be the proper multiplier to assess reasonable compensation. Thus calculated the claimants would be entitled to Rs. 57,600 by way of compensation. They shall also be entitled to 12 per cent interest on this amount from the date of the application till its realization.

(13) In view of the above discussion, this appeal is allowed, the impugned judgment of the Tribunal set aside and the award passed in favour of the appellants in the amount of Rs. 57,600 together with interest at the rate of 12 per cent per annum from the date of petition till its realization. The owners, respondents No. 1 and 2 and the driver, respondent No. 4 would be liable to pay the amount jointly and severally. However, the liability of the insurance Company would be limited to Rs. 20,000 apart from the interest at the said rate or the same amount in accordance with the law prevalent at the time of the accident. The claimants shall also be entitled to their costs throughout.

S. S. Sandhawalia, C.J.—I agree.

H.S.B.

Before S. S. Sandhawalia, C.J. & D. S. Tewatia, J.

HARJIT SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB and another,—*Respondents.*

Criminal Writ Petition No. 322 of 1982.

March 22, 1983.

Constitution of India 1950—Article 226—Writ of Habeas Corpus challenging detention admitted to a hearing—High Court—Whether can grant interim bail to the petitioner pending disposal of the writ petition.

Held, that the High Court has the jurisdiction to grant bail to a person, as an interim relief, in a writ of *habeas corpus* challenging his detention filed under Article 226 of the Constitution of India, 1950. (Para 7).

Gurmail Singh *v.* State Writ 279 of 1982 decided on 8th September, 1982—Overruled.

Case referred by Hon'ble Mr. Justice D. S. Tewatia, on September 15, 1982 to a larger bench for deciding an important question involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S Sandhawalia and Hon'ble Mr. Justice D. S. Tewatia, decided the question on March 22, 1983 and returned all the cases to a learned Single Judge for decision on merits.

Petition under Articles 226/227 of the Constitution of India praying that—

(i) *The respondents be directed to set the petitioner at liberty forthwith for the illegal custody by means of a writ in the nature of habeasc corpus.*

(ii) *Any other writ, order or direction deemed appropriate in the circumstances of the case be issued.*

(iii) *The petitioner be ordered to be released on bail during the pendency of this petition.*

(iv) *Filing of affidavit and filing of certified copies of Annexure be dispensed with.*

Balwant Singh Malik and S. V. Rathee, Advocates, *for the Petitioner.*

G. S. Bains, A.A.G. Punjab, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. The meaningful question lucidly formulated in the order of reference to the Division Bench is in the following terms :—

> "Whether the High Court while admitting a writ of habeas corpus, in which detention of the petitioner is challenged, can enlarge the petitioner on bail, pending the decision of the writ petition or not ?"

2. It is unnecessary to advert to the merits of the individual cases and it suffices to notice the matrix of facts from Criminal Writ No. 322 of 1982—*Harjit Singh* v. *Punjab State* to provide the requisite foundation for the legal issue involved. Harjit Singh writ petitioner was convicted on the charge of murder and sentenced to imprisonment for life by the Court of Session at Bhatinda on the 28th of September, 1974. The conviction and sentence were affirmed on appeal. The core of the petitioner's case is that taking into consideration the remissions granted for good conduct by the State Government under the statutory rules as also the period during trial in which the petitioner remained in custody, he has already qualified for his premature release. However, the State Government notwithstanding the aforesaid factors and the recommendations of the Jail Department has arbitrarily rejected the claim of the petitioner for release and directed the resubmission of the petitioner's case after one year. Consequently, the petitioner preferred the present writ petition under Articles 226 and 227 of the Constitution praying

in terms for a writ of habeas corpus directing that the petitioner be set at liberty forthwith. The case originally came up for motion hearing before my learned brother Tewatia, J., sitting singly and when the same was admitted for hearing the learned counsel for the petitioner strenuously pressed for an interim relief by way of bail till the final disposal of the writ. This prayer was opposed on behalf of the respondent-State and primary reliance therefore was placed on the following observations of Punchhi, J.,—*Gurmail Singh* v. *The State of Punjab* (1):—

> "I have expressly ruled in a number of decisions that unless this Court is seisin of an appeal or revision on behalf of the convict, it has no power to suspend his sentence. The concession of bail, strictly speaking, is extendable only to undertrials. The sentence of a convict can only be suspended by the State Government. Being cognizant of these principles, I do not think that discretions exercised by Hon'ble Single Judges of this Court in granting bail in other cases are binding precedents on me to grant bail to the petitioner, unless there be some legal principles settled. There is none whatsoever on the orders placed before me by Shri Malik. Thus, the prayer for bail is declined."

The observations aforesaid were assailed on behalf of the petitioner. Owing to the significance of the question involved and expressing a doubt with regard to the correctness thereof the matter has been referred for decision by the Division Bench and that is how it is before us.

3. As would be evident from the formulated question quoted above the issue would ordinarily have merited consideration on larger principle. However, we are inclined to the view that it seems to be so squarely covered by binding precedent that any dissertation on the matter, on first principles, may well be an exercise in futility. The point seems to have been expressly raised in the celebrated Presidential reference under Ar. 143 in *Keshav Singh's case* (2). In our view it is categorically concluded by the following observations therein:—

> "In the course of his arguments, Mr. Seervai laid considerable emphasis on the fact that in habeas corpus proceedings, the High Court had no jurisdiction to grant interim

(1) Cr. W. 279 of 1982 decided on 8th September, 1982.

(2) AIR 1965 S.C. 745.

bail. It may be conceded that in England it appears to be recognised that in regard to habeas corpus proceedings commenced against orders of commitment passed by the House of Commons on the ground of contempt, bail is not granted by courts. As a matter of course, during the last century and more in such habeas corpus proceedings returns are made according to law by the House of Commons, but 'the general rule is that the parties who stand committed for contempt cannot be admitted to bail'. But it is difficult to accept the argument that in India the position is exactly the same in this matter. If Article 226 confers jurisdiction on the Court to deal with the validity of the order of commitment even though the commitment has been ordered by the House, how can it be said that the Court has no jurisdiction to make an interim order in such proceedings? As has been held by this Court in *State of Orissa* v. *Madan Gopal Rungta* (3), an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding. Indeed, as Maxwell has observed, when an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. That being so, the argument based on the relevant provisions of the Criminal Procedure Code and the decision in the Privy Council in *Jairam Das* v. *Emperor* (4) is of no assistance."

The question arose even more pointedly later in *State of Bihar* v. *Rambalak Singh* (5), wherein the very jurisdiction of the High Court to grant bail to a person detained under rule 30 of the Defence of India Rules in a writ of habeas corpus was specifically assailed on behalf of the State. Repelling such a challenge and approvingly reiterating the rule in the aforesaid special reference, their Lordships concluded as follows :—

" * * *. Therefore, on the point raised by the learned Advocate-General in the present appeal, our conclusion is that in dealing with habeas corpus petitions under Article

(3) AIR 1952 S.C. 12.
(4) AIR 1945 P.C. 94.
(5) AIR 1966 S.C. 1441.

226 of the Constitution where orders of detention passed under Rule 30 of the Rules are challenged, the High Court has jurisdiction to grant bail, ..."

4. Learned counsel for the respondent-State was fair enough to concede that he could not cite any judgment of their Lordships of the Supreme Court to the contrary but attempted to place reliance on the observations of Punchhi, J., sitting singly in *Maghar Singh* v. *State of Punjab & another* (6) A reference to that judgment would make it evident that the matter was considered there within the narrow confines of sections 432 and 482 of the Code of Criminal Procedure and not on the larger vista of the power of the High Court to grant interim relief in a writ of habeas corpus. The observations in the said judgment are, therefore, plainly distinguishable and do not even remotely cover the specific issue before us now.

5. However, it would appear that in *Gurmail Singh's case* (supra) by implication the ratio in *Maghar Singh's case* has been extended even to the arena of a writ of habeas corpus as well. This, in our view, is not warranted. A reference to the short order in *Gurmail Singh's case* would indicate that the issue was not even remotely raised or canvassed before the Bench. The binding precedents of the Supreme Court in the Special Reference in *Keshav Singh's case* (supra) *and Rambalak Singh's case* (supra) were not even adverted to. The sharp distinction between the wider gamut of the celebrated writ of habeas corpus as against the limited statutory provisions of the Criminal Procedure Code seems not to have been high lighted. We are, therefore, of the view that the observations on this specific point in *Gurmail Singh's case* do not lay down the law correctly and are hereby overruled.

6. Before parting with this judgment, we would wish to make it clear that we are dealing here with the question of jurisdiction of the High Court to grant interim relief in a petition seeking a writ of habeas corpus and are not in any way concerned with the propriety or reasonableness of the exercise of such jurisdiction. In fairness to the learned counsel for the State we would notice his reliance on a Calcutta High Court decision in *Re. Nikhilesh Nanda* (7). A plain reading thereof would indicate that the said authority pertains exclusively to the exercise of the jurisdiction and not to the

(6) 1981 C.L.R. 1517.

(7) 1975 Crl. L.J. 1137.

very right of granting relief. The said judgment consequently is of no aid to the respondent-State.

7. To conclude finally, the answer to the question posed at the very outset is rendered in the affirmative and it is held that the High Court has jurisdiction to grant bail to the petitioner, as an interim relief, in a writ of habeas corpus challenging his detention.

8. The question of law having been settled as above, these eight cases would now go back to the learned Single Judge for a decision on their individual merits.

D. S. Tewatia, J.—I agree.

H.S.B.

Before P. C. Jain & J. M. Tandon, JJ.

DARSHAN ENGINEERING WORKS, AMRITSAR,—*Petitioner.*

versus

THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT and others,—*Respondents.*

Civil Writ Petition No. 1102 *of* 1980.

March 24, 1983.

Constitution of India 1950—*Article* 19(1)(*g*)—*Payment of Gratuity Act* (*XXXIX of* 1972)—*Sections* 1(4), 2(q) & (*r*), 4(1)(b)—*Payment of Gratuity—Employee attaining the age of superannuation before the enforcement of the Act—Such employee—Whether entitled to gratuity—Employee attaining age of* 58 *years—Continuing in service—If entitled to gratuity—Fixing of a period of five years for payment of gratuity—Such fixation if violative of Article* 19(1)(*g*).

Held, that it is specifically provided under section 4(1)(b) of the Act that an employee shall be paid gratuity on his retirement or resignation. Sub-clause (b) of sub-section (1) is independent of sub-section (a) thereof. It is, therefore, clear that an employee will be entitled to gratuity in terms of sub-section (1) on his superannuation if he ceased to be an employee thereafter. Should the employee be appointed or continued in the employment after the date of his superannuation he will still be entitled to gratuity on his retirement or resignation when he would cease to be in the employment of the employer. The petitioner cannot disown the liability to pay the gratuity to the respondent under the Act on the ground that the latter had attained the age of 58 years before the Act came into force. (Para 2).

Held, that the age of superannuation is relevant for the purpose of payment of gratuity under section 4(1) of the Act where a workman ceases