013) 4 ALT 83

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Challa Gunjaranjan, for the Appellant;

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao

1. All these Writ Petitions can be dealt with together and decided, as they raise a common question of law for determination. The Managing Committee of a private unaided Engineering College and the Principal of the said college are the petitioners. They challenge the correctness of the orders passed on 31.07.2000 by the Appellate Authority under the A.P. Payment of Gratuity Rules, 1972 reversing the orders passed by the Controlling Authority under the A.P. Payment of Gratuity Rules, 1972.

2. The individual employee, at whose instance the case was initiated, has been impleaded as respondent to each of these Writ Petitions apart from the official respondents. An educational society, registered under the provisions of the Societies Registration Act, is got up for the purpose of running educational institutions imparting both general and technical education. This society has

established an Engineering College at Kanuru, Vijayawada in the year 1977 after obtaining necessary approvals and permissions in terms of and in accordance with the All India Council for Technical Education Act, 1987 and the Andhra Pradesh Education Act, 1982. As of now, there are about 225 employees working in the said Engineering College, comprising of both teaching and non-teaching staff.

3. For the purpose of easy grasp, I record the facts relating to the 3rd respondent in Writ Petition No. 16325 of 2000, which are almost identical in the other cases as well. The 3rd respondent worked as a Junior Mechanic in Mechanical Engineering Department of the Engineering College for the period from 21.10.1981 to 31.07.1998, when he was ultimately relieved consequent on his attaining the age of superannuation. Since the provisions of the Payment of Gratuity Act, 1972 (for short, the "Act") are not attracted to the employees of educational institutions, according to the petitioners, the 3rd respondent has not submitted any application for payment of gratuity, as provided for in Rule 7(1) of the A.P. Payment of Gratuity Rules, 1972 (for short, "the Rules"). Instead, the 3rd respondent straight away approached the 2nd respondent and lodged a claim for payment of gratuity in accordance with Rule 10(1) of the Rules on 30.07.1999. The 2nd respondent, upon contest by the petitioners herein, dismissed the application for condonation of delay and held that the claim petition is time barred. Aggrieved by the said orders passed by the 2nd respondent on 22.01.2000, the 3rd respondent had preferred an appeal in terms of Section 7(7) of the Act to the 1st respondent. The 1st respondent, by his order dated 31.07.2000, allowed the said appeal and hence, the present Writ Petitions.

4. Heard Sri Challa Gunjaranjan, learned counsel for the petitioners, learned Government Pleader for Labour and Sri V. Subrahmanyam, learned counsel appearing for the individual employees.

5. Sri Gunaranjan, learned counsel for the petitioners would contend that the 3rd respondent employee is aware that employees of educational institutions are not entitled to be paid gratuity for the services rendered by them to the educational institutions and hence, did not make any claim before the management of the college for payment of gratuity. This apart, Government of India got published a notification in terms of Section 1(3)(c) of the Act only on 03.04.1997 and hence, the obligation for payment of gratuity cannot be fastened for the period preceding 03.04.1997. After 03.04.1997, the 3rd respondent workman has not rendered adequate and qualifying length of service to enable him to receive gratuity. It was also urged by Sri Gunaranjan that if the past service prior to 03.04.1997 is to be reckoned, then, it would amount to giving retrospective effect to the notification issued by the Government of India on 03.04.1997 and no such retrospective effect should be ascribed to the said notification, particularly in the absence of an explicit notification giving retrospective effect. It is also urged by Sri Gunaranjan that since the employee has not made any claim

and also did not submit any such application, as is required under law, the 2nd respondent could not have been approached by him directly. The 2nd respondent can be approached by an individual employee only in the event the employer declines to pay the amount of gratuity or when gratuity is paid, there is a dispute with regard to the quantum of gratuity payable. Therefore, the 2nd respondent ought not to have entertained the claim petition from the employee at the first instance. It was also further urged by the learned counsel for the petitioners that when a time limit is prescribed for preferring a claim, there should have been satisfactory explanation as to why the 3rd respondent employee could not make any such claim within the said time frame and further, if he seeks condonation of delay, it is for the employee to ascribe proper and sufficient cause for condonation of such delay. For the mere asking, the delay in making the claim should not have been entertained by the authorities. The appellate authority, the 1st respondent, has completely lost sight of these vital principles while dealing with the appeal preferred by the 3rd respondent. Hence, the order passed by him on 31.07.2000 deserves to be set aside. However, the learned counsel for the petitioners has pointed out that pursuant to the interim order passed by this Court on 06.09.2000, in W.P.M.P. No. 20761 of 2000, moved in this Writ Petition, and pursuant to similar such orders passed in the remaining cases, the petitioners deposited half of the gratuity amount payable. Further, pursuant to another interlocutory order passed by this Court on 11.09.2002, the 3rd respondent employee was permitted to withdraw the said amount.

6. There is no denying the fact that the 3rd respondent employee, who was working as a Junior Mechanic in the Department of Mechanical Engineering, was relieved by the Principal of the Engineering College on the After Noon of 31.07.1998, upon his attaining the age of superannuation. There is also no denying that the employee has lodged the claim before the controlling authority under the Payment of Gratuity Act, 1972 only on 30.07.1999 and also moved a petition seeking condonation of delay of 364 days in filing the claim petition. The case was contested by the petitioners. The controlling authority passed an order on 22.01.2000, dismissing the petition moved for condonation of delay, by a very short order, which reads as under:

The reasons stated in the petition filed by the petitioner for condoning the delay of 364 days are not genuine and found to be not reasonable. Therefore, the undersigned comes to the conclusion that it is not a fit case to consider to accord condonation for delay in filing the petition. Hence the delay condonation petition is hereby dismissed.

7. Thereafter, the 3rd respondent has filed an appeal before the appellate authority, the 1st respondent herein. Entertaining the said appeal, the 1st respondent issued a notice to both the parties, posting the case for hearing on 25.04.2000 at 03.00 P.M. On behalf of the 1st petitioner herein, a detailed counter-affidavit was filed on 09.05.2000, which was adopted by the 2nd petitioner by filing a memo to that effect on the same day. After hearing both

parties, the 1st respondent has passed orders on 31.07.2000 allowing the appeal and directed the management of the college to effect payment of gratuity to the employee within a period of seven days, failure of which payment would invite obligation to pay interest and other penal measures to be initiated against the management. Relying upon a judgment rendered by a Division Bench of this Court in *V. Venkateswara Rao Vs. Chairman/Governing Body, S.M.V.M. Polytechnic and Others*, , where it is held that ordinarily the delay in making the applications for gratuity should be condoned unless for special reasons the same can be rejected, and further, the fact that the claim for payment of gratuity was not made within the time limit specified does not render any such claim petition invalid, the appellate authority has allowed the appeal. This reasoning is faulted in this batch of Writ Petitions.

8. It will be appropriate at the outset to notice the provisions of the Payment of Gratuity Act, 1972 and the Rules made there under.

9. The Government of Kerala was the first to enact a legislation for payment of gratuity. That was followed quickly by the State of West Bengal. Thereafter, some other States have also felt the necessity for making similar enactments in their respective States. Taking into account and consideration these concerns of various States, the Parliament felt it appropriate to make a law on the subject for ensuring uniform pattern for payment of gratuity to the employees through out the country. A broad consensus for a central legislation on the subject has emerged at the Labour Minister's conference held on 24th and 25th August 1971. A similar sentiment was expressed by the Indian Labour Conference at its session held on 22nd and 23rd October 1971. Thus, the Payment of Gratuity Act, 1972, Act No. 39 of 1972, a beneficial and social welfare legislation came to be made providing for a scheme for payment of gratuity to the employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops and other establishments. This enactment was brought into force through a notification dated 16.09.1972. Sub-section (3) of Section 1 of the Act spread the canvass for the applicability of this Act. It would be important to notice clause (c) thereof, which enabled the Central Government, by notification, to specify 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, for bringing them within the spread of this canvass. Accordingly, the Central Government, by a notification dated 03.04.1997, specified that "educational institutions" in which ten or more persons are employed or were employed on any day preceding twelve months as a class of establishments to which the Payment of Gratuity Act, 1972 shall apply with effect from the date of publication of this notification. Thus, the college of Engineering run and managed by the petitioners has been brought within the purview of Payment of Gratuity Act, 1972. Section 4 of the Act makes payment of gratuity obligatory. Sub-section (1) thereof makes it clear that gratuity shall be payable to an employee on the termination of his employment, after he has rendered continuous service for not less than five years--(a) on his superannuation, or (b) on his retirement or

resignation, or (c) on his death or disablement due to accident or disease. The first proviso added thereto makes it clear that completion of continuous service of five years shall not be necessary where the termination of the employment occurred due to death or disablement. Sub-section (2) thereof obligates every employer to pay gratuity to an employee at the rate of 15 days wages, based on the rate of wages last drawn by the employee concerned, for every completed year of service or part thereof in excess of six months. An explanation was added thereto through Amending Act 22 of 1987 specifying that in the case of monthly rated employees, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. Sub-section (3) has imposed a ceiling on the maximum amount of gratuity payable to an employee. Sub-section (5) thereof makes it clear that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Sub-section (6) dealt with the aspects relating to forfeiture of gratuity, which may not be really relevant for our scrutiny. Section 5 of the Act conferred power on the appropriate Government, by notification and subject to such conditions as may be specified, to exempt any establishment to which the Act applies from the provisions of the Act, if in the opinion of the appropriate Government, the employees in such establishment are in receipt of gratuity or pensionary benefits, not less favourable than the benefits conferred under this Act. The highlighted expressions namely "the benefits conferred under this Act" amply make it clear that the Act is intended to confer certain benefits on the employees. Section 7 dealt with the determination of the amount of gratuity. Sub-section (1) thereof makes it clear that a person, who is eligible for payment of gratuity under the Act or any other 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. However, sub-sections (2), (3) and (3A) will be of significance for our enquiry and hence, I consider it appropriate to extract them:

Section 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.

Section 7(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) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) 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.

(Emphasis is generated)

10. Sub-section (2) has cast an obligation on every employer to determine the amount of gratuity payable 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. Most significantly, sub-section (2) has set out that the determination must be carried out whether an application referred to in subsection (1) has been made or not. By specifically using these expressions, the Parliament has made its intention abundantly clear that making an application in terms of sub-section (1) of Section 7 is neither obligatory nor mandatory, but it is merely desirable or directory. Therefore, the Parliament has thrust a duty on every employer to determine the amount of gratuity payable to an employee and then give a notice in writing about such determination not only to the employee concerned, but also to the controlling authority. This provision contained in subsection (2) of Section 7 has used expressions, which are firm, crisp and clear. They are incapable of being understood differently. The expressions "employer shall" are the most key words for unraveling the scope and magnitude of subsections (1) and (2) of Section 7. In this context, it is apt to advert to the observations made by a Division Bench of this Court (to which I am a party) in *V. Chakrapani Rao Vs. The State Bank of India and Others*,

35. It will be appropriate, at this stage, to notice the principles enunciated by the Constitution Bench of the Supreme Court in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, n paragraph 15.

15. Two principles of construction—one relating to *casus omissus* and the other in regard to reading the statute as a whole—appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou* (at All ER p. 544-I), "is not to be imputed to a

statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* where at AC p. 577 he also observed: (All ER p. 664-I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."]

41. To my mind, Rule 68B made an attempt to fix a time limit when it said that no sale of immovable property shall be made after expiry of three years [which was extended to four years by Notification No. 9995 dated 1.3.1996] from the end of the financial year in which the order giving rise to a demand of any amount, for the recovery of which the immovable property has been attached, has become conclusive or final. Therefore, Rule 68B enunciated a scheme to compulsorily accomplish the task of bringing about the sale of the immovable property of the defaulted assessee (borrower in our case), which property has been attached by the Recovery Officer in terms of Rule 48, in quick time. Therefore, Rule 68B imposed a duty upon the Recovery Officer to start acting promptly from the date the order giving rise to the demand attains finality. The Recovery Officer, being a public authority is really expected to act with necessary expedition and urgency, in the matter. But, however, in a variety of circumstances, including the vacancy in the office, like in the instant case, or heavy work load or consumption of time for identification of the precise asset of the defaulter to be proceeded against etc., there can occur delays, unintentionally, though. Since the contents of Rule 68B have to be suitably understood in the context of sub-section (22) of Section 19 of the DRT Act, the finality attained to such an order is of relevance. u/s 20 of the DRT Act, an aggrieved party has been conferred a right to prefer an appeal against the order of the Debts Recovery Tribunal and such appeal should be filed within a period of 45 days. Thus, until and unless the certificate issued by the Presiding Officer of the Debts Recovery Tribunal in terms of sub-section (22) of Section 19 has attained finality, the Recovery Officer acting u/s 25 of the Debts Recovery Tribunals Act cannot start initiating one or the other modes of recovery. In other words, the Recovery Officer while acting in furtherance of Section 25 in the process of recovering the debts due to banks and financial institutions, must endeavour to complete the transaction of sale within three/four years or in proximate closeness thereof. Since Rule 68B has used the expression "the end of financial year", the proximate closeness period would end with 31st March of the succeeding year when the three/four years period is completed. Hence, we feel that the language used in Rule 68B is not peremptory in content, but, purely indicative of a time frame limit for accomplishing the sale. If performance of a public duty is required to be done within a specified time, which is also related to a right given to a person, the provision as to time will still be held as directory unless it is shown that the person on whom the related right is conferred is prejudiced because of the non-performance of the duty within the specified time.

It may be relevant to see whether the requirement of time is addressed to a party or an officer, for in the former case it may be mandatory. Further, when a public authority is required to do a certain thing within a specified period, the same is ordinarily construed as directory, and it is equally well settled that when consequences for inaction on the part of the statutory authority within the specified time is expressly provided, it must be held to be imperative (See Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,

11. The intention of a Legislature normally comprises of two components. The first relates to the concept of meaning i.e. what is commonly understood meaning of the expressions chosen to be used by the Legislature and the second aspect conveys the purpose and object or the reason or spirit behind the legislation itself. In all normal circumstances, primarily, the language employed in the statute is the determinative factor of the legislative intention. The first and primary rule of construction therefore, is that the intention of the Legislature must be gathered from the words employed by the Legislature itself.

12. Long years ago, Lord Atkin in AIR 1939 47 (Privy Council) has observed:

But in truth when the meaning of words is plain, it is not the duty of the Courts to busy themselves with supposed intentions.

13. If the words of a statute are very precise and unambiguous, then no more can be necessary than to expand those words in their natural and ordinary sense. In AIR 1945 48 (Privy Council) it is set out that:

In construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used.

14. In Kanai Lal Sur Vs. Paramnidhi Sadhukhan, , it is held that

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act, whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction.

15. Let us apply these salutary tests to the present fact situation and then deal with the contention canvassed by Sri Gunaranjan. Sub-section (1) of Section 7 required a person, who is eligible for payment of gratuity or any other person authorized by him, in writing, to act on his behalf, to send a written application to the employer within such time and in such form, as may be prescribed, for payment of such gratuity. State Government, exercising the power available to it under sub-section (1) of Section 15 of the Act, framed the A.P. Payment of Gratuity Rules, 1972. Rule 7(1) has prescribed that the employee, who is eligible for payment of gratuity or any person authorized by him, in writing, to act on his

behalf shall apply ordinarily within 30 days from the date the gratuity became payable and in Form I to the employer. Therefore, Sri Gunaranjan contended that the first and the foremost requirement is that an application in Form I shall be lodged by the eligible employee or any other person acting on his behalf with the employer and that too, within 30 days from the date the gratuity becomes payable. Since the 3rd respondent has not lodged any such claim with the employer, the question of his approaching the competent authority u/s 7(4) of the Act read with Rule 10 seeking payment of gratuity would not arise and hence, entertaining the claim petition by the primary authority itself was contrary to the provisions of law and hence, it is an illegal exercise.

16. I am afraid, this contention is without much merit. Sub-section (2) of Section 7 holds the key to understand the contours of sub-section (1) of Section 7. In Sub-section (2), the most crucial expressions used read as under:

Whether an application referred to in sub-section (1) has been made or not.

17. By the choice of using these expressions, the Parliament has made it explicitly clear that submission of an application, either by the employee or by anyone authorized by him on his behalf, in terms of sub-section (1) of Section 7, is purely a directory one, but not mandatory one. In fact, by using specifically the expressions "the application has been made or not", the Parliament has conveyed very firmly its intention that the gratuity becomes payable to an employee irrespective of the fact that an application for that purpose has been made or not. In other words, the payment of gratuity has been made mandatory and an application soliciting such payment is made purely directory. After all, the primary objective of this legislation was to secure payment of gratuity. That is the reason why the State Government, while framing the rules, used the expressions in Rule 7(1) that employee or any person authorized by him shall apply ordinarily within 30 days from the date of gratuity became payable. The intention is very clear. An application requiring payment of gratuity can ordinarily be made within 30 days, thus, implying that such an application can be lodged even beyond the said 30 days time. Thereby, indicating that right to receive gratuity does not get jeopardized all due to delay in applying. It would also be apt to notice that certain penal consequences would follow from the default committed in the matter of payment of gratuity. u/s 8, the arrears of gratuity become recoverable together with compound interest thereon at the rate of 9% per annum from the date of expiry of the prescribed time as arrears of land revenue. Further, Section 9 recognizes avoidance of payment of gratuity as penal and the offender can be punished with imprisonment for a term, which may extend to six months or with fine, which may extend to Rs. 10,000/-, or with both. Therefore, when Sections 7, 8 and 9 are read together and kept in view, it becomes explicitly clear that the Parliament never intended that gratuity becomes payable only upon an application made by a party, who is eligible to receive the same. Perhaps, making an application for payment of gratuity acts merely as a catalyst to hasten the process of the payment of gratuity and thus

avoid the follow up consequences emanating from default. I therefore, reject the contention of Sri C. Gunaranjan that the competent authority could not have entertained the claim for payment of gratuity without the employee concerned approaching and lodging a claim in terms of Sub-section (1) of Section 7 read with Rule 7 (1) of the A.P. Payment of Gratuity Rules, 1972.

18. The next contention of Sri C. Gunaranjan is that the notification was issued by the Central Government in terms of Section 1(3)(c) of the Act only on 03.04.1997 and hence, the provisions of the Act cannot be applied for the services rendered by an employee prior to 03.04.1997. If any such service prior to 03.04.1997 is taken into account and consideration, according to the learned counsel Sri Gunaranjan, it would amount to giving retrospective effect to the notification of the Government of India.

19. No notification shall be construed to have brought into force a provision of a statute with retrospective effect, unless it has been stated so explicitly or by necessary implication. The notification has never set out that it would have retrospective effect. To my mind, there is no such necessity either. All that is required by the Government of India was to notify "any other establishment" intended by it to be brought under the cover of the Act and for that purpose, it was required to be notified in accordance with and in terms of Section 1(3)(c). When once the Government of India issues any such notification, the provisions of the Payment of Gratuity Act, 1972 get attracted to all such establishments. Once the provisions of the said enactment got attracted, the rights and obligations created there under start flowing automatically. Consequently, if any employee of such an establishment has retired from service after 03.04.1997, on attaining the age of superannuation or tendered his resignation or suffered any disablement due to accident or disease or unfortunately died, one becomes eligible and entitled to be paid gratuity. A right is thus created for an employee, who falls within the scope of Section 4 of the Act, to receive gratuity. Correspondingly, an obligation is cast upon the employer to make such a payment. Only for the purpose of working out the quantum of gratuity, the total service rendered by the employee till then is required to be reckoned. In other words, for the purpose of computation of the quantum only, the service rendered by such an employee prior to 03.04.1997 is required to be reckoned and in doing so, it does not amount to giving retrospective effect to the notification. I therefore, do not find any merit in this contention.

20. In the present context, it is worthy taking note of the legal principles relating to statutes which confer prospective benefit based on antecedent facts. In *R. v. (St.) Mary Whitechapel (Inhabitants)* (1848) 12 QB 120, the question related to construction of Section 2 of the Poor Removal Act, 1846, which provided that "no woman residing in any parish with her husband at the time of his death shall be removed from such parish, for twelve calendar months next after his death, if she so long continues a widow", came up for consideration as, in that case it was sought to remove a widow within twelve months from the date of the death of

her husband who had died prior to the Act coming into force and it was contended that to apply the Act to such a case was to construe it retrospectively. In rejecting the contention, LORD DENMAN, C.J. observed:

It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption against a retrospective statute being intended supported this construction; but we have shown before that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing

21. Thus, the words "shall be removed" were found appropriate to cover all cases of future removals irrespective of whether the husband had died prior to the Act or not.

22. When rate of interest payable upon compensation for "land acquired" by a municipal council was raised by an Act from four to six percent, it was held by the Privy Council in AIR 1928 128 (Privy Council) , that benefit of increase in interest from the date of operation of the Act was available also in respect of land acquired before the Act and that such a construction of the Act did not give rise to any question of retrospective operation of the Act.

23. In Barber v. Pigden (1937) 1 All ER 115 (PC), the question related to the Law Reform (Married Women and Tortfeasors) Act, 1935, which provided, that the husband, shall not, by reason only of his being her husband, be liable in respect of any tort committed by her, whether before or after the marriage" fell for consideration. Section 4 of the said Act saved from the operation of the Act, legal proceedings already commenced. The question before the Court of Appeal was: whether the Act applied to a tort committed prior to the Act in respect of which proceedings had not commenced when the Act came into operation. In holding the Act applicable to such torts, SCOTT, LJ., pointed out that the purpose of the Act was to make a clean sweep of the old legal fiction that a woman on marriage became merged in the personality of her husband, and thus to confer on a married woman full human status; that the legal fictions so removed were in their origin inextricably mixed up with old procedural law; that a statute abolishing old legal fictions of this nature is akin to a procedural statute; and that only expressed exception pointed out in the Act was in respect of pending proceedings which implied that there is no room for any other exception.

24. It was held in Master Ladies' Tailors' Organization v. Ministry of Labour (1950) 2 All ER 525, that the fact that a prospective benefit under statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. Thus, it becomes clear that the rule against retrospective construction is not always applicable to a statute merely because a part of the requisites for its action is drawn from time antecedent to its passing. In Rattan Lal Vs. State of Punjab, , Probation of

Offender Act, 1958 was extended to an area after the trial resulting in conviction was completed and when the matter was pending in appeal. The Supreme Court held that the Appellate Court could set aside the sentence and pass an order of probation under the said Act.

25. In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, a question arose as to the benefit of Section 17-B of the Industrial Disputes Act, 1947, which was brought into force with effect from 21.08.1984, could be extended to awards passed prior to the said date. Section 17-B of the Industrial Disputes Act, 1947, provided that where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of a workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court the employer shall be liable to pay such workman during the pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, if the workman had not been employed in any establishment during such period.

26. The Labour Court in its award dated September 28, 1983 held that the termination of services of the appellant, was wrongful and illegal and that he was entitled to be reinstated with continuity of service. It directed that the appellant would be entitled to back wages at the rate at which he was drawing them when his services were terminated. The management challenged the award on January 31, 1984 by filing a writ petition before the High Court. On December 12, 1984 the appellant moved an application under s. 17-B of the Act for a direction to the management to pay him full wages last drawn by him during the pendency of the writ petition. The High Court held that the section was applicable only to cases where the awards were passed after its commencement, and since the award in that case was passed prior to August 21, 1984 the section had no application.

27. It was answered as under:

In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have attempted to make the object of the enactment effective and to render its benefits unto the person in whose favour it is made. The respondents' contention is that a Section which imposes an obligation for the first time, cannot be made retrospective. Such sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this Section has been enacted. It is here that the Court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the Court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the Courts have necessarily to give the statute a purposeful or a functional interpretation.

Now, it is trite to say that acts aimed at social amelioration giving benefits for the have nots should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have nots and the underdog and which would lead to injustice should always be avoided. This Section was intended to benefit the workmen in certain cases. It would be doing injustice to the Section if we were to say that it would not apply to awards passed a day or two before it came into force.

28. I, therefore, have no hesitation to reject the plea that for payment of gratuity, if services rendered prior to the date of notification were reckoned it amounts to giving retrospective effect to the notification published on 03.04.1997.

29. It was further contended that no reasons are set out, much less any valid reasons as to why there was a delay of 364 days in lodging the claim by the employee concerned at the first instance and there was no justification whatsoever for condoning any such delay. As was already noticed supra, the rules framed by the State Government require an application to be made ordinarily within 30 days time from the date the gratuity becomes payable. By using the expression "ordinarily", the rule-making authority has clearly implied that any such application, even if is made beyond the 30 days, becomes entertainable and it cannot be rejected only on the ground that no such application has been made within the said period. Further, as was already noticed supra, sub-section (2) of Section 7 required the employer not only to compute the amount of gratuity payable and communicate the same to the employee concerned, but also required the employer to intimate the same to the competent authority. Rules can be made for giving effect to the object sought to be achieved by the statute. A rule cannot seek to frustrate the primary objective and intent of the statute. Therefore, Rule 7(1) should be understood as a mere tool for giving effect to sub-section (1) of Section 7 of the Act and that does not intend to put a limitation upon the provision contained under sub-section (2) of Section 7. Therefore, for this reason, the contention canvassed was liable to be rejected.

30. Further, delay in preferring a claim should not result in denying a right, unless such a consequence is really intended to follow from any such delayed claim. There is no provision in the Act or the Rules to that effect. Hence for technical reasons alone delay should not be allowed to defeat any claim. Further delay, in making any claim deserves to be condoned unless there are special or compelling reasons not do so. If the opposite party has to suffer any additional hardship on account of any such delay perhaps, that might be a factor that can come in the way of condonation of delay. If the opposite party has also altered its position all due to delay and reversing the position later on becomes difficult, then perhaps the delay may not be condoned. No such circumstances are

pleaded or established in the instant case.

31. It is also noteworthy that the learned counsel for the petitioner has relied upon the Judgment rendered by the Supreme Court in *Balwant Singh (Dead) Vs. Jagdish Singh and Others*, in support of his contention that delay shall not be condoned for mere asking and in the absence of sufficient cause. It is appropriate to notice the principle enunciated by the Supreme Court in paragraph 26 of the said Judgment in the following words:

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

32. It is clear from the principle enunciated that, if a valuable right has accrued in favour of one party as a result of the failure of the other party all because of the delay, in the absence of a justifiable and sufficient cause, it would be unreasonable to take away the valuable right accrued in favour of the party who is not to be blamed for the delay. The facts in the instant case clearly demonstrate that, by default and delay in making a claim for payment of gratuity, on the part of the unofficial respondent herein, no right much less a valuable one had accrued to the petitioners. The obligation cast on them by the statute to effect payment of gratuity, irrespective of an application was made in that behalf or not, persists. Therefore, by delay on the part of the employee in making a claim for payment of gratuity, the obligation statutorily thrust upon the petitioners does not get withered away.

33. The learned counsel for the petitioner has placed reliance upon the judgment rendered on 28.12.2011 by this Court in W.P. No. 4857 of 2000, which, in turn, reiterated the principle enunciated by the Division Bench of this Court in *V. Venkateswara Rao's* case (cited supra). I am afraid, the judgment rendered by the Division Bench in *V. Venkateswara Rao's* case (supra) and the judgment rendered in Writ Petition No. 4857 of 2000 are of not much help to the petitioner's cause. The employee concerned in that case retired from the service of the college on 31.05.1995. By then, there was no notification issued by the Central Government, in accordance with Section 1(3)(c), which was published in the Gazette only on 19.04.1997. Hence, a person, who has retired from service prior thereto, could not have made a claim for payment of gratuity at all.

34. The learned counsel for the petitioner has pressed into service the judgment rendered by the Supreme Court in Ahmedabad Pvt. Primary Teachers' Association Vs. Administrative Officer and Others, The said case dealt with the question as to whether a teacher would fall within the definition of "employee", as defined in Clause 2(e) of the Payment of Gratuity Act or not. The Supreme Court had held that no teacher can be said to be covered by the said expression and consequently, not entitled for payment of gratuity. This judgment is not of much help to the petitioner's cause, for, the respondent workman herein is not a member of the teaching faculty of the college, but he is a non-teaching employee, who squarely falls within the sweep of the expression "employee" used in Clause 2(e) of the Act.

35. The learned counsel has also relied upon the judgment rendered in MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, wherein the Supreme Court had set at rest all speculative aspects relating to the retrospective effect of the provisions of the Act or notifications and set out that unless the express language renders it otherwise bringing them with retrospective effect, all provisions of Acts and notifications are to be construed to be prospective in their operation. The case on hand never specified that the notification dated 03.04.1997 of the Central Government is brought with retrospective effect. It is purely prospective in nature. Hence, all such employees, who can be covered by the sweep of Section 4 of the Act, become entitled for payment of gratuity thereafter. The judgment rendered by the Supreme Court in Shakti Tubes Ltd. Vs. State of Bihar and Others, is also to the same effect wherein in paragraph 24, the principles relating to understanding the prospective nature of the provisions of the Act or notifications have been dealt with. Paragraph 24 reads as under:

Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. (The aforesaid) rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only--*nova constitutio futuris formam imponere debet non praeteritis*--a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p.440).

36. The other judgment relied upon by Sri Gunaranjan, namely Anil Chandra and

Others Vs. Radha Krishna Gaur and Others, is not of much help either to the present case.

37. I do not find any merit in these Writ Petitions and they are accordingly dismissed. No costs. Thirty days' time is granted to the writ petitioners from the date of receipt of a copy of this order for payment of the balance 50% of the amount of gratuity payable to each of the employees.